



Notice of Precomment Draft & Online Webinar
Home Equity Amendments: Electronic Disclosures & Out-of-State Financial Institutions
July 26, 2021 at 2:00 p.m.

The Joint Financial Regulatory Agencies (Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department) will hold an online webinar on July 26, 2021, at 2:00 p.m.

During the webinar, the agencies will discuss the July 16 precomment draft of amendments to 7 Tex. Admin. Code Chapter 153, relating to electronic disclosures and out-of-state financial institutions. The agencies intend to present these amendments for proposal at the Finance Commission's August 20 meeting and the Credit Union Commission's August 27 meeting.

Summary of Amendments on Electronic Disclosures

The July 16 precomment draft includes amendments relating to electronic disclosures in the home equity interpretations at 7 Tex. Admin. Code Chapter 153.

The draft amendments would revise the following sections to specify that lenders may use electronic disclosures or signatures in accordance with state and federal law:

- Section 153.13, concerning the preclosing disclosure
- Section 153.26, concerning the acknowledgment of fair market value
- Section 153.45, concerning the refinance disclosure
- Section 153.51, concerning the 12-day consumer disclosure

These amendments respond to a request that the agencies received in September 2020, while the agencies were conducting a rule review of Chapter 153. In an official comment, a stakeholder recommended either: (1) adopting a new section to specify that the lender may electronically deliver all notices, disclosures, and documents to the property owner, or (2) amending the individual sections on required disclosures to specify that the lender may electronically deliver each disclosure. The agencies generally do not object to the use of electronic disclosures. However, the agencies received this suggestion too late in the rulemaking process to include the proposed changes in the final adoption of rule review amendments in October 2020. The commissions indicated that the agencies would revisit this issue in the future.

After reviewing the request, the agencies believe that it is appropriate to amend each section individually. This will help ensure that Chapter 153 remains clear with respect to which constitutional provision is interpreted by each section of Chapter 153.

Summary of Amendments on Out-of-State Financial Institutions

One of the draft amendments would revise Section 153.17 to describe the Texas Constitution's applicability to certain out-of-state financial institutions. This amendment would interpret Article

XVI, Section 50(a)(6)(P) of the Texas Constitution, which lists the financial institutions that are authorized to make home equity loans.

The amendment to Section 153.17 explains that for purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a financial institution described by Texas Finance Code, §201.101(a)(1)(A)-(D) that is chartered under the laws of another state and does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102. The financial institutions described by Texas Finance Code, §201.101(a)(1)(A)-(D) are banks (including savings banks), savings and loan associations, and credit unions.

This amendment responds to a request that the agencies received from an out-of-state bank in March 2021. The request asks whether a bank organized under the laws of another state may make a home equity loan under the Texas Constitution.

Questions for Stakeholders

The agencies invite all stakeholders to provide input on the July 16 precomment draft of amendments. Stakeholders may provide input verbally at the stakeholder meeting, in writing through informal precomments, or both. In particular, the agencies invite responses to the following questions:

- 1) Do stakeholders believe that the draft amendments are appropriate and consistent with Texas Constitution, Article XVI, Section 50?
- 2) Do stakeholders recommend changes to the draft amendments? If so, what alternative text would stakeholders recommend? What constitutional provisions are being interpreted under the recommendation, and what is the legal basis for the recommendation? How would the recommendation help lenders and borrowers?
- 3) What costs and benefits will stakeholders experience if the draft amendments are adopted?

Participating in Webinar

Stakeholders are invited to listen and participate in the online webinar. Please follow the instructions available at: <https://attendee.gotowebinar.com/register/4644390308482528014>

Submitting Informal Precomments

Informal precomments on the draft amendments may be submitted by email to rule.comments@occc.texas.gov, or in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Blvd., Austin, Texas 78705.

Informal precomments on the July 16 precomment draft must be received by 5:00 p.m. on July 30, 2021.

Joint Financial Regulatory Agencies
Home Equity Amendments on Electronic Disclosures & Out-of-State Financial Institutions
7/16/2021 Precomment Draft

Title 7, Texas Administrative Code

Part 8. Joint Financial Regulatory Agencies

Chapter 153. Home Equity Lending

§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii)

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

(1) - (3) (No change.)

(4) The lender may provide the preclosing disclosure electronically in accordance with state and federal law governing delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic delivery.

(5) [(4)] Bona fide emergency.

(A) - (B) (No change.)

(6) [(5)] Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) - (C) (No change.)

(7) [(6)] An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(8) [(7)] The owner maintains the right of rescission under Section 50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

§153.17. Authorized Lenders: Section 50(a)(6)(P)

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants

for the loans reside or the property proposed to secure the loans is located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this section; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage banker or mortgage company.

(1) An authorized lender under Texas Finance Code, Chapter 341 must meet both constitutional and statutory qualifications to make an equity loan.

(2) For purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a financial institution described by Texas Finance Code, §201.101(a)(1)(A)-(D) that:

(A) is chartered under the laws of another state; and

(B) does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102.

(3) [(2)] A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section 50(a)(6)(P)(ii). Loan correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P).

(4) [(3)] A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company for purposes of Section 50(a)(6)(P)(vi). A person who is registered under Texas Finance Code, Chapter 157 is a person regulated by this state as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

(5) [(4)] A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).

§153.26. Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

(1) - (3) (No change.)

(4) The owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic signatures.

§153.45. Refinance of an Equity Loan: Section 50(f)

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) - (3) (No change.)

(4) Refinance Disclosure. To meet the condition in Section 50(f)(2)(D), the lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed.

(A) - (D) (No change.)

(E) The lender may provide the refinance disclosure electronically in accordance with state and federal law governing delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic delivery.

(F) [(E)] One copy of the required refinance disclosure may be provided to married owners.

(G) [(F)] The refinance disclosure is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan or refinance. A lender may supplement the refinance disclosure to clarify any discrepancies or inconsistencies.

(H) [(G)] A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

(I) [(H)] The Finance Commission will publish a Spanish translation of the refinance disclosure on its website. A lender whose discussions with the owner are conducted primarily in Spanish may provide the Finance Commission's Spanish translation to the owner, although the Spanish translation is not required by Section 50(f)(2).

§153.51. Consumer Disclosure: Section 50(g)

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) (No change.)

(2) The lender may provide the consumer disclosure electronically in accordance with state and federal law governing delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic delivery.

(3) [(2)] Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(4) [(3)] A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(5) [(4)] A lender whose discussions with the borrower are conducted primarily in Spanish for a closed-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(6) [(5)] If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.