

*Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 153. Home Equity Lending*

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to §153.1 (relating to Definitions) in 7 TAC, Chapter 153, concerning Home Equity Lending.

The commissions adopt the amendments to §153.1 without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1556).

The commissions received no official comments on the proposal.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the rule changes to 7 TAC Chapter 153 are: (1) to amend the definition of "business day" to ensure that the definition appropriately excludes legal public holidays, reflects the common understanding of "business day" in the context of mortgage loan disclosures, and is consistent with similar definitions under federal law, and (2) to make technical corrections to ensure consistency in the text of other definitions.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and

then held an online webinar regarding the proposed changes. The agencies received informal verbal feedback from stakeholders during the webinar, and received one written precomment on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

The adoption amends the definition of "business day" in §153.1(2). The term "business day" is used in Section 50(a)(6)(M)(ii) and Section 50(f)(2)(D). Under Section 50(a)(6)(M)(ii), the lender must provide a preclosing disclosure to the owner at least one business day before the closing of a home equity loan. Under Section 50(f)(2)(D), when a lender refinances a home equity loan into a non-home-equity loan, the lender must provide a refinance disclosure within three business days after the homeowner submits a loan application.

The adopted amendments to §153.1(2) contain three definitions of "business day." First, for purposes of 7 TAC §153.13 (relating Preclosing Disclosures: Section 50(a)(6)(M)(ii)), the adoption states that a business day is a calendar day except for Sunday or a legal public holiday described by federal law. This is similar to the previous definition of "business day" in §153.1(2), but adds Juneteenth National Independence Day as a listed holiday. In 2021, federal law was amended to add Juneteenth as a legal public holiday. Juneteenth National Independence Day Act, Pub. L. No. 117-17, 135 Stat. 287 (2021) (codified at 5 U.S.C. §6103(a)). The adoption also adds a reference to the federal law listing legal public holidays at 5 U.S.C. §6103(a) (in case this section is amended to describe additional holidays in the future). Second, for purposes of 7 TAC §153.45

(relating to Refinance of an Equity Loan: Section 50(f)), the adoption amends §153.1(2) to state that a business day is a day on which the lender's offices are open to the public for carrying on substantially all of its business functions. Third, for purposes of 7 TAC §153.25 (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), the adoption states that a business day has the meaning provided by Regulation Z, 12 C.F.R. §1026.2(a)(6) that applies for purposes of rescission.

These definitions are based on the definitions of "business day" that currently apply to mortgage disclosures under federal law, as well as regulatory commentary on those definitions. Federal Regulation Z, 12 C.F.R. part 1026, requires a lender to provide several disclosures to a borrower in connection with a mortgage loan. The two definitions of "business day" are listed in Regulation Z, 12 C.F.R. §1026.2(a)(6). One of these definitions provides that a business day is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. The other definition provides that a business day is any calendar day except Sundays and legal public holidays listed in federal law. In its official commentary to Regulation Z, the Consumer Financial Protection Bureau (CFPB) refers to these two definitions as the "business function test" and the "more precise rule," respectively. Official Interpretations of Regulation Z, 12 C.F.R. pt. 1026, supp. I, para. 2(a)(6). Each definition applies to a different set of deadlines and timing requirements under Regulation Z. For example, the business function test applies for purposes of the requirement to provide an early disclosure within three business days after a creditor receives the consumer's application (as provided by 12 C.F.R. §1026.18(e)(1)(iii)(A)). The more precise

rule applies for purposes of the requirement to provide final disclosures at least three days before closing (as provided by 12 C.F.R. §1026.18(f)(1)(ii)(A)), as well as the consumer's right to rescind certain mortgage loans within three business days after consummation (as provided by 12 C.F.R. §1026.23(a)(2)). The CFPB analyzed how these definitions apply to Juneteenth in an interpretive rule issued in August 2021. Consumer Financial Protection Bureau, Impact of the 2021 Juneteenth Holiday on Certain Closed-End Mortgage Requirements, 86 Fed. Reg. 44,267 (2021).

The changes to the definition of "business day" respond to an informal comment that the agencies received from an industry attorney in August 2021. This attorney recommended adding a reference to Juneteenth in §153.1(2), and recommended consistency with Regulation Z's definitions of "business day."

During the online webinar on the precomment draft of the amendments, a second industry attorney expressed general support for the amendments, agreeing that the amendments reflected her members' understanding of what a business day is. This attorney requested additional clarity regarding observed holidays (such as holidays observed on the Monday following a holiday). In response to this verbal comment, the adopted amendment at §153.1(2)(A) includes guidance on observed holidays, based on the CFPB's commentary to Regulation Z, 12 C.F.R. pt. 1026, supp. I, para. 2(a)(6)1.

A third industry attorney (who works for a company that prepares closing documents for Texas mortgage lenders) submitted a written precomment expressing general support for the amendments. This attorney

stated: "We believe the proposed amendments are a positive step in aligning the Texas and federal business day definitions. . . . We believe the draft amendments are appropriate and consistent with the Texas Constitution. In the context of mortgage loan disclosures, the term 'business day' has multiple meanings that are set out in Regulation Z. The term obviously has differing meanings depending on the context and type of disclosure" The attorney explained that the proposed amendments would lead to fewer mistakes that may result from lenders manually providing Texas disclosures that do not align with their automated loan origination systems. The attorney also recommended replacing the list of holidays in §153.1(2)(A) with a single reference to federal law. The agencies considered this approach, but believe that the list of holidays helps the reader quickly understand the definition without having to refer to a separate legal source.

Based on these comments from stakeholders, the agencies believe that the adopted definitions reflect the common understanding of the term "business day" in the context of disclosures for mortgage loans. The definitions also have practical benefits. For example, by aligning the definition in §153.1(2) with Regulation Z, the adoption allows a lender to send the constitutionally required refinance disclosure on the same date it sends the federally required early disclosure. Also, the adoption allows a lender additional time to provide the refinance disclosure if its offices are closed for business functions due to an emergency (such as a pandemic or storm).

Other changes throughout §153.1 make technical corrections to ensure consistency of formatting and capitalization. The changes to

capitalization are based on feedback from staff of the *Texas Register*.

The rule changes are adopted under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the adoption are contained in Texas Constitution, Article XVI, §50. No statute is affected by this adoption.

Chapter 153. Home Equity Lending

§153.1. Definitions

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) ~~Balloon--~~An [~~an~~] installment that is more than an amount equal to twice the average of all installments scheduled before that installment.

(2) Business day [~~Day--All calendar days except Sundays and these federal legal public holidays: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day~~].

(A) As used in Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), "business day" means all

calendar days except Sundays and the following legal public holidays: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other legal public holiday specified in 5 U.S.C. § 6103(a). When a holiday falls on a Saturday or Sunday, entities might observe the holiday on the preceding Friday or following Monday (e.g., when July 4 falls on a Saturday, entities might observe the holiday on Friday, July 3). For purposes of this subparagraph, these observed holidays (in the example, July 3) are business days.

(B) As used in Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f)), "business day" means a day on which the lender's offices are open to the public for carrying on substantially all of its business functions. Activities that indicate that the lender is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle loan inquiries. Activities that indicate that the lender is not open for substantially all of its business functions include a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

(C) As used in §153.25 of this title (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), "business day" has the meaning provided by Regulation Z, 12 C.F.R. §1026.2(a)(6) that applies for purposes of rescission.

(3) Closed or closing--The [the] date when each owner and the spouse of each owner signs the equity loan agreement or the act of signing the equity loan agreement by each owner and the spouse of each owner.

(4) Consumer disclosure--The [Disclosure--the] written notice contained in Section 50(g) that must be provided to the owner at least 12 days before the date the extension of credit is made.

(5) Cross-default provision--A [a] provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation.

(6) Date the extension of credit is made--The [the] date on which the closing of the equity loan occurs.

(7) E-Sign Act--The [the] federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(8) Equity loan--An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(9) Equity loan agreement--The [the] documents evidencing the agreement between the parties of an equity loan.

(10) Fair market value--The [the] fair market value of the homestead as determined on the date that the loan is closed.

(11) Force-placed insurance--Insurance [insurance] purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(12) Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time.

(13) Lockout provision--~~A~~ [a] provision in a loan agreement that prohibits a borrower from paying the loan early.

(14) Owner--A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(15) Preclosing disclosure--The written itemized disclosure required by Section 50(a)(6)(M)(ii).

(16) Two percent limitation--~~The~~ [the] limitation on fees in Section 50(a)(6)(E).

(17) UETA--~~The~~ [the] Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322.

Certification

The agency certifies that legal counsel has reviewed the adoption and found it to be within the agency's legal authority to adopt.

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