Overview

On November 7, 2017, Texas voters approved Senate Joint Resolution 60 (SJR 60), which amended Article XVI, Section 50 of the Texas Constitution to make important changes to the rules governing home equity lending in Texas. These changes were effective January 1, 2018. However certain important amendments to the Texas Administrative Code concerning the regulations for home equity lending did not become effective until March 29, 2018.

12-Day Notice Receipt Requirements

The following requirements regarding the 12-Day Notice remain unchanged for 50(a)(6) loans. These requirements also apply to the 12-Day Notice required for the conversion to a non-50(a)(6) loan.

All owners/borrowers must receive the 12-Day Notice at least 12 calendar days prior to closing/signing.

All "owners/borrowers" means all parties with ownership interest – this includes all titled individuals as well as non-titled spouses. For example, if the borrower is married and the spouse is not on the loan, the spouse must still receive the 12-Day Notice in order to start the 12-day waiting period.

The owners/borrowers must sign and date the notice in order to start the 12-day waiting period. The signature and date of the owner/borrower evidences receipt. On an exception basis, if the owner/borrower e-consented to the notice in IDS, however did not complete the e-signing process, proof of e-delivery can be pulled from IDS and used to evidence receipt.

For calculating the earliest closing date, the next calendar day after the last owner/borrower signed and dated the notice is the first day of the 12-day waiting period. The loan may close at any time on or after the 12th calendar day after the date the last owner/borrower signed/dated the notice. (Calendar days are all days including Sundays and holidays.)

Note: If the borrower prefers to receive a Spanish version of the 12-day notice, it can be delivered to the borrower, however the English version must still be provided and be signed and dated.

TX 50(a)(6) Program Changes

The following changes affect how CMG must handle 50(a)(6) loans that close/sign in 2018. To clarify:

- Loans that close/sign in 2017 are not subject to the changes below – even if the loans fund in 2018.
- Loans that close/sign in 2017 but must re-sign in 2018 are subject to the changes below.
- Loans that close/sign on or after January 1, 2018 are subject to the changes below.

The key trigger is the closing/signing date, not the funding date.

12-Day Notice

A new 12-day notice is required to be provided to all owners/borrowers on (a)(6) loans that have not closed/signed prior to January 1, 2018. This notice restarts the 12 calendar day waiting period required prior to closing/signing. This means (a)(6) loans cannot close within the first 12 days of January.

The soonest it will be possible for an (a)(6) loan to close/sign in January 2018 is Sunday January 14th. CMG is not open on January 1st, so the new 12-day notice will not be issued until January 2nd. If the borrower e-signed the notice inside IDS on January 2nd, then the 12-day waiting period starts on January 3rd and expires on January 14th, the 12th calendar day after the borrower signed/dated the notice. It is important to note that January 14th is a Sunday and January 15th is a
Corporate Procedure

holiday (Martin Luther King Jr. Day), so it is unlikely that any loans will close either day, leaving the actual earliest closing date to be Tuesday January 16th.

*See Appendix A for timeline samples*

Retail and Wholesale:
On January 2, 2018, Operations must disclose the new TX Notice Concerning Extension of Credit 2018 on all (a)(6) loans that have not closed.

Operations will be responsible for monitoring these loans to ensure the owners/borrowers have signed and dated the 12-day notice and manually enter the signature date of the last owner/borrower into Byte in the “12-Day Notice Signed” field in the Doc Prep or CD Request screen. Both Byte and IDS will have hardstops to ensure no closing dates are permitted prior to the expiration of the 12-day waiting period. CDs and Closing Documents can still be generated prior to the waiting period expiration, however the closing date must be accurate.

Note: New applications dated January 1, 2018 or after will automatically include the new notice in the initial disclosure package. However, it is important to remember that all owners/borrowers must receive the 12-day notice, so the notice may need to be separately delivered to other parties separate from the initial disclosure package.

Correspondent and Mini-Correspondent/Select Partner:
CMG will not purchase any (a)(6) loans that have closed prior to expiration of the new 12-day waiting period.

The Correspondent Seller will be responsible for providing evidence of the date the new 12-day notice was received by all owners/borrowers. The preferred evidence of receipt is a signed and dated 12-day notice, however proof of e-consent and e-delivery or mailing is also acceptable. The closing date is not permitted to be prior to the expiration of the 12-day waiting period.

Investors are not permitting purchase of any loans that close prior to the expiration of the 12-day waiting period, so exceptions to this requirement are not permitted.

Note: Correspondent and Mini-Correspondent loans are not required to be audited for the 2% fee cap explained below in order to be eligible for purchase.

Fee Cap
Starting on loans closing/signing on or after January 1, 2018, the fee cap will be reduced from 3% to 2% of the original principal loan amount. The following fees will be excluded from the 2% fee calculation:

- Appraisal Fee that is payable to the third party appraiser – the portion of the appraisal fee that is paid to the Appraisal Management Company (AMC) is included in the 2% fee calculation
- Survey Fee performed by a state registered or licensed surveyor
- Lender’s Title Insurance premium and endorsements
  - Or Title Examination Report fee if its cost is less than the Lender’s Title Insurance without endorsements

The new 2% cap will be audited by both ComplianceEase and IDS.

Appraisal Fee:
As noted above, the appraisal fee paid to the appraiser is excluded from the 2% cap, however the portion paid to the AMC is not. Until Closing Corp is updated to quote separate Appraiser and AMC fees, the default will be to include the total Appraisal Fee payable to both parties in the 2% cap audit.
Corporate Procedure

The following two Appraisal Fees can be excluded from the 2% fee cap audit:

<table>
<thead>
<tr>
<th>Fee Name</th>
<th>Payable To</th>
<th>2% Cap</th>
<th>Fee Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraisal Conversion Fee</td>
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<td>Appraisal Fee</td>
</tr>
<tr>
<td>Appraisal Rush Fee</td>
<td>Appraiser</td>
<td>Excluded</td>
<td>Appraisal Fee</td>
</tr>
</tbody>
</table>

The following Appraisal Fees are required to be included in the 2% cap audit in both ComplianceEase and IDS due to being payable to both the Appraiser and AMC. The user must manually update the Fee Type field in Byte:

<table>
<thead>
<tr>
<th>Fee Name</th>
<th>Payable To</th>
<th>2% Cap</th>
<th>Change Fee Type To</th>
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</thead>
<tbody>
<tr>
<td>Appraisal Fee</td>
<td>Appraiser and AMC</td>
<td>Included</td>
<td>Appraisal Desk Review Fee</td>
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<tr>
<td>Appraisal Fee - Departing Residence</td>
<td>Appraiser and AMC</td>
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<td>Appraisal Desk Review Fee</td>
</tr>
<tr>
<td>Appraisal Fee - Second Appraisal</td>
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<tr>
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<tr>
<td>Appraisal Review</td>
<td>Appraiser and AMC</td>
<td>Included</td>
<td>Appraisal Desk Review Fee</td>
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</tbody>
</table>

Once Closing Corp is able to quote the AMC portion separately from the total cost, these defaults will be updated.

**ComplianceEase:** If the loan is failing the 2% cap audit and the invoice shows the portion payable to the AMC separately from the portion paid to the appraiser, Compliance can manually update ComplianceEase to separate the two fees – the appraiser portion would be identified in ComplianceEase as “Appraisal Fee” and the AMC portion as “Appraisal Desk Review Fee.” Ensure the invoice is uploaded to the correct document type and then contact Compliance at compliance.department@cmgfi.com.

**IDS:** Since the appraisal fee cannot be split in IDS or it will affect the disclosed cost on the LE/CD, the 2% cap audit in IDS will not be accurate if the cost could be split between the Appraiser and AMC as outlined for ComplianceEase above.

**Bona Fide Discount Points:**
Discount points may only be excluded from the fee cap if they are bona fide, which means the discount points must correspond with a true reduction in interest rate. *If the loan does not have an Undiscounted Rate/Price, then the discount points are not bona fide.*

Operations must first verify the Undiscounted Rate information is accurate –

- Retail: Since Optimal Blue doesn’t update the Undiscounted Rate or Price after the first rate lock, Operations must contact the lock desk to verify the Rate and Price are accurate.
- Wholesale: LendingQB does not always update the Undiscounted Rate and Price, so Operations must verify they are accurate either by reviewing the rate sheet or contacting the lock desk.

**The Undiscounted Price must be 100.0% or higher** in order for the discount points to be considered bona fide. If it is below 100.0%, then the undiscounted rate shown is discounted which means no discount points can be excluded.

- Example of an invalid Undiscounted Price and no discount points can be excluded:

  ![Discounted Price Example](attachment:image)

If the Undiscounted Rate is undiscounted, then you may choose “Bona Fide for State Tests Only” from the Discount Points Bona Fide dropdown.
ComplianceEase Workaround for VA Loans

Due to how the Refinance Type is mapped from Byte to ComplianceEase (CE), VA loans can trigger the 50(a)(6) audits to run in CE. To resolve this issue, the Operations or Processing Manager will need to access the loan directly in CE’s website and change the “Purpose of Refinance” dropdown to “No Cash-Out Rate/Term-$0 Max” then re-run the report.

The new CE report without the (a)(6) audits needs to be uploaded to Byte.

TX 50(a)(4) Rate/Term Refinance – Conversion to Non-50(a)(6)

The amendments also allowed for a rate/term refinance of a home equity loan. Under the previous law, a home equity loan could only be refinanced into another home equity loan or reverse mortgage – commonly known as the “once a home equity, always a home equity” rule. After January 1, 2018, a home equity loan can be refinanced with a regulator rate/term refinance as long as all of the following conditions are met:

- The rate/term refinance cannot close until a full year has elapsed since the closing date the home equity loan was closed;
- The refinance may not include the advance of any additional funds other than:
  - Funds to pay off the secured debt, and
  - The actual costs and reserves to refinance the loan.
- The principal loan amount cannot exceed 80% of the fair market value of the property
  - Since there is no safe harbor in the law on what type of valuation may be relied on to establish fair market value of the property, the Fair Market Value Affidavit must be signed and dated by the borrowers at closing.
- The 12-Day Notice (aka Refinance Option Disclosure) must be delivered the borrowers no later than 3 business days after the application date and received by all owners/borrowers at least 12 calendar days prior to the closing/signing date.
- The Four Conditions Affidavit (which confirms the requirements of Section 50(f)(2) were met) must be signed by the borrowers at closing.

The amendments to the regulations for this conversion to a non-(a)(6) loan became effective March 29, 2018.

12-Day Notice

The 12-Day Notice (aka Refinance Option Disclosure) for the conversion to a non-(a)(6) loan has 2 requirements:

- It must be delivered to the borrowers within 3 business days of the application date, and
- It must be received by all owners/borrowers at least 12 calendar days prior to the closing/signing date.
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For the delivery requirement, CMG is not required to deliver the 12-Day Notice to all owners/borrowers within 3 days of the application date, however in order to start the 12-day waiting period, all owners/borrowers must receive the Notice.

See 12-Day Notice Receipt Requirements for more information on the receipt requirements for the 12-day waiting period.

The 12-Day Notice will automatically be included in the initial disclosure package when the “TXA6 to Non TXA6” field in Byte is checked. The 12-Day Notice will also be automatically included in Redisclosure packages if the field is checked in case it needs to be re-delivered; the Notice may be un-checked in IDS if it does not need to be re-delivered.

Program Change:
If the loan starts under a different loan program then changes to a conversion to a non-(a)(6) loan, the 12-Day Notice must be delivered to the borrowers within 3 business days of that program change.

In order to generate the document with IDS, the “TXA6 to Non TXA6” field in Byte must be checked.

Wholesale:
Transferred LEs are not permitted for the conversion to non-(a)(6) program. In order to allow Transferred LEs, the Broker needs to deliver the 12-Day Notice, which is not permitted unless the Broker is an “Agent” of the lender. In order to make a Broker an “Agent” of CMG, new Broker Agreements would need to be executed, which is not a legal situation CMG wants to proceed with.

Four Conditions Affidavit & Fair Market Value Affidavit
The Four Conditions Affidavit and Fair Market Value Affidavit must be signed and dated by the borrowers at closing.

The Affidavits will automatically be included in the closing document package when the “TXA6 to Non TXA6” field in Byte is checked.

ComplianceEase Workaround for Non-(a)(6)
When the ComplianceEase (CE) report is run in Byte on a non-(a)(6) loan, the audits required for a 50(a)(6) loan will run due to a missing indicator from Byte to CE to notify CE that the loan is a conversion to a non-(a)(6) program. To resolve this issue, the Operations or Processing Manager will need to access the loan directly in CE’s website and uncheck the “This property is a Homestead Property” checkbox under Property, then re-run the report.

The new CE report without the (a)(6) audits needs to be uploaded to Byte.

Note: Byte will update their mapping to CE in a future release.
# Appendix A

## 12-Day Notice Timeline Samples

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*CMG is closed New Year’s Day and Martin Luther King, Jr. Day*

1. New 12-day notice will be disclosed electronically to borrower(s).
2. If borrower(s) has not provided e-consent, 12-day notice will be mailed to borrower(s).
3. Mailed disclosure is considered received.
4. If e-consent was provided and borrower e-signed on 1/2/2018, this is the first day the closing documents can be consummated (signed).
   a. The 12-day waiting period expires on 1/14/2018, however title/escrow companies are unlikely to be open on Sunday 1/14 or Monday 1/15 due to the holiday.
5. If mailed on 1/5/2018, this is first day the closing documents can be consummated (signed).
   a. The 12-day waiting period expires on 1/21/2018, however title/escrow companies are unlikely to be open on Sunday 1/21.