November 6, 2026

General Counsel Division
Attn: Rule Comments
Office of the Attorney General
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Re: Written Comments in Opposition to Proposed Rules, 1 TAC §§ 67.1-67.12, 51 Tex. Reg. 6996 (October 9, 2026) (Proposed Chapter 67, Foreign Ownership Enforcement)

Dear General Counsel Gordon:

On behalf of the undersigned, we offer these comments to the above-referenced proposed rules (the "October proposal") from the Office of Attorney General ("OAG") implementing Senate Bill 17 ("S.B. 17"), enacted during the 89th Texas Legislature. These comments are offered by a broad coalition of professional associations and organizations whose members participate in virtually every real estate transaction in Texas.

Collectively, we represent mortgage lenders, real estate brokers and sales agents, appraisers, title companies, apartment managers and owners, land developers, and residential and commercial builders. Our members operate across every region of the state and at every stage of the real estate lifecycle, contributing to an industry that generates hundreds of billions of dollars in economic activity each year and supports hundreds of thousands of Texas jobs. These professionals are uniquely positioned to assess how the proposed rules will operate in practice because they are integral to the lawful functioning of the Texas real estate market.

We share the Attorney General's commitment to protecting Texas's homeland, farmland, infrastructure, and national security interests and to the lawful implementation of S.B. 17. The 89th Legislature enacted an enforcement framework designed to reach prohibited foreign actors while providing certain safeguards for innocent participants in the real estate marketplace. As S.B. 17's bill analysis makes clear, an objective of S.B. 17 was to ensure "that innocent actors such as lien holders, lenders and real estate professionals are not harmed by the actions of a prohibited entity." Sen. Rsch. Ctr., Bill Analysis, Tex. S.B. 17, 89th Leg., R.S. (2025).

These comments explain why the proposed rules depart from that legislative design, impose substantial unintended burdens on the very professionals the statute sought to protect, and should be withdrawn or materially revised to conform to both the text and purpose of S.B. 17.

I. BACKGROUND

S.B. 17, enacted during the 89th Texas Legislature and effective September 1, 2025, added Subchapter H to Chapter 5 of the Texas Prop. Code. *See* Tex. Prop. Code §§ 5.251-5.259. The Legislature enacted S.B. 17 to address national security risks associated with hostile foreign ownership of real property in Texas, while preserving transactional certainty and protecting innocent market participants.

S.B. 17 achieves this statutory purpose in two interconnected ways. First, it creates a substantive prohibition on the purchase or acquisition of interests in real property by a defined set of foreign individuals and entities connected to "designated countries." Tex. Prop. Code §§ 5.251-5.254. The statute thus defines the prohibited conduct and assigns liability exclusively to the purchaser—the party best positioned to know and control its own eligibility to acquire property. *See* Tex. Prop. Code § 5.253 (directing the prohibition at enumerated foreign individuals, organizations, and governmental entities); *id.* § 5.255(e) (preserving validity of the transaction and insulating other parties from liability). Second, the statute establishes a way to enforce this prohibition by authorizing OAG to investigate impermissible real estate transactions after they have occurred, using defined statutory procedures, and—if warranted—to bring a court-supervised *in rem* enforcement action against the affected property. *Id.* §§ 5.255-5.257. In that action, the sole remedy authorized is divestiture through a court-appointed receiver, with proceeds applied to existing liens and to reimburse OAG's enforcement costs. *Id.* §§ 5.257(a), (c).

Critically, no part of S.B. 17's two-pronged approach imposes independent compliance, monitoring, or reporting obligations on third-party professionals involved in real estate transactions, and it does not authorize sanctions against such parties. *See id.* §§ 5.251-5.259. That omission is sensible. Real estate professionals generally do not collect, verify, or maintain the kind of information that would be relevant to determining compliance with S.B. 17. In an ordinary residential or commercial transaction, license holders, property managers, and housing providers gather information necessary to market, lease, finance, insure, or close the transaction—not whether a person is domiciled in a designated country, affiliated with a foreign governmental entity, or connected to a designated organization. Those determinations are outside the ordinary scope of residential and commercial real estate practice. Similarly, § 5.255(e) specifically states that the transaction "is not void because of the violation" therefore there is no information relevant to S.B.17 necessary to insure good title.

S.B. 17 grants the Attorney General limited rulemaking authority to "adopt rules for the implementation of Subchapter H[.]" 2025 Tex. Gen. Laws Ch. 956, § 5. Moreover, S.B. 17 authorizes the Attorney General to "establish procedures to examine a purchase or acquisition of an interest in real property and determine whether an investigation of a possible violation of this subchapter is warranted." Tex. Prop. Code § 5.255(a). The October proposal identifies S.B. 17, Section 5 as its sole statutory authority. 51 Tex. Reg. at 6998. S.B. 17 does not, however, empower the Attorney General to effectively expand and amend the statute. And S.B. 17 does not authorize the Attorney General to expand the class of regulated parties, impose independent compliance or reporting obligations on third parties, or create new sanctions or penalties.

We note that the OAG previously proposed rules on March 27, 2026, 51 Tex. Reg. 1937 (the "March proposal"), which were withdrawn on October 5, 2026 after the agency failed to adopt the proposal within six months of publication. *See* Tex. Gov't Code § 2001.027, 51 Tex. Reg. 7137. On April 24, 2026, we submitted comments to the March proposal which, because the March proposal was withdrawn, the OAG was not required to respond to our or to any other comments received as required by Texas Gov't Code § 2001.033. Not only does the October proposal retain identical provisions the undersigned requested the OAG amend or remove in April, it also includes new provisions that compound our concerns. We urge the OAG to reconsider the comments in this letter that were previously raised in our April letter and restated herein in addition to the new comments in response to the new proposals.

II. OBJECTIONS TO THE PROPOSED RULES

A. The Proposed Rules Exceed Statutory Authority

As an administrative agency, OAG "has only those powers expressly conferred upon it by the Legislature." *Pub. Util. Comm'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 316 (Tex. 2001). Thus, an agency's proposed rule may not exceed the scope of its statutory authority. It is well settled in Texas that "the determining factor in deciding whether an administrative agency has exceeded its rule-making authority is whether the rules are 'in harmony' with the general objectives of the legislation involved." *Harlingen Fam. Dentistry, P.C. v. Tex. Health & Hum. Servs. Comm'n*, 452 S.W.3d 479, 486 (Tex. App. 2014); *see also Gerst v. Oak Cliff Savings & Loan Ass'n,* 432 S.W.2d 702, 706 (Tex. 1968). Furthermore, while the Legislature's express grant of authority carries with it "whatever powers are reasonably necessary to fulfill its express functions or duties," that implied authority has defined limits. *Pub. Util. Comm'n*, 53 S.W.3d at 316. For example, an agency "may not...exercise what is effectively a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes." *Id.* To remain "in harmony" an administrative rule "must not impose additional burdens, conditions, or restrictions in excess of or inconsistent with relevant statutory provisions." *Harlingen*, 452 S.W.3d at 486. The proposed rules fail this test by imposing obligations on parties the statute does not authorize, capturing transactions the statute did not include, extending due diligence obligations to real estate professionals and individual property owners, and creating penalties the Legislature never authorized.

As noted, S.B. 17 operates in only two ways: (1) it prohibits certain foreign persons and entities from acquiring real property under specified conditions, and (2) it establishes procedures for OAG to enforce that prohibition. The statute appropriately vests enforcement authority with the Office of the Attorney General of Texas, not third-party professionals. In contrast, the proposed rules extend S.B. 17's regulatory directives to what the rule calls "facilitating entities," which include (but are not limited to) realtors, lenders, title companies, insurers, appraisers, and real estate attorneys. None of these parties are mentioned in the statute's text. The Legislature had every opportunity to include them in the enforcement scheme and chose not to do so, resting the sole authority to enforce the law with OAG. *See* Tex. Prop. Code §§ 5.255-5.257.

When the Legislature enumerates the parties subject to a statutory regime, that enumeration is ordinarily exclusive. *See Harlingen*, 452 S.W.3d at 482 ("[I]t is a settled rule that the express mention or enumeration of one person, thing, consequence or class is equivalent to an express exclusion of all others." (alteration in original)). An agency rule that imposes obligations on parties outside the statutory scheme is an unauthorized expansion of the statute. *See id.*, 452 S.W.3d at 486. For example, the addition of a definition for "control" falls outside the statutory scheme created by S.B. 17. Under the October proposal, "control" includes "a shareholder or stockholder holding ten percent or more of voting interests" and "any person who has the present or future right to acquire or dispose of an interest in real property in this State by such entity" as "deemed" to be in control of an entity, regardless of whether a stockholder holding ten percent of voting interests has the power to direct or cause the acquisition of real property or not. Proposed § 67.2(2)(B)(iii) and (v). This definition is overly broad, imposes obligations not envisioned by S.B. 17, and should be narrowed so it does not exceed S.B. 17's granted authority.

Similarly, the statute directs OAG to examine transactions, investigate potential violations, seek discovery through specified legal processes, pursue divestiture through judicial proceedings, and refer criminal violations to appropriate law-enforcement authorities. *See* Tex. Prop. Code §§ 5.255-5.257. S.B. 17 does not impose an affirmative duty on private parties or third-party professionals to investigate purchasers. The only affirmative duty on private parties or third-party professionals is to respond to the OAG's civil investigative demand as defined in statute. *See id.* §§ 5.255-5.256. Additionally, the phrase "or to promote the objectives of Senate Bill 17" in proposed § 67.7(b)(3) exceeds statutory authority because S.B. 17 does not authorize disclosure of confidential investigative materials on that basis, and the OAG may not expand its disclosure authority beyond what the Legislature expressly granted. Yet the proposed rule creates a freestanding and unlimited duty for private parties to conduct ongoing surveillance and report to the government, unsupported by any statutory directive.

The statute likewise provides no basis for referral of private parties to professional licensing authorities. Proposed § 67.4(e) provides that if OAG "determines a facilitating entity knew or should have known" of a violation but failed to file a complaint, OAG "may refer the matter to the appropriate licensing or professional disciplinary authority." S.B. 17, however, authorizes OAG to refer matters only to "the appropriate local, state, or federal law enforcement agency" in connection with suspected criminal violations. *See id.* § 5.255(c)(2). It does not mention licensing boards, regulatory agencies, or professional discipline of any kind, nor does it identify licensed professionals as a regulated class. *See id.* §§ 5.251-5.259. Where the Legislature intended to authorize sanctions, it did so expressly and narrowly, providing for divestiture of property interests and, in limited circumstances, criminal penalties for prohibited buyers or lessees and civil penalties for prohibited companies or entities. *Id.* §§ 5.257-5.259. The absence of any reference to licensing authorities confirms that S.B. 17 does not permit OAG to impose or threaten professional discipline by referral to third-party regulators.

The result is no different if OAG claims independent authority to refer matters to other state agencies, licensing boards, or professional disciplinary bodies outside S.B. 17. Proposed § 67.4(e)

does not merely preserve a preexisting discretionary power, rather, it creates a structured enforcement mechanism in which referral is the prescribed consequence for failing to satisfy obligations that have no basis in Subchapter H. A general authority to communicate with other state agencies, licensing boards, or professional disciplinary bodies does not validate a rule-based sanction built on an unauthorized regulatory framework. The question is not whether OAG may contact TREC, TALCB, or TDI, but whether it may create by rule a duty the Legislature chose not to impose and then threaten professional consequences for its breach. Under the statutory framework the Legislature enacted in S.B. 17, the OAG may not. *See Harlingen*, 452 S.W.3d at 486.

Subchapter H establishes civil and criminal enforcement mechanisms directed at the buyer or lessee, not at the real estate professionals who facilitate transactions. For example, civil remedies include appointment by a district court of a receiver to manage and sell improperly acquired property. The statute creates no penalty for third parties, imposes no reporting obligation on any person other than those who receive a civil investigative demand, and grants no authority to threaten the professional licenses of real estate professionals. The imposition of a new penalty requires express legislative authorization; general rulemaking authority does not suffice. For the same reason, proposed § 67.3(b)(5), which directs the OAG's enforcement unit to "[r]efer violations to the appropriate licensing or regulatory body," should be deleted.

In considering leasehold interests, the Legislature only prohibited certain parties from acquiring a leasehold interest with a duration of one year or more. *See id.* § 5.252(3). During lengthy public debate on this section, the Legislature did not choose to add renewals, extensions, or other aggregations of leasehold interests. The proposed inclusion of the aggregation of a series of leases creates a serious risk that ordinary leasing activity could be swept into a framework that was not designed for day-to-day housing operations. Though the term "acquiring" an interest in real property is specifically used throughout the statute, the proposed rules expand the definition of "leasehold interests" that were not contemplated in S.B. 17. A lease renewal or extension can be considered a new and independent transaction, not a continuation of the original term, and the decision to re-lease reflects market conditions, tenant choice, and business judgment wholly separate from the original acquisition. By treating successive short-term agreements as a single prohibited interest, the OAG has effectively legislated an aggregation rule the Legislature declined to adopt, exceeding its rulemaking authority under S.B. 17.

B. The Proposed Rules' Penalties Raise Due Process Concerns

Under proposed § 67.4(e), OAG is permitted to "refer the matter to the appropriate licensing or professional disciplinary authority." This authority is based on OAG's own determination that a facilitating entity "knew or should have known, after reasonable due diligence" of a violation but failed to file a complaint. That mechanism effectively authorizes OAG to impose a serious adverse consequence without first affording the affected professional basic procedural protections. As Texas courts have recognized, a professional license constitutes "a constitutionally protected property interest … that must be afforded procedural due process." *Scally v. Texas State Bd. of Med. Examiners*, 351 S.W.3d 434, 446-447 (Tex. App. 2011). "At a minimum, due process

requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* The proposed rules, however, do not require OAG to provide advance notice to the licensee, disclose the factual basis for its determination, allow a meaningful opportunity to respond, or apply any evidentiary standard before triggering referral. And because the referral decision is made by the enforcement authority itself, with no neutral decision maker and no prescribed procedures, the mechanism invites arbitrary and inconsistent outcomes. *Cf. Abdygapparova v. State*, 243 S.W.3d 191, 208 (Tex. App. 2007) ("Due process requires a neutral and detached hearing body or officer.").

That lack of process matters because the consequences are real even before any board acts. A referral to a licensing or professional disciplinary authority can initiate an investigation, impose immediate compliance burdens, and create reputational and business harm, all based on a threshold determination made outside any established adjudicatory framework. *Stafford Mun. Sch. Dist. v. L.P.*, 64 S.W.3d 559, 563 (Tex. App. 2001) ("'Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him,' the minimal requirements of the Clause must be satisfied."). Likewise, when government action threatens the loss or impairment of an important license interest, basic procedural protections such as notice and an opportunity to be heard are the constitutional minimum. *See Scally*, 351 S.W.3d at 448. The proposed rules provide none of that at the point where the practical damage begins—namely, when OAG makes and transmits the referral.

Nor is it an answer that any eventual licensing-board proceeding might provide process later. The unfairness here is front-loaded: the proposed rules authorize OAG to impose a serious adverse consequence by initiating disciplinary exposure without first providing the affected professional any defined, rule-based opportunity to understand, test, or correct OAG's premise. In short, proposed § 67.4(e) creates a coercive disciplinary trigger that operates without the procedural safeguards that ordinarily accompany government action with such high stakes, and for that reason alone it should be withdrawn or, at minimum, severed.

Due process deficiencies also exist in proposed § 67.7. A seven-day response window for civil investigative demands is not a meaningful opportunity to be heard because locating records, engaging counsel, and assessing privilege obligations cannot be accomplished responsibly in a week. Texas's civil discovery rules establish 30 days after service as the reasonable response period for written interrogatories and document requests. *See* Tex. R. Civ. P. §§ 197.2(a), 196.2(a). The proposed rules' exigency exception compounds the problem by allowing OAG and Secretary of State to unilaterally compress the deadline with no neutral check, which is the kind of unconstrained discretion due process prohibits. *See Abdygapparova*, 243 S.W.3d at 208.

Finally, proposed § 67.7(b) should be amended to reflect that under Texas Prop. Code § 5.256, the Secretary of State *serves* interrogatories on OAG's request. The issuing obligation remains with the OAG; obscuring issuing authority enumerated in S.B. 17, and as codified in Texas Prop. Code § 5.256, leaves respondents without the foundational information needed to evaluate or challenge the demand, which is itself a procedural deficiency.

C. The Compliance Standard Is Unconstitutionally Vague

Even if the reporting duty were otherwise authorized, the standard that proposed § 67.4(a) imposes, "knows or should have known, after reasonable due diligence," that a transaction violates Subchapter H, fails to provide fair notice of what is required. A regulation that penalizes conduct without giving persons of ordinary intelligence a reasonable opportunity to know what is prohibited is void for vagueness. *See Ex parte Wheeler*, 478 S.W.3d 89, 96 (Tex. App. 2015)

Consider what a "facilitating entity" would need to determine in order to comply with this standard:

- Whether the buyer/lessee is "domiciled" in a designated country—a legal conclusion requiring analysis of intent and physical presence, not a fact discernible from a driver's license or passport, *see* Tex. Prop. Code § 5.251(4);

- Whether the buyer's/lessee's country of domicile is a "designated country"—which requires consulting the U.S. Director of National Intelligence's Annual Threat Assessments for three consecutive years, as well as determining whether the Texas Governor has added any additional countries or organizations to the designated list, and rendering a legal determination based on those impermanent and opaque sources, *see id.* § 5.251(3);

- Whether the buyer/lessee has a disqualifying affiliation with a foreign governmental entity or designated organization—which may not be readily ascertainable without substantial inquiry, *see id.* § 5.251(7).

Even with the proposed safe harbor language in § 67.4(g) discussed below, the October proposal still offers no definition of what "reasonable due diligence" means for a mortgage lender, title company, property insurer, appraiser, apartment manager, land developer, builder, or real estate agent. These entities are not intelligence analysts, immigration attorneys, or national security professionals. They have no established protocols for making the legal determinations required, no access to the government databases that would make such determinations reliable, and no training that would make compliance meaningful rather than arbitrary. The absence of any workable standard, combined with the threat of professional disciplinary referral for non-compliance, creates a constitutionally untenable condition. Professionals will face a choice between over-reporting—filing complaints based on any conceivable foreign connection to avoid professional risk—and under-reporting at their professional peril. Transactions will be delayed, fail to close and will be more expensive. Neither outcome serves the statute's purposes. The lack of guidance in the proposed rules on the threshold evidentiary question of what triggers a due diligence inquiry is itself a constitutional defect.

D. The Proposed Rules Create an Irreconcilable Conflict with Federal and State Fair Housing Law

The duty imposed by proposed § 67.4 on real estate professionals, lenders, builders, and others involved in real estate transactions places those professionals on an unavoidable collision course

with the federal Fair Housing Act (42 U.S.C. §§ 3601-3619) and the Texas Fair Housing Act (Tex. Prop. Code Ch. 301). These statutes prohibit discrimination in housing transactions on the basis of national origin, among other protected characteristics. The mandatory reporting requirement contemplated by the proposed rules—applying when "a facilitating entity knows or should have known, after reasonable due diligence," that a transaction violates Subchapter H—cannot be implemented without triggering liability under these statutes.

Because of well-documented discriminatory practices in housing and real estate, the Fair Housing Act and its Texas counterpart were enacted to dismantle these practices and to ensure that housing transactions are conducted without regard to race, religion, ethnicity, or national origin. Real estate professionals take their obligations to uphold these Acts very seriously. *See, e.g.*, *Shelley v. Kraemer*, 334 U.S. 1 (1948) (holding judicial enforcement of racially restrictive covenants unconstitutional).

Against that backdrop, the proposed rules are particularly troubling because they effectively conscript private parties, the real estate professionals, into a screening and enforcement function that will replicate the very patterns the fair housing laws were designed to stop. By requiring those professionals to assess whether a buyer or lessee is domiciled in or affiliated with a designated country and also by threatening professional discipline for failure to do so, the proposed rules place individual brokers, appraisers, lenders, title agents, builders, and other real estate participants in the position of making national-origin-based judgments about prospective purchasers and lessees. The practical result is that real estate professionals could reasonably be seen as engaging in the kind of identity-based gatekeeping that federal and state law have spent more than half a century prohibiting.

1. National Origin Is a Protected Characteristic

The Fair Housing Act makes it unlawful to "refuse to sell or rent" or otherwise "make unavailable or deny" a dwelling based on national origin, or to "discriminate against any person in the terms, conditions, or privileges of sale or rental" on that basis. 42 U.S.C. § 3604(a), (b). The Texas Fair Housing Act imposes parallel prohibitions. Tex. Prop. Code § 301.021. National origin is not merely a protected class in the abstract; both federal and Texas courts have consistently held that its scope is broad, encompassing the country from which a person or their ancestors came, their ethnicity, and characteristics closely associated with a national-origin group. *See Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 95 (1973); *see also Moreno v. Tex. Dep't of Transp.*, 440 S.W.3d 889, 897 (Tex. App. 2013) ("[T]he term 'national origin' must embrace a broader class of people, and that the term is better understood by reference to certain traits or characteristics that can be linked to one's place of origin, as opposed to a specific country or nation.").

Under S.B. 17's definition of designated countries, those presently identified (the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, and the Democratic People's Republic of Korea) correlate directly with the national origin of identifiable ethnic and national communities in Texas. Any compliance program designed to identify buyers/lessees affiliated with these countries will, as a practical matter, involve scrutiny of buyers'/lessees' national origin, ethnicity, language, name, and country of birth. Courts have long recognized that

characteristics such as language, name, accent, ancestry, and country of origin can function as proxies for national origin. *See, e.g., CNY Fair Hous., Inc. v. Swiss Vill.*, LLC, No. 521CV1217MADML, 2022 WL 2643573, at *6 (N.D.N.Y. July 8, 2022); *Espinoza v. Hillwood Square Mut. Ass'n*, 522 F. Supp. 559, 568 (E.D. Va. 1981). Even if S.B. 17's domicile-based restrictions on buyers/lessees do not, on their own, constitute national-origin discrimination, that distinction does not address the risks that arise when real estate professionals are required to screen for the same characteristics. The issue is not whether domicile equals national origin as a legal category; it does not. The issue is that the only practical way for real estate practitioners to determine domicile tied to specific foreign countries is to rely on indicators that function as proxies for national origin, which is what the Fair Housing Act regulates.

The distinction between domicile and national origin does not resolve the Fair Housing Act risk, because liability arises not only from the classification itself, but from the methods of enforcement and their discriminatory effects. The United States Supreme Court has recognized that the Fair Housing Act reaches beyond intentional discrimination to encompass facially neutral policies whose practical operation disproportionately burdens protected communities. *See Texas Dept. of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc*., 576 U.S. 519, 540 (2015) (holding that disparate impact claims are cognizable under the Fair Housing Act and that such liability "permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment"). The proposed rules require "facilitating entities" to determine whether a prospective buyer or lessee is domiciled in a designated country yet provide no verification mechanism by which a "facilitating entity" can make that determination without resorting to national-origin proxies. Compliance regimes that require housing providers to screen for or inquire into such characteristics—particularly where they predictably burden identifiable national-origin communities—therefore implicate the Fair Housing Act's prohibition on national-origin discrimination.

2. Both Disparate Treatment and Disparate Impact Liability Are Created

Fair housing liability arises under two theories. Disparate treatment occurs when a person is treated differently because of a protected characteristic. Disparate impact occurs when a facially neutral practice has a disproportionate adverse effect on a protected class, even without discriminatory intent. The United States Supreme Court confirmed in *Inclusive Communities Project* that disparate impact claims are cognizable under the Fair Housing Act. Moreover, the Court held that statutes can only authorize disparate-impact liability in narrow circumstances. Those circumstances do not exist and were not authorized by the Legislature in S.B. 17. *Id.* at 534.

A compliance program designed to identify buyers from designated countries will predictably produce both forms of liability. A real estate professional who subjects Chinese American, Iranian American, Korean American, or Russian American buyers/lessees to heightened scrutiny by asking for country of birth, citizenship documentation, evidence of domicile, or ownership structure details not requested of other buyers/lessees engages in disparate treatment. A lender, title company, realtor, apartment manager, or insurer that implements a policy of enhanced due

diligence for entity buyers/lessees with names, structures, or other markers suggesting connection to a designated country engages in a practice with obvious disparate impact on national-origin groups. *See, e.g.*, *CNY*, 2022 WL 2643573, at *6; *Espinoza*, 522 F. Supp. at 568.

Critically, compliance with S.B. 17 has not been recognized as a defense to Fair Housing Act liability. No court has held that a professional's obligation under state law insulates that professional from federal anti-discrimination law. The Fair Housing Act explicitly provides: "any law of a state, a political subdivision, or other jurisdiction that purports to require or permit any action that would be a discriminatory housing practice . . . shall to that extent be invalid." 42 U.S.C. § 3615. And under the U.S. Constitution's Supremacy Clause a state regulatory requirement cannot authorize what federal law prohibits. *See Howlett v. Rose*, 496 U.S. 356, 375 (1990) (noting that state law cannot create immunities against federal law claims). The proposed rules thus expose real estate professionals to the prospect of Fair Housing Act liability—both private civil suits and HUD enforcement actions as a direct consequence of complying with the proposed rules.

E. The Proposed Rules Create Conflict with Federal Consumer Privacy Laws

Federal law imposes limits on the collection, use, and retention of Nonpublic Personal Information ("NPI") by financial institutions and related professionals involved in real estate transactions. The Gramm-Leach-Bliley Act ("GLBA") and its implementing regulations require covered entities—including mortgage lenders, title companies, and settlement agents—to restrict NPI collection to information necessary for the transaction and to protect such data through comprehensive information-security programs. *See* 15 U.S.C. §§ 6801–6802; 12 C.F.R. § 1016; 16 C.F.R. § 314. In practice, real estate market participants structure their processes to minimize NPI collection, consistent with GLBA's data-minimization and safeguarding principles and Consumer Financial Protection Bureau ("CFPB") guidance tying NPI protection to transactional necessity.

The proposed rules' duty of due diligence would represent a sharp departure from this framework. Compliance would require collecting and evaluating categories of sensitive personal information that are not ordinarily required in residential real estate transactions—such as citizenship or nationality status, country of domicile, beneficial ownership details, and organizational affiliations—and that fall squarely within, or are closely linked to, NPI as defined by federal law. *See* 12 C.F.R. § 1016.3(q). The proposed rules supply no limiting principle governing the scope of information to be collected, no guidance on retention or permissible use, and no data-security standards tailored to this expanded collection, notwithstanding GLBA's requirement that institutions assess risk and implement safeguards proportional to the sensitivity of the data collected. *See* 16 C.F.R. § 314.4.

As a result, the proposed rules would compel real estate professionals and institutions to collect substantially more sensitive personal information than any current transaction requires, while simultaneously exposing them to increased liability under federal and state privacy and data-security laws. Neither the proposed rules nor the accompanying materials acknowledge this conflict with GLBA or CFPB regulations, leaving regulated parties to bear significant unaddressed legal risk arising solely from compliance with the new due-diligence mandate.

F. The Proposed Rules Undermine the Existing Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Framework Under the Bank Secrecy Act

Banks are required to abide by an extensive federal statutory and regulatory framework to protect the state and nation as a whole from money laundering and terrorism financing. Accordingly, under the Bank Secrecy Act ("BSA") banks are required to maintain risk-based AML/CFT programs which, in part, require them to identify and report suspicious transactions. 12 U.S.C. § 1829b and 12 C.F.R. § 326. These regulations also apply to non-depository mortgage lenders generally known as mortgage banks or mortgage companies. The proposed rules would inappropriately conscript mortgage lenders and other professionals into a duplicative and potentially contradictory state-law framework that would undermine the BSA's risk-based structure, unnecessarily divert resources from required federal investigations and reporting, create confusion and inconsistency in the escalation and reporting expectations for the same activity, and potentially threaten the confidentiality of suspicious activity reporting in violation of the BSA.

G. The Proposed Rules Create a Fifth Amendment Violation

The mandatory reporting regime in proposed § 67.4 creates a Fifth Amendment violation because it forces real estate professionals into a posture where complying with the rule can supply evidence of their own potential criminal exposure. Subchapter H makes it a state jail felony for a prohibited individual to intentionally or knowingly acquire real property in violation of the statute. Tex. Prop. Code § 5.258. At the same time, proposed § 67.4 would require a builder, lender, title agent, property manager, appraiser, realtor, real estate attorney, property insurer, etc. to submit a complaint when it "knows or should have known, after reasonable due diligence" that a transaction violates Subchapter H, and it authorizes referral for professional discipline if the entity fails to do so.

That combination creates a constitutional trap under Texas's law of parties. Under Texas Penal Code § 7.02, a person is criminally responsible for an offense committed by another if, "acting with intent to promote or assist its commission, the person solicits, encourages, directs, aids, or attempts to aid" the other person in committing the offense. Tex. Penal Code § 7.02(a)(2). Additionally, Texas Penal Code § 7.03 makes clear that, in a parties-liability prosecution, it is no defense that the actor "belongs to a class of persons that by definition of the offense is legally incapable of committing the offense in an individual capacity." Tex. Penal Code § 7.03(1). In other words, even if a "facilitating entity" could never be the prohibited purchaser, it can still face criminal exposure as a party based on the new duty created in these proposed rules.

The United States Supreme Court has held that the Fifth Amendment bars the government from compelling a person to make disclosures that have the direct and unmistakable consequence of incriminating the disclosing party, particularly where the reporting obligation is directed at a group facing substantial criminal exposure and the information is available to prosecuting authorities from other sources. *Marchetti v. United States*, 390 U.S. 39 (1968). The United States Supreme Court applied the same principle to invalidate related wagering tax reporting requirements in

Grosso v. United States, 390 U.S. 62 (1968). Those decisions fit the structure here: proposed § 67.4 compels "facilitating entities" to submit complaints based on their knowledge of facts indicating a violation, and those submissions can serve as evidence of their criminal exposure under a parties-liability theory.

Critically, proposed § 67.4 couples the reporting mandate with the threat of referral to licensing or professional disciplinary authorities for failure to comply. Thus, the proposed rule forces professionals to choose between disclosing potentially incriminating information and risking professional consequences for silence. On this ground independently, the facilitating-entity reporting provisions should be withdrawn.

H. The Proposed Rules Are Unworkable in Practice and Impose Substantial Costs

1. Workability

The entities identified as "facilitating entities" do not, in the ordinary course of their professional duties, collect the information that any reasonable understanding of "reasonable due diligence" would require to determine whether a transaction violates Subchapter H. That gap is apparent across each category of "facilitating entity." For example, realtors facilitate marketing and negotiation between buyers and sellers, but they do not vet purchasers' legal eligibility, collect information bearing on domicile or organizational affiliation, or possess any professional role or training that would enable them to assess such matters. Similarly, a title insurance company's function is to insure title to real property. S.B. 17 itself provides that a purchase in violation of Subchapter H is not void. The transaction remains valid and insurable. There is therefore no nexus between the information required to insure title and the information required to evaluate a buyer's domicile, organizational affiliations, or ownership structure. And an appraiser's function is to determine the value of real property. The appraiser has no knowledge of or ability to investigate the national origin or foreign affiliations of the buyer. A property insurer underwrites risk associated with the physical property, not the legal status of its owner or tenant.

No professional standard of practice, licensing curriculum, or continuing education program currently prepares any of these professionals to make the legal and factual determinations Subchapter H requires. How is a builder, appraiser, or realtor to determine whether a buyer is a member of a foreign government entity or designated organization? How is any real estate professional to determine whether a property will be used as a homestead (a fact-based, legal question), which under Subchapter H constitutes a specific exception to the prohibition, for purposes of deciding whether to report? The proposed rules provide no answers to these foundational questions.

Furthermore, with the inclusion of aggregated leasehold interests, the proposed rules also appear to risk capturing routine residential leasing activity. That result would be especially problematic in Texas, where rental housing is provided not only by larger multifamily operators, but also by thousands of small owners, "mom-and-pop" landlords, private individuals who may own a single

home and are simply trying to lease that property to cover mortgage, insurance, taxes, and basic carrying costs.

Routine leasing and sales activity should not be converted into a compliance or enforcement mechanism under this framework. The Legislature vested enforcement authority in OAG, not in housing providers, leasing agents, property managers or individual owners. Imposing a compliance burden that would require individuals to investigate applicants, clients, or customers for potential ties to designated organizations and countries on obscure lists and manage enforcement risk is simply not workable. It does not meet the legislative intent, nor the reality of how leasing and real estate sales markets function.

2. Costs

The October proposal provides no cost estimate on the facilitating-entity regime. It again states "no anticipated additional significant economic costs to persons required to comply with the proposed rules beyond those imposed by Subchapter H," even though its government growth impact statement now acknowledges that the rules "will result in an increase in the number of individuals subject to the rule." 51 Tex. Reg. at 6998. That omission is significant. The compliance costs will be substantial and will ultimately be borne by Texas consumers—particularly because the regime extends to ordinary transaction professionals who operate on thin margins and high transaction volume and who lack dedicated compliance infrastructure. These newly imposed transaction costs created by OAG's proposed rules will be passed on to purchasers and will, as an unintended consequence, push a significant set of real estate transactions outside of the range of affordability in ways that would depress the market.

For the sake of illustration, if each category of "facilitating entity" were to incur even $500 in incremental compliance costs for legal review, the aggregate burden would exceed $4,000 per closing. Those costs will be passed directly to consumers through higher commissions, increased premiums, and elevated professional fees. The estimate is conservative: faced with ambiguous statutory standards and potential criminal or licensing exposure, prudent professionals in each category—including individual real estate brokers (for each buyer and seller), developers and builders, title agents, lenders, insurance agents, and appraisers—will have no choice but to retain outside counsel for transaction-specific advice, at costs that will most likely exceed this illustrative amount.[1]

[1] Note, this $500 amount is a conservative number for the purpose of illustration, however, it does reflect a real-world benchmark. The U.S. Treasury Financial Crimes Enforcement Network (FinCEN) recently adopted a rule, that a federal court in Texas subsequently ruled void for exceeding its statutory authority, which involved due diligence and reporting requirements relating to the parties to a real estate transaction. FinCEN estimated first-year compliance costs of $428 to $690 million across approximately 800,000 to 850,000 transactions nationwide representing roughly $500-$850 a transaction. *See* 31 C.F.R. § 1031.320, 89 Fed. Reg. at 70283-84. *See also Flowers Title Cos., LLC v. Bessent*, No. 6:25-CV-127-JDK, 2026 WL 782283, at *1 (E.D. Tex., Mar. 19, 2026), appeal docketed, No. 26-40285 (5th Cir., May 13, 2026).

The ongoing costs do not end at closing. To protect themselves from referral to licensing authorities under proposed § 67.4(e), "facilitating entities" would need to document and retain evidence of their "reasonable due diligence" determinations. The proposed rules provide no record-retention limits, no safe harbor that defines what diligence is sufficient (see discussion of proposed § 67.4(g) below), and no guidance on permissible reliance. There is also no reconciliation with Fair Housing and confidentiality requirements. Depending on applicable statutes of limitation and licensing authorities' reach, professionals may be compelled to retain records for years. Because those records will contain sensitive personal information, long-term retention entails continuing storage, security, and compliance obligations, creating additional regulatory exposure that the proposed rules neither acknowledge nor attempt to mitigate.

This will also impact the cost of residential leasing. Landlords, leasing offices, property managers and their staff, who have no practical ability, training, or systems to investigate an applicant's domicile, beneficial ownership structure, or possible affiliations with designated countries or organizations, would have to attempt similar compliance measures as those mentioned above. These proposed rules could thus significantly increase transactional costs to the consumer, as well as increasing compliance and liability review costs to the housing provider. Considering the sheer volume of leasing transactions that occur in Texas, both residential and commercial, these costs could quickly compound costs across the marketplace. And because S.B. 17 allows leasehold interests to be voided, the risk and liability to leasing practitioners and property owners is compounded further. Even a mere suspicion of an improper transaction under the proposed rules could result in months of lost income for property owners and managers alike.

3. Conflicting Professional Duties

The proposed rules also create direct and unresolved conflicts with the professional duties owed by "facilitating entities" to their clients. Realtors owe fiduciary duties of loyalty, confidentiality, and obedience to their principals under Texas law and Texas Real Estate Commission regulations. *See Burrow v. Arce*, 997 S.W.2d 229, 237-38 (Tex. 1999); *see also* 22 Tex. Admin. Code §§ 531.2-.4. Real estate attorneys owe duties of loyalty and confidentiality that are not merely ethical rules but are deeply rooted in the common law and, in many circumstances, receive constitutional protection through the attorney-client privilege. *See* Tex. Disciplinary R. Prof'l Conduct 1.05; *see also Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981); *and see Swidler & Berlin v. United States*, 524 U.S. 399, 403-05 (1998). Title companies and escrow agents, meanwhile, are expected under Texas law to act as neutral intermediaries, owing duties of impartiality and strict adherence to escrow instructions rather than advocacy against either party. *See Flagstar Bank, FSB v. Walker*, 451 S.W.3d 490, 499 (Tex. App. 2014).

The proposed rules would upend these settled obligations by compelling professionals to investigate, monitor, and report their own clients to the government, based on suspected legal violations, under threat of professional discipline for failure to do so. That mandate fundamentally transforms the role of these professionals—from fiduciaries and neutral intermediaries into *de facto* enforcement agents—and places them in an untenable position. A realtor required to probe a client's citizenship status or affiliations risks breaching duties of loyalty and confidentiality. An

attorney compelled to report suspected violations risks disclosure of client information protected by Rule 1.05 and the attorney-client privilege. A title company forced to escalate suspicions about the parties to regulators is no longer acting as a neutral escrow agent. Compliance with the proposed rules thus may require professionals to violate duties that state law independently requires them to honor.

As it relates to lenders, there is significant tension between compliance with the proposed rules and the Fair Housing Act, the Equal Credit Opportunity Act ("ECOA"), and ECOA's Regulation B. Specifically, the ECOA provides that a state regulatory requirement that compels conduct prohibited by federal law is preempted and unenforceable. *See* 12 C.F.R. § 1002.11(a). A state law is deemed to be inconsistent with the requirements of the ECOA and Regulation B to the extent that the law requires or permits a practice or act prohibited by the Act. 12 C.F.R. § 1002.11(b)(1). In this regard, any state-imposed obligation that effectively compels conduct inconsistent with ECOA and Regulation B exposes lenders to an untenable tension between the two and added compliance risk, as adherence to one legal regime may necessitate violation of another.

I. The New Safe Harbor Does Not Cure the Unauthorized Due Diligence Mandate

We appreciate that OAG considered the due diligence concerns we raised in our comments to the March proposal. But the October proposal's new § 67.4(g) only protects a facilitating entity that conducts "know-your-customer due diligence", so it presupposes that brokers, sales agents, appraisers, builders, title agents, insurers, and property managers will screen their customers for eligibility under S.B. 17. As previously noted, the statute does not impose any such obligation on a third party, and an agency may not create one by rule. *See Pub. Util. Comm'n*, 53 S.W.3d at 316; *Harlingen*, 452 S.W.3d at 486. Stated another way, brokers, sales agents, appraisers, builders, title agents, insurers, and property managers currently have no statutory know-your-customer requirements, nor does S.B. 17 impose such requirements. Thus, it is inappropriate for a duty to be created by these proposed rules.

The safe harbor provision also gives a facilitating entity nothing to rely on when it comes to defining "know-your-customer due diligence," "applicable regulatory body," or "recognized industry group." And we are aware of no "know-your-customer" standards that apply to real estate license holders, appraisers, title agents, landlords, or builders. While federal standards exist for banking and lending, they are limited in scope. The bank customer identification rule requires a customer's name, date of birth, address, and an identification number, 31 C.F.R. § 1020.220(a)(2)(i)(A), but nothing about whether the customer is "domiciled" in a designated country, belongs to that country's ruling political party, or acts as the country's agent. *See* Tex. Prop. Code §§ 5.251(4), 5.253(4).

Finally, by tying the legal consequence of a facilitating entity's conduct to "standards adopted in good faith by a recognized industry group," § 67.4(g) would let private organizations decide what diligence satisfies a duty backed by the threat of professional discipline. Not only does S.B. 17 not authorize OAG to delegate standard-setting to anyone, the Supreme Court of Texas disfavors such

an approach. "[T]he basic concept of democratic rule under a republican form of government is compromised when public powers are abandoned to those who are neither elected by the people, appointed by a public official or entity, nor employed by the government … [so] courts should subject private delegations to a more searching scrutiny than their public counterparts." *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 469 (Tex. 1997). The rule provides no public process for, or agency review of, the standards private groups might adopt. Additionally, the state cannot create a safe harbor from Federal requirements. We ask that § 67.4(g) be withdrawn together with the facilitating-entity provisions it presupposes. Any safe harbor should, at a minimum, protect any person that lacks actual knowledge of a violation without requiring customer screening, define its operative terms, and be described in the preamble with the same conclusive effect the rule text gives it.

J. The Optional Reporting Mechanism Includes Property S.B. 17 Does Not Govern

Section 6 of S.B. 17 provides that its changes "apply only to the purchase or acquisition of an interest in real property on or after the effective date of this Act," and that an earlier acquisition "is governed by the law in effect immediately before the effective date of this Act." Tex. S.B. 17, 89th Leg., R.S., § 6 (2025). That law provided that "[a]n alien has the same real and personal property rights as a United States citizen." Tex. Prop. Code § 5.005 (prior to amendment by S.B. 17). Proposed § 67.1(b) adopts the same limit, stating that the chapter "applies only to purchases or acquisitions of an interest in real property in this State that occur on or after September 1, 2025." Yet § 67.6(b) invites reports about property "acquired prior to the statute's effective date of September 1, 2025."

S.B. 17 gives the OAG no role with respect to those acquisitions. Section 5.255 directs the OAG to determine "whether a violation of this subchapter occurred," and an acquisition that predates the statute cannot be a violation. The preamble instead says § 67.6 reports will assist in "identifying potential foreign ownership patterns, supporting outreach, and maintaining an accurate public registry," 51 Tex. Reg. at 6997, and none of those functions appears in Subchapter H. Collecting reports about lawful, completed acquisitions to build a registry of foreign-connected owners would attach new consequences to past lawful conduct, which the Legislature expressly declined to do, and raises serious concerns under the constitutional prohibition on retroactive laws . Tex. Const. art. I, § 16; *see Robinson v. Crown Cork & Seal Co.*, 335 S.W.3d 126, 139 (Tex. 2010) ("the rules should not change after the game has been played").

Because the only practical indicators of a connection to a designated country are the national-origin proxies discussed above, the mechanism invites reports based on a person's name, language, ancestry, or country of birth. And because § 67.6(c) states that a report is not a complaint, it is unclear whether the confidentiality protections of § 67.9(a) apply to reports at all. We respectfully request that § 67.6 be withdrawn.

K. The Proposed Public Information Portal Is Not Authorized by S.B. 17 and Would Harm Innocent Owners, Lienholders, and Purchasers

Nothing in S.B. 17 authorizes the OAG to create or maintain a public registry of property or property owners, and the Legislature did not delegate the creation of such a registry to the OAK. In fact, the Legislature has clearly shown it knows how to create one when it intends to. For example, the Texas sex offender registration database, which § 67.10(b) names as a model, exists because the Legislature directed the Department of Public Safety to maintain it, declared its contents public information, and specified what data must be withheld. Tex. Code Crim. Proc. art. 62.005(a)-(b). S.B. 17 contains no comparable provision. The only public notice it provides for is the OAG's recording of notice of an *in rem* action "in the real property records of each county where any part of the real property subject to the action is located." Tex. Prop. Code § 5.255(d). When the Legislature specifies the form of public notice, that choice is ordinarily exclusive. *See Harlingen*, 452 S.W.3d at 482. A portal modeled after the Texas sex offender registry would be a new program created by rule.

The portal also risks publishing accusations before any court has found a violation. The preamble describes a portal containing "information about finalized enforcement actions," 51 Tex. Reg. at 6997, but the rule text contains no such limit and does not say whether complaints, investigative information, or § 67.6 reports could appear, or how publication would be reconciled with the confidentiality provisions of § 67.9. Except for a leasehold, a purchase in violation of § 5.253 "is not void because of the violation," Tex. Prop. Code § 5.255(e), and sale proceeds are applied "first to satisfy any existing liens on the property," *id.* § 5.257(c). Those provisions carry out the Legislature's objective that "innocent actors such as lien holders, lenders and real estate professionals are not harmed by the actions of a prohibited entity." Sen. Rsch. Ctr., Bill Analysis, Tex. S.B. 17, 89th Leg., R.S. (2025).

A searchable sex-offender-style database modeled on a registry designed to warn the public about individuals would stigmatize the parcel itself, reducing its marketability and value for lienholders, for the receiver charged with selling it, and for the lawful purchaser who acquires it after divestiture. The rule contains no procedure for correcting errors or for removing a property once the matter is resolved, and no procedure for handling bad-faith complaints from a competing bidder, tenant, or disgruntled neighbor.

III. REQUESTED ACTIONS

For the foregoing reasons, we respectfully request that OAG take the following actions:

- Delete proposed § 67.2(2)(B)(iii) and (v) to remove "a shareholder or stockholder holding ten percent or more of voting interests" and "any person who has the present or future right to acquire or dispose of an interest in real property in this State by such entity" from the definition of "Control".

- Delete proposed § 67.2(3) in its entirety, eliminating the definition of "Facilitating Entity" from the proposed rules.

- Delete the following from proposed § 67.2(5): "The term includes a series of licenses, leases, or other arrangements that, in substance, create a leasehold interest in real property in this State for one year or longer, even if structured as successive short-term agreements."

- Delete the following from proposed § 67.2(7)(A): "or series of transactions"

- Delete the following from proposed § 67.2(7)(A): "including a redemption or repurchase of the entity's outstanding interests,"

- Delete proposed § 67.2(7)(B) in its entirety, eliminating the definition of leasehold interests that includes series or aggregated or short-term agreements.

- Delete proposed § 67.3(b)(5), which directs the enforcement unit to "[r]efer violations to the appropriate licensing or regulatory body."

- Delete proposed § 67.4(a) through (d) as they apply to facilitating entities, including all provisions establishing a duty of due diligence or mandatory reporting for persons not identified in Subchapter H.

- Delete "or facilitating entity" from proposed § 67.4(b)

- Delete proposed § 67.4(e) and (f) as an unauthorized sanction not established by the Legislature.

- Delete proposed § 67.4(g) together with the above sections related to a "facilitating entity" or, if any facilitating entity provision is retained, revised § 67.4(g) as described in the above comments.

- Delete proposed § 67.6 in its entirety.

- Delete or revise proposed § 67.8 to eliminate any reference to coordination with TREC, TALCB, TDI, or other licensing bodies for the purpose of implementing obligations against facilitating entities not authorized by Subchapter H.

- Delete from proposed § 67.9(b)(3): ", or to promote the objectives of Senate Bill 17"

- Delete proposed § 67.10 in its entirety Amend proposed § 67.7(a) to allow for at least 30 days for a response to a civil investigative demand and revise to add the underlined text "unless <u>a court determines</u> exigent circumstances require a shorter timeframe."

- Amend proposed § 67.7(b) to allow for at least 30 days for a response to interrogatories and revise to add the underlined text "unless a court determines exigent circumstances require a shorter timeframe."

- Accept this as a request to hold a public hearing before adopting rules from the October proposal as required by Texas Gov't. Code § 2001.029. Section 2001.029(b) requires a state agency to grant an opportunity for a public hearing before it adopts a substantive rule if a public hearing is requested by: (1) at least 25 persons; (2) a governmental subdivision or agency; or (3) an association having at least 25 members. The associations submitting this letter each have at least 25 members. A public hearing would give the people directly affected by these rules a chance to explain their concerns on the record and answer questions the OAG may have. The public hearing is required for the OAG to meet its duty under § 2001.029(c) to "consider fully all written and oral submissions" about the proposed rules. *See Kidd v. Tex. Pub. Util. Comm'n*, 481 S.W.3d 388, 395-96 (Tex. App. 2015, no pet.). We respectfully request that the hearing be scheduled with sufficient advance public notice for stakeholders to travel across the state to attend.

- Respond to any comments in any order adopting rules from the October proposal, as required by Texas Gov't. Code § 2001.033.

IV. CONCLUSION

In short, the proposed rules governing "facilitating entities" impose mandatory duties—backed by the threat of professional discipline—on parties the Legislature deliberately chose not to capture in S.B. 17. They replace the government-initiated enforcement model enacted by the Legislature with a private monitoring and reporting regime. They subject regulated professionals to vague and unworkable compliance standards. They create an unresolved conflict with the GLGBA and Fair Housing Laws be they federal, state or by city ordinance. They undermine existing risk-based Bank Secrecy Act reporting requirements. They compel third-party facilitators to choose between self-incrimination and regulatory sanction in a manner the United States Supreme Court has recognized as constitutionally impermissible. They impose irreconcilable conflicts for real estate professionals between compliance with these rules and their legal and ethical obligations to others. And they impose substantial costs that the proposed rules neither estimate nor the Legislature authorized. The October proposal leaves each of these defects in place and adds new ones: a safe harbor that conditions protection on customer screening the statute does not require, a reporting channel for property acquisitions that S.B. 17 by its terms does not govern, and a public portal modeled on the sex offender registry that the Legislature never authorized.

These are not technical deficiencies curable through clarifying language. They are structural defects that exceed OAG's authority and that, if implemented, would expose hundreds of thousands of innocent market participants who were not tasked by statute with investigating or enforcing S.B. 17.

The Legislature entrusted enforcement of S.B. 17, including investigations of possible violations, to the OAG. The final rules must be in harmony with S.B. 17 to protect Texas's interest in national security and should not impose new burdens, risks or liabilities on ordinary real estate and housing operations that the statute itself does not create. The proposed facilitating-entity provisions invert that design. For these reasons, we respectfully urge OAG to withdraw those provisions, together with proposed §§ 67.6 and 67.10, in their entirety.

We appreciate the opportunity to submit these comments and welcome continued engagement with OAG on the implementation of S.B. 17.

Thank you for your consideration.

Sincerely,

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