



**DERIVATION TABLE AND REDLINE DRAFT
MORTGAGE REGULATION RULE REVIEW (JUNE 2024)**

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 58 RESIDENTIAL MORTGAGE LOAN SERVICERS

NEW SECTION	OLD SECTION	REDLINE
58.1	New	<p><u>Purpose and Applicability</u></p> <p><u>This chapter governs SML's administration and enforcement of Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act, concerning the registration and operations of residential mortgage loan servicers. This chapter applies to persons registered with SML as a residential mortgage loan servicer or those required to be registered.</u></p>
58.2	79.1	<p>Definitions</p> <p><u>For purposes of As used in</u> this chapter, and in <u>SML's the Department's</u> administration and enforcement of Finance Code, Chapter 158, the following <u>definitions apply, unless the context clearly indicates otherwise terms have the meanings indicated:</u></p> <p>(1) "Commissioner" means the <u>savings and mortgage lending commissioner Savings and Mortgage Lending Commissioner</u> appointed under Finance Code, Chapter 13.</p> <p><u>(2) "Control person" means an individual that directly or indirectly exercises control over a mortgage servicer. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage servicer,</u></p>

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		<p><u>whether through ownership of securities, by contract, or otherwise. Control person includes any person that:</u></p> <p><u>(A) is a director, general partner or executive officer;</u></p> <p><u>(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;</u></p> <p><u>(C) in the case of a limited liability company, is a manager or managing member; or</u></p> <p><u>(D) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 10% or more of the partnership's capital assets.</u></p> <p>(2) "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.</p> <p><u>(3) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or a manufactured home, if it is used as a residence.</u></p> <p>(3) "Department" means the Department of Savings and Mortgage Lending.</p> <p><u>(4) "E-Sign Act" refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).</u></p> <p><u>(5) "Mortgage servicer" has the meaning assigned by Finance Code §158.002 in defining "residential mortgage loan servicer."</u></p> <p><u>(6) "Mortgage servicing rights" means the contractual obligation to service a mortgage loan and the right to receive compensation for such services in accordance with the contract.</u></p> <p><u>(7) (4) "Nationwide Multistate Mortgage Licensing System" or "NMLS" has the meaning assigned by Finance Code §180.002 in defining "Nationwide Mortgage Licensing System and Registry." Means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of state residential mortgage loan originators.</u></p>

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		<p><u>(8) (5) "Person" has the meaning assigned by Finance Tex. Fin. Code §158.002.</u></p> <p><u>(9) "Residential mortgage loan" has the meaning assigned by Finance Code §158.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling but used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.</u></p> <p><u>(10) "Residential real estate" has the meaning assigned by Finance Code §158.002 and includes improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.</u></p> <p><u>(11) "SML" means the Department of Savings and Mortgage Lending.</u></p> <p><u>(6) "The Act" means the Residential Mortgage Loan Servicer Registration Act, as provided by Tex. Fin. Code §158.001.</u></p> <p><u>(12) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.</u></p>
58.3	New	<p><u>Formatting Requirements for Notices</u></p> <p><u>Any notice or disclosure (notice) required by Finance Code Chapter 158, or this chapter, must be made in at least 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 158, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (this list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):</u></p> <p><u>(1) Arial;</u></p> <p><u>(2) Aptos;</u></p> <p><u>(3) Calibri;</u></p> <p><u>(4) Century Schoolbook;</u></p> <p><u>(5) Garamond;</u></p>

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		<p><u>(6) Georgia;</u></p> <p><u>(7) Lucinda Sans;</u></p> <p><u>(8) Times New Roman;</u></p> <p><u>(9) Trebuchet; and</u></p> <p><u>(10) Verdana.</u></p>
58.4	New	<p><u>Electronic Delivery and Signature of Notices</u></p> <p><u>Any notice or disclosure required by Finance Code Chapters 158, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.</u></p>
58.5	New	<p><u>Computation of Time</u></p> <p><u>The calculation of any time period measured in days by Finance Code Chapter 158, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.</u></p>
58.100	New	<p><u>Registration Requirements</u></p> <p><u>(a) Registration Required. A person, unless exempt as provided by Finance Code §158.052, is required to be registered with SML as a mortgage servicer under Finance Code Chapter 158 if the person:</u></p> <p><u>(1) acts as a mortgage servicer or engages in or conducts the business of a mortgage servicer, concerning a residential mortgage loan secured by residential real estate in Texas; or</u></p> <p><u>(2) advertises or holds that person out to the public as engaging in or conducting the business of a mortgage servicer in Texas.</u></p> <p><u>(b) Wrap Mortgage Servicing. A "wrap lender," as defined by Finance Code §158.001, that holds the mortgage servicing rights for a wrap mortgage loan must be registered under Finance Code Chapter 158 and comply with the requirements of Finance Code Chapter 159, Subchapter F and Chapter 58 of this title (relating to Wrap Mortgage</u></p>

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		<p><u>Loans).</u></p> <p><u>(c) Master Servicers and Subservicers. With respect to a residential mortgage loan for which the mortgage servicing rights are held by a person who is not the owner of the note (a/k/a "master servicer"), the holder of the mortgage servicing rights must be registered under Finance Code Chapter 158 even if that person does not actually receive any payments from the borrower but, instead, contracts with another person to service the loan (a/k/a "subservicer").</u></p>
58.101	79.3(a) and (b)	<p><u>Applications for Registration –General</u></p> <p><u>(a) NMLS. Applications for registration Residential Mortgage Loan Servicer registrations must be submitted through NMLS the Nationwide Mortgage Licensing System and Registry and must be made using the current form prescribed by NMLS on the prescribed application form. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.</u></p> <p><u>(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation deemed necessary or appropriate to determine that the registration requirements of Finance Code Chapter 158 are met.</u></p> <p><u>(c) (b) Incomplete Filings; Deemed Withdrawal. A registration, notice, or any other filing with the Department will be deemed submitted only if it is complete. An application a filing is complete only if all required information and supporting documentation is included and only if all required fees are have been received by the Department. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the If an applicant fails to provide the additional Department any information, or supplemental documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection from the date of the request, the application may be deemed withdrawn.</u></p>
58.102	79.3(d)	<p><u>Fees Registration –General</u></p> <p><u>(a) Registration Fees. The registration fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §158.053(b), exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new registration versus renewal of the registration. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The registration fee must be paid in NMLS.</u></p>

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		<p><u>(b) NMLS Fees. NMLS charges a separate fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS website (nationwidelicensingsystem.org).</u></p> <p><u>(c) All fees are nonrefundable and nontransferable.</u></p> <p>(d) The fees for the registration of a residential mortgage loan servicer shall be established by the Commissioner. The amount of the fees may be modified upon not less than 30 days advance notice posted on the Department website. Fees are nonrefundable and nontransferable.</p>
58.103	79.5	<p>Renewal of Registration</p> <p><u>(a) A registration may be renewed on upon:</u></p> <p>(1) <u>timely</u> submission of a completed <u>renewal</u> application (<u>renewal request</u>) in NMLS for renewal through the Nationwide Mortgage Licensing System and Registry together with payment of <u>all required fees</u> the application renewal fee; and</p> <p>(2) <u>a</u> determination <u>by SML</u> that the <u>mortgage servicer applicant</u> continues to meet the minimum requirements for registration issuance, including the requirements of Finance Code §158.058(c).</p> <p><u>(b) Application of §58.101. A renewal request is an application subject to the requirements of §58.101 of this title (relating to Applications for Registration). A renewal request withdrawn under §58.101(c) of this title will be rejected in NMLS.</u></p> <p><u>(c) Commissioner’s Discretion to Approve with a Deficiency. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage servicer to continue conducting regulated activities while the mortgage servicer works diligently to resolve the deficiencies. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS registration status "Approved - Deficient." Approval under this subsection does not relieve the mortgage servicer of the obligation to resolve the deficiencies noted. A mortgage servicer approved under this subsection must resolve the deficiencies within 30 days after the date the registration is approved, unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the registration.</u></p> <p><u>(d) No Renewal After Expiration. If a mortgage servicer fails to make a renewal request during the annual renewal period (November 1 to December 31) while the registration is still active and before it expires, then the registration</u></p>

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		<u>cannot be renewed. Instead, the person must apply for a new registration and comply with all current requirements and procedures governing issuance of a new registration.</u>
58.104	New	<p><u>NMLS Records; Notices Sent to the Mortgage Servicer</u></p> <p><u>(a) NMLS Registration Status. SML is required to assign a status to the registration in NMLS. The registration status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the registration status options available in NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) describes the available registration status options and their meaning.</u></p> <p><u>(b) Amendments to NMLS Records Required. A mortgage servicer must amend its NMLS registration records (MU1 filing) within 10 days after the date of any material change affecting any aspect of the MU1 filing, including, but not limited to:</u></p> <ul style="list-style-type: none"> <u>(1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);</u> <u>(2) the addition or elimination of an assumed name (also known as a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);</u> <u>(3) the contact information under "Identifying Information";</u> <u>(4) the contact information listed under "Resident/Registered Agent";</u> <u>(5) the contact information listed under "Contact Employee Information"; and</u> <u>(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).</u> <p><u>(c) Amendments to MU2 Associations Required. A mortgage servicer must cause the individuals who are required to register an association with the mortgage servicer (control persons) to make the proper filings in NMLS using the current form prescribed by NMLS (MU2 filing) and must ensure such associations are amended within 10 days after the date of any material change affecting such associations.</u></p> <p><u>(d) Notices Sent to the Mortgage Servicer. Any correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the mortgage servicer in accordance with this subsection using the</u></p>

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		<p><u>mortgage servicer's current contact information of record in NMLS unless another method is required by other applicable law.</u></p> <p><u>(1) Service by Email. Service by email is made using the email address the mortgage servicer has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by email is complete on transmission of the email to mortgage servicer's email service provider; provided, SML does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. A mortgage servicer must monitor such email account and ensure that emails sent by SML are not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage servicer is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. A mortgage servicer is further deemed to have constructive notice of any NMLS system notifications sent to it by email.</u></p> <p><u>(2) Service by Mail. Service by mail is made using the address the mortgage servicer has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is made using the address the mortgage servicer has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage servicer by mail and the document communicates a deadline by or a time during which the mortgage servicer must perform some act, such deadline or time period for action is extended by 3 days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.</u></p>
58.106	New	<p><u>Surrender of the Registration</u></p> <p><u>(a) Surrender Request. A mortgage servicer may seek surrender of the registration by filing a surrender request (request) in NMLS. The filing must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:</u></p> <p><u>(1) the mortgage servicer is the subject of a pending or contemplated investigation or enforcement action;</u></p> <p><u>(2) the mortgage servicer is in violation of an order of the Commissioner; or</u></p> <p><u>(3) the mortgage servicer has failed to pay any fee, charge, or other indebtedness owed to SML.</u></p> <p><u>(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the mortgage servicer's registration will be assigned the registration status "Approved -</u></p>

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		<u>Inactive” in NMLS.</u>
58.107	79.4	<p><u>Surety Bond Requirement</u></p> <p><u>(a) Purpose and Applicability. This section clarifies and establishes requirements related to the surety bond certain mortgage servicers are required to have under Finance Code §158.055. This section does not apply to a mortgage servicer excepted from the surety bond requirement under Finance Code §158.055(h).</u></p> <p><u>(b) (a) NMLS Electronic Surety Bond Required. The surety bond must be submitted electronically through NMLS and must be made using the current form prescribed by NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) explains how to file the electronic surety bond in NMLS Bonds submitted for the approval of a Residential Mortgage Loan Servicer registration application must be on the prescribed form and for the amount determined applicable under Finance Code §158.055(b) or (c).</u></p> <p><u>(c) (b) Required Parties. The surety bond must be payable to the Commissioner as the sole payee. The name of the principal insured on the bond must match exactly the name filed with the Texas Secretary of State, if applicable. If the bond is a paper bond, it must include the surety seal and an attached power of attorney.</u></p> <p><u>(d) Authorized Surety Provider. The surety bond must be issued by a surety company authorized to transact business in Texas and comply with the applicable requirements of the Insurance Code.</u></p> <p><u>(e) Minimum Bond Amount. Except as provided by paragraph (4) of this subsection, the minimum amount for the surety bond is determined based on the mortgage servicer’s volume of loans serviced in Texas. The loan volume is calculated by adding the total unpaid principal balance of all residential mortgage loans serviced by the mortgage servicer secured by real property located in Texas as of October 31 of the year preceding the calendar year of the mortgage servicer’s registration. The minimum amount for the surety bond is:</u></p> <p><u>(1) New Applicants for Registration. If the applicant has never been registered with the Department as a mortgage servicer or was not registered within the 12 months preceding the date of application, the minimum amount for the surety bond is \$25,000. If the mortgage servicer was registered within the Department within the 2 years preceding the date of application, the minimum amount for the surety bond is determined based on the mortgage servicer’s loan volume on the day the mortgage servicer’s registration lapsed.</u></p> <p><u>(2) Volume less than or equal to \$25,000,000. If the mortgage servicer’s volume of loans is less than or equal to \$25,000,000, the minimum amount for the surety bond is \$25,000.</u></p> <p><u>(3) Volume greater than \$25,000,000. If the mortgage servicer’s volume of loans is greater than \$25,000,000, the</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>minimum amount for the surety bond is \$50,000.</u></p> <p><u>(4) Servicers of Unimproved Real Property or Foreclosed Properties. Paragraphs (2) and (3) of this subsection notwithstanding, and as provided by Finance Code §158.055(c), if a mortgage servicer services only residential mortgage loans secured by unimproved real property or services only residential mortgage loans secured by foreclosed properties with a dwelling, or both, the minimum amount for the surety bond is \$25,000, regardless of the cumulative value of sales of property by the mortgage servicer.</u></p> <p><u>(f) Duty to Maintain and Update Surety Bond. The surety bond must remain active for as long as the mortgage servicer's registration is active. The mortgage servicer must recalculate the minimum amount for the surety bond before requesting renewal of the registration during the annual renewal period (November 1 to December 31). If the mortgage servicer is required to increase the amount of the surety bond as provided by this section, the new surety bond reflecting the higher surety bond amount must be active before the registration will be renewed.</u></p>
58.200	79.2	<p>Required Disclosures Disclosure</p> <p><u>(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage servicer is required to make under Finance Code §158.101.</u></p> <p><u>(b) (a) Specific Notice to Borrower. A residential mortgage loan servicer registrants must <u>send written notice to the borrower concerning SML's include a written disclosure of the Department's regulatory oversight within 30 days after the date it begins servicing a residential mortgage loan on all correspondence provided to the borrower, including all periodic statements. The notice disclosure must be in the current form prescribed by SML the Department and posted published on its website (sml.texas.gov). The notice must be included in the first notice sent to the borrower that notifies the borrower of the mortgage servicer's role in servicing the loan, including any notice required by Regulation X (12 C.F.R. §1024.33(b)). This subsection applies to the servicing of residential mortgage loans secured by real property located in Texas. Mortgage servicers servicing a residential mortgage loan not secured by real property located in Texas must not provide the notice described by this section.</u></u></p> <p><u>(b) The requirements of this section apply only to residential mortgage loan registrants servicing residential mortgage loans secured by real estate located in Texas. Residential mortgage loan servicer registrants servicing mortgage loans secured by real estate not located in Texas must not include the written disclosure referenced by this section.</u></p> <p><u>(c) Posted Notice on Websites. A mortgage servicer must post the notice required by subsection (b) of this section on each website of the mortgage servicer, other than a social media site, that is accessible by a borrower. The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked page with the link to such page displayed on the initial or home page.</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(d) Disclosures in Correspondence. All correspondence sent to the borrower must include:</u></p> <p><u>(1) the mortgage servicer's name and NMLS ID; and</u></p> <p><u>(2) the mortgage servicer's website address, if it has a website.</u></p>
58.207	New	<p><u>Periodic Statements</u></p> <p><u>A mortgage servicer that services a loan secured by a dwelling must comply with the requirements of Section 1026.41 of Regulation Z (12 C.F.R. §1026.41), governing the issuance, content, form, and layout of periodic statements sent to the borrower.</u></p>
58.210	New	<p><u>Reportable Incidents</u></p> <p><u>(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:</u></p> <p><u>(1) "Catastrophic event" means an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations (e.g., the destruction of a principal office or data center).</u></p> <p><u>(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage servicer's operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:</u></p> <p><u>(A) a "catastrophic event" as defined by this subsection</u></p> <p><u>(B) a "security event" as defined by this subsection;</u></p> <p><u>(C) the termination or curtailment of a line of credit or funding source; or</u></p> <p><u>(D) the termination or curtailment of a service provided to the mortgage servicer by a third-party service provider.</u></p> <p><u>(3) "Root cause analysis report" means a written report concerning the results or findings of an audit or investigation to determine the origin or root cause of a security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event.</u></p>

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		<p><u>(4) "Security event" means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. It includes information that is encrypted, if the person with unauthorized access to the information can decrypt the data.</u></p> <p><u>(b) Incident Report. Except as provided by subsection (c) of this section, a mortgage servicer must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage servicer becomes aware of the reportable incident. The report must include:</u></p> <ul style="list-style-type: none"> <u>(1) a detailed description of the nature and circumstances of the reportable incident;</u> <u>(2) the number of Texas residents affected or potentially affected by the reportable incident;</u> <u>(3) the measures taken by the mortgage servicer to resolve or address the reportable incident;</u> <u>(4) the measures the mortgage servicer plans to take to resolve or address the reportable incident; and</u> <u>(5) the point of contact designated by the mortgage servicer for inquires by SML about the reportable incident.</u> <p><u>(c) Incidents Reported to Other Agencies. A mortgage servicer must provide SML with a copy of the following notifications sent to other agencies at the time it makes the notification. Except as provided by subsection (d) of this section, a notification provided to SML under this subsection satisfies the requirement to file a report under subsection (b) of this section:</u></p> <ul style="list-style-type: none"> <u>(1) the notification to the Federal Trade Commission (FTC) required by Section 314.4(j) of the FTC's Standards for Safeguarding Customer Information rules (16 C.F.R. §314.4(j)); and</u> <u>(2) the notification to the Office of the Attorney General of Texas required by Business and Commerce Code §521.053(i).</u> <p><u>(d) Root Cause Analysis for Data Breaches. For any security event triggering a notification described by subsection (c) of this section (data breach), the mortgage servicer must provide SML with a root cause analysis report within 120 days after the date the mortgage servicer becomes aware that the data breach occurred.</u></p> <p><u>(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.</u></p> <p><u>(f) Confidentiality. Information reported under subsection (b) or (d) of this section is deemed to be confidential</u></p>

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		<p><u>information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §158.102 and §58.302 of this title (relating to Confidentiality of Investigation Information).</u></p>
58.301	79.20	<p><u>Investigations</u></p> <p><u>(a) Purpose. This section clarifies and establishes requirements related to investigations of a mortgage servicer conducted by SML under Finance Code §158.102.</u></p> <p><u>(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has no reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate an action taken by SML to address a violation found during the course of an investigation.</u></p> <p>(b) If the Department requests reports or other information of registrant and registrant does not respond a \$150 penalty may be assessed against the registrant.</p> <p><u>(c) (a) Investigation Methods. Investigations will be conducted as <u>SML deems</u> deemed appropriate <u>based on the in light of all</u> relevant facts and circumstances then known. Such investigation may include <u>any or all of the following</u>:</u></p> <ol style="list-style-type: none"> <u>(1) review of documentary evidence;</u> <u>(2) interviews with complainants, <u>respondents, registrants,</u> and third parties, <u>and the taking of sworn written statements;</u></u> <u>(3) obtaining <u>information from reports, advice, and other comments and assistance of</u> other state <u>or and/or</u> federal <u>agencies, regulatory, authorities, enforcement, or self-regulatory organizations oversight bodies;</u> and</u> <u>(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and</u> <u>(5) (4) other lawful investigative <u>methods techniques</u> as <u>SML the Commissioner reasonably deems necessary or and/or appropriate,</u> including, but not limited to, requesting that complainants and/or other parties made the subject of complaints <u>provide explanatory, clarifying, or supplemental information.</u></u> <p><u>(d) (e) Investigation Fee. The Commissioner may collect a fee for conducting an investigation on a mortgage servicer. The amount of the fee is determined by the Commissioner not to exceed \$975 per complaint. The investigation fee, if any, is assessed at the time SML closes the complaint. The investigation fee, if any, will be invoiced in NMLS and</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p>must be paid in NMLS A complaint investigation fee may be assessed against a person required to be registered under this Act. The amount of the complaint investigation fee assessed is limited to costs incurred, will be at the discretion of the Commissioner, and may not exceed \$975 per complaint.</p> <p>(d) The Commissioner may conduct a Departmental investigation if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of the Act.</p>
58.302	New	<p><u>Confidentiality of Investigation Information</u></p> <p><u>(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an investigation, as provided by Finance Code §158.102.</u></p> <p><u>(b) Confidential Information. All information obtained by SML during an investigation is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §158.102 (list is not exhaustive):</u></p> <p><u>(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or generated during an investigation;</u></p> <p><u>(2) information that is derived from or is the product of the confidential information described by subparagraph (1), including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an investigation, including assertions of an actual or apparent violation of law or any directives, mandates, or recommendations for action by the mortgage servicer to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the investigation;</u></p> <p><u>(3) information that is derived from or is the product of the confidential information described by paragraphs (1) and (2) of this subsection, including any communications, documentary evidence, or other information concerning the mortgage servicer's compliance with any directives, mandates, or recommendations for action by the mortgage servicer and any corrective or remedial action taken by the mortgage servicer to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the investigation.</u></p> <p><u>(c) Loss of Confidentiality. Subsection (b) notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).</u></p>

NEW SECTION	OLD SECTION	REDLINE
57.303	New	<p><u>Corrective Action</u></p> <p><u>(a) Corrective Action, Generally; Purpose. During an investigation, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the investigation, and typically in lieu of possible enforcement action against the mortgage servicer that is not confidential, SML may direct the mortgage servicer to take corrective action to address the violations identified during the investigation. This section clarifies and establishes requirements related to such corrective action.</u></p> <p><u>(b) Internal Reviews. If SML determines during an investigation that a violation may be systemic, SML may direct the mortgage servicer to conduct its own internal review to self-identify any other violations, compile information concerning such violations, and report its findings to SML. SML may direct the mortgage servicer to take corrective action for any violations identified during the review.</u></p> <p><u>(c) Policies and Procedures and Internal Controls. SML may direct the mortgage servicer to develop and adopt policies and procedures and institutional controls designed to prevent or mitigate future violations.</u></p> <p><u>(d) Refunds to Consumers. SML may direct the mortgage servicer to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:</u></p> <p><u>(1) Certified Funds. The refund may be made by certified funds (cashier's check or money order) sent to the borrower at his or her last known address. The mortgage servicer must use reasonable diligence to determine the last known address of the borrower. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The mortgage servicer must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation;</u></p> <p><u>(2) Corporate Check. The refund may be made by issuing a check to the borrower. The check must be drawn on a bank account owned by the mortgage servicer. The check must be sent to the borrower at his or her last known address. The mortgage servicer must use reasonable diligence to determine the last known address of the borrower. The mortgage servicer must capture and maintain records evidencing the payment, including a copy of the check, any correspondence accompanying the check, and evidence that the check was successfully negotiated (i.e., cancelled check). If the borrower fails to cash the check, the mortgage servicer must comply with requirements of §58.304 of this title (relating to Unclaimed Funds);</u></p> <p><u>(3) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the borrower's verified bank account. The mortgage servicer must capture and maintain records evidencing the</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>payment, including any transaction receipt, confirmation page, or similar, reflecting:</u></p> <p><u>(A) name of the sender and any relevant contact information;</u></p> <p><u>(B) sender's bank information (institution, routing number, and account number);</u></p> <p><u>(C) name of the recipient and any relevant contact information;</u></p> <p><u>(D) recipient's bank information (routing number and account number); and</u></p> <p><u>(E) the transaction reference number or confirmation code; or</u></p> <p><u>(4) Credit Against Indebtedness. If, at the time of the refund, the mortgage servicer holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage servicer may issue a credit against the indebtedness equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage servicer on which interest was charged, the credit must be applied to the unpaid principal balance as of the date of such improper charge or the date the mortgage servicer began improperly holding the proceeds. The mortgage servicer must capture and maintain records evidencing application of the credit, including the payment history reflecting application of the credit and any subsequent adjustments to principal and interest payments as a result of the credit being applied.</u></p>
58.304	New	<p><u>Unclaimed Funds</u></p> <p><u>(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a borrower or other customer of the mortgage servicer for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage servicer must maintain a log of all transfers made to the escheat suspense account, including, at a minimum:</u></p> <p><u>(1) date of transfer to the escheat suspense account;</u></p> <p><u>(2) date the obligation to pay the funds arose;</u></p> <p><u>(3) full name and last known contact information of the borrower other customer to whom funds are owed; and</u></p> <p><u>(4) amount of unclaimed funds.</u></p> <p><u>(b) Required Records. The mortgage servicer must maintain records reflecting bona fide attempts to pay the funds</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>to the borrower or customer.</u></p> <p><u>(c) Escheat to State. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts as provided by Property Code §72.101, or as provided by such other state law governing the unclaimed funds.</u></p> <p><u>(d) Records Retention. Records required by this section must be retained for 10 years beginning on the date the obligation to pay the unclaimed funds arose.</u></p>
58.310	New	<p><u>Appeals</u></p> <p><u>(a) Purpose. Finance Code Chapter 158 provides that certain decisions of the Commissioner adverse to a mortgage servicer or other person may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which a mortgage servicer or other person must appeal the decision before it becomes final and non-appealable.</u></p> <p><u>(b) The following appeal deadlines apply:</u></p> <p><u>(1) Registration Denials. A registration denial under Finance Code §158.058(c), or otherwise, must be appealed on or before 10 days after the date notice of the Commissioner’s decision is received by the person seeking the registration.</u></p> <p><u>(2) Order to Take Affirmative Action or Order to Cease and Desist. An order issued by the Commissioner under Finance Code §§158.103(a), 158.105(a), or 158.106 must be appealed within 30 days after the date the order is issued.</u></p> <p><u>(3) Notice of Revocation. A notice of revocation issued under Finance Code §158.059 must be appealed on or before 30 days after the date the notice is issued.</u></p> <p><u>(4) Other Deadlines. Any appeal not otherwise addressed by this section must be made on or before 30 days after the date notice or order is issued.</u></p> <p><u>(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov).</u></p> <p><u>(d) Effect of Not Appealing. A mortgage servicer or other person that does not timely appeal the Commissioner’s</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>decision is deemed to have irrevocably waived any right it had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to it for purposes of judicial review of the Commissioner's decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a final, non-appealable order at any time without further notice or opportunity for a hearing to the mortgage servicer or other person.</u></p>
58.311	79.30	<p>Hearings and Appeals</p> <p><u>Adjudicative hearings conducted under Finance Code Chapter 158 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.</u></p> <p>As determined by the Commissioner, the Hearings Officer for the Finance Commission or an Administrative Law Judge at the State Office of Administrative Hearings (SOAH) may be designated as the hearings officer for hearings under this chapter. All such hearings are to be conducted in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), including, but not limited to motions for rehearing, notices of appeal, and applications for review and shall be a contested case governed by Chapter 2001, Government Code. All such hearings, unless specifically authorized by the Commissioner, shall be conducted in Austin, Travis County, Texas. Such rules, as set forth in Chapter 9 of this title, are incorporated herein by reference for all purposes.</p>