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") propose amendments to the following home equity lending interpretations: §§153.1, 153.5, 153.14, 153.17, 153.84, and 153.86; propose new §153.45; and propose the repeal of §153.87, in 7 TAC, Chapter 153, concerning Home Equity Lending.

The proposal applies the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §11.308 and §15.413.

The main purpose of the proposal is to implement SJR 60, passed by the Texas Legislature in 2017. SJR 60 amends Section 50 and applies to home equity loans entered on or after January 1, 2018.

SJR 60's constitutional amendments relate primarily to six issues. First, SJR 60 amends Section 50(a)(6)(E) by replacing the current three percent fee limitation with a two percent limitation, and specifying that four types of fees are not included in the limitation: an appraisal fee, a property survey fee, a mortgagee title insurance premium, and a title report fee. Second, SJR 60 amends Section 50(a)(6)(I) by removing the current prohibition on a home equity loan for agricultural property. Third, SJR 60 amends Section 50(a)(6)(P) by adding certain subsidiaries of depository institutions to the list of lenders authorized to make home equity loans, and replacing a reference to a "mortgage broker" with "mortgage banker or mortgage company." Fourth, SJR 60 amends Section 50(f) by allowing a home equity loan to be refinanced as a non-home-equity loan if four conditions are met: a one-year timing limitation, a limitation on advance of additional funds, an 80% loan-to-value limitation, and a required disclosure to the property owner. Fifth, SJR 60 amends Section 50(g) to make conforming changes to the required 12-day consumer disclosure. Sixth, SJR 60 amends Section 50(t)(6) by removing the 50% limitation on additional debits or advances for a home equity line of credit.

After the legislature passed SJR 60, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") circulated an initial precomment draft of proposed changes to interested stakeholders. The agencies then held a stakeholder meeting where attendees provided oral precomments. In addition, the agencies received four informal written precomments from stakeholders. Certain concepts recommended by the precommenters have been incorporated into this proposal, and the agencies appreciate the thoughtful input provided by stakeholders.

The individual purposes of the amendments, new section, and repeal are provided in the following paragraphs.

The proposed amendments to §§153.1, 153.5, and 153.14 implement SJR 60's amendments to Section 50(a)(6)(E). As discussed previously, SJR 60 amends Section 50(a)(6)(E) by replacing the current three percent fee limitation with a two percent limitation, and specifying that certain types of fees are not included in the limitation.

A proposed amendment to §153.1(15) replaces the phrase "three percent limitation" with "two percent limitation."

In §153.5, proposed amendments to the introductory paragraph reflect SJR 60's amendments to Section 50(a)(6)(E). Throughout §153.5, proposed amendments replace the phrase "three percent limitation" with "two percent limitation." Proposed amendments to paragraph (3)(B) in §153.5 replace the phrase "legitimate discount points" with "bona fide discount points," reflecting SJR 60's exclusion of bona fide discount points from the two percent limitation. In paragraph (7), regarding third-party charges, a proposed amendment moves a sentence providing an example of a third-party charge in order to provide better clarity. The amendment also removes the phrase "mortgage brokers' fees" from paragraph (7), reflecting SJR 60's removal of the phrase "mortgage broker" from Section 50. This amendment also responds to precomments stating that the phrase "mortgage brokers' fees" is no longer necessary. Proposed amendments to paragraph (8), regarding charges to evaluate, conform to SJR 60's amendments on fees for appraisals, surveys, and title reports.

Proposed new paragraphs (13)-(16) in §153.5 identify the four types of fees that may be excluded from the two percent limitation under SJR 60's amendments to Section 50(a)(6)(E): an appraisal fee, a property survey fee, a mortgagee title insurance premium, and a title report fee.

Proposed §153.5(13) states that an appraisal must be performed by a person who is not an employee of the lender, and that the excludable appraisal fee is limited to the fee paid to the appraiser for completion of the appraisal, not the fee for appraisal management services. This paragraph is based on Section 50(a)(6)(E)(i) of SJR 60, which states that the two percent limitation excludes a fee for "an appraisal performed by a third party appraiser." Under Texas Occupations Code, §1104.158(a), an appraisal management company must "separately state the fees: (1) paid to an appraiser for the completion of an appraisal; and (2) charged by the company for appraisal management services" in reporting to a client. Proposed paragraph (13) specifies that only the first of these two fees, the fee paid to the appraiser for the completion of the appraisal, may be excluded from the two percent limitation. At the stakeholder meeting, one attendee asked whether a fee for an evaluation that is not an appraisal may be excluded. This fee would be subject to the two percent limitation under proposed §153.5(8), which provides that charges to evaluate are generally subject to the two percent limitation, and would not be excludable under proposed §153.5(13), which provides an exception to this general requirement for certain appraisal fees.

Proposed §153.5(14) states that a fee for a property survey performed by a state registered or licensed surveyor is not a fee subject to the two percent limitation, and that the property survey must be performed by a person who is licensed or registered under Texas Occupations Code, Chapter 1071. This paragraph is based on Section 50(a)(6)(E)(ii) of SJR 60, which states that the two percent limitation excludes a fee for "a property survey performed by a state registered or licensed surveyor."

Proposed §153.5(15) states that an excludable premium for title insurance is limited to the applicable basic premium rate for title insurance published by the Texas Department of Insurance (TDI), plus authorized premiums for applicable endorsements, and that rules adopted by the TDI govern the applicability of endorsements and the authorized amount for each premium. This paragraph is based on Section 50(a)(6)(E)(iii) of SJR 60, which states that the two percent limitation excludes a fee for "a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law."

One precommenter recommends removing the applicability requirement in §153.5(15)(C), which states that any endorsements must be applicable to the mortgagee policy for the equity loan. TDI has identified various endorsements that may be used to modify a title insurance policy, and has established premiums for each type of endorsement. The endorsements are described in TDI's Title Insurance Basic Manual. The authorized endorsements include Form T-42 (insuring against loss due to failure to comply with Section 50's requirements for home equity loans), as well as endorsements relating to minerals, condominiums, balloon mortgages, and other issues. The applicability requirement in proposed §153.5(15)(C) is intended to capture the concept that a lender should not charge the property owner a premium for an endorsement that does not apply to the transaction. For example, if the property is not a manufactured home, then the property owner should not be required to pay a premium for a manufactured housing endorsement, Form T-31. Similarly, if the loan is not a home equity line of credit, then the property owner should not be required to pay a premium for a future advance or revolving credit endorsement, Form T-35. As stated in paragraph (15), TDI's rules govern the applicability of endorsements.

At the stakeholder meeting, one attendee explained that some lenders might make amendments to title insurance policies, and that these "amendments" are not necessarily endorsements for which TDI's rules authorize a premium. The commissions believe that proposed §153.5(15) appropriately defers to TDI's rules regarding the applicability of endorsements and authorized amount of the premium. TDI's rules, not the labels used by the parties, will determine whether the endorsement is authorized.

Proposed §153.5(16) states that an excludable fee for a title report must be less than the applicable basic premium rate for title insurance, and that the title report fee may not be excluded if the equity loan is covered by a mortgagee policy of title insurance. This paragraph is based on Section 50(a)(6)(E)(iv) of SJR 60, which states that the two percent limitation excludes a fee for "a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law." The agencies understand that this fee is intended to be excluded in transactions where the lender obtains a title report instead of a mortgagee policy of title insurance. In addition, proposed §153.5(16)(C) explains that the fee must comply with applicable law, including Texas Finance Code, §342.308(a)(1), which limits title examination fees for certain secondary mortgages.

One precommenter makes the following recommendation regarding paragraph (16): "Rather than require that such report fee be less than the state base premium without endorsements, it would be more appropriate to provide that it cannot exceed the state base premium for a mortgagee policy with endorsements." The commissions disagree with this recommendation. Section 50(a)(6)(E)(iv) of SJR 60 states that the two percent limitation excludes a fee for "a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law." The plain language of this provision requires the title report fee to be less than the state base premium for title insurance without endorsements.

In the initial precomment draft sent to stakeholders, paragraphs (13), (14), (15), and (16) each included a statement that the relevant fee "must comply with applicable law." This phrase was based on existing interpretations in current §153.5, which state that certain fees may be charged "to the extent authorized by applicable law" or that the lender "must comply with applicable law." Two precommenters recommended removing or amending this phrase, arguing that it is unnecessary or could create confusion. At the stakeholder meeting, one attendee recommended removing the phrase "must comply with applicable law" in paragraphs (14) and (15), while acknowledging that it is appropriate to state that a surveyor must be licensed under the Texas Occupations Code. The attendee recommended a provision-by-provision approach to using the phrase. In response to these precomments, proposed §153.5 does not include the phrase "must comply with applicable law" in paragraphs (13), (14), and (15), which relate to services performed by third parties, but includes the phrase in paragraph (16) regarding the title report, where the commissions believe that the phrase is appropriate.

A proposed amendment to §153.14(2)(D) replaces the phrase "3% fee cap" with "two percent limitation."

In §153.17, regarding lenders that are authorized to make home equity loans, proposed amendments to the introductory paragraph reflect SJR 60's amendments to Section 50(a)(6)(P). Proposed amendments to §153.17(3) remove a reference to a "mortgage broker" and specify that a person licensed under Texas Finance Code, Chapter 157 is a person regulated as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

Proposed new §153.45 describes the permissible ways in which a home equity loan can be refinanced, in accordance with Section 50(f) as amended by SJR 60. Paragraphs (1)-(4) of the new section describe the four conditions that must be met to refinance a home equity loan as a non-home-equity loan under Section 50(f)(2) of SJR 60.

Proposed §153.45(1) explains that the refinance may not be closed before the first anniversary of the closing date of the home equity loan, and that the closing date of the refinance is the date on which the owner signs the loan agreement for the refinance. This paragraph is based on Section 50(f)(2)(A) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinance is not closed before the first anniversary of the date the extension of credit was closed." The statement regarding the closing date of the refinance is based on the definition of "closing" in current §153.1(3).

Proposed §153.45(2) describes the limitation on the advance of additional funds for the refinance. This paragraph is based on Section 50(f)(2)(B) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinanced extension of credit does not include the advance of any additional funds other than: (i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or (ii) actual costs and reserves required by the lender to refinance the debt." Proposed §153.45(2)(A) explains that actual costs must be identifiable, must be actually incurred by the lender, and must comply with any applicable limitations on costs. Proposed §153.45(2)(B) explains that reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law. The commissions believe that the statement that the reserves "must comply with applicable law" is appropriate in this provision to ensure that the lender complies with any laws governing reserve accounts, such as the escrow requirements in Regulation X, 12 C.F.R. §1024.17, and Regulation Z, 12 C.F.R. §1026.35(b).

One precommenter recommends that paragraph (2)(A) state that costs must be "actually incurred by an owner or an owner's spouse." The precommenter states that this recommendation would "conform to an exclusion for charges absorbed by a lender or a third party in §153.5(5) and (7), respectively." The commissions disagree with this recommendation. It appears that the legislature intended the phrase "actual costs" to refer to costs that the lender actually incurs and requires the owner to pay back along with other advanced amounts. If the commissions used the precommenter's recommended language, this would suggest that there is no limitation on actual costs advanced in connection with the refinance, because all costs that the lender charges are incurred by the owner. In addition, specifying that actual costs exclude costs absorbed by the lender is unnecessary, because the lender does not advance these amounts.

Proposed §153.45(3) describes the 80% loan-to-value limitation for the refinance. This paragraph is based on Section 50(f)(2)(C) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made." Subparagraphs (A), (B), and (C) in proposed §153.45(3) describe the method of calculating the principal amount of the refinance and the principal balance of other outstanding debt. These subparagraphs are based on current §153.3, which describes the 80% loan-to-value limitation for home equity loans.

One precommenter recommends adding the following subparagraph (D) in proposed §153.45(3): "On a closed-end multiple advance refinance, the principal balance also includes contractually obligated future advances not yet disbursed." The commissions disagree with this recommendation. Section 50(f)(2)(B) of SJR

60 limits the advance of funds to the amount refinanced, actual costs, and required reserves. It does not appear that the legislature intended for the Section 50(f)(2) refinance to include multiple future advances.

Proposed §153.45(4) describes the requirement to provide a disclosure to the owner in connection with the refinance. This paragraph is based on Section 50(f)(2)(D) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the lender provides the owner the following written notice 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 . . . ." Section 50(f)(2)(D) then includes the text of the required refinance disclosure, which provides important information about the consumer protections that a borrower loses by agreeing to refinance a home equity loan into a non-home-equity loan.

Subparagraphs (A)-(C) in proposed §153.45(4) provide guidance to lenders in calculating the three-day and 12-day periods under Section 50(f)(2)(D). These requirements are based on interpretations relating to the closing date and the required 12-day consumer disclosure for home equity loans in current §153.12 and §153.51. In particular, proposed §153.45(4)(C) states that if a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery, and that a period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery. This subparagraph is nearly identical to current §153.51(1), which provides the same requirement and rebuttable presumption for the 12-day consumer disclosure under Section 50(g). The Texas Supreme Court upheld §153.51(1) in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566, 589 (Tex. 2013). The three-day rebuttable presumption is also consistent with similar presumptions for mailed notices, such as Rule 21a(c)-(e) of the Texas Rules of Civil Procedure. Proposed §153.45(4)(C) helps ensure that the borrower receives the important information in the refinance disclosure promptly after filing a loan application, and that the borrower has a full 12 days to consider this information before closing the refinance.

Two stakeholders suggested alternative language for the three-day requirement in §153.45(4)(C). At the stakeholder meeting, one attendee noted that in order to benefit from the rebuttable presumption in §153.45(4)(C), a lender would have to mail the refinance disclosure on the same day it receives the loan application. This is a result of reading the three-day presumption in §153.45(4)(C) together with the requirement to provide the disclosure within three days of the application under Section 50(f)(2)(D). The attendee expressed a concern that it would not be possible for lenders to send the refinance disclosure on the same day they receive the loan application. As an alternative, the attendee suggested a distinction between compliance with the three-day period (which would end when the lender deposits the disclosure in the mail) and compliance with the 12-day period (which would begin running when the borrower receives the disclosure). In an informal precomment, another stakeholder recommends addressing this issue by adding the following definition of "provide" in

§153.1: "deliver or place in the mail to the owner the disclosures required by Subsection 50(f)(2)(D) and Section 50(g)."

The commissions disagree with these recommendations, and believe that proposed §153.45(4)(C) appropriately requires a reasonable period for delivery of a mailed disclosure, for three reasons.

First, the requirement to allow a reasonable period for delivery is consistent with the plain meaning of the word "provide." *See, e.g.*, Webster's New Collegiate Dictionary (11th ed. 2003) (defining "provide" as "to supply or make available"). A mailed disclosure is supplied or made available to the borrower (i.e., provided) when it is delivered to the borrower. In *Norwood*, the Texas Supreme Court assumed that the 12-day disclosure is provided when the borrower receives it. *See Norwood*, 418 S.W.3d at 589 ("In giving meaning to 'provides', the Commissions have determined there is a rebuttable presumption that notice is received three days after it is mailed."). By contrast, the stakeholders' recommended changes would suggest that the disclosure is provided when it is placed in the mailbox. A disclosure is not supplied or made available to the borrower when the lender places it in a mailbox. This is why §153.45(4)(C) appropriately requires the lender to allow a reasonable period for delivery.

Second, if the commissions follow the stakeholders' recommended changes, then it is unclear whether the owner would be able to challenge the three-day presumption of delivery. The Texas Supreme Court upheld §153.51(1) because it gives homeowners an opportunity to challenge receipt and show that the consumer disclosure was not delivered in a timely manner. *See Norwood*, 418 S.W.3d at 589. Under the stakeholders' recommended changes, if an owner received the refinance disclosure weeks after submitting a loan application, it is unclear how the owner could challenge the lender's compliance with three-day requirement in Section 50(f)(2)(D).

Third, the commissions believe that adequate alternatives are available to lenders if they cannot mail the refinance disclosure on the same day they receive a loan application. Proposed §153.45 does not prohibit other methods of providing the refinance disclosure. For example, lenders may provide the disclosure electronically by e-mail or on a website in compliance with the E-Sign Act, 15 U.S.C. §§7001-7006, or they may deliver the disclosure in person. In addition, overnight U.S. mail or two-day commercial mailing might rebut the normal three-day presumption for delivery. Any of these alternatives could help the lender ensure that the refinance disclosure is provided to the owner "not later than the third business day after the date the owner submits the loan application to the lender," as required by Section 50(f)(2)(D).

In response to a precomment, proposed §153.45(4)(D) provides that one copy of the refinance disclosure may be provided to married owners. Proposed §153.45(4)(E) explains that the refinance disclosure is only a summary of substantive rights governed by the constitution. Proposed §153.45(4)(F) explains that a lender may rely on an established system of verifiable procedures to evidence compliance with paragraph (4). Proposed §153.45(4)(G) explains that lenders may use a Spanish translation of the refinance disclosure that will be posted on the Finance Commission's webpage. These provisions are based on interpretations for the 12-day consumer disclosure in current

§153.12 and §153.51. The agencies have circulated an initial draft Spanish translation of the refinance disclosure to stakeholders, and intend to post a final version to the Finance Commission's webpage once it is finalized.

One precommenter suggested specifying that a home equity line of credit may be refinanced as a non-home-equity loan under Section 50(f)(2). The commissions believe that this addition is unnecessary. Home equity lines of credit are a type of home equity loan under Section 50, and are subject to the same requirements as other home equity loans unless the constitution specifies otherwise. Adding the precommenter's suggested language could raise other questions about whether home equity lines of credit are subject to general requirements for home equity loans.

In addition to the amendments discussed previously, SJR 60 adds Section 50(f-1), stating: "An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met." When the agencies circulated the initial precomment draft of the amendments, the agencies asked whether an interpretation is needed regarding the content of the affidavit and the manner of its execution. The agencies received mixed responses on this issue. One precommenter recommends an interpretation on what would satisfy the affidavit provision. Another precommenter states that the commissions should not adopt an interpretation on this issue "because an affidavit is defined by §312.011(1), Chapter 312, Government Code, and the manner of its execution is subject to subsection 50(a)(6)(N)." This same precommenter recommends "that the Commissions propose an Interpretation to address the cure of a defective (f)(2) refinance pursuant to their authority under Subsection (u) to interpret Subsections (a)(6) and (f)," but the precommenter does not identify the constitutional basis for the cure or what the cure should entail. At the stakeholder meeting, one attendee stated that the commissions did not necessarily need to promulgate the affidavit, but the attendee believed it would be helpful to have a title for the affidavit. The agencies intend to monitor this issue to determine whether an interpretation is appropriate.

The proposed amendments to §153.84 and §153.86, together with the repeal of §153.87, implement SJR 60's amendments to Section 50(t)(6). As discussed previously, SJR 60 amends Section 50(t)(6) by removing the 50% limitation on additional debits or advances for a home equity line of credit. Proposed amendments to §153.84 and §153.86 remove references to the 50% limitation in Section 50(t)(6) while maintaining references to the overall 80% loan-to-value limitation in Sections 50(a)(6)(B) and 50(t)(5), which SJR 60 did not amend. Section 153.87 is proposed for repeal because it relates solely to the 50% limitation that SJR 60 removes.

One precommenter recommends that the commissions issue an interpretation of SJR 60's temporary provision, which states that SJR 60's changes apply to a home equity loan made on or after January 1, 2018, and that the temporary provision expires January 1, 2019. The precommenter recommends an interpretation specifying that the changes made by SJR 60 continue after January 1, 2019. The commissions believe that this interpretation is unnecessary. The legislature clearly intended for the amendments in SJR 60 to continue in effect beyond December 31, 2018, and would have made a clearer statement if it intended for all of the amendments in SJR 60 to expire on December 31, 2018.

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the amendments, new rule, and repeal are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn have also determined that for each year of the first five years the proposal is in effect, the public benefits anticipated as a result of the proposal will be to create standards and guidelines for both lenders and borrowers, fostering a stable environment for the extension of home equity loans.

There is no anticipated cost to persons who are required to comply with the proposal. Any costs are imposed by SJR 60's amendments to the constitution, and are not imposed by the proposal. There will be no effect on individuals required to comply with the proposal.

The commissions are not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of the proposal, the commissions invite comments from interested stakeholders and the public on any economic impacts on small businesses, micro-businesses, or rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, or rural communities.

During the first five years the proposal will be in effect, the proposal will not create or eliminate a government program. Implementation of the proposal will not require the creation of new employee positions or the elimination of existing employee positions. The proposal does not require an increase or decrease in fees paid to the agencies or the commissions. The proposal creates a new interpretation at §153.45, regarding the refinance disclosure. The proposal amends §§153.1, 153.5, 153.14, 153.17, 153.84, and 153.86, resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposal repeals the current interpretation at §153.87. The proposal does not increase or decrease the number of individuals subject to the home equity interpretations in Chapter 153. To the extent that there is any change in the number of individuals subject to the interpretations, the change is a result of SJR 60's amendments to Section 50(a)(6)(P), and does not result from the proposal. The commissions do not anticipate that the proposal will have an effect on the state's economy. The commissions anticipate that any effect on the state's economy will be a result of SJR 60's amendments to the constitution, and will not result from the proposal.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601

North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the Texas Register, no further written comments will be considered or accepted by the commissions.

The amendments, new section, and repeal are proposed under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §11.308 and §15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5)-(7), (e)-(p), (t), and (u) of the Texas Constitution.

The constitutional provisions affected by the proposed amendments, new section, and repeal are contained in Article XVI, Section 50 of the Texas Constitution.

§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) - (14) (No change.)

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

§153.5. Two [~~Three~~] percent fee limitation: Section 50(a)(6)(E).

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two [~~three~~] percent of the original principal amount of the extension of credit, excluding fees for an appraisal performed by a third party appraiser, a property survey performed by a state registered or licensed surveyor, a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(1) Optional Charges. Charges paid by an owner or an owner's spouse at their sole discretion are not fees subject to the two [~~three~~] percent [~~fee~~] limitation. Charges that are not imposed or required by the lender, but that are optional, are not fees subject to the two [~~three~~] percent limitation. The use of the word "require" in Section 50(a)(6)(E) means that optional charges are not fees subject to the two [~~three~~] percent limitation.

(2) Optional Insurance. Insurance coverage premiums paid by an owner or an owner's spouse that are at their sole discretion are not fees subject to the two [~~three~~] percent limitation. Examples of these charges may include credit life and credit accident and health insurance that are voluntarily purchased by the owner or the owner's spouse.

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) are not fees subject to the two [~~three~~] percent limitation.

(A) Per diem interest is interest and is not subject to the two [~~three~~] percent limitation.

(B) Bona fide [~~Legitimate~~] discount points are interest and are not subject to the two [~~three~~] percent limitation. Discount points are bona fide [~~legitimate~~] if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the equity loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are bona fide [~~legitimate~~]. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation.

(5) Charges Absorbed by Lender. Charges a lender absorbs, and does not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two [~~three~~] percent limitation.

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation.

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating an equity loan are fees subject to the two [~~three~~] percent limitation. For example, these charges include attorneys' fees for document preparation to the extent authorized by applicable law. Charges that [~~those~~] third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two [~~three~~] percent limitation. [~~Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.~~]

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the two [~~three~~] percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, [~~survey,~~] flood zone determination, tax certificate, [~~title report,~~] inspection, or appraisal management services.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) Charges to Record. Charges an owner or an owner's spouse is required to pay for the purpose of recording equity loan documents in the official public record by public officials are fees subject to the two [~~three~~] percent limitation.

(11) Charges to Insure an Equity Loan. Premiums an owner or an owner's spouse is required to pay to insure an equity loan are fees subject to the two [~~three~~] percent limitation. Examples of these charges include title insurance and mortgage insurance protection, unless the premiums are otherwise excluded under paragraph (15) of this section.

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) Exclusion for Appraisal Fee. A fee for an appraisal performed by a third party appraiser is not a fee subject to the two percent limitation. The appraisal must be performed by a person who is not an employee of the lender. The excludable appraisal fee is limited to the amount paid to the appraiser for the completion of the appraisal, and does not include an appraisal management services fee described by Texas Occupations Code, §1104.158(a)(2).

(14) Exclusion for Property Survey Fee. A fee for a property survey performed by a state registered or licensed surveyor is not a fee subject to the two percent limitation. The property survey must be performed by a person who is licensed or registered under Texas Occupations Code, Chapter 1071.

(15) Exclusion for Title Insurance Premium. A state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law is not a fee subject to the two percent limitation.

(A) The excludable premium is limited to the applicable basic premium rate for title insurance published by the Texas Department of Insurance, plus authorized premiums for applicable endorsements.

(B) Any mortgagee policy for the equity loan must be provided by a company authorized to do business in this state.

(C) If additional premiums for endorsements are charged, the endorsements must be applicable to the mortgagee policy for the equity loan. Rules adopted by the Texas Department of Insurance govern the applicability of endorsements and the authorized amount of the premium for each endorsement.

(16) Exclusion for Title Examination Report Fee. A fee for a title examination report is not a fee subject to the two percent limitation if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(A) The excludable fee must be less than the applicable basic premium rate for title insurance published by the Texas Department of Insurance, not including any additional premiums for endorsements.

(B) The fee for a title examination report may not be excluded from the two percent limitation if the equity loan is covered by a mortgagee policy of title insurance.

(C) The fee must comply with applicable law. If the equity loan is a secondary mortgage loan under Texas Finance Code, Chapter 342, then the fee is limited to a reasonable fee for a title examination and preparation of an abstract of title by an attorney who is not an employee of the lender, or a title company or property search company authorized to do business in this state, as provided by Texas Finance Code, §342.308(a)(1).

(17) [~~(13)~~] Secondary Mortgage Loans. A lender making an equity loan that is a secondary mortgage loan under Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~] may charge only those fees permitted in Texas Finance Code, [~~TEX. FIN. CODE,~~] §§342.307, 342.308, and 342.502. A lender must comply with the provisions of Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~] and the constitutional restrictions on fees in connection with a secondary mortgage loan made under Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~].

(18) [~~(14)~~] Escrow Funds. A lender may provide escrow services for an equity loan. Because funds tendered by an owner or an owner's spouse into an escrow account remain the property of the owner or the owner's spouse those funds are not fees subject to the two [~~three~~] percent limitation. Examples of escrow funds include account funds collected to pay taxes, insurance premiums, maintenance fees, or homeowner's association assessments. A lender must not contract for a right of offset against escrow funds pursuant to Section 50(a)(6)(H).

(19) [~~(15)~~] Subsequent Events. The two [~~three~~] percent limitation pertains to fees paid or contracted for by an owner or owner's spouse at the inception or at the closing of an equity loan. On the date the equity loan is closed an owner or an owner's spouse may agree to perform certain promises during the term of the equity loan. Failure to perform an obligation of an equity loan may trigger the assessment of costs to the owner or owner's spouse. The assessment of costs is a subsequent event triggered by the failure of the owner's or owner's spouse to perform under the equity loan agreement and is not a fee subject to the two [~~three~~] percent limitation. Examples of subsequent event costs include contractually permitted charges for force-placed homeowner's insurance costs, returned check fees, debt collection costs, late fees, and costs associated with foreclosure.

(20) [~~(16)~~] Property Insurance Premiums. Premiums an owner or an owner's spouse is required to pay to purchase homeowner's insurance coverage are not fees subject to the two [~~three~~] percent limitation. Examples of property insurance premiums include fire and extended coverage insurance and flood insurance. Failure to maintain this insurance is generally a default provision of the equity loan agreement and not a condition of the extension of credit. The lender may collect and escrow premiums for this insurance and include the premium in the periodic payment amount or principal amount. If the lender sells insurance to the owner, the lender must

comply with applicable law concerning the sale of insurance in connection with a mortgage loan.

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property.

(1) (No change.)

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

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

(D) The two percent limitation [~~3% fee cap~~] required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

§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 [~~broker~~].

(1) - (2) (No change.)

(3) A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company [~~broker~~] 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).

(4) (No change.)

§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) One Year Prohibition. To meet the condition in Section 50(f)(2)(A), the refinance may not be closed before the first anniversary of the closing date of the equity loan. For purposes of this section, the closing date of the refinance is the date on which the owner signs the loan agreement for the refinance.

(2) Advance of Additional Funds. To meet the condition in Section 50(f)(2)(B), the refinanced extension of credit may not include the advance of any additional funds other than funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of Section 50, or actual costs and reserves required by the lender to refinance the debt.

(A) Actual costs must be identifiable, must be actually incurred by the lender, and must comply with any applicable limitations on costs.

(B) Reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law.

(3) 80 Percent Limitation on Loan Amount. To meet the condition in Section 50(f)(2)(C), the refinance of the extension of credit must be of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made.

(A) The principal amount of the refinance is the sum of the amount advanced and any charges at the inception of the refinance, to the extent these charges are financed in the principal amount of the refinance.

(B) The principal balance of all outstanding debt secured by the homestead on the date the refinance is made determines the maximum principal amount of the refinance.

(C) The principal amount of the refinance does not include interest accrued after the date the refinance is made (other than any interest capitalized and added to the principal balance on the date the refinance is made), or other amounts advanced by the lender after closing as a result of default, including for example, ad valorem taxes, hazard insurance premiums, and authorized collection costs, including reasonable attorney's fees.

(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) Submission of a loan application to an agent acting on behalf of the lender is submission to the lender. A loan application may be given orally or electronically.

(B) For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the date that the lender provides the owner a copy of the required refinance disclosure is the first day of the 12-day waiting period. The refinance may be closed at any time on or after the 12th calendar day after the lender provides the owner a copy of the required refinance disclosure.

(C) If a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(D) One copy of the required refinance disclosure may be provided to married owners.

(E) 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.

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

(G) A lender whose discussions with the borrower are conducted primarily in Spanish for a closed-end loan may rely on the translation of the refinance disclosure 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.

§153.84. Restrictions on Devices and Methods to Obtain a HELOC Advance: Section 50(t)(3).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which an owner is prohibited from using a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower to obtain a HELOC advance.

(1) A lender may offer one or more non-prohibited devices or methods for use by the owner to request an advance. Permissible methods include contacting the lender directly for an advance, telephonic fund transfers, and electronic fund transfers. Examples of devices that are not prohibited include prearranged drafts, preprinted checks requested by the borrower, or written transfer instructions. Regardless of the permissible method or device used to obtain a HELOC advance, the amount of the advance must comply with:

(A) the advance requirements in Section 50(t)(2); and

(B) the loan to value limits in Section 50(t)(5). [~~; and~~]

[~~(C) the debit or advance limits in Section 50(t)(6).~~]

(2) - (3) (No change.)

§153.86. Maximum Principal Amount Extended under a HELOC: Section 50(t)(5).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which the maximum principal amount that may be extended under the account, when added to the aggregated total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, cannot exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made.

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

(4) For purposes of calculating the <u>maximum principal balance</u> [~~limits and thresholds~~] under Section 50(t)(5) [~~and (6)~~], the outstanding principal balance of all other debts secured by the homestead is the principal balance outstanding of all other debts secured by the homestead on the date of the closing of the HELOC.

§153.87. Maximum Principal Amount of Additional Advances under a HELOC: Section 50(t)(6). **{{Section 153.87 will be repealed.}}**

Certification

The agencies hereby certify that the proposal has been reviewed by legal counsel and found to be within the commissions' legal authority to adopt.

Issued in Austin, Texas on November 3, 2017.

Harold E. Feeney
Credit Union Department Commissioner
Joint Financial Regulatory Agencies