



**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 59 WRAP MORTGAGE LOANS**

<b>NEW SECTION</b>	<b>OLD SECTION</b>	<b>REDLINE</b>
59.1	78.1	<p><b>Purpose and Applicability</b></p> <p>This chapter governs the Commissioner's administration and enforcement of Finance Code Chapter 159, governing wrap mortgage loans concerning residential real estate located in Texas. This chapter applies to wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan.</p>
59.2	78.2	<p><b>Definitions</b></p> <p><del>For purposes of The following terms, when used in</del> this chapter, and in <del>SML's the Commissioner's</del> administration and enforcement of Finance Code Chapter 159, <del>have</del> the following <del>definitions apply meanings</del>, unless the context clearly indicates otherwise:</p> <p>(1) "Application" means a request, in any form, for an offer (or a response to a solicitation <del>of for</del> an offer) of wrap mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, <del>or and/or</del> the mortgage loan amount.</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(2) "Attorney" has the meaning assigned by <del>Texas</del> Insurance Code §2501.003.</p> <p>(3) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.</p> <p><del>(4) "Department" means the Department of Savings and Mortgage Lending.</del></p> <p><del>(4) (5) "E-Sign Act" refers to the federal Electronic Signatures in Global and National Commerce Act, (15 U.S.C. §7001 et seq.) §§7001-7006.</del></p> <p><del>(5) (6) "Inspection" includes examination.</del></p> <p><del>(6) (7) "Legal holiday" means the federal legal public holidays specified set forth in 5 U.S.C. §6103(a).</del></p> <p><del>(7) (8) "Make a wrap mortgage loan," means when a person determines the credit decision to provide the wrap mortgage loan, or the act of funding the wrap mortgage loan or transferring money to the wrap borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the wrap mortgage loan.</del></p> <p><del>(8) (9) "Nationwide <u>Multistate Mortgage Licensing System and Registry</u>" or "NMLS" has the meaning assigned by Finance Code §180.002 <u>in defining "Nationwide Mortgage Licensing System and Registry."</u></del></p> <p><del>(9) (10) "Residential mortgage loan" has the meaning assigned by Finance Code §159.001. The term does not include a loan <del>which is</del> secured by structure that is suitable for occupancy as a dwelling but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.</del></p> <p><del>(10) (11) "Residential mortgage loan originator" has the meaning assigned by Finance Code §180.002.</del></p> <p><del>(11) (12) "Residential mortgage loan servicer" has the meaning assigned by Finance Code §158.002.</del></p> <p><del>(12) (13) "Residential real estate" has the meaning assigned by Finance Code §159.001. For purposes of Finance Code §159.002(b)(1), the term does not include "unimproved residential estate," as that term is defined by Finance Code §159.002(a).</del></p> <p><del>(13) "SML" means the Department of Savings and Mortgage Lending.</del></p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(14) "Superior lien" refers to any lien described by Finance Code §159.001(7)(A).</p> <p>(15) "Superior lienholder" means the holder of any lien described by Finance Code §159.001(7)(A).</p> <p>(16) "Third-party servicer" means a person other than the wrap lender acting as residential mortgage loan servicer for a wrap mortgage loan.</p> <p>(17) "Title company" means a "title insurance company" as that term is defined by <del>Texas</del> Insurance Code §2501.003.</p> <p>(18) "UETA" refers to the Texas Uniform Electronic Transactions Act, <del>Texas</del> Business &amp; Commerce Code Chapter 322.</p> <p>(19) "Wrap borrower" has the meaning assigned by Finance Code §159.001.</p> <p>(20) "Wrap lender" has the meaning assigned by Finance Code §159.001.</p> <p>(21) "Wrap lender registrant" means a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158.</p> <p>(22) "Wrap mortgage applicant" means an applicant for a wrap mortgage loan or a person who is solicited (or contacts a wrap lender in response to a solicitation) to obtain a wrap mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Mortgage Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.</p> <p>(23) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.</p>
59.3	New	<p><b><u>Formatting Requirements for Notices</u></b></p> <p><u>Any notice or disclosure (notice) required by Finance Code Chapter 159, 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 159, 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 or disclosure must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<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> <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>
59.4	New	<p><b><u>Electronic Delivery and Signature of Notices</u></b></p> <p><u>Any notice or disclosure required by Finance Code Chapter 156, 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>
59.5	78.3	<p><b>Computation of Time</b></p> <p>The calculation of any time period measured in days by Finance Code Chapter 159, <u>or this chapter,</u> is <del>to be</del> made using calendar days, <u>unless clearly stated otherwise.</u> In computing a period of days, the first day is excluded and the last day is included. <del>If Except with respect to the disclosure required by Finance Code § 159.101 and §78.101 of this title (relating to Required Disclosure),</del> 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, <u>unless clearly stated otherwise.</u></p>
59.100	78.100	<p><b>Purpose and Applicability</b></p> <p>The purpose of this subchapter is to clarify and establish requirements related to a wrap lender's requirements and</p>

NEW SECTION	OLD SECTION	REDLINE
		responsibilities under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter C, and §159.105.
59.101	78.101	<p><b>Required Disclosure</b></p> <p>(a) Purpose. The purpose of this section is to clarify and establish requirements related to the written disclosure a wrap lender is required to provide the wrap borrower in accordance with Finance Code §159.101 (disclosure).</p> <p>(b) Model Disclosure Form. In accordance with Finance Code §159.101(c), the following form (Figure: 7 TAC <del>§59.101(b)(3)</del> <del>§78.101(b)(3)</del>; model disclosure form) is deemed to satisfy the substantive requirements of Finance Code §159.101(a). Interested persons should visit <u>SML's the Department's</u> website (sml.texas.gov) for a form-fillable version of the model disclosure form and an editable version in Word format (including for purposes of attaching additional sheets to supplement the form with additional information, as necessary). A wrap lender may modify and customize the model disclosure form; provided, the form:</p> <p style="padding-left: 40px;">(1) contains all substantive information contained in the model disclosure form that is applicable to the person issuing the disclosure;</p> <p style="padding-left: 40px;">(2) conforms to the formatting requirements of <u>§59.3 of this title (relating to Formatting Requirements for Notices) subsection (c) of this section</u>; and</p> <p style="padding-left: 40px;">(3) otherwise fulfills the requirements of Finance Code §159.101(a).</p> <p><u>Figure: 7 TAC §59.101(b)(3)</u></p> <p><del>(c) Formatting Requirements. The disclosure must be made in 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. Those portions of the disclosure comprising the body must use a normal font type. Those portions of the disclosure comprising a heading must use a bolded font type. Those portions of the disclosure comprising the content required by Finance Code §159.101(a)(2) and Texas Property Code §5.016(a)(7) must use an "all caps" or "small caps" font type. 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):</del></p> <p style="padding-left: 40px;"><del>(1) Arial;</del></p> <p style="padding-left: 40px;"><del>(2) Calibri;</del></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><del>(3) Century Schoolbook;</del></p> <p><del>(4) Garamond;</del></p> <p><del>(5) Georgia;</del></p> <p><del>(6) Lucinda Sans;</del></p> <p><del>(7) Time New Roman;</del></p> <p><del>(8) Trebuchet; and</del></p> <p><del>(9) Verdana.</del></p> <p><u>(c)</u> <del>(d)</del> Effective Date. The disclosure is deemed to be provided by the wrap lender and received by the wrap borrower for purposes of Finance Code §159.101 on the date the disclosure is dated and signed by the wrap borrower, as provided by Finance Code §159.101(b).</p> <p><u>(d)</u> <del>(e)</del> Foreign Language Requirement. The wrap borrower must be provided an English-language version of the disclosure in addition to and contemporaneously with the foreign-language version required by Finance Code §159.102, if applicable. A wrap lender may provide the English-language and foreign-language disclosure in a single, combined disclosure. A wrap borrower receiving a foreign-language version of the disclosure may, but is not required to, date and sign the foreign-language disclosure. A wrap borrower receiving a foreign-language version of the disclosure must date and sign the English-language version of the disclosure, which determines the effective date the disclosure is received by the wrap borrower, as provided by subsection <u>(c)</u> <del>(d)</del> of this section. A Spanish-language version of the model disclosure form is available on <u>SML's</u> <del>the Department's</del> website (sml.texas.gov) and is deemed to satisfy the substantive requirements of Finance Code §159.101(a) and §159.102, with respect to negotiations with a wrap borrower conducted primarily in Spanish.</p> <p><del>(f) Electronic Delivery and Signature. The wrap lender may provide, and the wrap borrower may sign, the disclosure electronically 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 signature and delivery.</del></p> <p><u>(e)</u> <del>(g)</del> Computation of Time. Computation of the time period for a wrap lender to provide the disclosure required by Finance Code §159.101(a) is made using calendar days, irrespective of any Saturdays, Sundays, or legal holidays.</p>

NEW SECTION	OLD SECTION	REDLINE
59.102	78.102	<p><b>Closing Requirements</b></p> <p>(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement that a wrap mortgage loan be closed by an attorney or title company, as provided by Finance Code §159.105.</p> <p>(b) Closing by Title Company. For purposes of Finance Code §159.105, a wrap mortgage loan may only be closed by a title company issuing an owner's title insurance policy to the wrap borrower for the residential real estate secured or designed to be secured by the wrap mortgage loan.</p>
59.200	78.200	<p><b>Purpose and Applicability</b></p> <p>The purpose of this subchapter is to clarify and establish requirements related to a wrap borrower's rights under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter E.</p>
59.201	78.201	<p><b>Right to Deduct; Notice of Deduction</b></p> <p>(a) Purpose. The purpose of this section is to clarify and establish requirements related to a wrap borrower's right to make deductions from the amounts the wrap borrower owes to the wrap lender under the terms of a wrap mortgage loan, as provided by Finance Code §159.202.</p> <p>(b) Notice of Deduction. To the extent the wrap borrower seeks to exercise its right to deduct amounts owed to the wrap lender pursuant to Finance Code §159.202, the wrap borrower must, at the time the wrap borrower makes the deduction, provide the wrap lender or its third-party servicer notice of the amounts deducted including:</p> <ul style="list-style-type: none"> <li>(1) an itemized list of the deductions made, describing in detail the amounts paid by the wrap borrower on behalf of the wrap lender;</li> <li>(2) the dates on which such payments were made; and</li> <li>(3) supporting documentation evidencing paragraphs (1) and (2) of this subsection.</li> </ul>
59.300	78.300	<p><b>Purpose and Applicability</b></p> <p>The purpose of this subchapter is to clarify and establish requirements applicable to persons who collect or receive a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter D. The rules in this subchapter apply to a wrap lender or any other person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including a third-party servicer servicing</p>

NEW SECTION	OLD SECTION	REDLINE
		a wrap mortgage loan.
59.301	78.301	<p><b>Fiduciary Duties; Required Accounting</b></p> <p>(a) Purpose. The purpose of this section is to clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code §159.152.</p> <p>(b) Non-Delegation of Duties. A wrap lender or other person collecting or receiving a payment from a wrap borrower under the terms of a wrap mortgage loan may not delegate or assign its fiduciary duties owed under Finance Code §159.152 to another person except as a result of the wrap lender selling, assigning, transferring, or conveying the wrap mortgage loan. Any sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan is deemed to include an assignment of the fiduciary duties owed by the wrap lender to the wrap borrower under Finance Code §159.152. A sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan does not extinguish the assigning wrap lender's fiduciary duties to the wrap borrower in connection with amounts collected or received by the wrap lender from the wrap borrower prior to the effective date of the sale, assignment, transfer, or conveyance of the wrap mortgage loan.</p> <p>(c) Required Accounting. The wrap lender must, either directly, or through use of a third-party servicer it has contracted with, maintain, on a current basis, separate written accountings for each wrap mortgage loan made by the wrap lender sufficient to account for, track, and retrospectively trace all payments received from the wrap borrower under the terms of the wrap mortgage loan, and all disbursements, transfers, or assignments of such funds, including, but not limited to, disbursements made to a superior lienholder, taxing authority, or insurance company in connection with the residential real estate secured by the wrap mortgage loan. The accounting required by this subsection must be maintained by the wrap lender or its successor-in-interest until the limitations period for the wrap borrower to bring any cause of action against the wrap lender arising from a violation of law in connection with the wrap mortgage loan transaction has lapsed. To the extent the wrap lender uses the services of a third-party servicer, a wrap lender must establish and maintain policies and procedures that are reasonably designed to acquire from the third-party servicer any information or supporting documentation necessary or prudent to ensure the wrap lender satisfies the accounting required by this subsection. The accounting required by this subsection may be accomplished through administration of and the retention of records in connection with a trust account as provided by §59.302 of this title (relating to Trust Account; Maintenance of Funds Held in Trust).</p>
59.302	78.302	<p><b>Trust Account; Maintenance of Funds Held in Trust</b></p> <p>(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement of a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan to hold such</p>



NEW SECTION	OLD SECTION	REDLINE
		<p>funds in trust, as provided by Finance Code §159.151.</p> <p>(b) Definitions. The following terms in this section have the following meanings, unless the context clearly indicates otherwise:</p> <p style="padding-left: 40px;">(1) "Financial institution" has the meaning assigned by Finance Code §201.101(1).</p> <p style="padding-left: 40px;">(2) "Trust account" means a custodial, trust, or escrow account managed by one person for the benefit of another person.</p> <p style="padding-left: 40px;">(3) "Trust funds" means the funds collected or received from a wrap borrower under the terms of a wrap mortgage loan.</p> <p style="padding-left: 40px;">(4) "Receiver" means a wrap lender or other person collecting or receiving trust funds.</p> <p>(c) Trust Account Required. Unless otherwise agreed to in writing by the wrap borrower and wrap lender in connection with the wrap mortgage loan, trust funds must be placed in a trust account meeting the requirements of this section, and maintained or disbursed in accordance with this section.</p> <p>(d) Trust Account Requirements.</p> <p style="padding-left: 40px;">(1) The trust account must be clearly identified as such at the financial institution.</p> <p style="padding-left: 40px;">(2) The receiver may, but is not required to, maintain separate trust accounts for each wrap mortgage loan or wrap borrower. To the extent the receiver maintains separate trust accounts for each wrap mortgage loan or wrap borrower, the same trust account may also be used for purposes of administering an escrow account for the wrap mortgage loan or wrap borrower.</p> <p style="padding-left: 40px;">(3) Funds in the trust account must be capable of being disbursed by the receiver on-demand or in an amount of time sufficient to timely effect disbursements reasonably anticipated from the trust account.</p> <p style="padding-left: 40px;">(4) A receiver, in addition to depositing trust funds, may deposit and maintain a limited amount of money in the trust account necessary to avoid or cover potential fees imposed by the financial institution in connection with the trust account including account maintenance fees or fees charged for insufficient funds.</p> <p>(e) A receiver may not:</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(1) commingle trust funds with non-trust funds;</p> <p>(2) deposit or maintain trust funds in a personal account or any form of business account; or</p> <p>(3) pay operating expenses or otherwise make withdrawals or disbursements from a trust account for any purpose other than the proper disbursement of trust funds.</p> <p>(f) Disbursement of Trust Funds.</p> <p>(1) A receiver may only disburse money from a trust account in accordance with the terms of the wrap mortgage loan or such other agreement as may be entered into with the wrap borrower to govern the disbursement of trust funds.</p> <p>(2) If a receiver is unable to reasonably determine to which party or parties trust funds should be disbursed, the receiver may tender trust funds into the registry of a court of competent jurisdiction and interplead the relevant party or parties.</p>
59.303	78.303	<p><b>Use of a Third-Party Servicer</b></p> <p>(a) Purpose. The purpose of this section is to clarify and establish requirements concerning a wrap lender's use of a third party to act as a residential mortgage loan servicer of wrap mortgage loan.</p> <p>(b) Use of a Third-Party Servicer. A wrap lender is authorized to use the services of a third party to act as the residential mortgage loan servicer of a wrap mortgage loan (also known as a "subservicer").</p> <p>(c) Handling of Payments and Disbursements. To the extent a wrap lender uses the services of a third-party servicer, the handling of payments and disbursement of funds received by the third-party servicer is governed by the agreement between the wrap lender and third-party servicer, including:</p> <p>(1) whether or not and on what terms the third-party servicer makes disbursements to the superior lienholder;</p> <p>(2) disbursements made to the wrap lender; and</p> <p>(3) how payments by the wrap borrower in excess of the current amount due under the terms of the wrap mortgage loan are handled, applied, or disbursed.</p> <p>(d) No Limitation on Liability. As provided by Finance Code §159.107, any agreement between a wrap lender and a</p>

NEW SECTION	OLD SECTION	REDLINE
		third-party servicer may not seek to waive or limit the wrap lender's or third-party servicer's liability to the wrap borrower arising from the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152. However, an agreement between a wrap lender and third-party servicer may contain an indemnification agreement concerning potential liability arising from the fiduciary duties owed to the wrap borrower under Finance Code §159.152.
59.400	78.400	<p><b>Purpose and Applicability</b></p> <p>The purpose of this subchapter is to clarify and establish requirements related to the Commissioner's authority to conduct inspections of, and investigations on, a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap mortgage registrant), as provided by Finance Code Chapter 159, Subchapter F. This subchapter further clarifies and establishes requirements concerning the Commissioner's authority to seek enforcement action against a wrap mortgage registrant under Finance Code Chapter 159, Subchapter G.</p>
59.401	78.401	<p><b>Required Books and Records by a Wrap Lender Registrant</b></p> <p>(a) Purpose. This section clarifies and establishes requirements related to the wrap lender's requirement to maintain information and records necessary to facilitate the Commissioner's inspection of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252(d)(1). The requirements of this section are in addition to and supplement the requirements a wrap lender registrant or other person is required to maintain as a licensee or registrant under Finance Code Chapters 156, 157, 158, or 342, as applicable.</p> <p>(b) Maintenance of Records, Generally. Each wrap lender registrant must maintain records with respect to each wrap mortgage loan under Finance Code Chapter 159 and make those records available for examination under Finance Code §159.252. The records required by this section may be maintained using a paper, manual, electronic, or digitally-imaged recordkeeping system, or a combination thereof, unless otherwise specified by other applicable law. The records must be accurate, complete, current, legible, and readily accessible and sortable. If the requirements of other applicable law governing recordkeeping by the wrap loan registrant differ from the requirements of this section, such other applicable law prevails only to extent this section conflicts with the requirements of this section.</p> <p>(c) Required Records. A wrap lender registrant must maintain the following items:</p> <p>(1) Wrap Mortgage Servicing Log. A wrap mortgage servicing log for each wrap mortgage loan serviced by a wrap lender registrant, maintained on a current basis (which means that all entries must be made within seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:</p> <p>(A) the loan or account number, or other unique identifier assigned by the wrap lender registrant to the wrap</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>mortgage loan;</p> <p style="padding-left: 40px;">(B) the name and contact information of each wrap borrower; and</p> <p style="padding-left: 40px;">(C) the date the wrap mortgage loan was entered into by the wrap lender and wrap borrower.</p> <p>(2) Wrap Borrower Index. The current alphabetical index or a report of outstanding wrap mortgage loans of the wrap lender registrant, regardless of whether or not it services the wrap mortgage loan, reflecting the name of each wrap borrower and the loan or account number, or other unique identifier assigned by the wrap lender to the wrap mortgage loan. A wrap lender registrant may maintain the wrap borrower index as a part of other records maintained by the wrap lender registrant; provided, the wrap lender registrant is able to sort, generate, and print, as a separate record, the wrap borrower index in strict alphabetical order.</p> <p>(3) Wrap Mortgage Transaction File. A wrap lender registrant must maintain a wrap mortgage transaction file for each wrap mortgage loan or be able to produce the same information within a reasonable time upon request. The wrap mortgage transaction file must contain documents demonstrating the wrap lender registrant's compliance with applicable law, including Finance Code Chapter 159, and any applicable state and federal statutes, rules, or regulations. The wrap mortgage loan transaction file must include the following records or documents:</p> <p style="padding-left: 40px;">(A) for all wrap mortgage loan transactions:</p> <p style="padding-left: 80px;">(i) the promissory note, loan agreement, or repayment agreement, signed by the wrap borrowers;</p> <p style="padding-left: 80px;">(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document signed by the wrap borrower(s);</p> <p style="padding-left: 80px;">(iii) the title insurance policy or abstract of title;</p> <p style="padding-left: 80px;">(iv) the initial and final mortgage application (including any attachments, supplements, or addenda thereto), signed and dated by the mortgage applicant and the residential mortgage loan originator, and any other written or recorded information used to evaluate the mortgage application, as required by Regulation B (12 C.F.R. §1002.4(c));</p> <p style="padding-left: 80px;">(v) the real estate contract documenting the sale of the residential real estate securing the wrap mortgage loan;</p> <p style="padding-left: 80px;">(vi) the disclosure statement requirement by Finance Code §159.101 and §59.101 of this title (relating to</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>Required Disclosure), including any foreign-language disclosure required by Finance Code §159.102;</p> <ul style="list-style-type: none"> <li>(vii) the initial and any revised integrated loan estimate disclosure required by Regulation Z (12 C.F.R. §1026.37);</li> <li>(viii) the initial, revised, and final closing disclosure as required by Regulation Z (12 C.F.R. §1026.38);</li> <li>(ix) any rate lock agreements, or similar document;</li> <li>(x) the records relating to the ability-to-repay the wrap mortgage loan required by Regulation Z (12 C.F.R. §1026.25 and §1026.43);</li> <li>(xi) copies of any appraisal reports or written valuation reports used to determine the value of the residential real estate;</li> <li>(xii) the privacy notice required by Regulation P (12 C.F.R. §1016.5); and</li> <li>(xiii) the wrap borrower's authorization and consent to receive electronic documents as required by the E-Sign Act and Regulation Z (12 C.F.R. §1026.17(a)(1);</li> </ul> <p>(B) with respect to servicing the wrap mortgage loan, the following additional records are required to be maintained:</p> <ul style="list-style-type: none"> <li>(i) any payoff requests received from the wrap borrower, agent of the wrap borrower, another lender, or a title company;</li> <li>(ii) any payoff statements issued to the wrap borrower, agent of the wrap borrower, another lender, or a title company;</li> <li>(iii) if the wrap mortgage loan is paid off or otherwise satisfied, a copy of the release of lien;</li> <li>(iv) receipts or invoices along with proof of payment for any attorneys' fees assessed, charged, or collected in the collection of a delinquent wrap mortgage loan;</li> <li>(v) if collateral protection insurance is acquired or purchased, a copy of the insurance policy or certificate of insurance and the notice required by Finance Code §307.052;</li> </ul>

NEW SECTION	OLD SECTION	REDLINE
		<p>(vi) any periodic statements or billing invoices sent to the wrap borrower;</p> <p>(vii) copies of any collection letters or notices sent by the wrap lender registrant or its agent to the wrap borrower;</p> <p>(viii) any modification, reinstatement, or settlement agreement that is proposed or entered into between the wrap borrower and the wrap lender registrant;</p> <p>(ix) any records related to a consumer inquiry, complaint, or error resolution;</p> <p>(x) any records or documents relating to a request for protection under the Servicemembers Civil Relief Act (50 U.S.C. §3901 et seq.); and</p> <p>(xi) any other servicing notice, disclosure, or record required by federal or state law;</p> <p>(C) for wrap mortgage loan transactions involving a foreclosure or attempted foreclosure, the following records:</p> <p>(i) for transactions involving judicial foreclosure:</p> <p>(I) any records pertaining to a judicial foreclosure including records from the wrap lender registrant's attorneys, the court, or the wrap borrower or the wrap borrower's agent;</p> <p>(II) any notice to cure the default sent to the wrap borrower and each superior lienholder as required by Property Code §51.002(d), including verification of delivery of the notice;</p> <p>(III) any notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;</p> <p>(IV) any notice of acceleration sent to the wrap borrower and each superior lienholder; and</p> <p>(V) any records related to receipt of the foreclosure proceeds;</p> <p>(ii) for transactions involving non-judicial foreclosure:</p> <p>(I) the notice to cure the default sent to the wrap borrower and each superior lienholder as required by</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>Property Code §51.002(d), including verification of delivery of the notice;</p> <p style="padding-left: 40px;">(II) the notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;</p> <p style="padding-left: 40px;">(III) the notice of acceleration sent to the wrap borrower and each superior lienholder;</p> <p style="padding-left: 40px;">(IV) the notice of sale required by Property Code §51.002(b) including verification of delivery of the notice;</p> <p style="padding-left: 40px;">(V) any records related to the foreclosure sale by the trustee including the person purchasing the property, and the dollar amount of the proceeds received from the foreclosure sale;</p> <p style="padding-left: 40px;">(VI) any records related to a short sale, deed-in-lieu of foreclosure, or similar disposition;</p> <p style="padding-left: 40px;">(VII) proof of payment of reasonable fees or charges paid by the trustee in connection with the deed of trust or similar instrument including fees for enforcing the lien against or posting for sale, selling, or releasing the residential real estate secured by the deed of trust; and</p> <p style="padding-left: 40px;">(VIII) the foreclosure deed upon sale of the property;</p> <p style="padding-left: 40px;">(D) for wrap mortgage loan transactions where the wrap borrower provided an actionable notice of rescission and the wrap lender registrant did not avoid the rescission, a copy of the notice of rescission and documentation reflecting that the wrap lender registrant refunded to the wrap borrower all amounts required by Finance Code §159.104(c);</p> <p style="padding-left: 40px;">(E) for wrap mortgage loan transactions where the wrap lender avoided the rescission, documentation reflecting that the wrap lender:</p> <p style="padding-left: 80px;">(i) paid the outstanding balance due on the debt owed on the residential real estate to the superior lienholders;</p> <p style="padding-left: 80px;">(ii) paid any due and unpaid taxes or other governmental assessments owed on the residential real estate;</p> <p style="padding-left: 80px;">(iii) paid to the wrap borrower as damages for noncompliance the sum of \$1,000 and any reasonable attorneys' fees incurred by the wrap borrower; and</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(iv) evidence of compliance with clause (i) or (ii) above provided to the wrap borrower;</p> <p>(F) for wrap mortgage loan transactions where the wrap borrower has deducted from the amount owed to the wrap lender under the terms of the wrap mortgage loan as authorized by Finance Code §159.202, any records related to this action including the written notice from the wrap borrower required by §59.201 of this title (relating to Right to Deduct; Notice of Deduction), and any actions taken to address the deductions;</p> <p>(4) General Business Records. General business records include:</p> <p>(A) all servicing and sub-servicing agreements entered into by the wrap lender registrant as a residential mortgage loan servicer;</p> <p>(B) policies and procedures related to the origination and servicing of wrap mortgage loans by the wrap lender registrant, including, but not limited to, Quality Control Policy / Compliance Manual, Identify Theft Prevention Program / Red Flags Rule required by 16 C.F.R. §681 et seq., Anti-Money Laundering Program required by Title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Personnel Administration / Employee Policies, Ability-to-Repay Underwriting Policies, and an information security program required by 16 C.F.R. §314.1 et seq.;</p> <p>(C) records reflecting the disbursement of money to pay the superior lienholders and payment of taxes and insurance for which the wrap lender registrant has received from the wrap borrower;</p> <p>(D) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to disbursements made in connection with wrap mortgage loans by the wrap lender registrant;</p> <p>(E) complete records (including invoices and supporting documentation) for all expenses and fees paid in connection with the wrap mortgage loan, including the date and amount of all such payments;</p> <p>(F) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;</p> <p>(G) copies of all contractual agreements or understandings with third parties in any way relating to a wrap mortgage loan transaction;</p> <p>(H) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and</p>



NEW SECTION	OLD SECTION	REDLINE
		<p>(l) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed;</p> <p>(5) Record of the wrap borrower's account (payment and collection history). A separate record must be maintained for the servicing account of each wrap borrower and the record must contain at least the following information on each wrap mortgage loan serviced by the wrap lender registrant:</p> <ul style="list-style-type: none"> <li>(A) loan identification number;</li> <li>(B) loan repayment schedule and terms, itemized to reflect: <ul style="list-style-type: none"> <li>(i) the date of the loan;</li> <li>(ii) the number of installments;</li> <li>(iii) the due date of installments;</li> <li>(iv) the amount of each installment; and</li> <li>(v) the maturity date;</li> </ul> </li> <li>(C) name, address, and phone number of the wrap borrower(s);</li> <li>(D) legal description of the residential real estate;</li> <li>(E) principal amount;</li> <li>(F) total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;</li> <li>(G) amount of official fees for recording or releasing a security interest that are collected at the time the loan is made;</li> <li>(H) individual payment entries, itemized to show: <ul style="list-style-type: none"> <li>(i) the date payment was received (dual postings are acceptable if the date of posting is other than the</li> </ul> </li> </ul>

NEW SECTION	OLD SECTION	REDLINE
		<p>date of receipt);</p> <p style="padding-left: 40px;">(ii) actual amounts received for application to principal and interest; and</p> <p style="padding-left: 40px;">(iii) actual amounts paid for default, deferment, or other authorized charges;</p> <p>(I) individual entries for disbursements of funds from a wrap borrower under the terms of wrap mortgage loan to superior lienholders, taxing authorities, insurance companies, or other payees, itemized to show:</p> <p style="padding-left: 40px;">(i) the actual date of disbursement; and</p> <p style="padding-left: 40px;">(ii) the actual amounts disbursed;</p> <p>(J) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to the wrap borrower(s), with refund amounts itemized to show interest charges refunded, including the refund of any unearned points; and</p> <p>(K) collection contact history, including a record of each contact made by a wrap lender registrant with the wrap borrower or any other person and each contact made by the wrap borrower with the wrap lender registrant, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.</p> <p>(d) A wrap lender registrant must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws, rules, and regulations, including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.</p> <p>(e) A wrap lender registrant must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.</p> <p>(f) Production of Records. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request.</p> <p>(g) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state or federal laws, rules, and regulations.</p> <p>(h) Records Retention After Dissolution. Within ten days of termination of operations, a wrap lender registrant must provide <del>SML the Department</del> with written notice of where the required records will be maintained for the prescribed</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>periods. If such records are transferred to another wrap lender registrant, the transferee must provide <del>SML the Department</del> with written notice within ten days after receiving such records.</p>
59.402	78.402	<p><b>Examination of Wrap Lender Registrants</b></p> <p>(a) Purpose. This section clarifies and establishes requirements related to <del>SML's the Commissioner's</del> authority to make inspections of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252.</p> <p>(b) Notice of Examination. Except when <del>SML the Department</del> determines that giving advance notice would impair the examination, <del>SML the Department</del> will give the primary contact person of the wrap lender registrant listed in NMLS, or a person designated by the primary contact person, advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which <del>SML's the Department's</del> examiners are scheduled to begin the examination. Failure to <del>actually</del> receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.</p> <p>(c) <u>Examination</u> Scope. Examinations will be conducted to determine compliance with Finance Code Chapter 159, and this chapter, and will specifically address whether:</p> <ul style="list-style-type: none"> <li>(1) all required books and records are being maintained in accordance with §59.401 of this title (relating to Required Books and Records by a Wrap Lender Registrant);</li> <li>(2) all legal and regulatory requirements applicable to the wrap lender registrant are being properly followed; and</li> <li>(3) other matters <del>SML and its examiners as the Commissioner may</del> deem necessary or advisable to carry out the purposes of Finance Code Chapter 159.</li> </ul> <p>(d) <u>Loan Sample</u>. The examiners will review a sample of wrap mortgage loan files identified by the examiners <del>and randomly selected</del> from the wrap lender registrant's wrap mortgage servicing log <u>required by §59.401(c)(1) of this title</u>. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.</p> <p>(e) The examiners may require a wrap lender registrant, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.</p> <p>(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as permitted</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>or required by law.</p> <p>(g) Reimbursement for Costs. When <del>SML the Department</del> must travel outside of Texas to conduct an examination of a wrap lender registrant because the required records are maintained at a location outside of Texas, <del>SML the Department</del> will require reimbursement for the actual costs incurred by the Department in connection with such travel, including, but not limited to, transportation, lodging, meals, communications, courier service, and any other reasonably related costs.</p>
59.403	78.403	<p><b>Investigation of Wrap Lender Registrants</b></p> <p>(a) Purpose. The purpose of this section is to implement the requirements of Finance Code §159.252 concerning <del>SML's the Commissioner's</del> authority to conduct an investigation of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158.</p> <p>(b) Reasonable Cause for Investigation. Pursuant to Finance Code §159.252(b), <del>SML the Commissioner</del> may, upon a finding of reasonable cause, examine a wrap lender registrant to determine whether the wrap lender registrant is complying with Finance Code Chapter 159, and this chapter. Reasonable cause will be deemed to exist if <del>SML the Commissioner</del> has received information from a source <del>it the Commissioner</del> has no reason to believe to be other than reliable, including documentary or other evidence, or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code Chapter 159, or this chapter.</p> <p>(c) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:</p> <ul style="list-style-type: none"> <li>(1) review and consideration of any complaints received by the Department against a wrap lender registrant;</li> <li>(2) review of documentary evidence;</li> <li>(3) interviews with complainants, licensees, and third parties;</li> <li>(4) obtaining reports, advice, and other comments and assistance from other state and/or or federal regulatory, enforcement, or oversight bodies; and</li> <li>(5) other lawful investigative techniques <del>SML as the Commissioner</del> deems necessary or appropriate, including, but not limited to, requesting that complainants or other parties that are the subject of a complaint provide explanatory, clarifying, or supplemental information.</li> </ul>