

Section 2.01c – Texas Section 50(a)(6) Mortgages

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Overview

Product Summary

A Texas Section 50(a)(6) mortgage is a loan originated **in accordance with and secured by a lien permitted** under the provisions of Article XVI, Section 50(a)(6), of the Texas Constitution, which allow a borrower to take equity out of a homestead property under certain conditions. **Texas Section 50(a)(6) mortgage loan programs are offered through traditional underwriting (i.e., non-AUS), Fannie Mae's Desktop Underwriter (DU), and Freddie Mac's Loan Product Advisor (LPA).**

The lender must meet the eligibility criteria specified in the Texas Constitution Section 50(a)(6).

Eligible loan products available under the Texas 50 (a)(6) loan program includes the following:

- Fully Amortizing Fixed Rate, and
- Fully Amortizing 7/1, and 10/1 LIBOR ARMs.

All Texas Section **50(a)(6) first** mortgage transactions must comply with the more restrictive of [Section 2.01: Agency Loan Programs](#) guidelines or the Texas Section 50(a)(6) Mortgages guidelines, as outlined in this product description. **Guidelines not addressed in this product description will follow standard Agency requirements, as outlined in [Section 2.01: Agency Loan Programs](#) of the *Correspondent Seller Guide*. If not specified in this product description, the guidelines apply for all underwriting methods.**

Related Bulletins

General

Related bulletins are provided below in PDF format. To view the list of published bulletins, select the applicable year below.

- [2018](#)
 - [2017](#)
 - [2016](#)
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Loan Origination and Compliance

General

Non-AUS

By sale of a Texas Section 50(a)(6) mortgage loan to SunTrust, lenders represent and warrant that the mortgage loan complies with the Article XVI, Section 50(a)(6), of the Texas Constitution and all applicable requirements of this document.

- The borrower's first payment must be due no later than two months after closing.
- The lender must provide the title company with a detailed closing instruction letter, and require an acknowledgment of its receipt.
- The closing instructions must require the title company to conduct the closing in a way that ensures compliance with all applicable provisions of Section 50(a)(6) of the Texas Constitution. For purposes of the compliance with the acknowledgment of the "fair market" value of the homestead property requirement, the "fair market value" must be based on an appraisal and the appraisal must be attached to the written acknowledgment.
- The proceeds from a Texas Section 50(a)(6) loan must not be used to acquire or improve the homestead if a loan for that purpose could have been made under a different provision of the Texas Constitution. SunTrust has no other restrictions on the use of the loan proceeds.
- If the new loan is a Texas Section 50(a) (6) refinance transaction originated to cure a failure in the original loan to comply with Texas Constitution Section 50(a)(6), then the new loan is eligible for sale to SunTrust provided that it complies in all respects with SunTrust's requirements.

Fannie Mae DU

Follow DU requirements which are the same as non-AUS guidelines, in addition to the following:

- DU does not contain the specific eligibility rules needed to determine eligibility of Texas Section 50(a)(6) loans under Texas Constitution Section 50(a)(6) or this document. Lenders must determine whether refinance loans secured by properties in Texas are eligible for sale to SunTrust, and should be aware that even though a loan may receive an "Eligible" recommendation, the loan may not comply with Texas Constitution Section 50(a)(6) or be eligible for delivery according to Texas Constitution Section 50(a)(6) or this document.

Loan Origination and Compliance, Continued

General,
(continued)

Freddie Mac LPA

Follow LPA requirements, which are as follows:

- The lender is responsible for determining whether the proposed refinance of a mortgage secured by the borrower's homestead in the state of Texas is a mortgage that must be originated pursuant to Section 50(a)(6) of Article XVI of the Texas Constitution.
- Any action taken, or not taken, in connection with the origination of a Texas Equity Section 50(a)(6) Mortgage that results in any of the following (even if such action is a result of lender's effort to cure a failure to comply with the provision of the Section 50(a)(6)) is a breach of the representations and warranties:
 - A forfeiture of any principal or interest due under the mortgage
 - The invalidation of the mortgage as a first lien
 - The abatement of accrual of interest and the borrower's obligations under the mortgage
 - A reduction in the principal amount of the mortgage
 - Any modification of the amount, interest rate, term or other provision of the mortgage

Lender Certification

General

Non-AUS

By sale of a Texas Section 50(a)(6) mortgage loan to SunTrust, the lender certifies that with respect to all of the Texas Section 50(a)(6) loans delivered to SunTrust:

- All Texas Section 50(a)(6) loans were (or will be) originated pursuant to written processes and procedures that comply with the provisions of the Texas Constitution applicable to mortgage loans authorized by Section 50(a)(6), Article XVI of the Texas Constitution, as amended from time to time.
- The lender has in place a specific process for the receipt, handling, and monitoring of notices from borrowers that lender (or mortgage originator, if lender is the servicer but not the mortgage originator) failed to comply with the provisions of the law applicable to Texas Section 50(a)(6) loans. Such process must be adequate to ensure that the lender will correct the failure to comply by one of the authorized means no later than the 60th day after the date the lender is notified of the failure to comply by the borrower.
- An attorney familiar with the provisions of Section 50(a)(6), Article XVI of the Texas Constitution was consulted (or will be consulted prior to origination of the Texas Section 50(a)(6) loans) in connection with the development and implementation of the processes and procedures used for the origination of the Texas Section 50(a)(6) loans.
- To ensure ongoing compliance with the law applicable to mortgage loans authorized by Section 50(a)(6), Article XVI of the Texas Constitution, the processes and procedures used for the origination of the Texas Section 50(a)(6) loans will be reviewed by the lender regularly and will be updated and revised, as appropriate pursuant to clarifications of the law, on a regular and continual basis.
- The matters certified herein are representations and warranties of the lender given to SunTrust in connection with each Texas Section 50(a)(6) mortgage loan.

Fannie Mae DU

Follow DU requirements, which are the same as non-AUS guidelines.

Lender Certification, Continued

General,
(continued)

Freddie Mac LPA

Follow LPA requirements, which are as follows:

- Lender represents and warrants that:
 - The lender has not been found by any federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside in a certain area or the property proposed to secure the loans is located in a certain area
 - All refinance mortgages that fall within the provisions of Section 50(a)(6) of the Article XVI of the Texas Constitution have been originated as Texas Equity Section 50(a)(6) Mortgages and comply with Section 50(a)(6) of Article XVI and related provisions of the Texas Constitution, as amended, and all other applicable laws
 - In connection with this representation and warranty, Freddie Mac recommends that the lender obtain advice from Texas legal counsel that confirms that the lender's lending and servicing policies, procedures, and practices are in compliance with Section 50(a)(6) of Article XVI of the Texas Constitution, all other applicable Texas Constitutional provisions, statutes, court decisions, regulations and rules and applicable state and federal law.
 - The estate or interest in the mortgaged premises is vested in the borrower. There is no defect in the borrower's title to the mortgaged premises
 - The mortgage is a valid and enforceable first lien on the mortgaged premises

Loan Terms

Amortization Terms

- Fully Amortizing Fixed Rate: 10-30 years
 - Fully Amortizing 7/1 LIBOR ARMS: 10-30 years
 - Fully Amortizing 10/1 LIBOR ARMs: 15-30 years
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Minimum Loan Amount

There is no minimum loan amount

Maximum Loan Amount

\$484,350

Loan Terms, Continued

Maximum LTV/TLTV/HTLTV Ratio Requirements

Texas Section 50 (a)(6) Mortgages Primary Residence – Fixed Rate				
Purpose	# of Units	LTV/TLTV/HTLTV for Non-AUS Loans	LTV/TLTV/HTLTV for DU Loans	LTV/TLTV/HTLTV for LPA Loans
Limited Cash-Out Refinance (Rate/Term)	1	80%/80%/NA ¹	80%/80%/NA ¹	80%/80%/NA ¹
Cash-Out Refinance	1	80%/80%/NA ¹	80%/80%/NA ¹	80%/80%/NA ¹
¹ Home Equity Lines of Credit (HELOCs) are not permitted.				

Texas Section 50 (a)(6) Mortgages Primary Residence – 7/1 and 10/1 LIBOR ARMs				
Purpose	# of Units	LTV/TLTV/HTLTV for Non-AUS Loans	LTV/TLTV/HTLTV for DU Loans	LTV/TLTV/HTLTV for LPA Loans
Limited Cash-Out Refinance (Rate/Term)	1	80%/80%/NA ¹	80%/80%/NA ¹	80%/80%/NA ¹
Cash-Out Refinance	1	80%/80%/NA ¹	80%/80%/NA ¹	80%/80%/NA ¹
¹ Home Equity Lines of Credit (HELOCs) are not permitted.				

Assumptions

Texas Section 50(a)(6) mortgage loans are not assumable at any time over its full term.

Security Property

General

Non-AUS

A Texas Section 50(a) (6) mortgage loan must be secured by a single-unit **primary** residence constituting the borrower's homestead under Texas law. Loans secured by two- to four-unit properties, investment properties, or second homes are not eligible.

The security property may be:

- a detached dwelling,
- an attached dwelling,
- a unit in a PUD project,
- a unit in a condo project,

The borrower's property may not exceed the applicable acreage limit as determined by Texas law when the Texas Section 50(a)(6) loan is originated.

A borrower that owns adjacent land must submit appropriate evidence, such as a survey, that the mortgaged homestead property is a separate parcel that does not exceed the permissible acreage.

Note: An *inter vivos* revocable trust that meets **Fannie Mae's** borrower eligibility criteria may be a borrower under a Texas Section 50(a)(6) mortgage, provided that the trust meets the requirements for a "qualifying trust" under Texas law for purposes of owning residential property that qualifies for the homestead exemption.

Fannie Mae DU

Follow DU requirements, which are the same as non-AUS guidelines.

Freddie Mac LPA

Follow LPA requirements, which are as follows:

- Each mortgage must be secured by a mortgaged premises that is:
 - A 1-unit primary residence
 - Located in the state of Texas, and
 - The borrower's homestead

Note: A Living Trust that meets Freddie Mac's eligibility requirements may be a borrower for a Texas Equity Section 50(a)(6) mortgage if the Living Trust meets the requirements for a "qualifying trust" under Texas law for purposes of owning residential property that qualifies for the homestead exemption.

Continued on next page

Ability to Repay and Qualified Mortgage

General

Reference: See the “Ability-to-Repay and Qualified Mortgage” topic in [Section 1.05: Underwriting](#) for guidance.

Eligible Transactions

General

Non-AUS

- Eligible transactions include:
 - Limited cash-out (rate/term) refinance
 - Cash-out refinance

Fannie Mae DU

Follow DU requirements, which are the same as non-AUS guidelines.

Freddie Mac LPA

Follow LPA requirements, which are as follows:

- Eligible transactions include:
 - “No-cash-out” refinance
 - Cash-out refinance

Note: “No cash-out” refinance is LPA’s terminology for a limited cash-out (rate/term) refinance.

Temporary Buydowns

Non-AUS

Temporary interest rate buydowns are not eligible.

Fannie Mae DU

Follow DU requirements, which are the same as non-AUS guidelines.

Freddie Mac LPA

Temporary interest rate buydowns are not eligible.

Refinances

General

Non-AUS

- Lenders should be aware that Fannie Mae's classification of mortgage transactions as "cash-out refinance" or "limited cash-out refinance" may differ from the way mortgage loans are classified under Texas law for purposes of compliance with the Amendment. Texas law determines whether or not a mortgage is a Texas Section 50(a)(6) mortgage.
- The lender is responsible for determining the applicability of Section 50(a)(6) of the Texas Constitution, regardless of Fannie Mae's definitions of cash-out and limited cash-out refinance transactions, including the applicable special feature codes.
- All mortgages that constitute Texas Section 50(a)(6) mortgages under Texas law must comply with these provisions, regardless of whether a loan is classified as a cash-out refinance or a limited cash-out refinance.
- Accordingly, lenders should not rely on Fannie Mae's categorization of refinance mortgages for purposes of determining whether compliance with the provisions of Section 50(a)(6) is required. Rather, such lenders should consult with their counsel to determine the applicability of Section 50(a)(6) to a particular loan transaction.

Note: For any refinance of a Texas Section 50(a)(6) loan that results in a loan originated in accordance with and secured by a **non-50(a)(6)** lien permitted by Article XVI, Section (a)(4) of the Texas Constitution, an affidavit referenced in Section 50(f-1) Article XVI of the Texas Constitution must be prepared and recorded in connection with such transaction.

Fannie Mae DU

Follow DU requirements, which are the same as non-AUS guidelines.

Freddie Mac LPA

Follow LPA requirements, which are as follows:

- The generally accepted commercial terms used to describe mortgages originated under Article XVI of the Texas Constitution ("cash-out refinance," "rate-term refinance") may not correspond to the meaning given the same or comparable terms by Freddie Mac.
- Lenders must understand the distinctions between Freddie Mac's refinance definitions and the provisions of Section 50(a)(6) and determine when Section 50(a)(6) applies, regardless of the definitions of cash-out and "no cash out" refinance transactions.
- The lender is responsible for determining whether the proposed refinance of a mortgage secured by the borrower's homestead in the State of Texas is a mortgage that must be originated pursuant to Section 50(a)(6) of Article XVI of the Texas Constitution.

Secondary Financing

Home Equity Lines of Credit (HELOCs)

Home Equity Lines of Credit (HELOCs) are not permitted.

Appraisal Requirements

General

Non-AUS

- Lenders must obtain a new full appraisal, including both interior and exterior inspections, to determine current value on either *Uniform Residential Appraisal Report* (Form 1004), or *Individual Condominium Unit Appraisal Report* (Form 1073). The appraisal must be attached to the written acknowledgement of fair value.
- The appraisal for the property and the acknowledgment of fair market value must not include any property other than the homestead.
- The survey (or other acceptable evidence) must demonstrate that:
 - the homestead property and any adjacent land are separate parcels, and
 - the homestead property is a separately platted and subdivided lot for which full ingress and egress is available.
- The lender must not have any interest (such as an option to purchase, a security interest, or an easement) in any parcel adjacent to the homestead property that is owned by the borrower, if such interest could constitute additional security for the Texas Section 50(a)(6) mortgage loan.

Fannie Mae DU

Follow DU requirements, which are the same as non-AUS guidelines, except as follows:

- Lenders must obtain a new full appraisal, including both interior and exterior inspections, to determine current value on either *Uniform Residential Appraisal Report* (Form 1004), or *Individual Condominium Unit Appraisal Report* (Form 1073), even if DU recommends a different property valuation method or an appraisal waiver. The appraisal must be attached to the written acknowledgement of fair value.

Freddie Mac LPA

Follow LPA requirements, which are as follows:

- The lender must provide an appraisal with an interior and exterior inspection that meets Freddie Mac requirements. An Automated Collateral Evaluation (ACE) is not eligible.
- The lender and the owner of the homestead must execute a written acknowledgment of the "fair market value" of the homestead property as of the date the extension of credit is made. The appraisal report must be attached to the acknowledgment.

Program Codes

General

The following table shows program codes for Agency Texas Section 50(a)(6) Mortgages:

Program Description	Program Code for SunTrust Internal Use Only
Agency FXD TX 50(a)(6) 15 (10-15 Years)	C15TX
Agency FXD TX 50(a)(6) 30 (16-30 Years)	C30TX
Agency 7/1 TX 50(a)(6) (all terms)	71FNTX
Agency 10/1 TX 50(a)(6) (all terms)	10FNTX

Closing and Loan Settlement

Mortgage Documentation

Section 50(a)(6) of Article XVI of the Texas Constitution permits a home equity loan to be secured by the borrower's homestead property under certain conditions. Mortgages originated under this provision are referred to as Section 50(a)(6) mortgages. This provision includes numerous consumer safeguards and significant lender penalties for noncompliance.

A special security instrument, notes and riders must be used in connection with Texas Section 50(a)(6) mortgage loans, and a special affidavit must be prepared and recorded with each Texas Section 50(a)(6) loan transaction. Lenders must use the following documents:

- *Texas Home Equity Security Instrument (First Lien)* (Form 3044.1)
- The specific Texas Section 50(a)(6) notes and riders, and
- *Texas Home Equity Affidavit and Agreement First Lien* (Form 3185)

Because of the complexities involved in closing Texas Section 50(a)(6) loans, lenders must provide the title company with a detailed closing instruction letter and require an acknowledgment of its receipt.

The closing instructions must require the title company to conduct its closings properly to ensure compliance with Texas Constitution Section 50(a)(6). To assist in this endeavor, the *Texas Home Equity Affidavit and Agreement First Lien* (Form 3185) must be prepared and recorded in connection with each Texas Section 50(a)(6) loan transaction. SunTrust suggests that a lender also require each borrower to sign a closing receipt that itemizes the documents that he or she received at closing.

Continued on next page

Closing and Loan Settlement, Continued

Power of Attorney

Non-AUS

[Section 2.01: Agency Loan Programs](#) non-AUS guidelines apply, in addition to the following:

- The lender must meet the execution and evidence of execution requirements authorized by Article XVI, Section 50(a)(6) of the Texas Constitution.

Fannie Mae DU

Follow DU requirements, which are the same as non-AUS guidelines.

Freddie Mac LPA

[Section 2.01: Agency Loan Programs](#) LPA guidelines apply, in addition to the following:

- The lender must meet the execution and evidence of execution requirements authorized by Article XVI, Section 50(a)(6) of the Texas Constitution.
-

Closing and Loan Settlement, Continued

Title Insurance

Non-AUS

- For all Texas Section 50(a)(6) mortgage loans, a title insurance policy written on Texas Land Title Association forms (standard or short form), supplemented by an Equity Loan Mortgage Endorsement (Form T-42) and a Supplemental Coverage Equity Loan Mortgage Endorsement (Form T-42.1), is required.

Note: There may be no exceptions or deletions to the coverage provided by Paragraphs 2(a) through (e) of the T-42 endorsement and the endorsement must include the optional coverage provided by Paragraph 2(f), as well as the additional coverage provide by Endorsement T-42.1.

- The title insurance policy cannot include language that:
 - excludes coverage for a title defect that arises because financed origination expenses are held not to be “reasonable costs necessary to refinance,” or
 - defines the “reasonable costs necessary to refinance” requirement as a “consumer credit protection” law since the standard title policy excludes coverage when lien validity is questioned due to a failure to comply with consumer credit protection laws.

Fannie Mae DU

Follow DU requirements, which are the same as non-AUS guidelines.

Freddie Mac LPA

Follow LPA requirements, which are as follows:

- Texas Equity Section 50(a)(6) Mortgages must be covered by a title insurance policy meeting Freddie Mac requirements, with the endorsements described below:
 - An Equity Loan Mortgage Endorsement (Form T-42). The Form T-42 endorsement must include the optional coverage provided by paragraph 2(f) of the endorsement and there must not be any exceptions to, or deletions of, paragraphs 2(a) through 2(e) of the Form T-42 endorsement.
 - A Supplemental Coverage Equity Loan Mortgage Endorsement (Form T 42.1). There must not be any exceptions to, or deletions of, paragraphs 1(a) through 1(k) of the Form T-42.1 endorsement, or any subsequent subparagraphs added to Paragraph 1 by any revision of the Form T 42.1 approved by the Texas Insurance Commission.
 - Any other endorsement that provides additional optional mortgagee coverage that is approved by the State of Texas Insurance Commission. The endorsement must be obtained by the lender for Texas Equity Section 50(a)(6) Mortgages originated on and after the date the endorsement becomes legally available. There must be no exceptions to, or deletions of, any paragraphs providing additional coverage in any such endorsement.