A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE .....October 16, 2015

MEETING LOCATION ..... State Finance Commission Bldg.
William F. Aldridge Hearing Room
2601 North Lamar Boulevard
Austin, Texas 78705

CONTACT INFORMATION..... Phone: (512) 936-6222
Email: Finance.Commission@fc.texas.gov
Website: www.fc.texas.gov

FUTURE MEETING DATES ..... December 18, 2015
February 19, 2016
April 15, 2016

*** The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Fin. Code §11.106*

Meeting Accessibility. Under the Americans with Disabilities Act, the agency will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Finance Commission Administrator several days prior to the meeting using the contact information above by mail, telephone, or email.

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FINANCE COMMISSION AGENDA

Friday, October 16, 2015
9:00 a.m. or Upon Adjournment of the
Audit Committee Meeting
Whichever is Later

Finance Commission Building
William F. Aldridge Hearing Room
2601 N. Lamar Blvd.
Austin, Texas 78705

Section A.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1, B2-B3, C2-C8, D4 and D5

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

A. FINANCE COMMISSION MATTERS

1. ***Review and Approval of the Minutes of the August 21, 2015, Finance Commission Meeting***

2. General Public Comment

3. Consent Agenda

4. Finance Commission Operations

5. Audit Committee Report

   A. Discussion and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' August 31, 2015 Investment Officer Reports

      1. Office of Consumer Credit Commissioner
      2. Texas Department of Banking
      3. Department of Savings and Mortgage Lending

   B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2015 Fourth Quarter Financial Statements

      1. Office of Consumer Credit Commissioner
      2. Texas Department of Banking
      3. Department of Savings and Mortgage Lending

   C. Report on Activities Relating to the Texas Financial Education Endowment Fund

6. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System *(Note: Report provided separately)*

7. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2015 for the Commissioners of the Office of Consumer Credit Commissioner, Texas Department of Banking, and Department of Savings and Mortgage Lending

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff

10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property

11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters of pending and contemplated litigation

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations : a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities

2. ***Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses***

3. ***Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions***

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and New Rule in 7 TAC, Chapters 84, 86, and 90, Concerning Plain Language Contracts, Resulting from Rule Review

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments, New Rules, and Repeals in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on New 7 TAC, §82.5, Concerning Contested Case Hearing Notice, Response, and Default

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89, Regarding Contested Case Procedure

8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Cause No. 15-50168, in the United States Court of Appeals for the Fifth Circuit

Ovation Home Lending LLC, Alamo Home Finance Inc., USPTL LLC, and Tax Advances LLC v. Finance Commission of Texas, Office of Consumer Credit Commissioner, and Leslie Pettijohn in her Official Capacity as Commissioner of the Office of Consumer Credit Commission; Cause No. D-1-GN-15-000886, in the District Court of Travis County, Texas, 353rd Judicial District

Ovation Lending LLC, Alamo Home Finance Inc., USPTL LLC, and Tax Advances LLC v. Finance Commission of Texas, Office of Consumer Credit Commissioner, and Leslie Pettijohn in her Official Capacity as Commissioner of the Office of Consumer Credit Commission; Cause No. D-1-GN-15-002641, in the District Court of Travis County, Texas, 98th Judicial District

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest

2. ***Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §33.4 Concerning Payment Processors***

3. ***Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §§6.1-6.6 Concerning Banking Development Districts***

4. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §3.36 and §3.37 Concerning Bank Assessments***

5. ***Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 15 Concerning Corporate Activities***

6. ***Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 17 Concerning Trust Company Regulation***

7. ***Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 19 Concerning Trust Company Loans and Investments***

8. ***Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 21 Concerning Trust Company Corporate Activities***

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC §17.23 Concerning Trust Company Call Reports

11. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

    *Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, C*ause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas.

    State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery, Cause No. 2013-DCL-2248-B, in the 138th Judicial District Court of Cameron County, Texas.

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items

2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints/Legal Activity; and d) Other Items

3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity

4. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §80.201 Concerning Loan Status Forms, §80.203 Concerning Advertising, and §80.204 Concerning Books and Records***

5. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §81.200 Concerning Required Disclosures, §81.201 Concerning Loan Status Forms, and §81.204 Concerning Books and Records***

6. Discussion of and Possible Action Regarding Anticipated and Pending Litigation

   Windsor Loans, Inc. v. Texas Department of Savings and Mortgage Lending and Caroline C. Jones, Cause NO. D-1-GN-15-003819, in the 98th Judicial District Court of Travis County, Texas.

NOTE: The Finance Commission may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, August 21, 2015
9:00 a.m.

The Finance Commission of Texas convened at 9:00 a.m. on August 21, 2015, with the following members present: Bill White, Chairman, Paul Plunket, Vice Chair, Susan Burton, Stacy London, Will Lucas, Jonathan Newton, Larry Patton, Jay Shands, and Cindy Lyons. Members absent: Victor Leal and Lori McCool.

Chairman White announced that there was a quorum of the Finance Commission of Texas with 9 members present. *(0:01on audio file)*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. FINANCE COMMISSION MATTERS		
1. Review and Approval of the Minutes of the June 19, 2015 Finance Commission Meeting	**On Consent Agenda – Item A1** This item approved on the Consent Agenda.	3:20
2. General Public Comment	No Action Required	2:45
3. Consent Agenda **- Items A1, D2, D3 and D4**	Stacy London made a motion to approve the Consent Agenda with the exception of item D4 which was removed from the Consent Agenda and will be taken up during the October 16, 2015 meeting. Cindy Lyons seconded and the motion passed.	3:20 start of discussion 3:30 vote
4. Finance Commission Operations	No Action Required	3:48
5. Audit Committee Report		4:10
A. Discussion and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' May 31, 2015 Investment Officer Reports 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	4:12 start of discussion 5:00 vote
B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's 2015 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	5:06 start of discussion 5:50 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2015 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	5:56 start of discussion 6:36 vote
D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2015 Third Quarter Financial Statements 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	6:42 start of discussion 7:00 vote
E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2016 Operating Budgets 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner	Coming upon recommendation from the Audit Committee, no second is required and the motion passed with one nay.	7:12 start of discussion 10:06 vote
F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Approve an Amount for the Upcoming 2016-17 Grant Cycle for the Texas Financial Education Endowment Fund	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	10:16 start of discussion 10:52 vote
G. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Revised Texas Financial Education Endowment Fund Grant Administration & Advisory Policy Manual, 2016-17 Funding Priorities, and New Grant Advisory Committee Member	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	11:06 start of discussion 11:42 vote
6. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2016 for the Commissioners of the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Department of Banking	Larry Patton made a motion to approve the Agency Priorities for Fiscal Year 2016 for the Commissioners of the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Department of Banking. Stacy London seconded and the motion passed.	12:15 start of discussion 23:10 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
7. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	Deferred to Executive Session – no vote taken	n/a
8. Discussion and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session – no vote taken	n/a
9. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters of pending and contemplated litigation	Deferred to Executive Session – no vote taken	n/a
B. DEPARTMENT OF BANKING		
1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest	No Action Required	23:30
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §33.4 Concerning Payment Processors	Jonathan Newton made a motion to publish for comment new 7 TAC §33.4 Concerning Payment Processors. Will Lucas seconded and the motion passed.	42:50 start of discussion 43:01 vote
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §§6.1-6.6 Concerning Banking Development Districts	Will Lucas made a motion to publish for comment new 7 TAC §§6.1-6.6 Concerning Banking Development Districts. Jonathan Newton seconded and the motion	43:20 start of discussion 50:00 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
	passed.	
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §3.36 and §3.37 Concerning Bank Assessments	Paul Plunkett made a motion to publish for comment amendments to 7 TAC §3.36 and §3.37 Concerning Bank Assessments. Will Lucas seconded and the motion passed, with one member abstaining.	52:43 start of discussion 57:36 vote
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion - No Action Required	n/a
C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		
1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; and c) Other Items	No Action Required	58:06
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints/Legal Activity; and d) Other Items	No Action Required	1:00:40
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity	No Action Required	1:05:36
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §80.201 Concerning Loan Status Forms, §80.203 Concerning Advertising, and §80.204 Concerning Books and Records	Cindy Lyons made a motion to adopt the amendments to 7 TAC §80.201 Concerning Loan Status Forms, §80.203 Concerning Advertising, and §80.204 Concerning Books and Records. Larry Patton seconded and the motion passed.	1:07:04 start of discussion 1:08:12 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §81.200 Concerning Required Disclosures, §81.201 Concerning Loan Status Forms, and §81.204 Concerning Books and Records	Stacy London made a motion to publish for comment amendments to 7 TAC §81.200 Concerning Required Disclosures, §81.201 Concerning Loan Status Forms, and §81.204 Concerning Books and Records. Jay Shands seconded and the motion passed.	1:09:20 start of discussion 1:10:48 vote
6. Discussion of and Possible Vote Regarding Anticipated and Pending Litigation	No Discussion – No Action Required	n/a
D. OFFICE OF CONSUMER CREDIT COMMISSIONER		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required	1:11:18
2. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §2.106, Concerning Denial, Suspension, or Revocation Based on Criminal History, for OCCC Residential Mortgage Loan Originators	**On Consent Agenda – Item D2** This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §88.102 and §88.107, and New 7 TAC §88.110, Concerning Criminal History Information, for Debt Management Services Providers	**On Consent Agenda – Item D3** This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 342 Concerning Plain Language Contract Provisions	**On Consent Agenda – Item D4** This item was removed from the Consent Agenda and deferred to the October 16, 2015 meeting.	n/a
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapters 84, 86 and 90, Concerning Plain	Jay Shands made a motion to publish for comment amendments to 7 TAC, Chapters 84, 86 and	1:23:01 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Language Contracts, Resulting from Rule Review	90, Concerning Plain Language Contracts, Resulting from Rule Review. Stacy London seconded and the motion passed.	1:26:37 vote

Chairman Bill White called for an Executive Session at 11:27 a.m. *(1:27:37 on the audio file)*. The open meeting resumed at 12:17 p.m. *(1:27:54 on the audio file).*

There being no further business, Chairman Bill White adjourned the meeting of the Finance Commission at 12:17 p.m. *(1:28:24 on audio file).*

_____
William J. White, Chairman
Finance Commission of Texas

_____
Charles G. Cooper, Executive Director
Finance Commission of Texas

_____
Anne Benites, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

October 16, 2015

A. Finance Commission Matters

1. Review and Approval of the Minutes of the August 21, 2015, Finance Commission Meeting

B. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses

3. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions

C. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §33.4 Concerning Payment Processors

3. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §§6.1-6.6 Concerning Banking Development Districts

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §3.36 and §3.37 Concerning Bank Assessments

5. Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 15 Concerning Corporate Activities

6. Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 17 Concerning Trust Company Regulation

7. Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 19 Concerning Trust Company Loans and Investments

8. Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 21 Concerning Trust Company Corporate Activities

D. Department of Savings and Mortgage Lending

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §80.201 Concerning Loan Status Forms, §80.203 Concerning Advertising, and §80.204 Concerning Books and Records

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §81.200 Concerning Required Disclosures, §81.201 Concerning Loan Status Forms, and §81.204 Concerning Books and Records

Future Meetings Rule Schedule

Rules	Short Title/Purpose	Projected Proposal Date for Presentation to Finance Commission	Agency
7 TAC, §33.13	**Processing Times for MSB Change of Control** ***Rule Revision***	12/18/2015	DOB
7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71, and 73	**Savings and Loan Associations** ***Rule Review***	12/18/2015	SML
7 TAC, Chapters 75 - 77	**Savings Banks** ***Rule Review***	12/18/2015	SML
7 TAC, Chapter 83, Subchapter B	**Rules for Credit Access Businesses** ***Proposed Amendments***	12/18/2015	OCCC
7 TAC, Chapter 84, §84.205	**Motor Vehicle Installment Sales** ***Proposed Amendments***	12/18/2015	OCCC
7 TAC, Chapter 85, Subchapter B	**Rules for Crafted Precious Metal Dealers** ***Rule Review***	12/18/2015	OCCC
7 TAC, Chapter 79	**Residential Mortgage Loan Servicers** ***Rule Review***	02/19/16	SML
7 TAC, Chapter 80	**Texas Residential Mortgage Loan Companies** ***Rule Review***	02/19/16	SML

7 TAC, Chapter 81	**Mortgage Bankers and Residential Mortgage Loan Originators** ***Rule Review***	02/19/16	SML

Office of Consumer Credit Commissioner

Agency Priorities – Year-End Report

FY 2015

1. LEGISLATIVE

1.1. 84th Legislative Session.

1.1.1. Objective: Respond timely to new legislative issues and requests for information or testimony. Anticipate issues and work to develop strong beneficial relationships with legislators and legislative staff. As appropriate, review or draft legislative proposals or amendments. Monitor all legislation and associated hearings affecting the regulated industries or respective underlying statutes of the OCCC.

Measure: To the extent legally permissible, respond to requested resource information. Regular weekly legislative reports communicated to the Finance Commission.

Status: *The OCCC's legislative recommendation pertaining to Criminal history access (SB 1075) was passed by the Legislature and signed into law by the Governor. Weekly status reports were provided to the Finance Commission members throughout the legislative session. The 84th Legislative Session was more active than the 83rd Session. Members filed a total of 6,160 bills or 4.7% more bills than the 83rd Legislative Session, when 5,868 bills were filed. The OCCC high priority legislation report reflected 56 bills that the agency was closely monitoring. The OCCC staff served as a resource witnesses to many of the bills on the list. The agency staff provided a substantial amount of resource support related to legislation, particularly on the technical corrections & regulatory flexibility bill and several short-term lending reform bills.*

2. REGULATORY ACTIVITIES

2.1. Regulated Entities.

2.1.1. Objective: Supervise and monitor the jurisdictionally appropriate industry segments for compliance with state and federal law. Investigate illegal activity. Initiate appropriate regulatory enforcement to ensure compliance with federal and state guidelines to protect the rights of consumers.

Measure: Reporting on compliance by regulated industry segment and enforcement actions.

Status: *At the end of Fiscal Year 2015, acceptable levels of compliance were as follows: Regulated Loans - 94.93%; MVSF - 81.79%; CAB - 94.49%; Pawn - 99.81% and Property Tax Loans - 73.91%. In FY 2015 4,002 compliance examinations were completed.*

The agency exceeded the goal of closing 84 investigations for the fiscal year. At year end, a total of 87 investigations were completed. In FY 2015 the legal department closed 390 enforcement actions. Unlicensed activity cases resulted in 24 final orders to cease and desist. Numerous other unlicensed activity cases resulted in entities being brought into compliance through corrective actions and proper licensure.

2.1.2. **Objective: MVSF.** Achieve acceptable level of compliance of 76% through examinations and industry education efforts. Complete 1,540 MVSF examinations. Monitor follow-up and restitution orders for licensees with outstanding examination issues.

Measure: Number of motor vehicle exams completed. Report the rate of satisfactory compliance. Report the amount of restitution returned to consumers as a result of MVSF examinations.

Status: *At the conclusion of the fiscal year, 1,565 MVSF examinations were completed, resulting in staff meeting 101.62% of the goal for FY 2015. The acceptable level of compliance was 81.79%. Restitution returned to consumers as a result of MVSF examinations was $6,333,255.*

2.1.3. **Objective: CAB Examination**. Continue in the implementation and assimilation of the CAB exam process. Complete 803 CAB exams. Supplement examination manual with additional CAB-specific policies and procedures.

Measure: Reporting on examination activities including the number of examinations of credit access businesses performed.

Status*: A higher than usual turnover rate, experience levels, and training of new examiners greatly impacted the number of CAB examinations that had been completed at mid-year. However, as newer examiners gained more experience, the agency was able to make more strides in the completion of examinations. By the end of the fiscal year, 816 CAB examinations (101.62% of the goal) were completed. Examination manuals were updated early in the fiscal year, providing supplemental CAB-specific policies and procedures, which have proven to be helpful to examiners in the field.*

2.2. Licensing.

2.2.1. Objective: Reduce application processing time received to finish, with the goal to process 95% of applications in under 90 days. Continue to process business and individual applications with specific targets. Scan all newly submitted and existing application files. Implement and encourage use of the new online licensing and registration system, with a goal of 40% of licensees using the online system by end of fiscal year.

Measure: Reporting on license activities including the number of business and individual applications, the associated processing time, and the online adoption rate of the new online system.

Status: *In FY 2015 the licensing department significantly minimized the number of pending applications and continued to improve processes and create efficiencies. While the department did not meet the goal of processing 95% of applications within 90 days, both Q3 and Q4 saw changes and trends toward hitting that goal. With regard to online submissions, the department exceeded the goal for online submissions. In September of 2015, an average of 76.60% of applications was submitted online. Additionally, the department has seen an increase in renewals completed online.*

3. POLICY AND RULE DEVELOPMENT

3.1. Agency Rules.

3.1.1. Objective: Rule Review. Complete rule reviews of 7 TAC, Part 1, Chapter 2, RMLOs Applying for Licensure with the OCCC under the SAFE Act (originally adopted 2010) ; 7 TAC Chapter 86, Retail Creditors (reviewed 2010); 7 TAC, Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers (originally adopted 2011).

Measure: Adoption of rules according to schedule and proposal of modifications to existing rules.

Status: *The commission adopted the completed rule reviews of Part 1, Chapter 2, RMLOs Applying for Licensure with the OCCC under the SAFE Act, and of Chapter 86, Retail Creditors, in December 2014, with the proposal of associated amendments being approved for publication at that time. The amendments for both Chapter 2 and Chapter 86 were approved by the commission in February 2015 and became effective on March 12, 2015. These two rule reviews involved clarifications related to the licensing process and minor technical corrections. The rule review for Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers has been rescheduled for December 2015.*

3.1.2. Objective: Rule Development. Work with interested stakeholders regarding development of updated guidelines for property tax loan reasonable closing costs and other associated issues. Draft rule amendments as appropriate.

Measure: Reporting on stakeholder engagement and rule development. Adoption of rules according to schedule.

Status: *The OCCC held a stakeholders meeting on September 5, 2014, regarding development of updated guidelines for property tax loan reasonable closing costs and other associated issues. Rule amendments were developed as a result of that meeting and a pre-comment draft was distributed on September 19, 2014. Amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802 were originally proposed at the October 2014 meeting, with a re-proposal at the December 2014 meeting due to additional stakeholder comments received. Amendments to §§89.102, 89.207, 89.504, and 89.601 were adopted by the commission at the February 2015 meeting and became effective on March 15, 2015.*

After further stakeholder input related to rule amendments in §89.601, revisions were proposed by the commission in April 2015 and adopted by the commission at the June 2015 meeting. The revisions adopted in June provide guidelines for charging legitimate discount points in connection with property tax loans. These amendments replace a portion of the previously adopted rule and became effective on July 9, 2015.

4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE).

4.1.1. Objective: Manage grant reporting and funding for the FY2014 grant cycle. Plan improvements and begin preparation for the FY 2016 grant award cycle.

Measure: Reporting on fund activities, investment earnings, grant request submissions, grants awarded and grantee reporting highlights. Also, identify and implement ways in which to improve grant program based on report findings and program needs.

Status: *Staff reported on fund activities, investment earnings, grant request submissions, grants awarded and grantee reporting program highlights to the Finance Commission, Audit Committee, and Grant Advisory Committee throughout the year. The initial 2014-2015 grant cycle will be drawing to a close in December 2015. The first cycle provided many learning opportunities, but overall seemed successful and will position the program well for the next cycle. The Finance Commission approved the recommended changes to the application and grant reporting process that will better streamline operations for the 2016-2017 grant cycle. A policy and procedures manual was created to centralize all grant activity information.*

4.2 Financial Literacy

4.2.1. Objective: Maintain active participation in financial literacy efforts through participation at community events, presentations, and via online resources.

Measure: Provide financial literacy education to consumers. Assist regulated entities with financial literacy efforts.

Status: *Staff organized, coordinated, led, and participated in various financial literacy community events via educational presentations, meetings and webinars. Staff received the Distinguished Partner Award from Financial Fitness Greater Austin (FFGA) for the Office of Consumer Credit Commissioner's involvement and participation with FFGA.*

Staff developed new community relationships, most recently connecting with the Capital Area Food Bank (CAFB). Staff initiated discussions regarding a pilot program to address the needs of this population, through financial literacy classes with CAFB partners throughout Austin.

Through an increase in community engagement, volunteering for leadership roles with collaborating organizations, and promoting the upcoming TFEE grant cycle, staff educated 347 Texas consumers, which exceeds the performance goal of 300 face-to-face interactions for the second consecutive year.

4.3. Industry Education.

4.3.1. Objective: Develop on-demand compliance learning modules for regulated entities needing assistance including on-demand or instructional resources.

Measure: Publish learning modules on-demand or an instructional resource for OCCC's regulated entities. Quarterly reporting on industry education activities and training module metrics based on feedback and available web-based analytics.

Status: *<u>The status of this measure is applicable to 4.3.1; 4.3.2; 4.3.3.</u> Over this past year, staff redirected all its efforts to improving and redesigning its website. The site's homepage welcomes users with bold colors, a clean uncluttered design, and content focused on the agency's mission to create a fair, lawful, and healthy credit environment that grows prosperity for all Texans.*

By doing so, staff has revised content and pages so that they are clear and strategically-focused. In addition, staff created a content rich website that enables users to find most industry related information on one page. The new site is divided into three main sections: CONSUMERS, REGULATED INDUSTRIES, & PUBLICATIONS. By moving to a more user-centric layout, the agency has allowed users to access information based on their own choice rather than sift through everything to decide what is of interest to them. Staff did have the opportunity to add reference material to the website for one of the industries it oversees, a MVSF brochure.

Also, the website was updated periodically with news of events, different types of publications and other industry relevant material. Industry stakeholders have complemented staff regarding its ease in finding industry relevant material.

The agency has also focused its resources in other communication related areas. It registered its website with Google Analytics (GA). This will generate detailed statistics & reports about visits to the agency's website. In order to get the most accurate data, the agency has also begun to filter out as much irrelevant traffic as possible to obtain an accurate base line by filtering traffic from the agency's internal IP addresses and filtering remote employee IP addresses.

By having these analytics in place, the agency hopes to determine which segments are most valuable, which pages retain visitors the longest, what types of content & topics should be written about more and ultimately make intelligent decisions backed by hard data, about strategic initiatives and focus its industry education efforts for maximum impact and effectiveness.

4.3.2. **Objective:** Host at least two compliance webinars and at least one webinar focused on the use of ALECS.

Measure: Reporting on effectiveness and quality of webinars based on participant feedback and webinar-based Q&A.

Status: *Refer to 4.3.1 status*

4.3.3. **Objective:** Develop published communication and stakeholder outreach pieces.

Measure: Quarterly reporting on frequency and reach of communication programs.

Status: *Refer to 4.3.1 status*

5. AGENCY MANAGEMENT

5.1. Performance Measures.

5.1.1. **Objective:** Performance Targets. Meet or exceed 80% of key performance targets within ±5% of the projected target.

Measure: Continue to meet or exceed the strategic planning goals for key performance measures, attainment of 7 out of 9 key performance targets. Report results to Finance Commission when the performance equals or exceeds 95% of the projection.

Status: *The agency attained 8 of the 9 key performance targets this fiscal year, which is 89%. The closure of written consumer complaints in 90 days measure fell short of goal due to staff turnover, resources being directed to more credit card surcharge complaints and difficulty in finalizing unlicensed/unregistered activity complaints.*

5.2. Human Resources.

5.2.1. Objective: Personnel. Recruit and retain qualified personnel with the appropriate skill set necessary to meet short and long term needs; develop and maintain retention strategies; administer compensation system for staff to improve retention and maintain competitiveness.

Measure: Reporting on actions to improve staff retention. Report turnover ratio for FY15; quarterly reporting on activities related to staff focus groups (frequency, feedback, actions taken); reporting on actions taken to improve internal communications and employee awareness of agency activities and staff opportunities.

Status: *Human Resources conducted a salary survey for the Financial Examiner series to ensure that staff salaries were aligned and competitive within the industry. In addition, a thorough review of the agency's compensation levels for staff members was conducted following the legislative session to ensure appropriate alignment with agency goals and market competitiveness. The findings resulted in equity adjustments that will be reviewed in FY16 for consideration and availability of funds.*

The agency turnover ratio at the close of FY15 was 18.13%, representing fifteen (15) departures from the agency, eight (8) of which were from the Financial Examiner series. Interagency transfers represented forty-seven percent (47%) of the total departures while another forty-seven percent (47%) left for opportunities in the private sector. One involuntary separation represented the remaining six percent (6%).

Efforts will continue for the upcoming fiscal year to increase staff retention and maintain acceptable levels of turnover. Those efforts include conducting in-person exit meetings to determine the factors that could aid the agency in employee retention. In addition, HR has taken some additional steps to improve recruiting, internal communications and employee awareness.

5.2.2. Objective: Promote opportunities for staff professional development; ensure that examiners receive adequate and proper training to perform their duties and progress within the financial examiner series to the next level.

Measure: Reporting on training opportunities and attainment of minimum exam staff training and administrative staff training opportunities.

Status: *Financial examiners have taken part in many professional development opportunities. All examiners attended the examiners' conference, hosted by the agency, where an in-depth curriculum was presented, including legislative and rule changes from the state and federal government. Throughout FY '15 eight (8) examiners attended National Association of Consumer Credit Administrators (NACCA) Examiners' School; four (4) examiners attended American Association of Residential Mortgage Regulators (AARMR) Training School; ten (10) examiners attended New Mortgage Disclosures Training; and four (4) examiners attended further external training. Additionally, the agency conducted internal Chapter 348 and Chapter 351 classroom trainings.*

All newly hired Financial Examiners receive eight weeks of introductory classroom training before moving into the field and from time-to-time attend refresher courses.

5.3. Financial and Self-Directed, Semi-Independent Status.

5.3.1. Objective: Ensure that the agency's revenues and expenditures are appropriate and balanced and maintain a cash reserve or fund balance in compliance with Finance Commission policies. Provide greater data reliability, more efficient transactional processing, and enhanced reporting. Integrate accounting system with new agency enterprise system (ALECS).

Measure: Review internal financial statements and variances on a monthly basis. Submit quarterly financial data relating to the agency's financial position and fund balance for review by the Finance Commission.

Status: *The agency monitors and timely reviews the financial status through monthly Operating Statements and Budget Analysis reports. These reports are reviewed on a quarterly basis by the Finance Commission. Financial performance in the year was within the budgeted levels as established by the Finance Commission. The agency continues to fine tune its use of the internal accounting system to improve transparency and improve the granularity of data for reporting and decision making.*

5.4. Information Technology.

5.4.1. Objective: Legacy Modernization. Commence work on the examination IT project (ALECS), the OCCC's data management and regulatory information system. Improve business operations. Engage in conceptual design of the project which will modernize data management for the examination function. Complete contract negotiation and Statement of Work specifications for the project with a qualified vendor. Begin data requirement gathering and development.

Measure: Reporting on project development and milestones.

Status: *Work was begun early in FY15, with the agency reviewing 3 bids received to the initial Statement of Work. However the project was subsequently put on hold, in*

anticipation of contracting procedural changes being enacted in the 84th Legislative Session.

In the first week of September, per the regulations developed by DIR in accordance with SB 20, the Agency revised the Statement of Work (SOW) and submitted it to DIR, requesting expedited review. The SOW was quickly approved and OCCC invited 20 qualified DBITS vendors to bid on the project. A pre-bid conference was held on September 14 and the agency will be receiving proposals on October 5, with plans to award the bid on October 28.

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M E M O R A N D U M

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: August 31, 2015

RE: Year End Updates to the Department of Banking Priorities for Fiscal Year 2015

I. LEGISLATIVE – *State and National Legislative Issues*

I.1 Objective: Respond positively and actively, providing appropriate and comprehensive resource material as requested.

Measure: To the extent legally permissible, respond accurately and timely to all requests for resource information. Maintain contact with legislative committee chairs and staff. Testify at hearings as requested.

Update:

- Provided written and oral testimony to Legislative committees upon request.
- Briefed committee chairs on agency issues.
- Congressional testimony: Commissioner Cooper testified before the U.S. House Financial Institutions and Consumer Credit Subcommittee on regulatory burden.

I.2 Objective: Monitor state legislation that may affect the agency or its regulated entities. Make recommendations for state legislative changes to address areas that the law does not adequately address, correct technical errors and modernize outdated statutes.

Measure: Monitor interim charges and meet with industry and citizen groups to determine if legislative changes are needed. Prepare draft bill proposals as necessary for legislative staff consideration. Monitor legislation and provide technical assistance and comprehensive resource materials when requested.

Update:

- Met with members of both the House Investments and Financial Services and Senate Business and Commerce committees to discuss the agency's 2015 legislative initiatives.
- Monitored and tracked 81 bills and served as a resource witness at numerous bill hearings.
- Completed 39 fiscal notes.
- All bills related to the agencies initiatives passed.

- Rules related to bills (passed this session) drafted and proposed to the Finance Commission.
- Responded timely to requests concerning interim charges.

I.3 Objective: Maintain accurate, timely, and complete communication with Finance Commission members about significant legislative issues and events (testimony and committee meetings) as well as conditions, trends and significant events in the industries the agency supervises.

Measure: Timely notify Finance Commission members of committee meetings, hearings and other items of interest when known. Keep members informed of significant federal laws and policy statements and how supervised entities are affected. Provide sufficient information and materials to give Commission members an overall assessment of our regulated industries.

Update:
- During the session, provided updates to Finance Commission members every Monday regarding bills tracked by the agency considered a high priority and upcoming Legislative hearings the Commission may find of interest.
- Provided summary reports and updates during Finance Commission meetings.

II. REGULATORY ACTIVITIES – *Examination Activity and Enforcement Actions*

II.1 Objective: Meet key performance measures.

Measure: Continue to meet or exceed the strategic planning goals for key performance measures. Quarterly, report results to the Finance Commission. Ensure that every problem institution has an effective administrative or enforcement action to address adverse examination findings.

Update:
- The Bank & Trust and Corporate Divisions met or exceeded the four key performance measures.
- Special Audits met or exceeded the two key performance measures.

II.2 Objective: Remain active and involved at the national level in supervisory issues affecting banking, money services business activities, trust services and other areas of direct supervisory oversight in Texas.

Measure: Maintain active contact with other states individually and through regulatory associations (CSBS and MTRA), trade associations (IBAT and TBA) and frequent contact with federal regulators so as to be aware of events, decisions, other state and federal policies and other areas of actual or potential impact on the Department's regulatory functions or the industry. Remain active in the non-bank financial institution subcommittee of FinCEN's Bank Secrecy Act Advisory Group. Take proactive steps to respond as issues arise affecting the industries or our supervisory duties.

Update:

- Commissioner Cooper serves as Chairman-Elect of CSBS.
- Deputy Commissioner Newberg serves as President of the MTRA.
- Agency is an active member of MMET.
- Notified MSB industry that Department implemented voluntary use of NMLS.
- Agency continues to work closely with other state MSB regulators and FinCEN.
- Participated in CSBS Government Relations Fly-in held in Washington, D.C.
- Participated in Commissioners' Conference sponsored by the FDIC.
- Met with representatives of the Federal Reserve Bank of Dallas and Dallas Regional Office of the FDIC to discuss common supervisory concerns.

II.3 Objective: Maintain an ongoing awareness of our bank and trust entities' risk profiles and the condition of the economies in which they operate. Continue ongoing monitoring of individual or systemic conditions, including cyber-security threats and high risk activities, which present risks to their financial stability. Monitor and take necessary actions against institutions exhibiting unacceptable risk profiles.

Measure: Perform research, maintain ongoing dialogue with other regulators, and attend training to maintain an understanding of conditions in which our entities operate. Maintain a leading role in the effort to combat cyber-security threats. Maintain an off-site monitoring program of bank and trust industries while initiating appropriate regulatory responses and actions when applicable. Research and take required actions against institutions with unacceptable risk profiles to minimize the adverse impact on depositors, shareholders and the banking system in general.

Update:
Conducted a special risk assessment on the impact that declining oil prices may have on the Texas banking system. In January, several banks were contacted and then a questionnaire was sent to 22 banks to obtain more detailed information. A second tier of 37 banks was sent a similar questionnaire with responses due back by mid-April. Additional follow-up on banks that could be affected by declining oil process is being coordinated with the FDIC.

In December the Department, in partnership with TBA and IBAT, held an ELOC (Executive Leadership of Cybersecurity) cybersecurity summit in Austin for bank executive officers. The summit, which was facilitated by CSBS, was the first of many planned events to be held across the U.S. The event brought together more than 300 CEOs, senior executives and board members to learn about the growing cybersecurity threats facing their institutions.

II.4 Objective: Monitor emerging issues in our areas of regulation and determine and communicate the impact to the regulated entities.

Measure: Report on emerging issues to the Finance Commission and regulated entities. Provide publications that address topics of interest. Participate in industry meetings and seminars. Continue to be involved in speaking opportunities with these regulated industries to provide updates related to ongoing regulatory issues.

Update:

- MSB staff continues with its participation with the MTRA Emerging Issues and Licensing Committee.
- Staff continues to participate in CSBS committees that discuss and address emerging banking and MSB issues.
- Staff participated in the IBAT Regional Meetings and TBA's Bankers' Blitz at the Texas Capitol.
- Notified industry of Departmental guidance related to an authorized delegate conducting money transmission on behalf of a license holder.
- Emerging issue updates provided at Finance Commission meetings.
- Participated in webinars with trade associations concerning implementation of new regulations affecting banks.

II.5 Objective: Monitor areas/industries we regulate for illegal activity.

Measure: Monitor for and investigate illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against licensed and/or unlicensed entities to ensure compliance with applicable rules and regulation to protect the rights and interests of consumers.

Update:

- Issued three orders prohibiting former bank officers from engaging in any future banking activity.
- Issued ten orders against seven money service businesses.
- Issued ten orders against eight prepaid funeral contract sellers.
- Notified 27 MSB entities that may be engaged in money transmission without a license and as a result:
  - Three companies filed an application to obtain an MSB license;
  - Fourteen companies responded with documentation that they do not need a license – nine are currently being reviewed by legal and five recently responded and are being reviewed by Special Audits;
  - Six companies presented evidence that licensing was not required and the Department concurred;
  - Two companies responded they only performed a few transactions in Texas and upon receipt of the correspondence from the Department discontinued offering its MSB services to Texas consumers; and,
  - Two companies time to respond will not expire until the end of September 2015.
- Notified eight PFC entities that may be engaged in prepaid funeral contract activity without a license and as a result:
  - Three companies paid restitution;
  - One funeral home is closed and the Department was unable to obtain restitution;
  - One funeral home was issued a permit;
  - One funeral home is currently paying restitution;
  - One insurance company issued a Cease and Desist notice against an unauthorized seller; and,
  - One illegal PFC is still under investigation.

II.6 Objective: Continue to process consumer complaints/inquiries professionally, appropriately and timely. This includes communicating with the CFPB with regard to the complaint process, and redevelopment of the government portal.

Measure: Periodically report to the Finance Commission on the complaints/inquiries received and processed. Attend meetings with the CFPB to enhance processes between both agencies.

Update:

- Consumer complaint data provided at each Finance Commission meeting.
- Complaints processed timely and accurately.
- Several conference calls held with CFPB to discuss complaint information sharing portal.
- Processed over 5,180 complaints and inquiries for the year.

II.7 Objective: Continue to build relationships with the CFPB to ensure cooperation and efficiencies in joint examination activities. Notify the CFPB of non-compliance with their MSB consumer receipt disclosure requirements. Comment on CFPB rule activity that affects the agency or the industries we regulate.

Measure: Attend meetings with the CFPB. Periodically report to the Finance Commission the interactions with the CFPB.

Update:

- Staff attended the CFPB/CSBS Coordinated Examination Planning Event in Washington, DC.
- Staff continues to participate in the CFBP complaint sharing system initiative.
- MSB staff participated in the first CFBP MSB examination.
- Meeting highlights are included in each Finance Commission package.

II.8 Objective: Continue to develop and refine examination procedures and reference materials to enhance the examination process.

Measure: Monitor regulatory changes and update examination materials in a timely manner. Perform internal reviews of work procedures to ensure proper intent and applicability. Timely and regularly communicate updates/changes to examiners.

Update:

- Updates to examination procedures are provided to staff on a timely basis along with a detailed description of the changes. Revisions were made to three Commercial and five Trust examination procedures. In addition, one new Information Technology (IT) examination procedure was provided for examiners. Numerous reference materials (or access to materials via a web link) were added which related to Cybersecurity, Regulatory Capital, Oil and Gas Lending, Capital Markets, BSA, Earnings, Investments, and Liquidity. Revised five internal Examiner Bulletins related to procedures and work paper documentation guidelines for commercial, IT, and trust examinations; requirements for the three levels of IT Examinations; and a general overview of the commercial examination process.

The following revisions to the Special Audits examination procedures were made:

- Revisions were made to the MSB money transmission examination procedures which included the addition of 15 non-traditional transmission procedures, the addition of two procedures related to bi-weekly license holders, addition of procedures to ensure compliance with Brazilian law remittances, and one procedure revised related to authorized delegate on-site reviews.
- Revisions to MSB currency exchange examination procedures to include addition of five procedures relating to non-traditional (mail-order) currency exchange activity and one procedure revised to incorporate new currency exchange security requirements.
- Revisions to the PCC examination work program were made to 22 procedures for clarification purposes and were non-substantial.
- Revisions to the PFC insurance-funded examination work program were made to 21 procedures for clarification purposes and were non-substantial.
- All updates to Special Audits examination procedures are provided to staff on a timely basis along with a detailed description of the changes.
- The Department's Law and Guidance Manual for the web, which contains statutes, rules, regulatory guidance, supervisory memorandum, and legal opinions, is updated every calendar quarter. A desktop version of the Law and Guidance Manual is updated at the same time and allows all examiners access to the same information as the web version, without requiring an internet connection.

III. POLICY AND RULE DEVELOPMENT – *Internal and External Policies, Activities, and Rules*

III.1 Objective: Issue formal communications to regulated entities to clarify and/or promote best practices to assist in complying with laws and policy statements.

Measure: Issue Supervisory Memorandums, Regulatory Guidance and Legal Opinions in a timely manner as needed.

Update:

- Revised Supervisory Memorandum 1004 applicable to trust companies regarding examination frequency – October 2014.
- Issued Supervisory Memorandum 1038 applicable to authorized delegates of money transmission license holders – October 2014.
- Revised Supervisory Memorandum 1003 applicable to commercial banks regarding examination frequency – March 2015.
- Revised Supervisory Memorandum 1007 applicable to commercial banks and addressing policies regarding investment securities – March 2015.
- Revised Supervisory Memorandum 1020 applicable to commercial banks, trust companies, and technology service providers addressing information technology examination frequency and ratings – March 2015.
- Issued Supervisory Memorandum 1039 applicable to commercial banks regarding bargain purchases and assisted acquisitions – May 2015.

III.2 Objective: Monitor and modify Texas Administrative Code rules as necessary to reflect changes in state and federal laws and address the dynamics of the changing industries. Perform periodic reviews of fee rules to ensure each regulated area covers its cost of regulation.

Measure: Amend rules and adopt new rules as necessary to timely effect necessary changes. Conduct rule reviews every four years to evaluate their necessity and applicability.

Update:

- Rule amendments and new rules were adopted to:
  - Establish conditions and eligibility requirements for an agency employee tuition assistance program;
  - Clarify the form of documents that may be submitted in support of an application for a private child support enforcement agency registration, and set the annual fee payment deadline for such registration;
  - Clarify recordkeeping requirements for perpetual care cemetery license holders;
  - Streamline the notices concerning safety at ATMs that banks must provide to their customers;
  - Clarify the requirements for establishment of loan production offices;
  - Require notification before exercise of dormant trust powers;
  - Specify means of compliance for MSBs posting complaint notices;
  - Provide details concerning exemption of certain payment processors from licensing;
  - Establish requirements for entities seeking to develop banking development districts; and
  - Update assessments charged to state chartered banks.

III.3 Objective: Maintain active participation in financial literacy efforts.

Measure: Provide financial literacy education to consumers. Assist our regulated entities with financial literacy efforts. Continue active participation in financial literacy groups and events.

Update:

- The Department hosted financial education webinars on the following:
  - October 20, 2014 – The topic was Healthy Communities: A Framework for Meeting CRA Obligations which was presented by the Federal Reserve Bank of Dallas. There were a total of 225 registered participants.
  - February 19, 2015 – The topic was the Texas Financial Education Endowment (TFEE) and featured two organizations that were recipient of these funds. There were a total of 173 registered participants.
  - May 8, 2015 – The topic was FDIC Money Smart for Young People and Banking on Kids. There were a total of 183 registered participants.
  - August 3, 2015 – The topic was Money Smart for Older Adults. The FDIC and CFPB collaborated on the presentation. There were 161 registered participants.
- The Department's Financial Education Coordinator was contacted as a resource to assist a university with their new financial literacy program and potential career track.

IV. AGENCY MANAGEMENT – *Staffing, Recruiting, Fiscal Responsibility, and Technology*

IV.1 Objective: Remain active in recruiting qualified personnel while strengthening the diversity of the workforce whenever possible. Maintain compliance with all state and federal employment laws.

Measure: Actively recruit entry level positions at state universities and colleges by attending no less than six job fair events. Promptly post vacancies. Update personnel policy and procedures to comply with changes due to legislation and judicial decisions.

Update:

- Posted 25 jobs and interviewed 95 applicants.
- Hired 17 new employees.
- Bank and Trust filled four FE I positions and two previous interns were hired as regular full-time FE I's. Two interns served in the summer semester.
- Special Audits filled two FE II positions.
- Austin Headquarters filled four administrative staff, one programmer and one web administrator positions.
- Attended 18 career fairs at 12 universities of which four were minority universities.
- Updated two chapters of the Personal Manual and five personal administrative memorandums.

IV.2 Objective: Continue efforts to attain full staffing, with an emphasis on employee retention and staff diversity. Promote junior staff involvement in new responsibilities to better enable seamless transition into senior staff positions as vacancies occur. Continue efforts to be proactive in competitive salary administration.

Measure: Continue to improve examination staff retention by addressing major issues that contribute to non-retirement resignations, with a goal to have non-retirement turnover not exceed 8% for fiscal year 2015. Be proactive with succession planning development. Maintain competitive examiner salary program compared to the FDIC by maintaining a minimum 90% level of equivalency.

Update:

- Fiscal Year 2015 turnover rate was 13.77%. Turnover excluding Retirement/Termination/Death was 10.07%.
- Fiscal Year 2015 Financial Examiner turnover rate was 12.50%. Turnover excluding Retirement/Termination/Death was 10.16%.
- Financial Examiner salary structure remains competitive with limited adjustments necessary in September 2014 DOB salary levels.
- Agency hosted two supervisory training classes to aid in the development of supervisory staff for succession planning.

IV.3 Objective: Have up-to-date computer hardware and software to enhance the effectiveness, speed and quality of the work products that are compatible with our federal counterparts. Provide timely technical support to staff.

Measure: Provide technology tools necessary for staff to efficiently and effectively perform their job functions. Ensure network and website function without prolonged

downtimes. Maintain technology help desk and timely train staff on any new software applications.

Update:

- Moved several physical servers to virtual systems. Virtual systems provide automated recovery of servers in the event of hardware failure, disaster recovery and business continuity.
- Installed help desk ticketing system, Track-It, to give employees another tool to contact the help desk, self-manage service requests and provide user self-help resources. This also satisfies certain recommendations of the Gartner security audit.
- Installed desktop management system, Desktop Authority, to secure, manage and update computers and to satisfy certain recommendations of the Gartner security audit.
- Replaced servers in regional offices.
- Replaced laser printers that were over ten years old.
- Installed McAfee EPO, to better monitor virus outbreaks on equipment.

IV.4 Objective: Safeguard the integrity of data and information technology networks and systems from unauthorized access or use and ensure they are available during an emergency.

Measure: Perform an annual information security risk assessment (external every three years) and initiate corrective actions to maintain data integrity and minimize the risk of unauthorized access or use. Conduct annual test of the Department's disaster recovery plan to ensure operations will function appropriately and continue periodic intrusion testing by the Department of Information Resources.

Update:

- Rewrote Chapter 14 of the personnel manual, IT Policy and Procedures. The manual emphasizes computer security.
- Wrote DIR security plan which complies with Senate Bills 1597 and 1134 from the 83rd Legislative Session, which required DIR to develop a cyber-security strategy and framework for state agencies.
- Conducted annual file and users' security permissions audit.
- Annual security risk assessment scheduled to be completed by end of November 2015.
- Disaster recovery plan was tested and all systems were properly restored.

IV.5 Objective: Ensure financial examiners receive adequate and proper training to perform their duties and progress within the financial examiner series to become commissioned.

Measure: Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Prepare examiners adequately to pass the commissioning test.

Update:

- Examiners continue to attend core training courses designed to provide sufficient knowledge to complete the commissioning process.
- 47 financial examiners were promoted in the FE series.

- Regional Directors provided a detailed summary of the in-house and external training that each assistant examiner has been given.
- Commissioned four examiners.

IV.6 Objective: Ensure agency expenditures are necessary and prudent and within budgetary constraints; revenues collected are adequate to cover expenditures; and provide a cash reserve or fund balance that complies with Finance Commission policies.

Measure: Review expenditure and revenue patterns monthly. Prepare quarterly financial statements to substantiate the agency's financial position and cash reserve.

Update:
- Financial statements presented to the Finance Commission quarterly.
- For the year, revenues were 97.5% of budget and expenditures were 97.1% of budget.
- Cash reserves were within policy guidelines.

IV.7 Objective: Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency.

Measure: Report on improvements identified and implemented.

Update:
- Divisional reviews during the year required minimal tweaking to internal controls and processes of the agency.

IV.8 Objective: Continue to explore options for physical relocation of the Finance Commission agencies that meets the needs of all three agencies.

Measure: Report on activities related to relocation of the Finance Commission agencies.

Update:
- Agency Commissioners continue to explore options for the Finance Commission agencies relocation.

IV.9 Objective: Comply with the directives of the State Office of Risk Management and the Department of Public Safety regarding the Business Continuity Plan.

Measure: Ensure our Continuity Coordinator receives the required training, a Continuity Plan is developed and an exercise of the Plan is conducted.

Update:
The agency's continuity coordinator completed all required training. Our Continuity Plan was submitted to the State Office of Risk Management (SORM) and after it was reviewed by SORM no major findings or deficiencies were reported. An exercise of the plan was conducted in August 2015. Our continuity coordinator was selected by SORM to participate in their training for state agencies on the proper completion and execution of a Continuity Plan.

As Commissioner, my overriding objective continues to be for the Banking Department to be considered the top financial regulator by the industries we regulate, as well as our regulatory peers and counterparts, and the top employer by our personnel. The culmination and achievement of the aforementioned goals will help achieve this objective.

TEXAS DEPARTMENT OF SAVINGS & MORTGAGE LENDING

Caroline C. Jones
Commissioner

MEMORANDUM

To: **The Texas Finance Commission**

From: **Caroline C. Jones, Commissioner**

Date: **October 1, 2015**

Re: **Department Priorities Year End Report for Fiscal Year 2015**

I. Legislative Items

I.1 ***Objective:*** Monitor legislation that may affect the Department or its regulated industries throughout the session. Seek changes to Texas law to grant examination authority over mortgage bankers to the Department.

Measure: Keep open lines of communication and maintain contact with legislative staff, committee chairs and members. Provide information to Finance Commission members on significant legislation. Passage of a bill granting the Department examination authority over mortgage bankers. Outreach to industry affected by the bill.

Status: *The Department monitored and tracked legislation that could impact the Department and its regulated industries. The Department served as a resource to various members and their staff on a number of bills. Example: the Department worked closely with Rep. Giddings' office on HB831 and worked closely with Sen. Rodriguez's office and TDHCA on SB1203. Both bills passed.*

I.2 ***Objective:*** Respond promptly and accurately, providing appropriate and comprehensive resource material, as legally permissible, to the Governor's Office, committee chairs and other members of the Texas Legislature on subjects of interest.

Measure: Notify Finance Commission members about any testimony or proposed legislation affecting the Department or the industries it regulates; retain written contact with committee chairs, members, and staff; responses to requests for resource information.

Status: *The Department responded promptly to requests for resource information during and after legislative session. As requested, the Department provided written and verbal Department updates to its oversight committees.*

I.3 ***Objective:*** Monitor federal legislation and regulations that may affect the Department or its regulated entities.

***Measure**:* Communicate relevant information with Finance Commission and industries, as necessary.

Status: *The Department monitored legislation and regulations at the federal level and as appropriate reported information to the Finance Commission as well as to its regulated industries. Examples: CFPB's Know Before You Owe disclosures (TRID) – the Department monitored TRID, provided training to the Department's mortgage examiners through an external speaker and sent mortgage examiners to FDIC TRID training. Additionally as of August 31, 2015, Director of Licensing and Director of Mortgage Examinations participated in four speaking engagements on TRID and Commissioner Jones spoke about TRID in her presentation to the TMBA Board. These speaking engagements were reported to the Finance Commission.*

II. Regulatory Items

II.1 ***Objective:*** Continue to closely monitor the Department's savings banks' risk profiles and the economic conditions in which they operate. Continue ongoing monitoring of both individual and systemic conditions that present risks to their financial security through the Department's off-site financial information software and onsite presence.

Measure: Maintain off-site monitoring program of savings banks while initiating appropriate regulatory responses and enforcement actions when applicable.

Status: *Throughout the year the Department actively engaged in determining and taking appropriate supervisory action during on-site examinations and off-site reviews. In Finance Commission reports, the Department reported a trend towards upgrades in bank ratings. Compliance with existing enforcement actions was monitored through quarterly reports from the banks and on-site visitations and examinations. The Department monitored potential systemic conditions that could present risks to the industry, for example, the Department, through off-site and on-site monitoring and in communication with the state savings banks, monitored the potential impact of oil price decline and the potential impact of interest rate risk.*

II.2 ***Objective:*** *C*ontinue to coordinate, promote, participate in, and utilize the enhanced communication among applicable federal, state, and local agency investigation staffs, including the Attorney General's Mortgage Fraud Task Force, TREC, and TDI, to expedite final resolution of regulatory concerns.

Measure: Department representatives to continue attending the Mortgage Fraud Task Force meetings. Quantify the number of cases referred to and from the various agencies and the Mortgage Fraud Task Force.

Status: *The Mortgage Fraud Task Force, which is coordinated by the Attorney General's Office, did not met this fiscal year.*

II.3 ***Objective:*** Retain the prompt resolution time on consumer complaints.

Measure: Compare current fiscal year case aging data to prior fiscal years. Regularly review all complaints over 120 days to identify issues preventing the timely closing of investigations.

Status: *As of August 31, 2015, 93% of the open consumer complaints were less than 90 days old and with 77% of them being aged less than 60 days, and none being aged over 180 days.*

II.4 ***Objective:*** Continue to participate in the development and implementation of home equity interpretations.

Measure: Continued participation in meetings of the Home Equity Lending Working Group, comprised of representatives from the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, the Department of Banking, and the Credit Union Department.

Status: *The Department participated in the Home Equity Lending Working Group meetings and discussions on the amendments to the home equity rules that were adopted by the Finance Commission in December, 2014. The working group did not meet during the second half of the fiscal year.*

II.5 ***Objective:*** Continue to remain active and involved at the national level on supervisory issues affecting savings banks and residential mortgage loan originators.

Measure: Maintain active contact with other states, regulatory associations (e.g., ACSSS, CSBS, SRR, AARMR, and NACCA), trade associations, (e.g., DFWAMB, IBAT, TAR, TBA, and TMBA) and federal regulators in order to be aware of events, decisions, other state and federal policies and other areas of actual or potential impact on the Department's regulatory functions or the industry. Take proactive steps to respond as issues arise affecting the industries or supervisory duties.

Status: *For the fiscal year, the Department had three staff members serving on national regulator association boards. Serving on these boards provides the Department with a voice at the national level. Several staff members serve on CSBS committees and working groups. The Department is consistently in contact with TBA, IBAT, and TMBA.*

II.6 ***Objective:*** Continue to cooperate and build relationships with the CFPB on examinations, supervision, and consumer complaint resolution issues. Also monitor CFPB rule writing activity and interpretations of existing statutes such as RESPA, TILA and SAFE Act.

Measure: Report to the Finance Commission on the frequency of interaction with CFPB in all of the above listed activities as well as conferences meetings.

Status: *The Department continued, during the fiscal year, to keep open communications with the CFPB, particularly in relation to upcoming origination/servicing examinations and enforcement actions. During the fiscal year, the Department participated in a Multi-State Mortgage Committee (MMC) exam in which the CFPB conducted a concurrent exam. Additionally, the Department had a representative on the State Coordinating Committee.*

II.7 ***Objective:*** Continue compliance examinations of Mortgage Companies licensed under Finance Code Chapter 156 and Residential Mortgage Loan Originators licensed under Finance Code Chapter 157 to ensure that all loan originators are properly licensed with the Department when

conducting business with Texas consumers. Analyze recurring examination findings and take steps to communicate best practices.

Measure: Engagement with the industry through speaking engagements, e-mail blasts, post examination follow up or post examination enforcement actions.

Status: *The Department made contact with various mortgage trade associations to provide information and participated in ten speaking engagements. In addition to those speaking engagements, the Department held its Mortgage Industry Seminar in November, 2014. The Department issued enforcement actions as appropriate and had post-examination communication as deemed necessary. In FY2015, the Department conducted 403 examinations covering 8,239 licensees.*

III. Policy and Rule Development

III.1 ***Objective:*** Develop any rules necessary to implement statutory changes passed by the 84th Legislative Session.

Measure: Obtain Finance Commission adoption of implementing rules. Reach out to industry to prepare for changes and to assist in implementation.

Status: *The legislation that passed, which affected the Department, do not require any rules to be implemented at this point.*

IV. Agency Administration

IV.1 ***Objective:*** Recruit personnel with the appropriate skill set necessary to meet the Department's short and long term needs. Maintain adequate staffing and retention of qualified personnel. Train and cross-train employees as needed to minimize knowledge loss due to employees' retirements or separations and to prepare for workload shifts due to changes in regulated industries and/or technology.

Measure: Reporting on staffing activity, actions to retain staff, and turnover ratios.

Status: *During the fiscal year, the Department had eight employees leave employment, either for personal reasons, planned retirements, or termination. During FY2015, two of those positions were filled, one was absorbed by current staff, and five were in the process of being filled.*

Significant efforts are made to provide training and cross-training for job skills and personal development and enrichment. The Department conducted an agency wide training; both thrift and mortgage examination areas provided internal trainings; and staff attended CSBS, FDIC, and FFIEC trainings. One thrift examiner graduated from the Graduate School of Banking in Colorado. One thrift staff member taught at the Graduate School of Banking in Colorado, two examiners obtained their CSBS Examiner in Charge Certification, and one examiner obtained their CSBS Operations Manager certification. The Department's structure and business needs are monitored on an

ongoing basis in an effort to anticipate needed skills and qualifications and to be prepared for succession planning upon retirements.

IV.2 ***Objective:*** Meet or exceed 90% of the outcome performance measures within the Department's control - three out of six, and meet or exceed 90% of the output performance measures within the Department's control – four out of eight. Strive to reduce deficiency, if any, in the remaining measures outside the Department's control.

Measure: Performance measure results at fiscal year-end.

Status: *The Department has four key output performance measures, two of which are within the Department's control. The performance is measured and reported quarterly to the Finance Commission. In FY2015, the Department met or exceeded three of the four output measures.*

IV.3 ***Objective:*** Implement improvements in business processes and internal controls in response to evolving business needs, audit recommendations, and/or internal reviews.

Measure: Report on implementation progress and outcome of audits to Finance Commission Audit Committee.

Status: *The Department underwent an internal audit of the mortgage examination area during the fiscal year and has implemented the necessary changes to policy or procedure to comply with the recommendations of the audit.*

IV.4 ***Objective:*** Monitor the Department's budget and reserve balances as approved by the Finance Commission to maximize the responsiveness and flexibility allowed by the Self-Directed/Semi-Independent status.

Measure: Report to Finance Commission Audit Committee at least quarterly on both revenue and expenditure variances to the budget.

Status: *For the fiscal year, reports were submitted quarterly to the Finance Commission as required, with detailed explanations of variance and cash reserves. Internally, the budget is monitored and analyzed on an ongoing basis.*

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A. FINANCE COMMISSION MATTERS

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

PURPOSE: The purpose of the proposed amendments is to update and clarify certain contested case procedural rules applicable to the finance agencies. Regarding §9.1, the purpose of the proposed amendments is to clarify the rules applicable to different forums in which contested cases may be heard for individuals and entities regulated by the finance agencies. Regarding §9.12, the purpose of the amendments is to clarify that the finance agencies may informally dispose of contested cases by default, as authorized by Section 2001.056 of the Texas Government Code.

RECOMMENDED ACTION: The finance agencies request that the Finance Commission approve the amendments to 7 TAC, Chapter 9 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC, Chapter 9.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings
§9.1. Application, Construction, and Definitions [~~Definitions and Interpretation; Severability~~]
§9.12. Default

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings. Specifically, the amendments are proposed in §9.1, concerning Definitions and Interpretation; Severability; and in §9.12, concerning Default in a contested case subject to the rules under Chapter 9, Subchapter B.

In general, the purpose of the proposed amendments is to update and clarify certain contested case procedural rules applicable to the finance agencies (Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner).

Regarding §9.1, the purpose of the proposed amendments is to clarify the rules applicable to different forums in which contested cases may be heard for individuals and entities regulated by the finance agencies.

Regarding §9.12, the purpose of the amendments is to clarify that the finance agencies may informally dispose of contested cases by default, as authorized by Section 2001.056 of the Texas Government Code.

The finance agencies circulated drafts of the proposed amendments to interested stakeholders and held a stakeholders meeting where the background of the amendments was provided.

The following background information relates to the proposed amendments in §9.1, regarding contested case forums.

Some of the finance agencies have contracted with a licensed attorney to serve as an administrative law judge and conduct contested case hearings. This administrative law judge used by the Texas Department of Savings and Mortgage Lending (SML) and by the Office of Consumer Credit Commissioner (OCCC) elected to not renew the contract for the 2016 fiscal year. In order to provide an appropriate, timely, and transparent forum to persons subject to SML and OCCC regulation, these two finance agencies entered into contracts with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings.

In contrast, the Texas Department of Banking has contracted with another administrative law judge for this fiscal year. At present, contested cases for the Texas Department of Banking will continue to be governed by the rules contained in 7 TAC, Chapter 9.

With regard to the SML and the OCCC, the law requires that SOAH's rules of procedure control a contested case conducted by SOAH. In order to clarify the application of procedural rules in various forums, the proposed amendments have been prepared for persons regulated by the SML and the OCCC whose cases may be heard by SOAH.

46

Additionally, should any of the finance agencies have the need to utilize a different contested case forum in the future, the proposed amendments will provide the flexibility for contested cases to be heard by either a contracted administrative law judge or by SOAH.

The proposed amendments to §9.1 add new subsection (a), which states that the rules provided in Chapter 9 govern contested case hearings conducted by an administrative law judge employed or contracted by one of the finance agencies. The amendments to §9.1 further explain that contested case hearings conducted by SOAH are governed by SOAH's procedural rules.

The proposed amendments also revise the title of the rule to provide a more appropriate description of the amended content of the rule. The new title of "Application, Construction, and Definitions" is proposed to replace the current title of §9.1, "Definitions and Interpretation; Severability." In addition, the existing subsections have been relettered accordingly.

The following background information relates to the proposed amendments in §9.12, concerning Default in a contested case subject to the rules under Chapter 9, Subchapter B.

A contested case is a formal proceeding to determine the legal rights, duties, or privileges of licensees and applicants after an opportunity for an adjudicative hearing. The proceeding is governed by formal rules of procedure, which allow an agency to dispose of a case by default.

The finance agencies expend considerable resources preparing for and conducting contested case hearings where the respondent fails to appear at the hearing, or withdraws its request shortly before the hearing date. These costs are ultimately passed on to licensees and applicants in the form of higher license and renewal fees.

During the last session, the Texas Legislature expressed further support for disposing of cases by default according to the individual agency's rules. Therefore, the proposed amendments to §9.12 further the Legislature's directive to conserve state resources where a party does not intend to proceed with a hearing.

The proposed amendments to §9.12 clarify the finance agencies' authority to informally dispose of a contested case by default. The amendments add a single sentence to the end of the existing rule. The additional sentence states that a finance agency may, as an alternative to conducting a hearing when a party fails to appear, informally dispose of the matter as permitted by Section 2001.056 of the Texas Government Code, without the necessity of a hearing. This amendment is consistent with Section 2001.056(4) of the Texas Government Code, as well as the Finance Commission's existing default procedures found within the current language of §9.12 (deeming the defaulting party to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense), and the default procedures of the State Office of Administrative Hearings found at 1 Texas Administrative Code §155.501.

Charles Cooper, Banking Commissioner, as Executive Director of the Finance Commission, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications

for state or local government as a result of administering the amendments.

For each year of the first five years the amendments are in effect, Commissioner Cooper has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will conform to current practice of administrative agencies, will be more easily understood by persons required to comply with the rules, and will be more easily enforced.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on November 29, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also proposed under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the department of banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorize the savings and mortgage lending commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the department of savings and mortgage lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the proposal are contained in Texas Finance

Code, Chapters 14, 154, 156, 157, 180, 339, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

§9.1. Application, Construction, and Definitions [~~Definitions and Interpretation; Severability~~]

(a) This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code.

(b) [~~(a)~~] The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in Government Code, §2001.003, and the definitions in subsection (b) of this section govern the interpretation of this chapter. If any section of this chapter is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this chapter.

(c) [~~(b)~~] The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Administrative law judge--The hearings officer employed by or contracted by an agency to conduct administrative hearings for the finance commission, the department of banking, the department of savings and mortgage lending, and the office of consumer credit commissioner.

(2) Agency--The finance commission, the department of banking, the department of savings and mortgage lending, or the office of consumer credit commissioner.

(3) Agency head(s)--Finance commission members, the banking commissioner, the savings and mortgage lending commissioner, or the consumer credit commissioner, or a designee if authorized by law.

(4) Applicant--A party seeking a license, registration, charter, or permit, or to amend its authority under an existing license, registration, charter or permit, or other action from an agency.

(5) Protestant--A party opposing an application for a license, registration, charter, permit, or ther action filed with an agency who has paid any filing fees required by an applicable law.

(6) Respondent--A permittee, licensee, registrant, charter holder, or other party against whom a disciplinary proceeding is directed by an agency.

§9.12. Default

If, after served with notice in compliance with §9.11 of this title (relating to Notice and Initiation of Proceedings), a party fails to attend a hearing, the administrative law judge may proceed in that party's absence and, where appropriate, may issue a proposal for decision against that party. The proposal for decision shall be served upon the defaulting party and the party will be afforded the opportunity to contest the law as stated in the proposal for decision, but shall be deemed to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense. In the alternative, an agency may

informally dispose of the matter as permitted by Section 2001.056 of the Texas Government Code, without the necessity of a hearing.

B.

Office of Consumer Credit Commissioner

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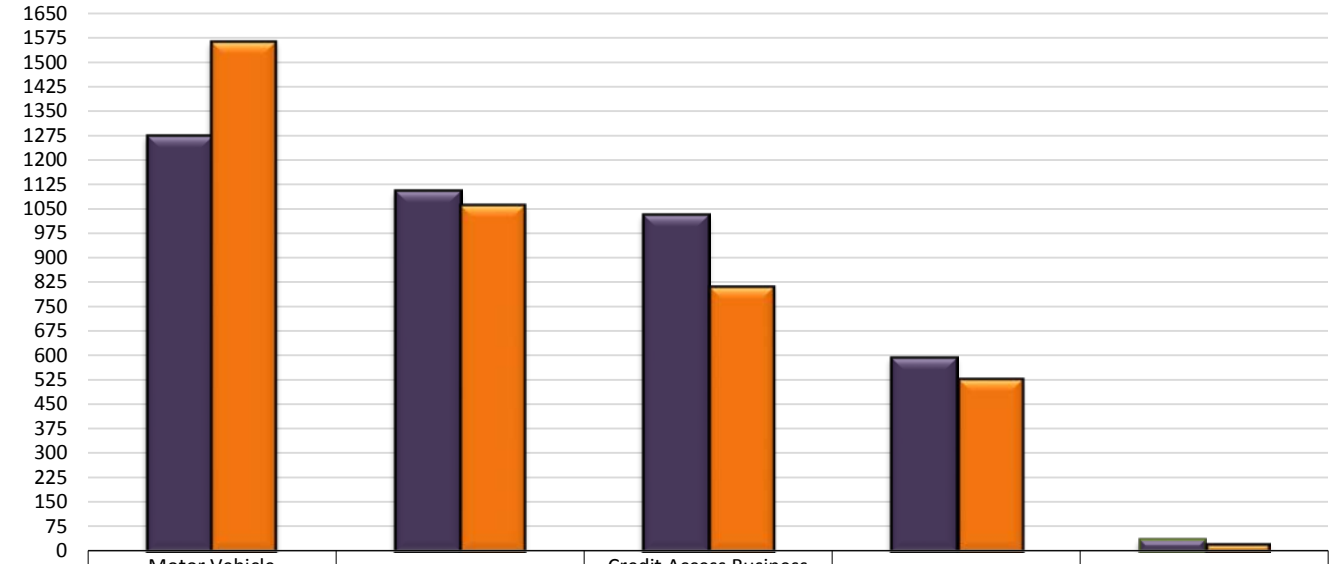
Consumer Protection and Assistance Report

Rudy Aguilar, Director of Consumer Protection

At the conclusion of Fiscal Year 2015 (FY '15), a total of 4,002 examinations were conducted as compared to 4,038 conducted for Fiscal Year 2014 (FY '14). Year-end goals for FY '15 were exceeded in four of the five examination areas: Motor Vehicle Sales Finance (MVSF); Regulated Loan; Credit Access Business (CAB) and Pawn. The goal of conducting 23 Property Tax Lender examinations was met.

Examinations Conducted: Sept - Aug
Fiscal Year Comparison



	Motor Vehicle Sales Finance	Regulated Loan	Credit Access Business (CAB)	Pawn	Property Tax Lenders
FY '14	1274	1106	1031	593	34
FY '15	1565	1065	816	533	23

The Houston examiner hired in August 2015 completed classroom training September 18, 2015, and is now being provided with field examination training. The other Houston examiner vacancy is posted and the Dallas vacancy is in the process of being posted. The Consumer Assistance Investigator I position is posted.

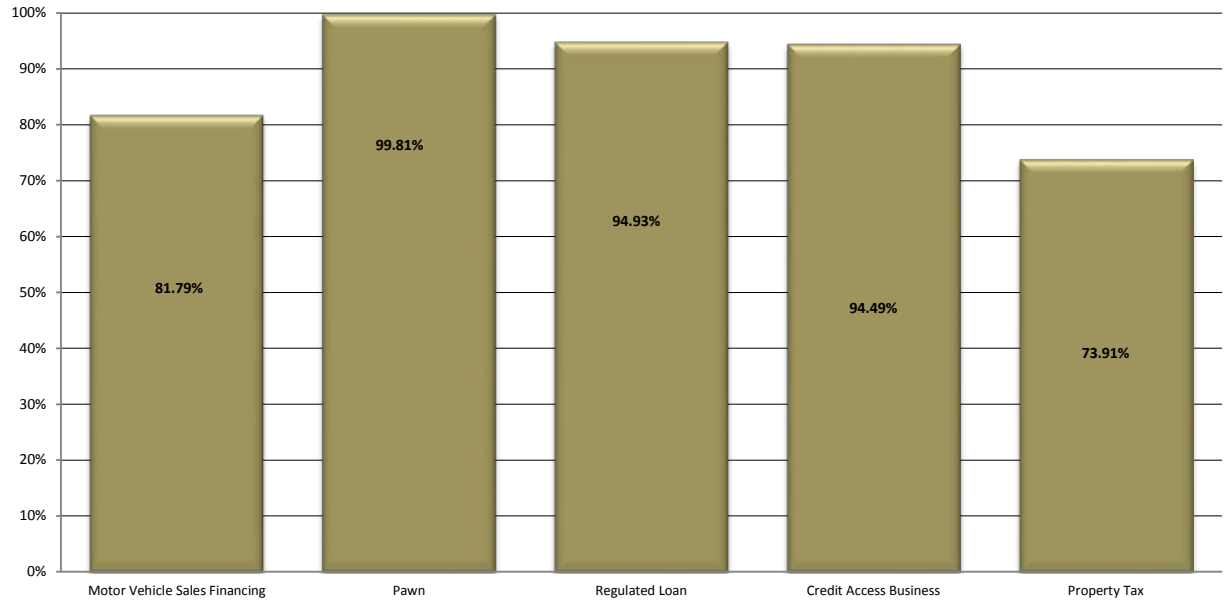
On September 9, 2015 Commissioner Pettijohn was notified by the Chairman of the Conference of State Bank Supervisors (CSBS) Performance Standards Committee that the OCCC has received a certificate of accreditation for mortgage supervision. The accreditation certifies that the OCCC maintains the standards and practices in state mortgage supervision set by the CSBS/AARMR Mortgage Accreditation Program.

Consumer Protection Director Rudy Aguilar made a presentation at Texas Department of Motor Vehicles (TxDMV) dealer training seminar on August 20, 2015, in Austin. Financial Examiner Brian Arbogast and Investigator Debrah Watts, both from the Consumer Assistance Section, attended the Austin dealer training seminar.

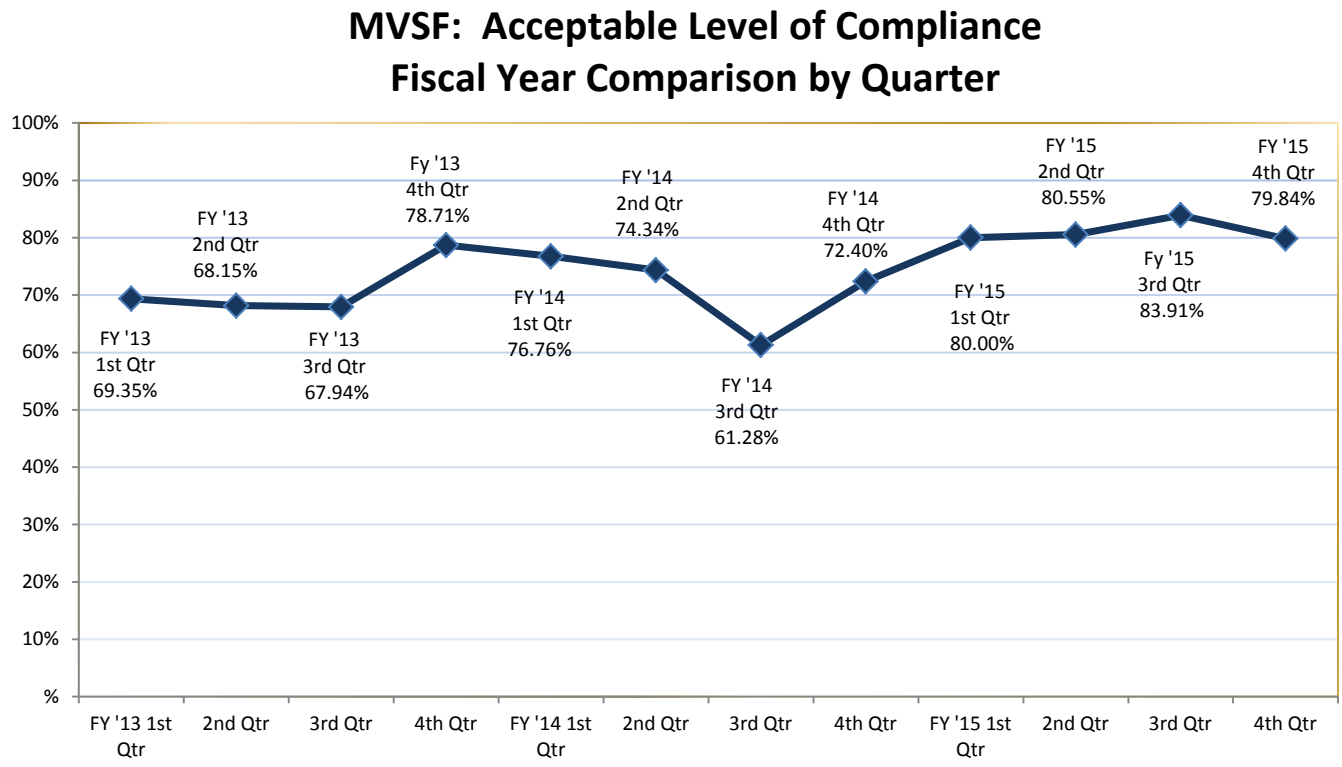
The National Association of Consumer Credit Administrators held its 28th Annual Consumer Services and Examiners School in Pittsburgh, Pennsylvania, September 14 – 18, 2015. Eight agency staff attended this training, including Director Aguilar who assisted in organizing the conference, as a member of the NACCA Continuing Education Committee.

The current acceptable level of compliance in the five examination areas is noted on the chart that follows. The acceptable level of compliance of Pawn, Regulated Loan, and CAB examinations at the end of FY ’15 was consistent with the acceptable level of compliance for the same time period in FY ’14. The acceptable level of compliance for MVSF continued on an upswing during FY ’15. At year end, despite a dip in the fourth quarter to 79.84%, the MVSF acceptable level of compliance for FY ’15 was 81.79%, significantly higher than the 72.45% at FY ’14 year end. Property Tax Lenders’ acceptable level of compliance was 94.12% for FY ’14, with 32 of 34 exams at acceptable levels, and was at 73.91% for FY ’15, with 17 of 23 exams at acceptable levels.

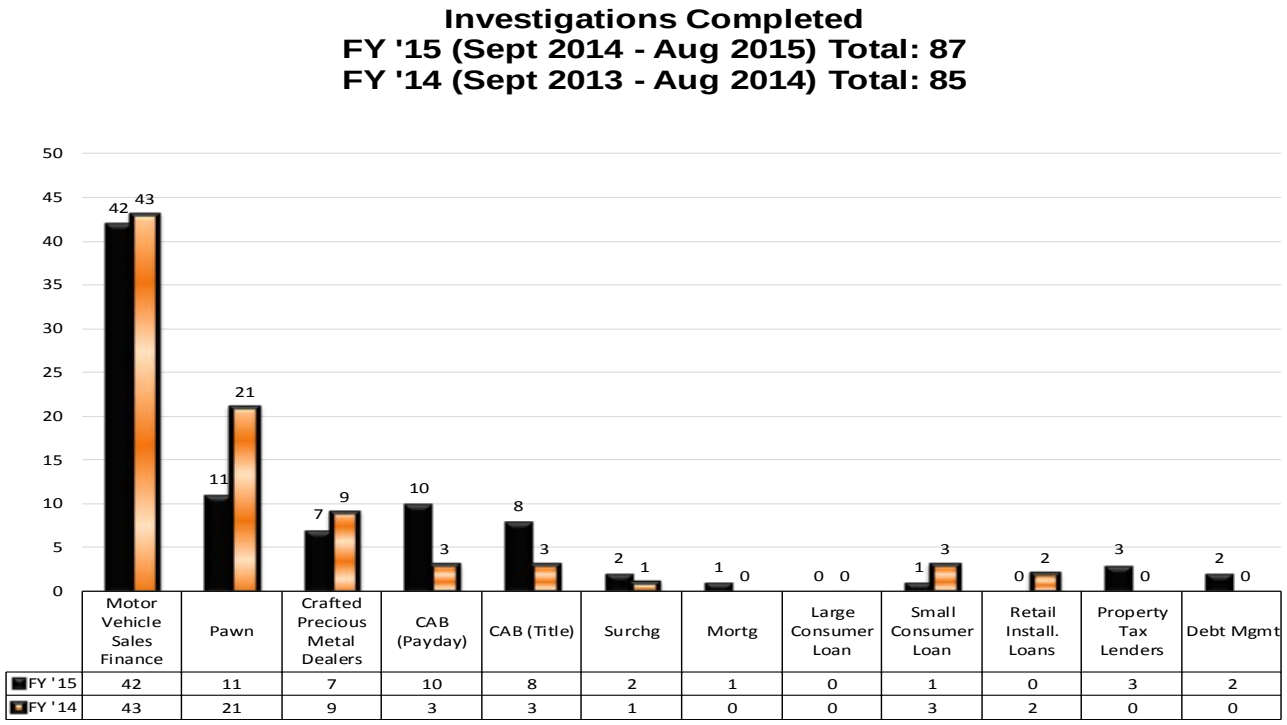
Acceptable Level of Compliance
FY '15 (Sept 2014 - Aug 2015)



A rolling three year comparison of MVSF compliance rates by quarter is noted on the chart that follows.



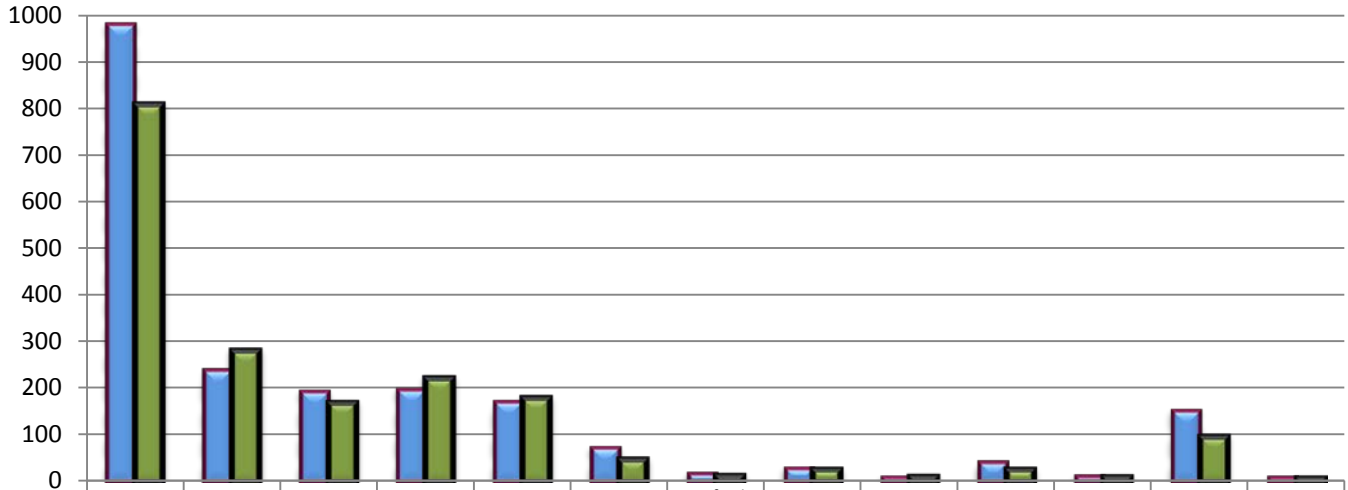
Investigations



	Motor Vehicle Sales Finance	Pawn	Crafted Precious Metal Dealers	CAB (Payday)	CAB (Title)	Surchg	Mortg	Large Consumer Loan	Small Consumer Loan	Retail Install. Loans	Property Tax Lenders	Debt Mgmt
FY '15	42	11	7	10	8	2	1	0	1	0	3	2
FY '14	43	21	9	3	3	1	0	0	3	2	0	0

Consumer Assistance

Complaints Processed
FY '15 (Sept 2014 - Aug 2015) Total: 2,131
FY '14 (Sept 2013 - Aug 2014) Total: 1,915



	Motor Vehicle Sales Finance	CAB Payday Loans	CAB Auto Title Loans	Reg. Lenders Non-Real Estate	Pawn	Revolving Loans	Crafted Precious Metals Dealers	Mortg Lenders: Real Estate	Mnufct. Hsng	Property Tax Lenders	Debt Mgt Debt Settlmnt	Surcharge (Credit Card Use)	All Others
FY' 15	982	240	194	198	172	73	17	29	10	42	12	153	9
FY' 14	810	283	171	224	181	49	14	27	12	27	11	98	8

The complaint categories of MVSF, CAB, Regulated Lenders, and Pawn resulted in 83.8% of the total complaints for the fiscal year.

MVSF remained the largest complaint category for the fiscal year at 46.08% of total complaints. The complaint issues by type are categorized as: repossessions (16%), payment postings/dispute of account balances (13%); unlicensed activity (11%); financing conditioned on subsequent assignments (10%); issues related to ancillary products and insurance (9%); title issues (8%); consumer right of rescission (7%); dispute of contracted price and other fees (5%) and mechanical issues (4%).

CAB complaints were the second largest category of complaints, being 20.37% of total complaints for FY ’15. Payday loans comprised 11.26% and title loans were 9.10% of total complaints. CAB payday complaints involved mainly: allegations of improper posting of payments-ACH and dispute of account balances (30%); allegations of id theft/fraudulent loan applications (16%); complaints about fee amounts being charged (10%); consumers alleging financial hardship and seeking assistance (12%) and collection practices (7%). CAB title loan complaints by type for this reporting period were primarily: allegations of improper posting of payments and balance owed not decreasing (24%); repossessions (19%); release of titles upon payoff (17%) and charges and fees (12%).

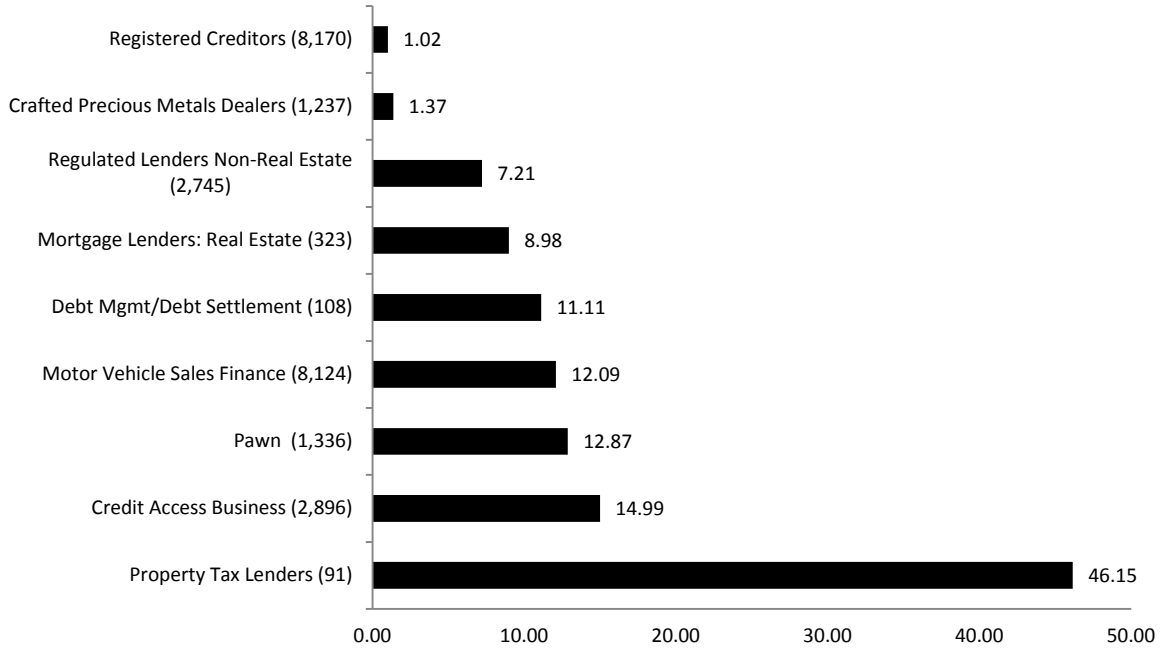
Regulated Lenders Non-Real Estate was the third largest complaint category at 9.29% for FY ’15. Primary issues involved allegations of abusive collection practices (31%). Other issues are allegations of improper posting of payments (22%), customer service (11%), high interest rates (11%) and complaints about fees (7%).

For FY ’15, Pawn complaints were the fourth largest category at 8.07%. The predominant issues were: replacement of lost/damaged goods (27%); redeeming of pawned items (26%); forfeiture of goods (8%); pawn service charges (7%); victim assistance in stolen items (5%); monitoring the acceptance of goods (5%) and issues related to purchased goods (4%).

An increase in the number of complaints related to surcharges for credit card use was noted during the fiscal year. Complaints in this area ranged from a low of five per month to as high as 17 per month during the fiscal year, equating to an average of 11 surcharge complaints per month. At the end of FY ’15, complaints about surcharges for credit card became the fifth largest category of complaints at 7.18% of the total.

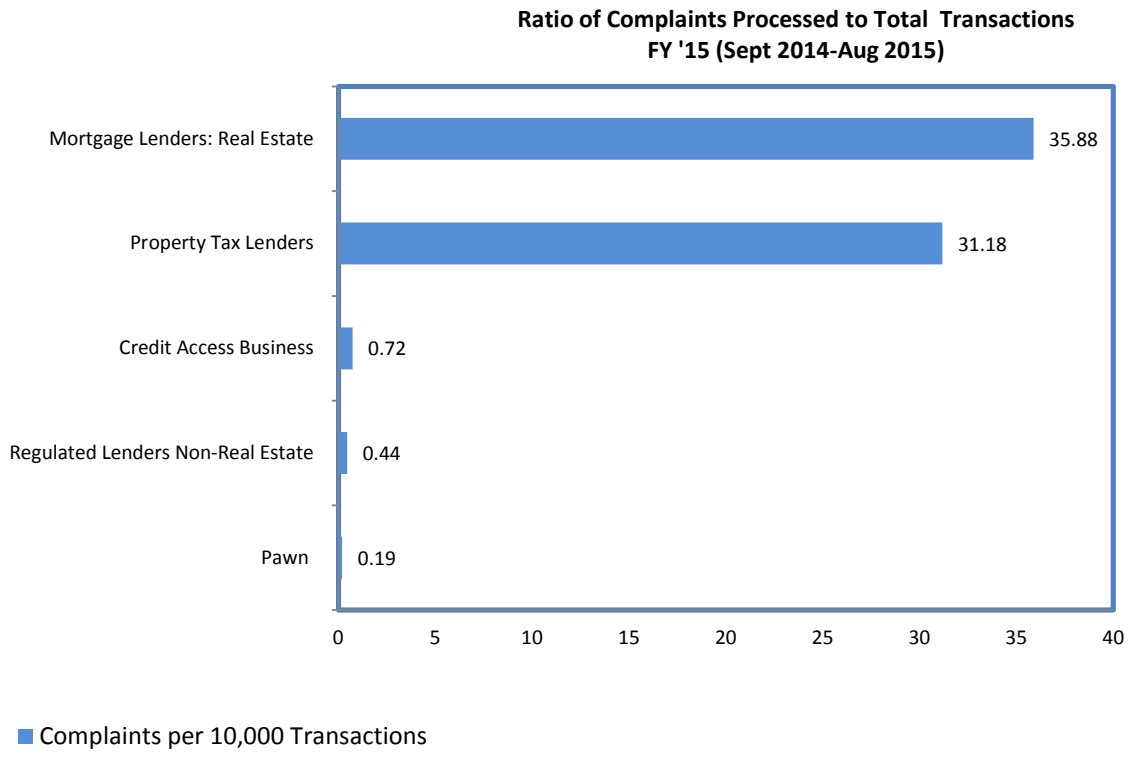
Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. At the end of the fiscal year, the rank order of complaints to active license or registrants remained the same as the prior reporting period. Property Tax Lender complaints maintained the highest ratio, with CAB complaints ratio having the second highest ratio. The third and fourth highest ratios of complaints to active licenses or registrants were Pawn and MVSF respectively.

Ratio of Complaints Processed to Total Active Licenses or Registrants*
FY '15 (Sept 2014-Aug 2015)



*License-Registrant levels as of 09-01-15

A comparison of complaints processed to the number of total transactions conducted by OCCC regulated entities reporting transactional data is noted on the chart below, shown in rank order.



CAB Reporting Update

Reports through the second quarter CY2015 are currently compiled and published. The third quarter 2015 submissions are due on 10/31/2015. A comparison of data from the first two quarters is presented by year. This year's data indicates the lowest volume of new transactions and store activity through the second quarter since data collection began. The current trend is to structure payday loans with longer repayment periods. For the year, 38% of all new payday loans are installment loans due in an average term of 160 days.

Data Highlights (All Loan Types) Q1 & Q2 Comparison	2015	2014	2013	2012
Number of new payday loans	1,084,472	1,100,247	1,200,988	1,184,536
Number of new auto title loans	160,415	206,235	241,267	226,272
Percentage of Payday Loans due in multiple installments	38%	32%	20%	14%
Percentage of Auto Title Loans due in multiple installments	22%	17%	13%	16%
Number of vehicles repossessed under all auto title loans	18,511	20,879	18,498	17,175
Total number of locations reporting activity	2,573	3,001	3,176	3,063

	Single Installment		Multiple Installment	
Payday Loans Q1 & Q2	2015	2014	2015	2014
Number of consumer obtaining loans	511,339	588,056	363,734	311,336
Number of New Loans	677,581	745,347	406,891	354,900
Number of refinances on new loans in the quarter	496,590	634,917	31,974	29,267
Number of total refinances	1,291,363	1,657,264	118,675	67,497
Average Loan Amount [1]	$492	$475	$526	$538
Average Fee per $100 borrowed [1]	$23.69	$23.16	$171.81	$151.09
Average original term (in days) [1]	18	19	160	153

	Single Installment		Multiple Installment	
Title Loans Q1 & Q2	2015	2014	2015	2014
Number of consumer obtaining loans	110,467	153,130	34,580	33,264
Number of New Loans	124,341	170,900	36,074	35,335
Number of refinances on new loans in the quarter	76,664	100,559	4,481	5,510
Number of total refinances	619,712	633,879	14,354	24,005
Average Loan Amount [1]	$1,221	$1,128	$1,075	$1,080
Average Fee per $100 borrowed [1]	$17.10	$19.24	$83.87	$98.75
Average original term (in days) [1]	30	30	166	198

1 Refinance activity represents only the renewals occurring in the quarter the loan was originated.
2 Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.

Licensing Report

Mirand Zepeda, Manager

Renewals

The renewal period for Registered Creditors began September 1st and goes through October. Online early renewal opened in ALECS mid-August and current registrants have been notified renewal is ongoing. The department has continued seeing marked improvement and increases in licensees utilizing the ALECS system for renewals. The agency has seen a reduction in time and cost in processing renewals due to the online submissions.

Applications Processing

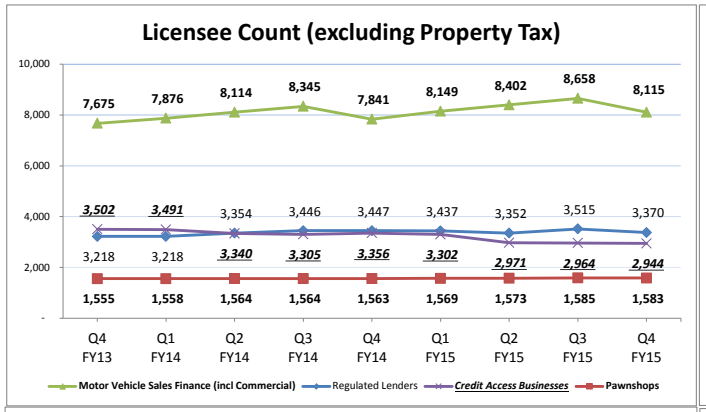
In reviewing applications processed in FY 2015, the department saw significant improvement in application turnaround times in Q3 and Q4. This trend is likely to continue in the first quarters of FY 2016. Data collection and analyzation will be conducted to ensure progress continues. Some of this improvement is attributable to efficiencies in ALECS and, although improvements have been made in the system, the department continues to seek modifications to enhance transactions for both internal and external users.

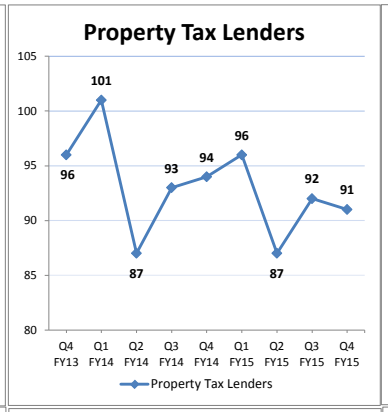
The number of pending applications has continued to decline, which simultaneously makes the volume more manageable. The department has cut pending applications by about 12.5% from July to October. Additionally, as of September 1 all new applications for business licenses must be submitted online, with the exception of pawnshops. The team has also developed a process to streamline fingerprint authorizations, allowing for constructive progress in other areas.

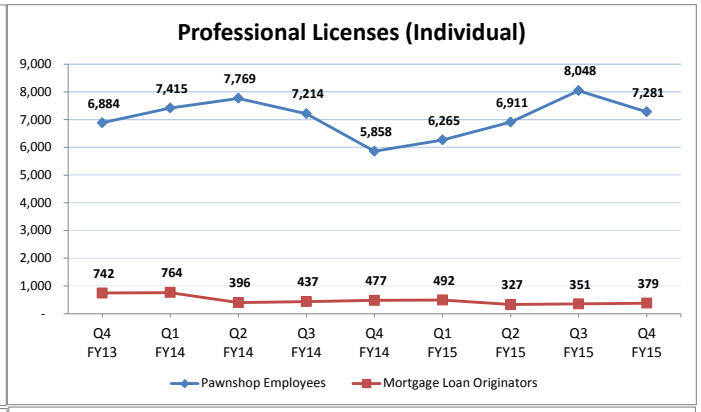
Regulated Entity Population Trends

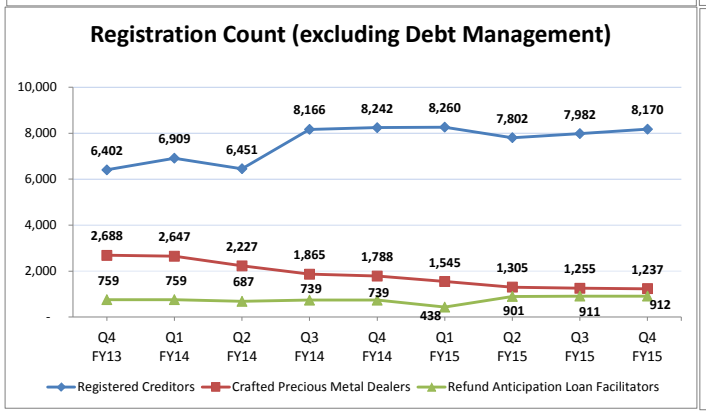
The following charts reflect the number of OCCC regulated entities at the end FY 2013, and quarterly for FY 2014 through FY 2015.

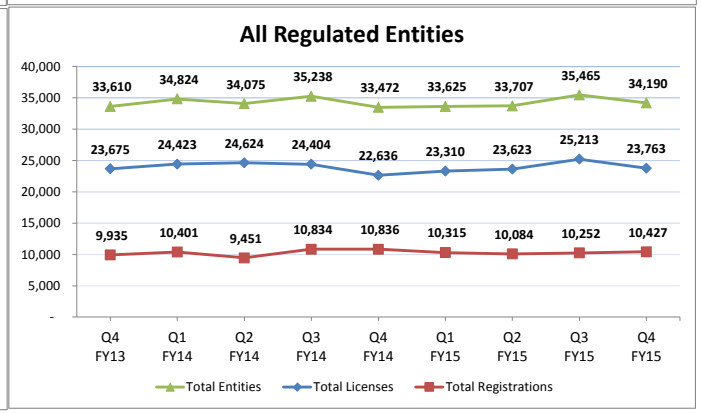
Number of OCCC Regulated Entities
Quarterly Comparison of FY 13 & 14 with Current Data











Communications, Human Resources & Administration Report

Juan V. Garcia, Director of Strategic Communications, Administration and Planning

Stakeholder Engagement and Communication

Engaging stakeholders and maintaining strong communication strategies play an important role in the regulatory activities of the Office of Consumer Credit Commissioner. A strategic and structured approach to stakeholder relations incorporates live presentations, production of new brochures, and advisory bulletins.

Since the beginning of FY 15, the agency has published several pieces of compliance-focused communications in the form of advisory bulletins. Since the last report, an additional two bulletins have been published, bringing the total to five for the fiscal year. The last two bulletins specifically explain that pawnshops must accept a handgun license as a valid form of identification from a pledgor; and a bulletin that crafted precious metal dealers must accept a handgun license as a valid form of identification from a seller.

The agency provided a total of sixteen (16) live presentations to various state agencies and industry stakeholders during the FY 2015. The focus of these presentations related to compliance matters and the regulatory role and responsibilities of the agency.

On August 10, Juan V. Garcia, Director of Strategic Communications, Administration, & Planning, and Mirand Zepeda, Licensing Manager, and Eric Fancher, Dallas Financial Examiner traveled to San Antonio and attended the 2015 Texas Independent Automobile Dealers Association (TIADA) Annual Conference & Expo. Eric presented a motor vehicle installment sales compliance presentation to TIADA attendees while Juan and Mirand spoke with numerous attendees during the exhibit hall and answered agency related questions. In addition, they provided specific industry information via a "*Motor Vehicle Sales Finance Reference Guide,*" which highlighted compliance matters, as well as the regulatory role and responsibilities of the agency.

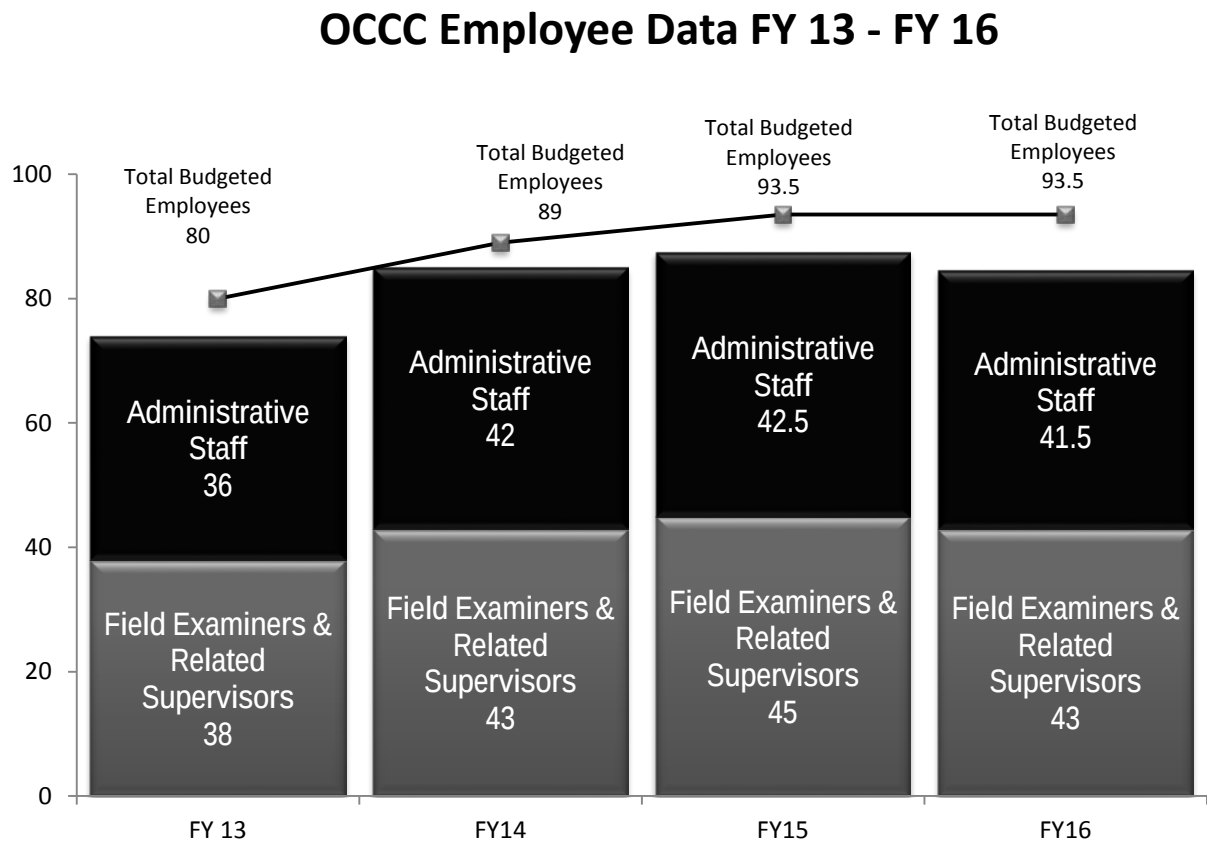
Human Resources

During this reporting period (August and September), four employees departed the agency, three Financial Examiner II positions and one Legal Assistant I. The Agency was able to replace one examiner position within the same period (Financial Examiner) to bring the FTE count to 84.5 FTEs at the end of September. Currently the turnover ratio is 1.18%.

In anticipation of the strategic planning process that will be occurring soon, Human Resources staff has begun to prepare for the agency's participation in the Survey of Employee Engagement (SEE) scheduled to take place in November 2015.

The agency continues to focus on recruitment and selection efforts to ensure qualified applicants for various positions within the OCCC. Current vacancies are noted below:

FY 16 Vacancies	
Vacancy	**Status**
Financial Examiner II	Active
Legal Assistant III	Active – Interviews in progress
Investigator I	Active – Applications under review
Financial Examiner – Houston	Active – Applications under review



In August, Matt Medford, HR Specialist, obtained his SHRM Certified Professional (SHRM-CP) certification from the Society for Human Resource Management (SHRM). The SHRM certification is applicable across industries, geographic borders, job responsibilities and career levels and is 100% focused on the competencies and knowledge all HR professionals need to lead in today's business community.

Financial Literacy

Consumer Education staff has met its in-person contact goal for FY2015 of reaching 300 consumers.

Staff participated in a variety of community engagement opportunities and financial education events that provided ample community contact and presentations. TFEE grantees invited staff to speak on various occasions throughout this reporting period, which provided additional audiences. Staff continues to develop educational consumer resources from websites, networking meetings and trainings related to financial education, coaching and capability.

Staff is currently working with the Capital Area Food Bank to develop a new working relationship and create a collaborative partnership with this community organization.

Staff has been requested to provide a presentation in October for the League of Women Voters to discuss CAB legislation.

Accounting & IT Reports

Accounting

The accounting department is in the process of completing the Fiscal Year 2015 Annual Financial Report, due October 1st. The department has also been preparing presentations and training materials for the Annual Examiner Conference. The accounting department is preparing and completing fiscal year end closes for the agency.

Information Technology-Legacy Modernization

The Application, Licensing, Examination and Compliancy System (ALECS) is in maintenance mode, performing all major database functions properly. The agency is on track to cease the maintenance contract for ALECS in March of 2016, when the OCCC internal programmer will take over routine maintenance. Additional functionality and process improvements continue to be added. Some of this is already being performed in-house, while some new functionality continues to be programmed by the vendor.

Substantial numbers of licensees and applicants are using ALECS for applications, license modifications and renewals. Most license types are now required to enter new applications through ALECS.

The Statement of Work (SOW) for the examination and complaint project was released on September 10. Twenty vendors were invited to respond to the SOW. The pre-bid conference was conducted, with five companies participating, and staff has answered questions from prospective vendors. The agency plans to award the project on October 28, 2015.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of August 31, 2015

	FY 2013	FY 2014	FISCAL YEAR 2015				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	7,369	22,977	2,244	1,677	1,715	1,481	7,128
Regulated Lenders Examinations	1,098	1,106	258	355	359	93	1,065
Property Tax Lender Examinations	28	34	0	2	13	8	23
Pawnshop Examinations	697	593	110	210	186	27	533
Motor Vehicle Examinations	1,380	1,247	271	364	434	496	1,565
Credit Access Businesses Examinations	916	1,031	140	43	194	439	816
CONSUMER ASSISTANCE							
Telephone Complaints Received	1,151	1,067	226	280	314	366	1,186
Written Complaints Received	967	976	227	249	233	291	1,000
Total Complaints Processed	2,089	1,915	470	509	596	556	2,131
% of Written Complaints Closed within 90 Calendar Days	95.52%	90.60%	86.69%	84.59%	78.83%	80.89%	82.47%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	366	321	110	48	129	185	472
Finalized	333	335	72	66	96	156	390
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,218	3,447	3,437	3,352	3,515	3,370	3,370
Pawnshop Licenses	1,555	1,563	1,569	1,573	1,585	1,583	1,583
Pawnshop Employee Licenses	6,884	5,858	6,265	6,911	8,048	7,281	7,281
Commercial MV Sales Fin. Licenses	14	16	17	18	20	19	19
Motor Vehicle Sales Finance Licenses	7,661	7,825	8,132	8,384	8,638	8,096	8,096
Property Tax Loan Licenses	96	94	96	87	92	91	91
NMLS-Mortgage Loan Originators	742	477	492	327	351	379	379
Credit Access Business Licenses	3,502	3,356	3,302	2,971	2,964	2,944	2,944
Registrations							
Registered Creditors	6,402	8,242	8,260	7,802	7,982	8,170	8,170
Crafted Precious Metal Dealers	2,688	1,788	1,545	1,305	1,255	1,237	1,237
Debt Management Service Providers	86	67	72	76	104	108	108
Refund Anticipation Loan Facilitators	759	739	438	901	911	912	912
Applications							
Business -- New	1,398	1,427	452	361	463	556	1,832
Business -- Change of Ownership	712	473	109	127	193	195	624
Pawnshop Employees -- New	2,576	2,011	669	487	573	1,281	3,010
HUMAN RESOURCES DATA							
Field Examiners Staffing	38	42	47	46	46	43	43
Total Staffing	74	83	89	88.5	87.5	85.5	85.5

Office of Consumer Credit Commissioner
Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure		2015 Target	2015 Actual	2015 YTD	Percent of Annual Target
Output Measures-Key					
1-1-1	COMPLAINT RESOLUTION				
	1. # COMPLAINTS CLOSED				
	Quarter 1	2,100	470	470	22.38%
	Quarter 2	2,100	509	979	46.62%
	Quarter 3	2,100	596	1,575	75.00%
	Quarter 4	2,100	556	2,131	101.48%
	2. # INVESTIGATIONS CLOSED				
	Quarter 1	84	16	16	19.05% *
	The number of completed investigations in the first quarter was one examination short of being in the goal range, due to investigative staff assuming additional duties in response to a senior examiner's medical leave of absence.				
	Quarter 2	84	33	49	58.33% *
	Solid, consistent efforts to close old investigations has been made. Several investigations came to a conclusion during this reporting period.				
	Quarter 3	84	24	73	86.90% *
	Continued efforts have been made to reduce the number of older investigations.				
	Quarter 4	84	14	87	103.57%
2-1-1	EXAMINATION AND ENFORCEMENT				
	1. # COMPLIANCE EXAMINATIONS PERFORMED				
	Quarter 1	3,864	779	779	20.16%
	Quarter 2	3,864	974	1,753	45.37%
	Quarter 3	3,864	1,186	2,939	76.06%
	Quarter 4	3864	1,063	4,002	103.57%

2-2-1 LICENSING

1. # BUSINESS APPLICATIONS PROCESSED

Quarter 1	2,200	381	381	17.32%	*

The number of business applications processed is under target due to staffing changes and training. Numbers are expected to be on target in the next quarter.

Quarter 2	2,200	542	923	41.95%	*

Significant gains are being made in application processing times, but due to staff changes and ongoing training, numbers are below the targeted 50% level.

Quarter 3	2,200	562	1,485	67.50%	*

Performance continues a slight improvement in the third quarter and. when viewed alone, would meet the projection on a pro rata basis. However, the delays in processing from the first quarter because of staffing changes and turnover continue to pull down the overall performance to date

Quarter 4	2,200	741	2,226	101.18%

2. # INDIVIDUAL LICENSES PROCESSED

Quarter 1	2,750	715	715	26.00%
Quarter 2	2,750	796	1,511	54.95%

Quarter 3	2,750	1,605	3,116	113.31%	*

The agency has exceeded the annual performance target for the number of individual licenses processed. A backlog of applications was cleared during the third quarter which caused the measure to be exceeded, but brought the volume of pending application more within normal expectations.

Quarter 4	**2,750**	**1322**	**4,438**	161.38%	*

The agency has exceeded the annual performance target for the number of individual licenses processed. A backlog of applications was cleared during the third quarter which caused the measure to be exceeded, but brought the volume of pending application more within normal expectations.

3-1-1 # CONSUMERS RECEIVING FINANCIAL EDUCATION

Quarter 1	300	32	32	10.67%	*

Staff conducted one face-to-face presentation to the Hispanic Real Estate Brokers Association in Arlington, Texas in the first quarter. There will be more presentation opportunities as the year progresses.

Quarter 2	300	201	233	77.67%	*

To date, staff has conducted three presentations: one webinar and two face-to-face presentations. The Texas Financial Education Endowment (TFEE) webinar garnered 173 national and international participants. The face-to-face presentation this quarter was for Coastal Bend College's TRIO Day, for high school students. Staff anticipates additional presentation opportunities will be scheduled to reach the year's target.

Quarter 3	300	62	295	98.33%	*

Increased opportunities to promote the new grant cycle for TFEE in the community and conducting extra classes in April for Financial Fitness Greater Austin Awareness Week have led to the variance .

Quarter 4	300	45	340	113.33%	*

Increased opportunities to promote the new grant cycle for TFEE in the community and conducting extra classes in April for Financial Fitness Greater Austin Awareness Week have led to the variance .

* Varies by 5% or more from quarterly or year-end targets.

Office of Consumer Credit Commissioner
Actual Performance for Outcome Measures

Type/Strategy/Measure	2015 Target	2015 YTD	Percent of Annual Target	
Outcome Measures-Key				
1-1 CONSUMER COMPLAINTS				
1. % COMPLAINTS RESOLVED WITHIN 90 DAYS	95.00%	82.47%	86.81%	*
Factors contributing to this shortfall included staff turnover, existing resources dealing with more credit card surcharge complaints and difficulty in finalizing unlicensed/unregistered activity complaints due to slow response from businesses.				
2-1 ENSURE COMPLIANCE				
1. % EXAMINATIONS IN COMPLIANCE	85.00%	90.23%	106.15%	*
Two examination categories had unexpectedly high levels of compliance this fiscal year, Pawnshops - 99.81% and Ch. 342 Sub. F consumer loans - 99.98%. These two categories drove up the total level of compliance.				
2. MONIES RETURNED FROM LICENSEES	$5,000,000	$7,128,679	142.57%	*
Ch. 348 Motor Vehicle Sales Finance compliance improved, however they still had a high level of restitution. 76% of the total restitution came from the MVSF industry.				

*Varies by 5% or more from quarterly or year-e

Legal Department Report

Michael Rigby, General Counsel

October 2015

Enforcement Report

Pawnshop Employee – Administrative Penalty

In November 2014, the OCCC assessed an administrative penalty against Emma Ruth Ortiz, a pawnshop employee at L Bufalo Pawn for entering into two pawn transactions in which documentation of ownership by a third party or independent verification of ownership of the items, as required under 7 Tex. Admin. Code § 85.418(a)(3) was not obtained. On March 10, 2014, a hearing was held before Holly Compton-Noelke, Administrative Law Judge.

On June 25, 2015, the ALJ issued a proposal for decision finding that both violations occurred as alleged and recommending that the assessed administrative penalty become final and enforceable. On August 27, 2015, Juan V. Garcia, pursuant to OCCC Delegation Order of March 4, 2015, adopted the recommendation of the proposal for decision and issued a final order upholding the administrative penalty assessed against Ms. Ortiz. Ms. Ortiz did not file a timely motion for rehearing with the OCCC. Therefore, the August 27 order is now final.

Transition to SOAH

In September 2015, the OCCC started referring its contested cases to the State Office of Administrative Hearings ("SOAH"). Pursuant to this change, OCCC contested cases are now conducted under the SOAH Rules of Procedure (Title 1, Chapter 155 of the Texas Administrative Code). On September 16, 2015, the OCCC held its first two hearings at SOAH, both concerning pawnshop employee license application denials. A proposal for decision is pending from the ALJ in both cases.

Administrative Rule Report

At the October meeting, the OCCC is presenting four rule actions:

- An adoption of amendments to update plain language model contracts, and to update procedures for plain language non-standard contract submission.
- Proposed new rules and amendments on examination guidelines, recordkeeping requirements, and other requirements for credit access businesses.
- Proposed amendments and a new rule on notices of contested case hearings, responses, and defaults.
- Proposed amendments on contested case procedures.

At upcoming meetings, the OCCC plans to present rule actions regarding the following issues:

- Amendments relating to credit access businesses, including requirements for quarterly and annual reports, disclosures, and license transfers.
- Amendments relating to the procedure for filing a documentary fee for motor vehicle retail installment contracts.
- Amendments relating to rule review for crafted precious metal dealers.

Performance Report

The following table is an overview of enforcement actions completed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of September 30, 2015. These figures only reflect actions that have been fully resolved with a final order; actions that are still pending are not included in the table. The table does not include license application denial actions. The OCCC completed two application denial actions in fiscal year 2014 and 25 denial actions in fiscal year 2015. As of September 30, 2015, the OCCC has completed no application denial actions in fiscal year 2016. It is difficult to predict the types of cases the legal department will pursue, as many factors impact how each enforcement matter will evolve. The following table provides a snapshot of completed enforcement actions during the listed time period.

Enforcement Actions Completed as of September 30, 2015				
	FYTD 2016	**FY 2015**	**FY 2014**	**FY 2013**
Revocation / Suspension Actions				
Regulated Loan License	0	27	10	3
Pawnshop License	0	2	1	1
Pawnshop Employee License	0	2	1	2
Credit Access Business	0	1	4	0
Motor Vehicle Sales Finance License	3	4	4	3
Property Tax Loan License	0	0	4	0
Crafted Precious Metal Dealer	0	2	0	0
Total Revocation / Suspension Actions	**3**	**38**	**24**	**9**
Cease & Desist Actions				
Regulated Loan License	0	1	0	1
Pawnshop License	0	0	0	0
Pawnshop Employee License	0	0	0	0
Credit Access Business License	0	1	4	1
Motor Vehicle Sales Finance License	0	12	8	13
Property Tax Loan License	0	1	2	1
Crafted Precious Metal Dealer	0	3	0	0
Registered Creditor (Ch. 345)	0	0	0	1
Debt Management Services (Ch.394)	0	6	1	1
Credit Card Surcharge (Ch. 339)	0	1	0	0
Unlicensed Activity – Other Chapters	0	0	2	10
Total Cease & Desist Actions	**0**	**25**	**17**	**28**
Administrative Penalty Actions				
Regulated Loan License	0	73	121	144
Pawnshop License	1	4	6	9
Pawnshop Employee License	0	4	8	8
Credit Access Business License	1	136	56	52
Motor Vehicle Sales Finance License	2	76	88	112
Property Tax Loan License	1	8	18	12
Crafted Precious Metal Dealer	0	0	1	0
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	**5**	**301**	**298**	**337**
Total Enforcement Actions Closed	**8**	**364**	**339**	**374**

From August 1, 2015, to September 30, 2015, the OCCC:

- issued 38 final orders,
- opened 76 cases in order to assess administrative penalties,
- opened 6 cases in order to issue administrative injunctions,
- held 2 administrative hearings, and
- dismissed 2 administrative hearings.

The OCCC has 4 hearings scheduled between October 1, 2015, and November 30, 2015.

Litigation

Ovation Lending LLC v. Finance Commission of Texas

A group of property tax lenders has sued the Finance Commission and the OCCC, seeking to prevent enforcement of the commission's recently adopted rule at 7 Texas Administrative Code Section 89.601(d)(5). Section 89.601(d)(1)-(4) includes disclosure requirements for property tax loan discount points, and prohibits the property tax lender from including discount points in the principal balance of the property tax loan. The plaintiffs are challenging Section 89.601(d)(5), which prohibits a property tax lender from making a separate loan to finance discount points, if the loan is payable to the property tax lender or an affiliate. The plaintiffs argue that this provision exceeds the commission's statutory authority, violates the constitutional separation of powers, violates the Equal Protection Clause of the U.S. Constitution's Fourteenth Amendment, and violates property owners' freedom of contract.

On September 22, 2015, a Travis County district court granted the motion for summary judgment filed by the commission and OCCC, dismissing the plaintiffs' lawsuit. The court's order dissolved a temporary restraining order that previously restrained the commission and the OCCC from enforcing Section 89.601(d)(5).The plaintiffs' deadline to appeal the district court's decision is October 22.

The full style of the case is *Ovation Lending LLC, Alamo Home Finance Inc., USPTL LLC, and Tax Advances LLC v. Finance Commission of Texas, Office of Consumer Credit Commissioner, and Leslie Pettijohn, in her Official Capacity as Commissioner of the Office of Consumer Credit Commissioner*. The case number is D-1-GN-15-002641, in the 98th district court in Travis County, Texas.

The court has also dismissed an older case with the same parties. The older case involved a challenge to the previous version of Section 89.601(d), which prohibited discount points altogether. The commission and OCCC filed a plea to the jurisdiction in this case, arguing that the case is moot because the challenged version of Section 89.601(d) no longer exists. The court granted the plea to the jurisdiction on August 7, dismissing the case. The agreed temporary restraining order from the old case has expired. The plaintiffs filed a motion for a new trial in this case on September 9. The case number for the old case is D-1-GN-15-000886, in the 353rd district court in Travis County, Texas.

Rowell v. Pettijohn

In March 2014, a group of merchants filed a complaint in federal district court against Leslie Pettijohn in her official capacity, to enjoin enforcement of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. The merchants argue that the prohibition is an unconstitutional violation of free speech and that it is void for vagueness, in violation of the First and Fourteenth Amendments to the U.S. Constitution. In February 2015, the court granted the OCCC's motion to dismiss the lawsuit, holding that Section 339.001 is a regulation of pricing and economic conduct rather than speech, and that it is not void for vagueness. *Rowell v. Pettijohn*, No. 1:14-cv-00190-LY, 2015 U.S. Dist. LEXIS 40739 (Feb. 4, 2015).

The plaintiffs have appealed the case to the Fifth Circuit Court of Appeals. The plaintiffs filed their brief on June 9, the OCCC filed its brief on July 28, and the plaintiffs filed their reply brief on August

12. The plaintiffs have requested oral argument before the Fifth Circuit. The OCCC is being represented by two divisions of the Office of the Attorney General: the Office of Solicitor General and the Financial Litigation, Tax, and Charitable Trusts Division.

The full style of the case is *Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas*. The Fifth Circuit's case number is 15-50168, and the district court's case number is 1:14-cv-00190-LY.

Similar cases have been filed in New York, Florida, and California. The Second Circuit upheld New York's credit card surcharge statute, reversing the federal district court's decision. *Expressions Hair Design v. Schneiderman*, No. 13-4533, 2015 U.S. App. LEXIS 17156 (2d Cir. Sept. 29, 2015). The federal district court in Florida upheld Florida's credit card surcharge statute. *Dana's R.R. Supply v. Bondi*, No. 4:14-cv-00134-RH-CAS (N.D. Fla. Sept. 2, 2014). The federal district court in California struck down California's credit card surcharge statute. *Italian Colors Rest. v. Harris*, No. 2:14-cv-00604-MCE-DAD, 2015 WL 1405507, 2015 U.S. Dist. LEXIS 39030 (E.D. Cal. Mar. 26, 2015). The Florida case has been appealed to the Eleventh Circuit, which heard oral arguments in June. The California case has been appealed to the Ninth Circuit.

Property Tax Lender TILA Litigation

Several cases are pending in the Fifth Circuit Court of Appeals about whether the federal Truth in Lending Act (TILA) applies to Texas property tax lenders. Federal district judges in San Antonio have issued conflicting decisions on this issue. In one case, the court held that TILA does not apply to property tax lenders, and granted the property tax lender's motion to dismiss the borrower's TILA claims. *Billings v. Propel Financial Services, LLC*, No. 5:14-cv-00764-OLG, 2014 WL 7448248, 2014 U.S. Dist. LEXIS 179738 (W.D. Tex. Nov. 28, 2014). However, in two other cases, the court held that TILA does apply to property tax lenders and denied the lenders' motions to dismiss. *Thiery v. Texas Tax Solutions, LLC*, No. 5:14-cv-00940-HLH, 2014 WL 7447976, 2014 U.S. Dist. LEXIS 179763 (W.D. Tex. Dec. 19, 2014); *Torres v. Propel Financial Services, LLC*, No. 5:14-cv-01040-HLH (W.D. Tex. Jan. 22, 2015).

These three decisions have been appealed to the Fifth Circuit. The appellants filed their briefs in July, and the appellees filed their briefs in August. In addition, the Consumer Financial Protection Bureau filed an amicus curiae brief with the Fifth Circuit, arguing that TILA applies to Texas property tax lenders.

There are three other pending cases involving the same issue: *Ramos v. FGMS Holdings, LLC*, No. 5:14-cv-00860-FB (filed Oct. 1, 2014); *Orosco v. Ovation Lending, LLC*, No. 5:14-cv-00897-XR (filed Oct. 14, 2014); and *Castano v. FGMS Holdings, LLC*, No. 5:14-cv-00949-OLG (filed Oct. 28, 2014).

ACE Cash Express, Inc. v. City of Denton

Several credit access businesses (CABs) have sued cities, arguing that CAB ordinances are preempted under state law. In June, the Fort Worth court of appeals rejected a challenge to Denton's CAB ordinance, finding that the CAB had not demonstrated a sufficient harm to its property interests to

provide a state court with jurisdiction to hear the case. *ACE Cash Express, Inc. v. City of Denton*, No. 02-14-00146-CV, 2015 WL 3523963, 2015 Tex. App. LEXIS 5723 (Tex. App.—Fort Worth June 4, 2015 pet. filed) (mem. op.). On September 14, ACE Cash Express filed a petition for review with the Texas Supreme Court to appeal the case. The decision of the court of appeals was based partly on a Dallas court of appeals decision from last year, which rejected a challenge to Dallas's CAB ordinance for similar reasons. *Consumer Serv. Alliance of Tex., Inc. v. City of Dallas*, 433 S.W.3d 796 (Tex. App.—Dallas 2014, no pet.).

Advisory Bulletins

From August 1, 2015, to September 30, 2015, the OCCC did not issue any advisory bulletins.

Interpretation Requests

From August 1, 2015, to September 30, 2015, the OCCC did not receive any requests for official interpretations. There were no pending interpretation requests as of September 30, 2015.

Open Records Requests

From August 1, 2015, to September 30, 2015, the OCCC has processed and responded to 60 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

From August 1, 2015, to September 30, 2015, the OCCC did not receive any gifts.

Rule Item/Purpose	Proposal Date	Adoption Date
Rules for Credit Access Businesses - *Adopt Completed Rule Review* 7 TAC, Part 5, Chapter 83, Subchapter B To adopt the completed rule review of Chapter 83, Subchapter B under Tex. Gov't Code, §2001.039	Not applicable	Presented for Adoption 10/16/15
Chapter 342, Plain Language Contract Provisions - *Adopt Completed Rule Review* 7 TAC, Part 5, Chapter 90 To adopt the completed rule review of Chapter 90 under Tex. Gov't Code, §2001.039	Not applicable	Presented for Adoption 10/16/15
Plain Language Contracts - *Adopt Amendments and New Rule (from Rule Review)* 7 TAC, Part 5, Chapter 84, Motor Vehicle Installment Sales 7 TAC, Part 5, Chapter 86, Retail Creditors 7 TAC, Part 5, Chapter 90, Plain Language Contract Provisions (for Tex. Fin. Code, Chapter 342) To adopt amendments and a new rule based on the rule review of Chapter 90, as well as corresponding changes to Chapters 84 and 86; to revise plain language non-standard contract submission procedures relating to readability levels, typefaces, and font sizes; to update plain language contracts to conform with federal TILA-RESPA disclosures; to update references to state and federal law; and make technical corrections	08/21/15	Presented for Adoption 10/16/15
Rules for Credit Access Businesses - *Proposed Amendments, New Rules, and Repeals (from Rule Review)* 7 TAC, Part 5, Chapter 83, Subchapter B To conduct standard 4-year review under Tex. Gov't Code, §2001.039; to clarify definitions, license application requirements, and fees; to provide examination and recordkeeping requirements; and to provide guidance regarding separation between credit access businesses and third-party lenders, requirements for each extension of consumer credit, and criminal charges against consumers *Precomment draft distributed September 11, 2015*	10/16/15	

Rule Item/Purpose	Proposal Date	Adoption Date
Administration - *Proposed New* 7 TAC, Part 5, Chapter 82, §82.5 To clarify the notice requirements for a contested case hearing and allow the OCCC to informally dispose of contested cases by default *Precomment draft distributed July 20, 2015* *Stakeholders meeting held September 9, 2015*	10/16/15	
Rules Regarding Contested Case Procedure - *Proposed Amendments* 7 TAC, Part 1, Chapter 4 7 TAC, Part 5, Chapters 83, 84, 85, 88, and 89 To clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the OCCC *Precomment draft distributed September 3, 2015* *Stakeholders meeting held September 9, 2015*	10/16/15	
Rules for Credit Access Businesses - *Amendments (from Rule Review)* 7 TAC, Part 5, Chapter 83, Subchapter B To conduct standard 4-year review under Tex. Gov't Code, §2001.039; to provide rule amendments regarding consumer disclosures, reporting requirements, and license transfers	12/18/15	
Motor Vehicle Installment Sales - *Proposed Amendments* 7 TAC, Part 5, Chapter 84, §84.205 To provide more detailed documentary fee reasonableness and submission requirements	12/18/15	
Rules for Crafted Precious Metal Dealers - *Rule Review* 7 TAC, Part 5, Chapter 85, Subchapter B To conduct standard 4-year review under Tex. Gov't Code, §2001.039, to clarify definitions and make other technical corrections	12/18/15	

B. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 83, Subchapter B. The notice of the review was published in the *Texas Register* as required on September 11, 2015 (40 TexReg 6165). The commission received no comments in response to that notice. Aside from the proposed repeal of §83.4004 and §83.3012, the commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Rule changes within Chapter 83, Subchapter B are being separately presented for proposal.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 83, Subchapter B as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 83, Subchapter B continue to exist and that the rules are reproposed and readopted.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 83. Regulated Lenders and Credit Access Businesses
Subchapter B. Rules for Credit Access Businesses

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses, comprised of §§83.1001-83.1002, 83.2001-83.2003, 83.3001-83.3012, 83.4001-83.4007, 83.5001-83.5002, and 83.6001-83.6008, pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 83, Subchapter B was published in the *Texas Register* as required on September 11, 2015, (40 TexReg 6165). The commission received no comments in response to that notice. Aside from the proposed repeal of §83.4004 and §83.3012, the commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments, new rules, and repeals in Chapter 83, Subchapter B, as published elsewhere in this issue of the *Texas Register*.

Subject to the proposed changes to Chapter 83, Subchapter B, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 83, Subchapter B.

B. Office of Consumer Credit Commissioner

3. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions.

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 90. The notice of the review was published in the *Texas Register* as required on July 17, 2015 (40 TexReg 4707). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Rule changes within Chapter 90 are being separately presented for adoption.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 90 as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 90 continue to exist and that the rules are reproposed and readopted.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 90. Chapter 342, Plain Language Contract Provisions

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions, comprised of §§90.101 - 90.105, 90.201 - 90.204, 90.301 - 90.304, 90.401 - 90.404, 90.501 - 90.504, 90.601 - 90.604, and 90.701 - 90.706, pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 90 was published in the *Texas Register* as required on July 17, 2015, (40 TexReg 4707). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Those rule changes were published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5618). The commission is concurrently adopting the rule changes, including amendments and new rule, in Chapter 90, as published elsewhere in this issue of the *Texas Register*.

Subject to the adopted rule changes in Chapter 90, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 90.

B. Office of Consumer Credit Commissioner

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and New Rule in 7 TAC, Chapters 84, 86, and 90, Concerning Plain Language Contracts, Resulting from Rule Review

PURPOSE: The purpose of the amendments and new rule governing plain language contract provisions is to implement changes resulting from the commission's review of Chapter 90 under Texas Government Code, §2001.039, along with corresponding revisions to §86.101 and the plain language rules in Chapter 84, concerning Motor Vehicle Installment Sales. The amendments update plain language non-standard contract submission procedures relating to readability levels, typefaces, and font sizes. The rule changes also update plain language contracts to conform with federal TILA-RESPA integrated disclosures, including a new rule that was repealed and replaced. Additionally, the amendments provide updated references to state and federal law and make technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments and new rule in 7 TAC, Chapters 84, 86, and 90 with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments and new rule in 7 TAC, Chapters 84, 86, and 90.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 84. Motor Vehicle Installment Sales
Chapter 86. Retail Creditors
Chapter 90. Chapter 342, Plain Language Contract Provisions

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales; Chapter 86, concerning Retail Creditors, and Chapter 90, concerning Chapter 342, Plain Language Contract Provisions. The commission also adopts new 7 TAC §90.703, which was repealed and replaced.

The commission adopts the majority of the amendments to Chapter 84 (specifically, §§84.102, 84.801, 84.805, and 84.807) without changes to the proposed text as published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5608).

The commission adopts the amendments to §§84.802, 84.808, and 84.809 with changes to the proposed text as published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5608). These changes are being made in order to incorporate suggested comments, as discussed in the following paragraph.

The commission received three written comments on the proposal related to Chapter 84 from the following organizations: the American Financial Services Association, the Texas Automobile Dealers Association, and the Texas Independent Automobile Dealers Association. The first commenter offered a suggested model clause regarding collection contacts. The latter two commenters generally supported the amendments but requested clarification regarding the disclosure of the inspection fee as contained in §84.808 and §84.809. The commission's response to the three official comments is included after the purpose discussion regarding §84.808.

The commission adopts the amendments to Chapter 86 (specifically, §86.101) without changes to the proposed text as published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5616).

The commission received no written comments in response to the proposed amendments to §86.101.

The commission adopts the majority of the amendments to Chapter 90 (specifically, §§90.101-90.103, 90.105, 90.201-90.204, 90.301-90.302, 90.401-90.402, 90.404, 90.501-90.502, 90.504, 90.601-90.602, 90.604, 90.701, and new 90.703) without changes to the proposed text as published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5618).

The commission adopts the amendments to §§90.104, 90.303-90.304, 90.403, 90.503, and 90.603, with changes to the proposed text as published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5618). These changes are being made in order to make technical corrections and provide further clarification related to high-cost mortgage loans.

The commission received no written comments in response to the proposed amendments to Chapter 90.

In general, the purpose of the amendments and new rule governing plain language contract provisions is to implement changes resulting from the commission's review of Chapter 90 under Texas Government Code, §2001.039, along with corresponding revisions to §86.101 and the plain language rules in Chapter 84, concerning Motor Vehicle Installment Sales. The adopted amendments revise plain language non-standard contract submission procedures relating to readability levels, typefaces, and font sizes. The rule changes also update plain language contracts to conform with federal TILA-RESPA integrated disclosures, including a new rule that was repealed and replaced. Additionally, the amendments provide updated references to state and federal law and make technical corrections.

In Chapter 84, amendments have been made to §84.102, concerning Definitions, and to the following sections in Subchapter H, concerning Retail Installment Sales Contract Provisions: §§84.801, 84.802, 84.805, 84.807, 84.808, and 84.809. In Chapter 86, amendments are contained in §86.101, concerning Consumer Notifications.

The adopted changes affect the rules listed, as contained in the following subchapters of Chapter 90: Subchapter A, concerning General Provisions (§§90.101 - 90.105); Subchapter B, concerning Secured Consumer Installment Loans (Chapter 342, Subchapter E) (§§90.201 - 90.204); Subchapter C, concerning Signature Loans (Chapter 342, Subchapter F) (§§90.301 - 90.304); Subchapter D, concerning Second Lien Home Equity Loans (Chapter 342, Subchapter G) (§§90.401 - 90.404); Subchapter E, concerning Second Lien Purchase Money Loans (Chapter 342, Subchapter G) (§§90.501 - 90.504); Subchapter F, concerning Second Lien Home Improvement Contracts (Chapter 342, Subchapter G) (§§90.601 - 90.604); and Subchapter G, concerning Spanish Disclosures (§90.701 and §90.703).

The notice of intention to review 7 TAC Chapter 90 was published in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4707). The commission received no comments in response to that notice.

The majority of the adopted amendments center on changes made throughout several sections of rule text, as well as multiple figures, in order to provide consistency throughout the plain language rules. In the following paragraphs, most of the amendments will be outlined on an issue-by-issue basis. First, a basic statement of the rule issue will be provided. Second, the purpose and background of the changes will be described. And third, a list of the relevant provisions containing amendments related to that rule issue will be provided. Additionally, certain amendments isolated to one or a small number of rules will be discussed on a section-by-section basis, as appropriate.

In §84.102, the agency's acronym "OCCC," which stands for Office of Consumer Credit Commissioner, has been adopted as a new defined term in §84.102(12) to allow appropriate use throughout the chapter. Similarly, the term "OCCC" has been added in §90.101(6). In both rules, the remaining definitions have been renumbered accordingly.

In Chapter 90, each subchapter contains a purpose section that outlines the purpose of the particular plain language contract provisions provided in that subchapter. In

each respective purpose section, the term "commissioner" is being replaced with "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. The following rules include amendments to replace "commissioner" with "OCCC": §§84.801, 90.201, 90.301, 90.401, 90.501, and 90.601.

In Chapters 84 and 90, the agency's non-standard contract submission procedure has been revised in order to provide more efficiency and clarity. In §84.802(b) and §90.104(b), the certification of readability includes amendments adding a list of the typefaces and font sizes used in the contract, as well as the Flesch-Kincaid Grade Level score of the contract. To provide consistency, the list of easily readable typefaces and use of the typeface "Times New Roman" instead of "Times" has been revised in §90.103 to match the language in current §84.103. Since the proposal, technical corrections have been made to §84.802(b) and §90.104(b).

The filing requirements in §84.802(c) and §90.104(c) contain amendments requiring submission in both Microsoft Word and PDF format. Paper filings or other formats will not be accepted under the new submission procedure. New provisions contained in §84.802(c)(4) and §90.104(c)(4) set the maximum Flesch-Kincaid Grade Level scores for each type of contract submitted, which are as follows: grade 8 for Chapter 342, Subchapter F loans; grade 9 for Chapter 342, Subchapter E loans; grade 10 for Chapter 342, Subchapter G loans; and grade 11 for Chapter 348 retail installment contracts. These grade level requirements will help ensure that agreements are readable and accessible to consumers. The agency's experience indicates that contracts can be drafted to comply with these requirements.

Section 86.101 outlines the consumer notifications that must be provided on all Chapter 345, 347, and 348 contracts. Similarly, §90.105 specifies the consumer notices for Chapter 342 contracts. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. In order to provide consumers with the best contact information for the agency, this adoption amends several provisions and figures with the OCCC's updated contact information.

Other revisions have been made to the text of the consumer notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Previously, this notice has been referenced in the rules as the "Complaints and inquiries notice" or the "Consumer credit commissioner notice." To continue the use of the agency's acronym and provide consistency throughout the rules, this consumer notice has been relabeled as the "OCCC Notice." In addition, an amendment to §90.105(b)(1) requires the lender to include its phone number in the OCCC notice of each Chapter 342 loan contract. This is similar to the phone number requirement that already exists under §86.101 for contracts under Chapters 345, 347, and 348. The new provision adopted in §90.105(b)(6) specifies that the phone number may be included in a portion of the contract other than the OCCC notice, as long as the reader's attention is directed to the area of the document where the phone

number may be found. Adopted amendments to §86.101(a) and §90.105(b)(1) also require creditors and lenders to include a statement that consumers can contact the phone number for questions or complaints, and allow creditors to include one or more of the following: mailing address, fax number, website, or e-mail.

Changes to update references to the notice with the new label ("OCCC Notice") are contained in the following provisions: §§84.805(a), 84.807(19), 84.808(19), 86.101(a), 90.105 (rule title), 90.202(23), 90.203(b)(24), 90.302(22), 90.303(b)(21), 90.402(a)(21), 90.403(b)(21), 90.502(a)(21), 90.503(b)(21), 90.602(a)(2)(X), (4)(Y), and 90.603(c)(24), (e)(25). Certain provisions have been renumbered or relettered accordingly.

Adopted revisions to update the text of the OCCC Notice are contained in the following provisions: §§84.808(19), 86.101(a), 90.105(b), 90.203(b)(24), 90.303(b)(21), 90.403(b)(21), 90.503(b)(21), and 90.603(c)(24), (e)(25). Certain provisions have been renumbered or relettered accordingly.

The following figures contain the OCCC Notice as revised for this adoption: §§84.809(b), 90.204(a)(7)-(8), 90.304(a)(7)-(9), 90.404(a)(8), 90.504(a)(8), and 90.604(a)(14), (16). Certain figures have been renumbered or relettered accordingly.

The rules often cite other state and federal law, federal regulations, as well as refer to other sections within title 7 of the Texas Administrative Code. Since the last review of the plain language rules, state laws have been added or revised, certain federal regulations have been relocated, and the Consumer Financial Protection Bureau (CFPB) has been created and assumed the duties of other federal agencies. The amendments include revisions to update existing citations, provide more accurate or specific citations, remove obsolete citations, or provide new or revised language in accordance with other law.

Revisions to update legal citations and references are included in the following provisions: §§84.808(8)(E), (9)(C)-(D) (deleted), (37), (40)(B), (41)-(43), 84.809(c), 90.102, 90.303(b)(3), 90.402(c), 90.403(b)(1)(A), (b)(3)(B), (c)(1)(P), 90.404(a)(7), 90.502(c), 90.503(b)(1)(A), (b)(3)(B), (c)(1)(O), 90.504(a)(7), 90.602(b), 90.603(b)(12), (c)(1)(A), (c)(5)(B), (c)(26), (d)(20), (e)(1)(A), (e)(5)(B), (f)(1)(P), 90.604(a)(1), (a)(12), 90.701(a)-(b), and 90.703. Additionally, citations have been added to or updated in the following figures: §§90.404(a)(8)-(9), 90.504(a)(8)-(9), and 90.604(a)(14), (16)-(17). Certain provisions have been renumbered or relettered accordingly.

In §90.203(b)(5) regarding contracts under Subchapter E of Chapter 342, a clarifying change has been made to specify that the clause on interest on the matured amount applies to contracts using the scheduled installment earnings method of the sum of the periodic balances method.

The rate bracket amounts for loans governed by Subchapter E of Texas Finance Code, Chapter 342 are adjusted on an annual basis. In order to direct the reader to the most recent rate bracket amounts, the following sentence has been added to §90.203(b)(7): "The model finance charge earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter."

Conforming changes to update the rate bracket amounts for Subchapter E loans are contained in the following figures: §90.203(b)(7)(A), (b)(7)(C), and (b)(7)(E). The amounts included in the figures reflect those published in the March 3, 2015, issue of the *Texas Register*, and the amounts are applicable to loans made July 1, 2015 to June 30, 2016. In addition, the phrase "per year" has been added to figure §90.203(b)(7)(A) after "$100.00" in two instances to provide clarification.

In figure §90.204(a)(8), the after-maturity interest clause has been removed from the Subchapter E true daily earnings model contract because other provisions allow the lender to charge accrued interest.

Amendments are contained in §84.808(8) and the accompanying figures relating to inspection fees on a motor vehicle retail installment sales contract. Under a recent amendment to Texas Transportation Code, §548.509, the Texas Department of Motor Vehicles (TxDMV) or a county assessor-collector will collect the portion of the inspection fee paid to the state. This amendment is implemented by TxDMV's "Two Steps, One Sticker" program. Under this program, the proof of registration and proof of inspection have been combined into one sticker, effective March 1, 2015. In figures 7 TAC §84.808(8)(A) and §84.808(8)(B), an optional disclosure has been updated to remove a reference to the seller keeping $7 of the inspection fee, because this amount does not apply to all counties. In these same figures, the word "and/or" has been replaced with "and" in the section on government license and registration fees. New subparagraph (E) in §84.808(8) specifies how creditors should disclose the inspection fee in the itemization of amount financed. This provision explains that the creditor may use either of two methods. First, under clause (i), the creditor may include the entire inspection fee in the "Government vehicle inspection fees" section, with the separate amounts paid to the state and the inspection station documented immediately below this section. Second, under clause (ii), the creditor may include the portion remitted to the state in the "Government license and registration fees" section, and the portion remitted to the inspection station in the "Government vehicle inspection fees" section.

Two commenters requested that the accompanying figures include graphics showing how to separately disclose the portion of the inspection fee paid to the state and the portion paid to the inspection station. In response to these comments, the separate disclosures of these amounts have been added to figures 7 TAC §84.808(8)(A) and §84.808(8)(B), and conforming changes are contained in the model contract at figure 7 TAC §84.809(b).

One of these commenters expressed concern that "if a licensee/creditor includes an *inspection fee*, or a portion of the inspection fee, in the '*Government license and registration fees*' itemized charge line on the retail installment contract, even if it is the portion remitted to the state, and then itemizes the portion of the inspection fee that is maintained or remitted to the inspection station in the 'Government vehicle inspection fees section,' that the inclusion of any inspection fee in a license and registration fee line will be misinforming the consumer and may be, at best, confusing to both the buyer and to the seller."

The commission disagrees with this comment. The state collects its portion of the inspection fee at registration and in connection with registration, so it is not misleading to include this portion in the "registration fees" line. This portion of the fee is disclosed on the title application receipt, together with other fees collected at registration. The agency also understands that TxDMV has recognized the approach described in §84.808(8)(E)(ii) as a valid method of disclosing the inspection fee. In addition, both §84.808(8) of the rule text and the official commentary to Regulation Z, 12 C.F.R. part 226, supp. I, para. 18(c)2., part 1026, supp. I, para. 18(c)2., provide that creditors have "considerable flexibility" in disclosing amounts on the itemization of amount financed. Disclosing the state's portion of the fee in the "registration fees" line is consistent with this flexibility. Of course, creditors must ensure that all disclosed amounts are accurate and that the retail buyer is not charged twice for the same fee.

Additional amendments are included throughout §84.808 to provide technical corrections for motor vehicle retail installment contracts. Amendments are contained in figure 7 TAC §84.808(7), the Truth in Lending Act disclosure for motor vehicle retail installment sales contracts, to update references to earnings methods. Outdated provisions regarding documentary fees charged before August 1, 2010, have been deleted from §84.808(9)(C)-(E). Clarifying language has been added to §84.808(10) regarding how to disclose a downpayment. Since the proposed version, a change has been made to §84.808(10) to specify that the dollar amount of the downpayment must be included in the total of payments if the deferred downpayment amount is disclosed in the payment schedule. A statement providing a maximum insurance deductible for required property insurance has been added to figure 7 TAC §84.808(11). Conforming changes regarding insurance have been made to the model clause at §84.808(25). Clarifying changes have been made to §84.808(16)(A) to specify that the finance charge for the add-on method is calculated on an annual basis and is not the same as the annual percentage rate. Clarifying changes have been made to §84.808(16)(B)-(C) to specify that the contract rate disclosure should be provided in transactions where sales tax is deferred. A clarifying change has been made to §84.808(23) to specify that the clause on interest on the matured amount applies to contracts using the scheduled installment earnings method or the sum of the periodic balances method. A clarifying change has been made to §84.808(34)(E) to specify that the 10-day period to provide the notice of disposition applies when the creditor sells the vehicle at a public or private sale, in accordance with Texas Business and Commerce Code, §§9.610-9.612. Conforming changes are contained in the model contract at figure 7 TAC §84.809(b).

One commenter requested that the model contract for motor vehicle retail installment contracts include a statement about servicing and collection contacts. The Telephone Consumer Protection Act, 47 U.S.C. §227(b)(1)(A)-(B), generally prohibits creditors and other persons from calling a residential telephone line using an automatic telephone dialing system or an artificial or prerecorded message without the prior express consent of the called party. Based on this requirement, the commenter suggested adding the following model clause: "Servicing and Collection Contacts: I agree that you may try to contact me in writing, by e-mail, or using prerecorded/artificial voice

messages, text messages, and automatic telephone dialing systems, as the law allows. I also agree that you may try to contact me in these and other ways at any address or telephone number I provide you, even if the telephone number is a cell phone number or the contact results in a charge to me."

In response to this comment, new §84.808(37) includes the following model clause for servicing and collection contact: "You may try to contact me at any mailing address, e-mail address, or phone number I give you, as the law allows. You may try to contact me in writing (including mail, e-mail, and text messages) and by phone (including prerecorded or artificial voice messages and automatic telephone dialing systems)." A conforming change is contained in the model contract at figure 7 TAC §84.809(b). The commission disagrees with the commenter's suggestion to include the phrase "even if the telephone number is a cell phone number or the contact results in a charge to me." The Texas Debt Collection Act, Texas Finance Code, §392.302(d), prohibits debt collectors from "causing a person to incur a long distance telephone toll, telegram fee, or other charge by a medium of communication without first disclosing the name of the person making the communication." In addition, the Consumer Financial Protection Act, 15 U.S.C. §5531(a), and the Fair Debt Collection Practices Act, 15 U.S.C. §1692f, prohibit creditors and debt collectors from engaging in unfair practices to collect debts. Unfair practices may include "[c]ausing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees." 15 U.S.C. §1692f(5). If the model clause included the commenter's suggested phrase, this could be read as a waiver of the prohibition on unfair practices. For this reason, the model clause does not include the phrase "even if the telephone number is a cell phone number or the contact results in a charge to me." The rule does not prohibit creditors from contacting consumers' cell phones, but creditors must ensure that they do not engage in unfair, abusive, or illegal practices.

New §84.808(38) specifies that the creditor may charge a returned check fee up to $30, as authorized under Texas Business and Commerce Code, §3.506. New §84.808(41)(B) contains a model clause for commercial vehicle retail installment contracts, specifying that Texas Finance Code, Chapter 353 applies to the transaction. Additional technical changes and updates to citations are included throughout §84.808. Conforming changes are contained in the model contract at figure 7 TAC §84.809(b).

Amendments throughout §90.303 provide model provisions for Chapter 342, Subchapter F loan contracts using the scheduled installment earnings method and the true daily earnings method. The amendments implement Texas Finance Code, §342.260, enacted by the Texas Legislature in 2013. New §90.303(b)(2)(B) provides the promise to pay for contracts using the true daily earnings method. New §90.303(b)(5)(B) provides the model prepayment clause for contracts using the true daily earnings method, stating that the borrower can make any payment early. New §90.303(b)(6)(C)-(D) include the finance charge earnings and refund method provisions for contracts using the scheduled installment earnings and true daily earnings methods. These amendments include provisions on the order in which the lender will apply payments, in accordance with

Texas Finance Code, §342.260(d), as well as a statement that the acquisition charge will be collected on a straight-line basis in accordance with 7 TAC §83.606(i)(2). Since the proposed version, clarifying language has been added to §90.303(b)(4) to specify that the after maturity interest clause applies to contracts using the add-on method or the scheduled installment earnings method. In addition, since the proposed version, clarifying language has been added to §90.303(b)(7) to specify that the deferment clause applies to contracts using the add-on method or the scheduled installment earnings method.

Additional amendments throughout §90.303 specify that current provisions apply to contracts using the add-on method. A new model Subchapter F contract using the scheduled installment earnings method, and incorporating the model provisions, has been added as figure 7 TAC §90.304(a)(8). Since the proposed version, the model deferment clause has been added to the contract at figure 7 TAC §90.304(a)(8), and a technical correction has been made to the language on after maturity interest. A new model Subchapter F contract using the true daily earnings method, and incorporating the model provisions, has been added as figure 7 TAC §90.304(a)(9).

Amendments throughout Chapter 90 add the lender's Nationwide Mortgage Licensing System & Registry (NMLS) ID number to the model contracts for Subchapter G secondary mortgages. A recent amendment to Regulation Z, 12 C.F.R. §1026.36(g), requires promissory notes and security documents in mortgage transactions to include the following items: the lender's NMLS ID number, the name of the individual residential mortgage loan originator, and the originator's NMLS ID number. The official commentary to 12 C.F.R. §1026.36(g) explains that the lender may omit its NMLS ID if it does not have an NMLS ID and is not legally required to obtain one. The lender's NMLS ID, the originator's name, and the originator's NMLS ID have been added to the following model provisions that currently include the lender's contact information: §§90.403(b)(1)(A), (c)(1)(D), 90.503(b)(1)(A), (c)(1)(D), and 90.603(b)(2)(C), (c)(1)(A), (d)(2)(C), (e)(1)(A), (f)(1)(C). Conforming changes have been made to the model contracts in the figures accompanying the following provisions: §§90.404(a)(8)-(9), 90.504(a)(8)-(9), and 90.604(a)(13)-(17). New provisions have been added in the following sections to describe permissible changes allowed under Regulation Z, 12 C.F.R. §1026.36(g) and the official commentary to that section: §§90.404(a)(7), 90.504(a)(7), and 90.604(a)(12). Certain provisions have been renumbered or relettered accordingly.

Amendments throughout Chapter 90 have been made to ensure conformity with the TILA-RESPA integrated disclosures required under recent amendments to Regulation Z, 12 C.F.R. §§1026.19, 1026.37, and 1026.38. One of the integrated disclosures is the Closing Disclosure, a form that integrates and replaces the HUD-1 settlement statement required under the Real Estate Settlement Procedures Act and the final Truth in Lending Act disclosure. The Consumer Financial Protection Bureau (CFPB) has adopted model forms for the Closing Disclosure, which must be provided to the consumer at least three days before consummation of the loan. The new requirements will go into effect on October 3, 2015.

Four types of changes have been made to ensure conformity with the TILA-RESPA integrated disclosures. First, the box containing the final TILA disclosure has been removed from the Subchapter G model contracts, because this disclosure has been replaced with the CFPB's Closing Disclosure, which must be provided separately. Second, the payment schedule that is currently in the final TILA disclosure has been moved into the promise to pay. Third, the statement that there is no prepayment penalty, which is currently in the final TILA disclosure, has been moved into the provisions on the finance charge earnings and refund method. Fourth, in the model provisions for promissory notes for home improvement loans, the description of the property subject to the lien has been moved into the provision on security for payment. The following provisions and accompanying figures relating to the final TILA disclosure have been deleted: §§90.402(a)(2)-(3), 90.403(b)(2)-(3), 90.502(a)(2)-(3), 90.503(b)(1)-(3), 90.602(2)(B)-(C), (4)(B)-(C), and 90.603(c)(2)-(3), (e)(2)-(3). Certain provisions have been renumbered or relettered accordingly. Amendments and new figures are contained in the following sections to add the payment schedule to the promise to pay: §§90.403(b)(2)(C), 90.503(b)(2)(C), and 90.603(c)(4)(C), (e)(4)(C). Amendments to the following provisions and accompanying figures add a statement that there is no prepayment penalty: §§90.403(b)(6), 90.503(b)(6), and 90.603(c)(8), (e)(8). Amendments to the following provisions add the property description to the clause on security for payment: §90.603(c)(2) and (e)(2). Conforming changes have been made to the model contracts in the figures accompanying the following provisions: §§90.404(a)(8), 90.504(a)(8), and 90.604(a)(14), (16). New provisions are included in the following sections to specify that the model provisions are separate from the TILA-RESPA integrated disclosures: §§90.402(c), 90.502(c), and 90.603(b).

Amendments throughout Chapter 90 have been adopted to ensure conformity with the provision on late charges for high-cost mortgage loans in Regulation Z, 12 C.F.R. §1026.34(a)(8). Regulation Z limits the late charge for high-cost mortgage loans to 4% of the amount of the payment past due. This is less than the 5% limitation that generally applies to secondary mortgage loans under Texas Finance Code, §342.302(e). Amendments to the following provisions describe the late charge limitation for high-cost mortgages, in addition to the general limitation: §§90.403(b)(3), 90.503(b)(3), and 90.603(c)(5), (e)(5). While the proposed amendments stated that the late charge for high-cost mortgage loans is "4% of the scheduled payment," the adopted amendments specify that the late charge is "4% of the amount of the payment past due," to more closely conform to the requirement in Regulation Z, 12 C.F.R. §1026.34(a)(8)(i). Conforming changes have been made to the model contracts in the figures accompanying the following provisions: §§90.404(a)(8), 90.504(a)(8), and 90.604(a)(14), (16).

Since the proposed version, clarifying language has been added to the following sections to specify that the after maturity interest clause applies to contracts using the scheduled installment earnings method: §§90.403(b)(4), 90.503(b)(4), 90.603(b)(6), and 90.603(e)(6).

An amendment to §90.604(a)(1) provides an updated citation to the CFPB's model form for the right of rescission notice

required for mortgage loans under Regulation Z, 12 C.F.R. §1026.23(b).

Amendments related to Spanish disclosures are contained in §90.701, to provide clarity regarding which forms must be provided, and to conform to revised §90.703. Adopted new §90.703 replaces the former version of this section, which has been repealed. Subsection (a) provides that for a Chapter 342 loan negotiated in Spanish, the licensee must provide a Spanish disclosure, and that the disclosure must be completed with amounts that are accurate within the tolerances described by Regulation Z, 12 C.F.R. Part 1026. Paragraph (1) provides that for a Subchapter E loan, the lender may provide either a Spanish translation of the loan contract or the "Notificación de Crédito Al Consumidor (Préstamo a Plazos)" (a figure that has been renumbered without changes from former §90.703(a)(2)). Paragraph (2) provides that for a Subchapter F loan, the lender may provide either a Spanish translation of the loan contract or both of the following: the "Notificación de Crédito Al Consumidor (Préstamo)" (a figure that has been renumbered without changes from former §90.703(a)(3)(A)) and the "Conceptos Financieros" (a figure that has been renumbered without changes from former §90.703(a)(3)(B)). Paragraph (3) provides that for a Subchapter G secondary mortgage loan, the lender must provide copies of the CFPB's Spanish translations of both the TILA-RESPA integrated disclosures. This paragraph replaces the former provision and accompanying figure located at §90.703(a)(4), the "Notificación de Crédito Al Consumidor (Préstamo de Segunda Hipoteca)."

Subsection (b) provides that for a Chapter 348 transaction, the creditor may provide a Spanish translation of the retail installment sales contract or the "Notificación de Crédito Al Consumidor (Contrato de Menudeo a Plazos para Vehículo Automotor)" (a figure that has been renumbered without changes from former §90.703(a)(5)). Subsection (c) provides that a licensee may delete inapplicable provisions of the model disclosures, except for the TILA-RESPA integrated disclosures required under subsection (a)(3). In addition, the two Subchapter E loan contracts and the three Subchapter F loan contracts include an updated statement (in both English and Spanish) acknowledging that the borrower received a summary of the contract in Spanish. This statement is included in the following figures: §90.204(a)(7)-(8) and §90.304(a)(7)-(9).

The provisions relating to Spanish disclosures are adopted under Texas Finance Code, §341.502(a-1), which provides that if the terms of a Chapter 342 loan are negotiated in Spanish, "a copy of a summary of those terms and other pertinent information shall be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under 12 C.F.R. Section 226.18." The provisions are intended to ensure that the Spanish disclosures are in the same form as the disclosures required under Regulation Z, which has been recodified from 12 C.F.R. Part 226 to 12 C.F.R. Part 1026.

The remaining amendments adopted throughout the rules relate to improvements in consistency, clarity, grammar, punctuation, and formatting. Any rules not included in this adoption will be maintained in their current form.

All new non-standard contracts submitted on or after the amendments' effective date will have to be submitted under the amended submission requirements, and will have to contain clauses that comply with the amended rules (including the updated OCCC notification). However, the agency will allow a delayed implementation period for certain licensees. For those licensees utilizing the model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until December 31, 2016, to deplete supplies of existing forms during a 13-month transition period after the anticipated effective date of the rules. If licensees submitted compliant non-standard contracts under the prior rules, the agency will permit them to continue using these contracts until December 31, 2016. If licensees intend to continue using non-standard contracts, they must ensure that they submit an updated non-standard contract in compliance with the amended requirements by December 31, 2016. The agency encourages licensees to submit the updated contracts earlier. Starting January 1, 2017, licensees may no longer use contracts submitted under the prior rules. At any time, if the agency determines that a non-standard contract submitted under prior rules contains a substantive violation (e.g., an excessive late charge), it may order the licensee to resubmit the contract. If the contract is resubmitted on or after the amendments' effective date, it will have to comply with the amended requirements.

For those licensees performing mortgage transactions subject to the federal TILA-RESPA integrated disclosures, compliance with federal law should be completed in accordance with any guidance or deadlines issued by the CFPB.

The amendments and new rule are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code.

All of the plain language amendments and new rule are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are adopted under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The regulated lender amendments and new rule are adopted under Texas Finance Code, §342.551 which grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The amendments concerning motor vehicle contracts are adopted under Texas Finance Code, §348.513 which grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter. Additionally, §348.513 also authorizes the commission to modify the standard form required by §348.0091 to conform to the provisions of the Truth in

Lending Act or a regulation issued under authority of that Act.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapters 342, 345, 347, and 348.

Chapter 84. Motor Vehicle Installment Sales

Subchapter A. General Provisions

§84.102. Definitions.

The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise:

(1) - (11) (No change.)

(12) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(13) [~~(12)~~] Ordinary vehicle--A motor vehicle that is used primarily for personal, family, or household use.

(14) [~~(13)~~] Principal balance subject to finance charge--The principal balance used in the determination or calculation of the time price differential charge.

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

(15) [~~(14)~~] Regular payment contract--Any contract that is not an irregular payment contract.

(16) [~~(15)~~] Scheduled installment earnings method--The scheduled installment earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this paragraph, the creditor may also earn a $25 acquisition fee so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than $1.00. The scheduled installment earnings method may be used with either an irregular payment contract or a regular payment contract. The computation of finance charges must comply with the U.S. Rule as defined in paragraph (22) [~~(21)~~] of this section.

(17) [~~(16)~~] Sales tax advanced transaction--A retail installment sales transaction in which a retail seller remits the entire amount of the sales tax to the appropriate taxing authority within 20 working days of the sale.

(18) [~~(17)~~] Sales tax deferred transaction--A retail installment sales transaction in which a retail seller or a qualified related finance company collects sales tax from the retail buyer and remits the

tax under Texas Tax Code, §152.047 to the Texas Comptroller of Public Accounts.

(19) [~~(18)~~] Seller--The seller of the motor vehicle. This term is synonymous with the term "retail seller."

(20) [~~(19)~~] Sum of the periodic balances method (Rule of 78s).

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

(21) [~~(20)~~] True daily earnings method--The true daily earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual unpaid principal balance is outstanding. Payments are credited as of the time received; therefore, payments received prior to the scheduled installment date result in a greater reduction of the unpaid principal balance than the scheduled reduction, and payments received after the scheduled installment date result in less than the scheduled reduction of the unpaid principal balance. The computation of finance charges must comply with the U.S. Rule as defined in paragraph (22) [~~(21)~~] of this section.

(22) [~~(21)~~] U.S. Rule--The ruling of the United States Supreme Court in Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839) that, in partial payments on a debt, each payment is applied first to finance charge and any remainder reduces the principal. Under this rule, accrued but unpaid finance charge cannot be added to the principal and interest cannot be compounded. The U.S. Rule is described in Regulation Z, 12 C.F.R. Part 226, Appendix J, and 12 C.F.R. Part 1026, Appendix J.

(23) [~~(22)~~] Vehicle--A motor vehicle as defined by Texas Finance Code, §348.001(4).

Subchapter H. Retail Installment Sales Contract Provisions

§84.801. Purpose.

(a) Purpose.

(1) Model provisions applicable to ordinary vehicles. The purpose of this subchapter is to provide model provisions and a model plain language contract in English for Texas Finance Code, Chapter 348 motor vehicle installment sales contract provisions for ordinary vehicles. The establishment of model provisions for these transactions will encourage the use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a seller is not mandatory. Except for retail installment sales contracts involving commercial vehicles, the seller, however, may not use a contract other than a model contract unless the seller has submitted the contract to the OCCC [~~commissioner~~] in compliance with §84.802 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [~~commissioner~~] will issue an order disapproving the contract if the OCCC [~~commissioner~~] determines the contract does not comply with this section or rules adopted under this section. A seller may not claim the OCCC's [~~commissioner's~~] failure to disapprove a contract constitutes approval.

(2) (No change.)

(b) (No change.)

§84.802. Non-Standard Contract Filing Procedures.

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is written in plain language. [~~Non-standard contracts submitted for review may gain certain protections under the provisions of Texas Finance Code, §341.502.~~]

(b) Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the creditor or the entity submitting the form on behalf of the creditor. The certification must state that the contract is written in plain language and [~~(i.e.,~~] that the contract can be easily understood by the average consumer[~~)~~]. The certification must state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted in accordance with the following requirements:

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a PDF format so that the contract may be visually reviewed in its entirety.

(3) No other formats permitted. The OCCC will not accept paper filings or any other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level score for a Chapter 348 contact filing is grade 11.

[~~on paper that is suitable for permanent record storage and imaging. Handwritten forms or handwritten corrections will not be accepted. In addition to the paper submission, the licensee must also submit the contract filings in an electronic version. The electronic version must be submitted in a Corel WordPerfect (.wpd), MS Word (.doc), or a text (.txt) format.~~]

(d) Contact person. One person must be designated as the contact person for each filing submitted. Each submission must provide the name, address, phone number, and if available, the email address and fax number of the contact person for that filing. If the contracts are submitted by anyone other than the company itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

(e) Commercial vehicle. Pursuant to Texas Finance Code, §341.502(a), a motor vehicle retail installment sales contract involving a commercial vehicle does not have to be submitted in accordance with this section.

§84.805. Other Disclosures Required by Commission Rule.

(a) The OCCC [~~consumer credit commissioner~~] notice required by §86.101 of this title (relating to Consumer Notifications) must be disclosed.

(b) (No change.)

§84.807. Contract Provisions.

A Texas Finance Code, Chapter 348 motor vehicle installment sales contract may include the following contract provisions to the extent not prohibited by law or regulation. If the seller desires to assess certain charges or exercise certain rights under one of the following provisions, except provisions relating to default, repossessions, acceleration, and assignment of the contract, the seller must include the provision in the contract. A seller may delete inapplicable provisions. A seller who does not desire to apply a provision is not required to include it in the contract. For example, the seller may omit the balloon payment provisions if there is no balloon payment. A seller may also exclude non-relevant portions of a model clause. For example, a seller who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Texas Finance Code, Chapter 348 motor vehicle installment sales contract may contain the following provisions:

(1) - (18) (No change.)

(19) OCCC [~~Consumer credit commissioner~~] notice;

(20) - (45) (No change.)

§84.808. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) - (6) (No change.)

(7) Truth in Lending Act disclosure. The model clause regarding Truth in Lending Act disclosure reads:

Figure: 7 TAC §84.808(7) *{See attached amendments.}*

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:

Figure: 7 TAC §84.808(8)(A) *{See attached amendments.}*

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:

Figure: 7 TAC §84.808(8)(B) *{See attached amendments.}*

(C) - (D) (No change.)

(E) Inspection fee. Under Texas Transportation Code, §548.509, at the time of registration, the Texas Department of Motor Vehicles or a county assessor-collector will collect a portion of the inspection fee to be remitted to the state. The creditor may disclose the inspection fee by either of the following methods:

(i) including the entire inspection fee in the "Government vehicle inspection fees" section, with the amounts paid to the state and the inspector documented immediately below this section with the following language: "to state $_____" and "to inspection station $_____."; or

(ii) including the portion remitted to the state in the "Government license and registration fees" section, and the portion remitted to the inspection station in the "Government vehicle inspection fees" section; or

(9) Documentary fee.

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

[~~(C) Until August 31, 2010, if the dealer does not charge an amount in excess of $50, the following notice satisfies the requirements of Texas Finance Code, §348.006 if printed in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The model clause is contained in the Itemization of Amount Financed. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."~~]

[~~(D) Until August 31, 2010, if the dealer does not charge an amount in excess of $50, the following notices are sufficient Spanish translations of the documentary fee disclosure required by Texas Finance Code, §348.006. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read:~~]

[~~(i) "Un honorario de documentación no es un honorario ofícial. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comprador como gastos de manejo de documentos y para realizar servicios relacionados con el cierre de una venta. Un~~

~~honorario de documentación no puede exceder $50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notifícación es requerida por la ley."; or~~]

[~~(ii) "Un cargo documental no es un cargo ofícial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de $50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notifícación se exige por ley."~~]

[~~(E) Effective September 1, 2010, the documentary fee disclosures contained in paragraphs (9)(C) and (D) of this section are null and void.~~]

(10) Deferred downpayments. The creditor has considerable flexibility in disclosing the deferred downpayments. The model provision discloses the deferred downpayments by placing the information, the due date and dollar amount of the deferred downpayments, in several boxes. If a creditor uses this model provision, the creditor would enter the due date and dollar amount of each deferred downpayment in the appropriate boxes. As an alternative to this model provision, a creditor may disclose the deferred downpayments in the Payment Schedule of the Amount Financed in the federal disclosure box. If a creditor elects this option, the due date and the dollar amount of the deferred downpayment must be shown. If the total amount of the deferred downpayment is not satisfied by the date of the second regularly scheduled installment, the deferred downpayment must be included in the Payment Schedule. As another alternative, the creditor may disclose the deferred downpayment amount in the Payment Schedule. <u>If the deferred downpayment amount is disclosed in the Payment Schedule, then the dollar amount of the deferred downpayment must be included in the Total of Payments.</u> The model clause regarding deferred downpayments reads:

Figure: 7 TAC §84.808(10) (No change.)

(11) Required physical damage insurance. The creditor may choose to omit the statement of the retail buyer's right to obtain substitute coverage from another source. The model clause regarding required physical damage insurance reads:

Figure: 7 TAC §84.808(11) *{See attached amendments.}*

(12) - (15) (No change.)

(16) Finance charge earnings methods:

(A) Regular transaction using sum of the periodic balances method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance:

(I) (No change.)

(II) "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full

term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00 per year. This rate is not the same as the Annual Percentage Rate."

(ii) Deferred sales tax. The model clause regarding deferred sales tax reads: "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00 per year. This rate is not the same as the Annual Percentage Rate."

(B) True daily earnings method.

(i) (No change.)

(ii) Deferred sales tax: If [~~a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the~~] sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(C) Scheduled installment earnings method.

(i) (No change.)

(ii) Deferred sales tax. If [~~a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the~~] sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges."

(17) - (18) (No change.)

(19) OCCC [~~Consumer Credit Commissioner~~] notice. The following notice satisfies the requirements of Texas Finance Code, §14.104 and §86.101 of this title (relating to Consumer Notifications). The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice required by Texas Finance Code, §14.104 is amended to direct the reader's attention to the area of the contract where the telephone number may be found. The OCCC [~~consumer credit commissioner~~] notice reads: "For questions or complaints about this contract, contact (insert name of creditor) at (insert creditor's phone number and, at creditor's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws

that apply to this contract. If a complaint or question cannot be resolved by contacting the creditor, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." [~~"To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; www.occc.state.tx.us, and can be contacted relative to any inquiries or complaints."~~]

(20) - (22) (No change.)

(23) Interest on matured amount. For contracts using the scheduled installment earnings method or the sum of the periodic balances method, the [~~The~~] model provision for interest on any matured amount at any rate permitted by law reads: "If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due." In this provision, the maximum rate allowed by law refers to the rate found in Texas Finance Code, Chapter 303.

(24) (No change.)

(25) Agreement to keep motor vehicle insured. The model clause regarding agreement to keep the motor vehicle insured reads: "I agree to have physical damage insurance covering loss or damage to the motor vehicle for the term of this contract. The insurance must cover your interest in the vehicle. The insurer must be authorized to do business in Texas." The creditor may include one or both of the following optional provisions [~~provision~~]:

(A) "The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage."

(B) "The maximum deductible is $_____."

(26) - (33) (No change.)

(34) Default rights and repossession provisions. This paragraph details agreements allowing acceleration of the buyer's obligation upon the buyer's default or upon the creditor's determination of insecurity as permitted by Texas Business and Commerce Code, §1.309. The following provisions are samples of model clauses regarding some of the default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

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

(E) Disposition of motor vehicle. The model clause regarding disposition of the motor vehicle reads: "If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. If you sell the motor vehicle in a public or private sale, you [~~You~~] will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed

expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title."

(F) - (G) (No change.)

(35) - (36) (No change.)

(37) Servicing and collection contact. The Telephone Consumer Protection Act, 47 U.S.C. §227(b)(1)(A)-(B), generally prohibits creditors and other persons from calling a residential telephone line using an automatic telephone dialing system or an artificial or prerecorded message without the prior express consent of the called party. The model clause for servicing and collection contact reads: "You may try to contact me at any mailing address, e-mail address, or phone number I give you, as the law allows. You may try to contact me in writing (including mail, e-mail, and text messages) and by phone (including prerecorded or artificial voice messages and automatic telephone dialing systems)."

(38) Dishonored check fee. Under Texas Business and Commerce Code, §3.506, the holder of a payment device (including a check) may charge a processing fee up to $30 if the payment device is dishonored. The model clause for a dishonored check fee reads: "I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately."

(39) [~~(37)~~] Integration and severability.

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

(40) [~~(38)~~] No waiver and limitations on creditor's rights and usury savings.

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

(41) [~~(39)~~] Applicable law.

(A) General model clause. A model clause to establish the law that will apply to the contract reads: "Federal law and Texas law apply to this contract."

(B) Additional clause for commercial vehicles. Under Texas Finance Code, §353.009(b), if a commercial vehicle retail installment sales contract does not state that Texas Finance Code, Chapter 353 applies, then the contract is subject to Texas Finance Code, Chapter 348. In a commercial vehicle retail installment sales contract, the creditor may include the following clause to specify that Chapter 353 applies: "Chapter 353 of the Texas Finance Code applies to this contract."

(42) [~~(40)~~] Warranty disclaimer. The disclaimer of express and implied warranties should be set out from the surrounding text so that the disclosure is conspicuous. A disclaimer of express and implied warranties, such as the following, is permitted by Texas Business and Commerce Code, §2.316 [~~Article 2, Subchapter C~~], and reads: "Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or

implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide."

(43) [~~(41)~~] Preservation of consumer's claims and defenses notice. This notice only applies if the motor vehicle financed in the contract was purchased for personal, family, or household use. The preservation of consumer's claims and defenses notice disclosure should be set out from the surrounding text so that the disclosure is in all capitals, boldfaced and in at least 10-point type. The preservation of consumer's claims and defenses notice [~~disclosure~~], as required by the Federal Trade Commission's Holder in Due Course Rule [~~preservation of consumer's claims and defenses notice~~], 16 C.F.R. §433.2 [~~§§433.1 *et seq.*~~], reads: "NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use."

(44) [~~(42)~~] Used car buyer's guide. The used car buyer's guide disclosure should be set out from the surrounding text so that the disclosure is conspicuous. The disclosure should be prefaced by the words "In this box only, the word "you" refers to the Buyer." The used car buyer's guide disclosure, as required by the Federal Trade Commission's Used Car Rule [~~Regulation~~], 16 C.F.R. Part 455 [~~§§455.1 *et seq.*~~], reads:

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

(45) [~~(43)~~] Negotiability and assignment. The disclosure of the negotiability of the contract should be placed on the front side of the contract and may read:

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

(C) "A customer may obtain their own financing. The finance charge may be negotiable. The dealership may assign the retail installment contract. There is no duty to disclose the terms for the sale of this contract (for example [~~e.g.~~], price paid to retail seller to purchase retail installment contract)."

§84.809. Permissible Changes.

(a) (No change.)

(b) A sample model motor vehicle retail installment sales contract is presented in the following example.

Figure: 7 TAC §84.809(b) *{See attached amendments.}*

(c) A contract may include other provisions that are not prohibited by law, but the contract including the other provisions must be submitted to the OCCC under §84.802 of this title (relating to Non-Standard Contract Filing Procedures) [~~Office of Consumer Credit Commissioner for readability review before the creditor includes them~~].

(d) (No change.)

Chapter 86. Retail Creditors

§86.101. Consumer Notifications.

(a) OCCC notice. When a written contract or agreement is made under the authority of Texas Finance Code, Chapter 345, 347, or 348, the contract must contain as a separate section or otherwise conspicuously set out from the surrounding written material, the following statement: "For questions or complaints about this contract, contact (insert name of creditor) at (insert creditor's phone number and, at creditor's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to this contract. If a complaint or question cannot be resolved by contacting the creditor, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." [~~"To contact (insert authorized business name of retail seller, creditor, or holder as appropriate) about this account call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; (800) 538-1579; www.occc.state.tx.us; and can be contacted relative to any inquiries or complaints."~~]

(b) Creditor information. The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice in subsection (a) of this section is amended to direct the reader's attention to the area of the contract where the telephone number may be found.

Chapter 90. Chapter 342, Plain Language Contract Provisions

Subchapter A. General Provisions

§90.101. Definitions.

The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise:

(1) - (5) (No change.)

(6) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(7) [~~(6)~~] Prepayment--Any whole or partial payment of an amount equal to one or more full installments made by the borrower prior to the date the payment is due.

(8) [~~(7)~~] Security--An interest in personal property which serves to secure the payment or performance of an obligation. See "Collateral."

§90.102. Relationship with Federal Law.

In the event of an inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency. The remainder of the contract will remain in full force and effect. Use of the Consumer

Financial Protection Bureau's [~~Federal Reserve Board's~~] promulgated model forms complies with the Truth in Lending requirements of this chapter.

§90.103. Format.

(a) Plain language contracts must be printed in an easily readable font and type size pursuant to Texas Finance Code, §341.502(a). If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Arial, Calibri, Caslon, Century Schoolbook, Garamond, Helvetica, Scala, and Times New Roman [~~Times, Scala, Caslon, Century Schoolbook, Helvetica, Arial, and Garamond~~].

(c) Titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or to provide emphasis.

(d) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times New Roman typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

§90.104. Non-Standard Contract Filing Procedures.

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is written in plain language. [~~Non-standard contracts submitted for review may gain certain protections under the provisions of Texas Finance Code, §341.502.~~]

(b) Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the licensee or the entity submitting the form on behalf of the licensee. The certification must state that the contract is written in plain language and [~~(i.e.,~~] that the contract can be easily understood by the average consumer[~~)~~]. The certification must also state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted in accordance with the following requirements:

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be

based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a PDF format so that the contract may be visually reviewed in its entirety.

(3) No other formats permitted. The OCCC will not accept paper filings or any other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level scores for Chapter 342 contract filings are:

(A) grade 8 for Subchapter F (signature loans);

(B) grade 9 for Subchapter E (secured installment loans);

(C) grade 10 for Subchapter G, computed by scoring the note and security document in one continuous Microsoft Word document (home equity loans, second lien purchase money loans, and second lien home improvement contracts).

[~~on paper that is suitable for permanent record storage and imaging. Handwritten forms or handwritten corrections will not be accepted. In addition to the paper submission, the licensee must also submit the contract filings in an electronic version. The electronic version must be submitted in a Corel WordPerfect (.wpd), MS Word (.doc), or a text (.txt) format.~~]

(d) Contact person. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, of the contact person for that filing. If the contracts are submitted by anyone other than the licensee itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

§90.105. OCCC [~~Complaints and Inquiries~~] Notice.

(a) (No change.)

(b) Required notice.

(1) The following notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov."
[~~"The (your name) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S.~~

~~Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: consumer.complaints@occc.state.tx.us. Website: www.occc.state.tx.us."~~]

(2) - (4) (No change.)

(5) The notice described by paragraph (1) must be included [~~In addition to the notice required to be included on each privacy notice, a notice is also required~~] on each loan contract of a licensee pursuant to Texas Finance Code, §14.104.

[~~(A) The text of the notice required by paragraph (1) of this subsection is acceptable to meet this requirement; or~~]

[~~(B) A licensee may use the following notice: "This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us."~~]

(6) The lender's phone number may be printed in conjunction with the lender's name and address elsewhere on the privacy notice or loan contract if the notice described by paragraph (1) is amended to direct the reader's attention to the area of the document where the phone number may be found.

Subchapter B. Secured Consumer Installment Loans (Chapter 342, Subchapter E)

§90.201. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide [~~a~~] model plain language contracts [~~contract~~] in English for Texas Finance Code, Chapter 342, Subchapter E transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. The use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [~~commissioner~~] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [~~commissioner~~] will issue an order disapproving the contract if the OCCC [~~commissioner~~] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [~~commissioner's~~] failure to disapprove a contract constitutes an approval.

(b) (No change.)

§90.202. Contract Provisions.

A Chapter 342, Subchapter E contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A licensee who does not desire to apply a

provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter E contract may contain the following provisions:

(1) - (22) (No change.)

(23) OCCC [~~Complaints and inquiries~~] notice.

§90.203. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter E secured consumer installment loan contract.

(1) - (4) (No change.)

(5) After maturity interest. The after maturity interest model clause for contracts using the scheduled installment earnings method reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(6) (No change.)

(7) Finance charge earnings and refund method. The model finance charge earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter. The model finance charge earnings and refund method clause options read:

(A) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(a):

Figure: 7 TAC §90.203(b)(7)(A) *{See attached amendments.}*

(B) (No change.)

(C) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(e):

Figure: 7 TAC §90.203(b)(7)(C) *{See attached amendments.}*

(D) (No change.)

(E) For contracts using the true daily earnings method, Texas Finance Code, §342.201(e):

Figure: 7 TAC §90.203(b)(7)(E) *{See attached amendments.}*

(8) - (23) (No change.)

(24) OCCC [~~Complaints and inquiries~~] notice. Under §90.105 of this title (relating to OCCC [~~Complaints and inquiries~~] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a

state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." [~~"This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579."~~]

(25) - (26) (No change.)

§90.204. Permissible Changes.

(a) A licensee may consider making the following types of changes to the secured consumer installment loans plain language model clauses:

(1) - (6) (No change.)

(7) A sample model contract using the scheduled installment earnings method is presented in the following example.

Figure: 7 TAC §90.204(a)(7) *{See attached amendments.}*

(8) A sample model contract using the true daily earnings method is presented in the following example.

Figure: 7 TAC §90.204(a)(8) *{See attached amendments.}*

(9) (No change.)

(b) (No change.)

Subchapter C. Signature Loans (Chapter 342, Subchapter F)

§90.301. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide [~~a~~] model plain language contracts [~~contract~~] in English for Texas Finance Code, Chapter 342, Subchapter F transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. The use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [~~commissioner~~] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [~~commissioner~~] will issue an order disapproving the contract if the OCCC [~~commissioner~~] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [~~commissioner's~~] failure to disapprove a contract constitutes an approval.

(b) (No change.)

§90.302. Contract Provisions.

A Chapter 342, Subchapter F contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A

licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A Chapter 342, Subchapter F contract may contain the following provisions:

(1) - (21) (No change.)

(22) OCCC [~~Complaints and inquiries~~] notice.

(23) - (24) (No change.)

§90.303. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter F signature loan contract.

(1) (No change.)

(2) Promise to pay. The model clause for the borrower's promise to pay reads:

(A) For contracts using the add-on method or the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the unpaid principal balance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(3) Late charge. The late charge model provisions in this paragraph may be used for loans that are regular transactions under Texas Finance Code, §342.001(2). At the licensee's option, the late charge clause may be made applicable only to loans with more than one installment. As other options, a licensee may include one of the model late charge clause options, as set out in subparagraphs (A) and (B) of this paragraph, in both single and multiple installment loans, so long as the licensee does not collect a default charge on a single payment loan or omit the late charge clause for loans with a single repayment. The licensee may use one of the following late charge model provisions:

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

(4) After maturity interest. The after maturity interest model clause for contracts using the add-on method or the scheduled installment earnings method reads: "If I don't pay all I owe by the date the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due."

(5) Prepayment clause. The model prepayment clause reads:

(A) For contracts using the add-on method or the scheduled installment earnings method: "I can make a whole payment early."

(B) For contracts using the true daily earnings method: "I can make any payment early."

(6) Finance charge earnings and refund method.

(A) Add-on method. For contracts using the add-on method, the [~~The~~] model finance charge earnings and refund method clause reads: "The acquisition charge on this loan will not be refunded if I pay off early. If I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than $1.00."

(B) Add-on method for loans of $30 or less. At the licensee's option, the licensee may include the following model finance charge and refund method language if the licensee makes loans of $30 or less using the add-on method: "The acquisition charge on this loan will not be refunded if I pay off early. If this loan is for more than $30 and I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than $1.00."

(C) Scheduled installment earnings method. For contracts using the scheduled installment earnings method, the model finance charge earnings and refund method clause reads: "The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, I may save part of the interest charge. However, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded. You don't have to refund or credit any amount less than $1.00."

(D) True daily earnings method. For contracts using the true daily earnings method, the model finance charge earnings and refund method clause reads: "The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2)

late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded."

(7) Deferment clause. The deferment model clause for contracts using the add-on method or the scheduled installment earnings method reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(8) - (20) (No change.)

(21) OCCC [~~Complaints and inquiries~~] notice. Under §90.105 of this title (relating to OCCC [~~Complaints and Inquiries~~] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov."
[~~"This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579."~~]

(22) (No change.)

§90.304. Permissible Changes.

(a) A licensee may consider making the following types of changes to the signature loans plain language model clauses:

(1) - (6) (No change.)

(7) A sample model contract using the add-on method is presented in the following example.

Figure: 7 TAC §90.304(a)(7) *{See attached amendments.}*

(8) A sample model contract using the scheduled installment earnings method is presented in the following example.
Figure: 7 TAC §90.304(a)(8) *{New figure.}*

(9) A sample model contract using the true daily earnings method is presented in the following example.

Figure: 7 TAC §90.304(a)(9) *{New figure.}*

(10) [~~8~~] A sample model security agreement is presented in the following example.

Figure: 7 TAC §90.304(a)(10) *{Renumbered from 7 TAC §90.304(a)(8) with no changes.}*

(b) (No change.)

Subchapter D. Second Lien Home Equity Loans (Chapter 342, Subchapter G)

§90.401. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter G (secondary mortgage loans with an effective rate of greater than 10%) home equity loan transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [~~commissioner~~] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [~~commissioner~~] will issue an order disapproving the contract if the OCCC [~~commissioner~~] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [~~commissioner's~~] failure to disapprove a contract constitutes an approval.

(b) (No change.)

§90.402. Contract Provisions.

(a) A Chapter 342, Subchapter G home equity loan contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the fee for dishonored check clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G second lien home equity loan contract may contain the following provisions:

(1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the borrower and the lender;

[~~(2) A Truth in Lending Act disclosure box;~~]

[~~(3) An itemization of amount financed box;~~]

(2) [~~(4)~~] A promise to pay;

(3) [~~(5)~~] A late charge provision;

(4) [~~(6)~~] A provision for after maturity interest;

(5) [~~(7)~~] A prepayment clause;

(6) [~~(8)~~] A provision specifying the finance charge earnings and refund method;

(7) [~~(9)~~] A provision contracting for a fee for a dishonored check;

(8) [~~(10)~~] A provision specifying the conditions causing default;

(9) [~~(11)~~] A provision regarding property insurance;

(10) [~~(12)~~] A credit insurance disclosure box;

(11) [~~(13)~~] A provision regarding the mailing of notices to the borrower;

(12) [~~(14)~~] A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(13) [~~(15)~~] A provision expressing no waiver of the lender's rights;

(14) [~~(16)~~] A collection expenses clause;

(15) [~~(17)~~] A provision providing for joint liability;

(16) [~~(18)~~] A usury savings clause;

(17) [~~(19)~~] A savings clause stating that if any part of the loan agreement is invalid, the rest remains valid;

(18) [~~(20)~~] An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;

(19) [~~(21)~~] A provision stating that the homestead described in the loan agreement is subject to the lien of the security document;

(20) [~~(22)~~] A provision specifying that federal law and Texas law apply to the contract;

(21) OCCC [~~(23) Complaints and inquiries~~] notice;

(22) [~~(24)~~] A provision describing the collateral; and

(23) [~~(25)~~] Signature blocks.

(b) (No change.)

(c) The provisions described in this section are separate from the TILA-RESPA integrated disclosures required under Regulation Z, 12 C.F.R. §§1026.19, 1026.37 and 1026.38.

§90.403. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter G second lien home equity loan contract.

(1) Identification.

(A) The model identification clause lists the account or contract number, the name and address of the lender, the date of the note, and the name and address of the borrower. It also lists the following items that must be included on the promissory note under Regulation Z, 12 C.F.R. §1026.36(g):

(i) the lender's Nationwide Mortgage Licensing System and Registry identification number (labeled "Creditor/Lender NMLS ID");

(ii) the name of the individual residential mortgage loan originator with primary responsibility for the origination (labeled "Loan Originator"); and

(iii) the originator's Nationwide Mortgage Licensing System and Registry identification number (labeled "Loan Originator NMLS ID").

(B) The model clause identifying the pronouns used for the borrower and the lender reads: "A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder." The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments."

[~~(2) Truth in Lending Act disclosure box. The model Truth in Lending Act disclosure box reads:~~]

[~~Figure: 7 TAC §90.403(b)(2)~~]

[~~(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.~~]

(2) [~~(4)~~] Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the Texas scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause for the borrower's promise to pay reads: "This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution."

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

(C) The model payment schedule reads:

Figure: 7 TAC §90.403(b)(2)(C) *{New figure.}*

(3) [~~(5)~~] Late charge.

(A) Generally. The general model late charge provision for contracts using the scheduled installments earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(B) High-cost mortgage loans. The model late charge provision for high-cost mortgage loans subject to the limitation on late charges in Regulation Z, 12 C.F.R. §1026.34(a)(8), reads: "If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due."

(4) [~~(6)~~] After maturity interest. The model provision for after maturity interest for contracts using the scheduled installment earnings method reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(5) [~~(7)~~] Prepayment clause. The model prepayment clause options read:

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

(6) [~~(8)~~] Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.403(b)(6)(A) *{See attached amendments, renumbered from 7 TAC §90.403(b)(8)(A).}*

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.403(b)(6)(B) *{Renumbered from 7 TAC §90.403(b)(8)(B) with no changes.}*

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.403(b)(6)(C) *{See attached amendments, renumbered from 7 TAC §90.403(b)(8)(C).}*

(7) [~~(9)~~] Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A licensee may always choose a lesser amount. The fee for dishonored check model clause reads: "I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(8) [~~(10)~~] Default clause. The model provision specifying the conditions causing default reads:

Figure: 7 TAC §90.403(b)(8) *{Renumbered from 7 TAC §90.403(b)(10) with no changes.}*

(9) [~~(11)~~] Property insurance. The model provision regarding property insurance reads:

Figure: 7 TAC §90.403(b)(9) *{Renumbered from 7 TAC §90.403(b)(11) with no changes.}*

(10) [~~(12)~~] Credit insurance. If single premium credit insurance is allowable, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:

Figure: 7 TAC §90.403(b)(10) *{Renumbered from 7 TAC §90.403(b)(12) with no changes.}*

(11) [~~(13)~~] Mailing of notices to borrower. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail."

(12) [~~(14)~~] Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(13) [~~(15)~~] No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(14) [~~(16)~~] Collection expenses clause. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement."

(15) [~~(17)~~] Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and the spouse of each owner unless the owner or spouse obtained this loan by actual fraud. If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement."

(16) [~~(18)~~] Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than the law allows."

(17) [~~(19)~~] Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(18) [~~(20)~~] Contract supersedes prior agreements. For loan agreements exceeding $50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model integration clause providing that the contract supersedes prior agreements reads: "This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to

this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(19) [~~(21)~~] Security document. The model provision stating that the homestead described in the loan agreement is subject to the lien of the security document reads: "The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities."

(20) [~~(22)~~] Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law."

(21) OCCC [~~(23) Complaints and inquiries~~] notice. Under §90.105 of this title (relating to OCCC [~~Complaints and inquiries~~] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." [~~"This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579."~~]

(22) [~~(24)~~] Clause describing collateral. The model provision describing the collateral reads: "The homestead described above by the property address is subject to the lien of the Security Document."

(23) [~~(25)~~] Signature blocks. The licensee may also provide additional signature lines for witness signatures. The model provision regarding signature blocks reads:

Figure: 7 TAC §90.403(b)(23) *{Renumbered from 7 TAC §90.403(b)(25) with no changes.}*

(c) Model clauses for the security document for a Chapter 342, Subchapter G second lien home equity loan contract.

(1) The model definitions section reads:

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

(D) "You" means _____ _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____ _____. Your NMLS ID is _____. You are the beneficiary under this Security

Document. The loan originator's name is _____. The loan originator's NMLS ID is _____.

(E) - (O) (No change.)

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601 et seq.~~]) and Regulation X (12 C.F.R. Part 1024) [~~(24 C.F.R. Part 3500)~~], as [~~they might be~~] amended [~~from time to time~~], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) - (R) (No change.)

(2) - (37) (No change.)

§90.404. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien home equity loans plain language model clauses:

(1) - (6) (No change.)

(7) A licensee may place its NMLS ID number, the individual residential mortgage loan originator's name, or the originator's NMLS ID on any portion of a document requiring this information, including the signature page. To the extent allowed by Regulation Z, 12 C.F.R. §1026.36(g), and the official commentary to that section, a licensee may omit:

(A) the licensee's NMLS ID number, if the licensee does not have an NMLS ID number and is not legally required to obtain one; and

(B) the individual residential mortgage loan originator's NMLS ID number, if the originator does not have an NMLS ID number and is not legally required to obtain one.

(8) [~~(7)~~] A sample model note is presented in the following example.

Figure: 7 TAC §90.404(a)(8) *{See attached amendments, renumbered from 7 TAC §90.404(a)(7).}*

(9) [~~(8)~~] A sample model security document is presented in the following example.

Figure: 7 TAC §90.404(a)(9) *{See attached amendments, renumbered from 7 TAC §90.404(a)(8).}*

(b) (No change.)

Subchapter E. Second Lien Purchase Money Loans (Chapter 342, Subchapter G)

§90.501. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter G purchase money loan transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not

use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [~~commissioner~~] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [~~commissioner~~] will issue an order disapproving the contract if the OCCC [~~commissioner~~] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [~~commissioner's~~] failure to disapprove a contract constitutes an approval.

(b) (No change.)

§90.502. Contract Provisions.

(a) A Chapter 342, Subchapter G purchase money loan transaction may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the fee for dishonored check clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G second lien purchase money loan transaction may contain the following provisions:

(1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the borrower and the lender, and the property address;

[~~(2) A Truth in Lending Act disclosure box;~~]

[~~(3) An itemization of amount financed box;~~]

(2) [~~(4)~~] A promise to pay;

(3) [~~(5)~~] A late charge provision;

(4) [~~(6)~~] A provision for after maturity interest;

(5) [~~(7)~~] A prepayment clause;

(6) [~~(8)~~] A provision specifying the finance charge earnings and refund method;

(7) [~~(9)~~] A provision contracting for a fee for a dishonored check;

(8) [~~(10)~~] A provision specifying the conditions causing default;

(9) [~~(11)~~] A provision regarding property insurance;

(10) [~~(12)~~] A credit insurance disclosure box;

(11) [~~(13)~~] A provision regarding the mailing of notices to the borrower;

(12) [~~(14)~~] A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(13) [~~(15)~~] A provision expressing no waiver of the lender's rights;

(14) [~~(16)~~] A collection expenses clause;

(15) [~~(17)~~] A provision providing for joint liability;

(16) [~~(18)~~] A usury savings clause;

(17) [~~(19)~~] A savings clause stating that if any part of the loan agreement is invalid, the rest remains valid;

(18) [~~(20)~~] An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;

(19) [~~(21)~~] A provision stating that the property described in the loan agreement is subject to the lien of the security document;

(20) [~~(22)~~] A provision specifying that federal law and Texas law apply to the contract;

(21) OCCC [~~(23) Complaints and inquiries~~] notice;

(22) [~~(24)~~] A provision describing the collateral; and

(23) [~~(25)~~] Signature blocks.

(b) (No change.)

(c) The provisions described in this section are separate from the TILA-RESPA integrated disclosures required under Regulation Z, 12 C.F.R. §§1026.19, 1026.37 and 1026.38.

§90.503. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter G second lien purchase money loan contract.

(1) Identification.

(A) The model identification clause lists the account or contract number, the name and address of the lender, the date of the note, the name and address of the borrower, and the property address. It also lists the following items that must be included on the promissory note under Regulation Z, 12 C.F.R. §1026.36(g):

(i) the lender's Nationwide Mortgage Licensing System and Registry identification number (labeled "Creditor/Lender NMLS ID");

(ii) the name of the individual residential mortgage loan originator with primary responsibility for the origination (labeled "Loan Originator"); and

(iii) the originator's Nationwide Mortgage Licensing System and Registry identification number (labeled "Loan Originator NMLS ID").

(B) The model clause identifying the pronouns used for the borrower and the lender reads: A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder". The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments."

[~~(2) Truth in Lending Act disclosure box. The model Truth in Lending Act disclosure box reads:~~]

[~~Figure: 7 TAC §90.503(b)(2)~~]

[~~(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.~~]

(2) [~~(4)~~] Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

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

(C) The model payment schedule reads:

Figure: 7 TAC §90.503(b)(2)(C) *{New figure.}*

(3) [~~(5)~~] Late charge.

(A) Generally. The general model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(B) High-cost mortgage loans. The model late charge provision for high-cost mortgage loans subject to the limitation on late charges in Regulation Z, 12 C.F.R. §1026.34(a)(8), reads: "If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due."

(4) [~~(6)~~] After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest for contracts using the scheduled installment earnings method. A licensee may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(5) [~~(7)~~] Prepayment clause. The model prepayment clause options read:

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

(6) [~~(8)~~] Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.503(b)(6)(A) *{See attached amendments, renumbered from 7 TAC §90.503(b)(8)(A).}*

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.503(b)(6)(B) *{Renumbered from 7 TAC §90.503(b)(8)(B) with no changes.}*

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.503(b)(6)(C) *{See attached amendments, renumbered from 7 TAC §90.503(b)(8)(C).}*

(7) [~~(9)~~] Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A licensee may always choose a lesser amount. The model fee for dishonored check provision reads: "I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(8) [~~(10)~~] Default clause. The model provision specifying the conditions causing default reads:

Figure: 7 TAC §90.503(b)(8) *{Renumbered from 7 TAC §90.503(b)(10) with no changes.}*

(9) [~~(11)~~] Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.503(b)(9) *{Renumbered from 7 TAC §90.503(b)(11) with no changes.}*

(10) [~~(12)~~] Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:

Figure: 7 TAC §90.503(b)(10) *{Renumbered from 7 TAC §90.503(b)(12) with no changes.}*

(11) [~~(13)~~] Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(12) [~~(14)~~] Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding immediate payment of all

that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(13) [~~(15)~~] No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(14) [~~(16)~~] Collection expenses clause. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees."

(15) [~~(17)~~] Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(16) [~~(18)~~] Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(17) [~~(19)~~] Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(18) [~~(20)~~] Contract supersedes prior agreements. For loan agreements exceeding $50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model integration clause providing that the contract supersedes prior agreements reads: "This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(19) [~~(21)~~] Security document. The model provision stating that the property described in the loan agreement is subject to the lien of the security document reads: "In addition to the protections given to the Note Holder under this Note, a Security Document, dated _____, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Document describes how and under what conditions I may be required to make immediate payment in full of any amounts that I owe under this Note."

(20) [~~(22)~~] Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(21) OCCC [~~(23) Complaints and inquiries~~] notice. Under §90.105 of this title (relating to OCCC [~~Complaints and inquiries~~] Notice), the following required

notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." [~~"The (name of Lender or Note Holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of Lender or Note Holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207; Telephone No.: (800) 538-1579; Fax No.: (512) 936-7610; E-mail: consumer.complaints@occc.state.tx.us; Website: www.occc.state.tx.us."~~]

(22) [~~(24)~~] Clause describing collateral. The model provision describing the collateral reads: "The collateral described above by the property address is subject to the lien of the Security Document."

(23) [~~(25)~~] Signature blocks. The licensee may also provide additional signature lines for witness signatures. The model provision regarding signature blocks reads:

Figure: 7 TAC §90.503(b)(23) *{Renumbered from 7 TAC §90.503(b)(25) with no changes.}*

(c) Model clauses for a security document for a Chapter 342, Subchapter G second lien purchase money loan contract.

(1) The model definitions section reads:

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

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. Your NMLS ID is _____. You are the beneficiary under this Security Document. The loan originator's name is _____. The loan originator's NMLS ID is _____.

(E) - (N) (No change.)

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601 et seq.~~]) and Regulation X (12 C.F.R. Part 1024) [~~(24 C.F.R. Part 3500)~~], as [~~they might be~~] amended [~~from time to time~~], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a

"federally related mortgage loan" under RESPA.

(P) - (Q) (No change.)

(2) - (35) (No change.)

§90.504. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien purchase money loans plain language model clauses:

(1) - (6) (No change.)

(7) A licensee may place its NMLS ID number, the individual residential mortgage loan originator's name, or the originator's NMLS ID on any portion of a document requiring this information, including the signature page. To the extent allowed by Regulation Z, 12 C.F.R. §1026.36(g), and the official commentary to that section, a licensee may omit:

(A) the licensee's NMLS ID number, if the licensee does not have an NMLS ID number and is not legally required to obtain one; and

(B) the individual residential mortgage loan originator's NMLS ID number, if the originator does not have an NMLS ID number and is not legally required to obtain one.

(8) [~~(7)~~] A sample model note is presented in the following example.

Figure: 7 TAC §90.504(a)(8) *{See attached amendments, renumbered from 7 TAC §90.504(a)(7).}*

(9) [~~(8)~~] A sample model security document is presented in the following example.

Figure: 7 TAC §90.504(a)(9) *{See attached amendments, renumbered from 7 TAC §90.504(a)(8).}*

(b) (No change.)

Subchapter F. Second Lien Home Improvement Contracts (Chapter 342, Subchapter G)

§90.601. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter G home improvement transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [~~commissioner~~] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [~~commissioner~~] will issue an order disapproving the contract if the OCCC [~~commissioner~~] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [~~commissioner's~~] failure to disapprove a contract constitutes approval.

(b) (No change.)

§90.602. Contract Provisions.

(a) A Chapter 342, Subchapter G second lien home improvement loan transaction may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the fee for dishonored check clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G home improvement loan transaction may contain the following provisions:

(1) (No change.)

(2) For a promissory note for use in a transaction that does not allow withdrawals or multiple advances:

(A) An identification clause;

[~~(B) A Truth in Lending Act disclosure box;~~]

[~~(C) An itemization of amount financed box;~~]

(B) [~~(D)~~] A security for payment provision;

(C) [~~(E)~~] A definitions section;

(D) [~~(F)~~] A promise to pay;

(E) [~~(G)~~] A late charge provision;

(F) [~~(H)~~] A provision for after maturity interest;

(G) [~~(I)~~] A prepayment clause;

(H) [~~(J)~~] A provision specifying the finance charge earnings and refund method;

(I) [~~(K)~~] A deferment clause;

(J) [~~(L)~~] A provision contracting for a fee for a dishonored check;

(K) [~~(M)~~] A provision specifying the conditions causing default;

(L) [~~(N)~~] A provision regarding property insurance;

(M) [~~(O)~~] A credit insurance disclosure box;

(N) [~~(P)~~] A provision regarding the mailing of notices to the borrower;

(O) [~~(Q)~~] A provision specifying that the borrower's statements are truthful;

(P) [~~(R)~~] A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(Q) [~~(S)~~] A provision expressing no waiver of the lender's rights;

(R) [~~(T)~~] A collection expenses clause;

(S) [~~(U)~~] A provision providing for joint liability;

(T) [~~(V)~~] A usury savings clause;

(U) [~~(W)~~] A savings clause stating that if any part of the loan agreement is invalid, the rest remains valid;

(V) [~~(X)~~] An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;

(W) [~~(Y)~~] A provision specifying that federal law and Texas law apply to the contract;

(X) OCCC [~~(Z) Complaints and inquiries~~] notice;

(Y) [~~(AA)~~] A provision describing the collateral;

(Z) [~~(BB)~~] A notice regarding the preservation of claims and defenses; and

(AA) [~~(CC)~~] Signature blocks.

(3) (No change.)

(4) For a promissory note for use in a transaction that allows for withdrawals or multiple advances:

(A) An identification clause;

[~~(B) A Truth in Lending Act disclosure box;~~]

[~~(C) An itemization of amount financed box;~~]

(B) [~~(D)~~] A security for payment provision;

(C) [~~(E)~~] A definitions section;

(D) [~~(F)~~] A promise to pay;

(E) [~~(G)~~] A late charge provision;

(F) [~~(H)~~] A provision for after maturity interest;

(G) [~~(I)~~] A prepayment clause;

(H) [~~(J)~~] A provision specifying the finance charge earnings and refund method;

(I) [~~(K)~~] A deferment clause;

(J) [~~(L)~~] A provision contracting for a fee for a dishonored check;

(K) [~~(M)~~] A provision specifying the conditions causing default;

(L) [~~(N)~~] A provision regarding property insurance;

(M) [~~(O)~~] A credit insurance disclosure box;

(N) [~~(P)~~] A provision regarding the mailing of notices to the borrower;

(O) [~~(Q)~~] A provision specifying that the borrower's statements are truthful;

(P) [~~(R)~~] A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(Q) [~~(S)~~] A provision expressing no waiver of the lender's rights;

(R) [~~(T)~~] A collection expenses clause;

(S) [~~(U)~~] A provision providing for joint liability;

(T) [~~(V)~~] A usury savings clause;

(U) [~~(W)~~] A savings clause stating that if any part of the loan agreement is invalid, the rest remains valid;

(V) [~~(X)~~] An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;

(W) [~~(Y)~~] A provision specifying that the note is secured by a deed of trust;

(X) [~~(Z)~~] A provision specifying that federal law and Texas law apply to the contract;

(Y) OCCC [~~(AA) Complaints and inquiries~~] notice;

(Z) [~~(BB)~~] A provision describing the collateral;

(AA) [~~(CC)~~] A notice regarding the preservation of claims and defenses; and

(BB) [~~(DD)~~] Signature blocks.

(5) (No change.)

(b) The provisions described in this section are separate from the TILA-RESPA integrated disclosures required under Regulation Z, 12 C.F.R. §§1026.19, 1026.37 and 1026.38.

§90.603. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that does not allow for withdrawals or multiple advances.

(1) (No change.)

(2) Definitions. The model definitions section reads:

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

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies. The Lender's NMLS ID is (NMLS ID of Lender). The loan originator's name is (name of loan originator with primary responsibility for the origination). The loan originator's NMLS ID is (NMLS ID of originator).

(D) - (H) (No change.)

(3) - (11) (No change.)

(12) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule, 16 C.F.R. §433.2 [~~(16 C.F.R. §433)~~], it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(13) - (15) (No change.)

(c) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that does not allow for withdrawals or multiple advances.

(1) Identification.

(A) The model identification clause lists the account or contract number, the name and address of the lender, the date of the note, the name and address of the borrower, the property address, the principal amount, and the terms of payment. It also lists the following items that must be included on the promissory note under Regulation Z, 12 C.F.R. §1026.36(g):

(i) the lender's Nationwide Mortgage Licensing System and Registry identification number (labeled "Creditor/Lender NMLS ID");

(ii) the name of the individual residential mortgage loan originator with primary responsibility for the origination (labeled "Loan Originator"); and

(iii) the originator's Nationwide Mortgage Licensing System and Registry identification number (labeled "Loan Originator NMLS ID").

(B) The model identification clause [~~identifying the pronouns used for the borrower and the lender~~] reads:

Figure: 7 TAC §90.603(c)(1)(B) *{See attached amendments, renumbered from 7 TAC §90.603(c)(1).}*

[~~(2) Truth in Lending Act disclosure box. The model Truth in Lending Act disclosure box reads:~~]

[~~Figure: 7 TAC §90.603(c)(2)~~]

[~~(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.~~]

(2) [~~(4)~~] Security for payment. The model clause relating to the security for payment reads: "Liens created in the Contract secure this Note. You will have a security interest in the following described property: (property description)"

(3) [~~(5)~~] Definitions. The model definitions section reads:

(A) - (E) (No change.)

(4) [~~(6)~~] Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

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

(C) The model payment schedule reads:

Figure: 7 TAC §90.603(c)(4)(C) *{New figure.}*

(5) [~~(7)~~] Late charge.

(A) Generally. The general late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(B) High-cost mortgage loans. The model late charge provision for high-cost mortgage loans subject to the limitation on late charges in Regulation Z, 12 C.F.R. §1026.34(a)(8), reads: "If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due."

(6) [~~(8)~~] After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest for contracts using the scheduled installment earnings method. A licensee may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(7) [~~(9)~~] Prepayment clause. The model prepayment clause options read:

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

(8) [~~(10)~~] Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(c)(8)(A) *{See attached amendments, renumbered from 7 TAC §90.603(c)(10)(A).}*

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(c)(8)(B) *{Renumbered from 7 TAC §90.603(c)(10)(B) with no changes.}*

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(c)(8)(C) *{See attached amendments, renumbered from 7 TAC §90.603(c)(10)(C).}*

(9) [~~(11)~~] Deferment. The model provision regarding deferment reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(10) [~~(12)~~] Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A licensee may always choose a lesser

amount. The model fee for dishonored check provision reads: "I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(11) [~~(13)~~] Default. The model provision specifying the conditions causing default reads:

Figure: 7 TAC §90.603(c)(11) *{Renumbered from 7 TAC §90.603(c)(13) with no changes.}*

(12) [~~(14)~~] Property insurance. The model provision regarding property insurance reads:

Figure: 7 TAC §90.603(c)(12) *{Renumbered from 7 TAC §90.603(c)(14) with no changes.}*

(13) [~~(15)~~] Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:

Figure: 7 TAC §90.603(c)(13) *{Renumbered from 7 TAC §90.603(c)(15) with no changes.}*

(14) [~~(16)~~] Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(15) [~~(17)~~] Statement of truthful information. The model provision specifying that the borrower gave truthful information reads: "I promise that all information I gave you is true."

(16) [~~(18)~~] Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this loan agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this loan agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the loan agreement."

(17) [~~(19)~~] No waiver of the lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(18) [~~(20)~~] Collection expenses. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this loan agreement to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees."

(19) [~~(21)~~] Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(20) [~~(22)~~] Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than applicable law allows."

(21) [~~(23)~~] Savings clause. The savings model clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this loan agreement is declared invalid, the rest of the loan agreement remains valid. If any part of this loan agreement conflicts with any law, that law will control. The part of the loan agreement that conflicts with any law will be modified to comply with the law. The rest of the loan agreement remains valid."

(22) [~~(24)~~] Prior agreements. For loan agreements exceeding $50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model clause stating that there are no prior agreements between the parties regarding the loan agreement reads: "This written loan agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this loan agreement must be in writing. Both you and I have to sign written agreements."

(23) [~~(25)~~] Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this loan agreement."

(24) OCCC [~~(26) Complaints and inquiries~~] notice. Under §90.105 of this title (relating to OCCC [~~Complaints and inquiries~~] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." [~~"The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: Office of Consumer Credit~~

~~Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579."~~]

(25) [~~(27)~~] Collateral. The model clause regarding the collateral reads: "The Property is subject to the Contract lien. I am responsible for all obligations in this Note."]

(26) [~~(28)~~] Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule, 16 C.F.R. §433.2 [~~(16 C.F.R. §433)~~], it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(27) [~~(29)~~] Signature blocks. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The licensee may also provide additional signature lines for witness signatures. The model signature block reads:

Figure: 7 TAC §90.603(c)(27) *{Renumbered from 7 TAC §90.603(c)(29) with no changes.}*

(d) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that allows for withdrawals or multiple advances.

(1) (No change.)

(2) Definitions. The model definitions section reads:

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

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies. The Lender's NMLS ID is (NMLS ID of Lender). The loan originator's name is (name of loan originator with primary responsibility for the origination). The loan originator's NMLS ID is (NMLS ID of originator).

(D) - (P) (No change.)

(3) - (19) (No change.)

(20) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule, 16 C.F.R. §433.2 [~~(16 C.F.R. §433)~~], it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS

SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(21) - (23) (No change.)

(e) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that allows for withdrawals or multiple advances.

(1) Identification.

(A) The model identification clause lists the account or contract number, the name and address of the lender, the date of the note, the name and address of the borrower, the property address, the principal amount, and the terms of payment. It also lists the following items that must be included on the promissory note under Regulation Z, 12 C.F.R. §1026.36(g):

(i) the lender's Nationwide Mortgage Licensing System and Registry identification number (labeled "Creditor/Lender NMLS ID");

(ii) the name of the individual residential mortgage loan originator with primary responsibility for the origination (labeled "Loan Originator"); and

(iii) the originator's Nationwide Mortgage Licensing System and Registry identification number (labeled "Loan Originator NMLS ID").

(B) The model identification clause [~~identifying the pronouns used for the borrower and the lender~~] reads:

Figure: 7 TAC §90.603(e)(1)(B) *{See attached amendments, renumbered from 7 TAC §90.603(e)(1).}*

[~~(2) Truth in Lending Act disclosure box. The model Truth in Lending Act disclosure box reads:~~]

[~~Figure: 7 TAC §90.603(e)(2)~~]

[~~(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.~~]

(2) [~~(4)~~] Security for payment. The model clause relating to the security for payment reads: "The Deed of Trust and the Lien created in the Contract secure this Note. You will have a security interest in the following described property: (property description)"

(3) [~~(5)~~] Definitions. The model definitions section reads:

(A) - (P) (No change.)

(4) [~~(6)~~] Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow

periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

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

(C) The model payment schedule reads:

Figure: 7 TAC §90.603(e)(4)(C) *{New figure.}*

(5) [~~(7)~~] Late charge.

(A) Generally. The general model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(B) High-cost mortgage loans. The model late charge provision for high-cost mortgage loans subject to the limitation on late charges in Regulation Z, 12 C.F.R. §1026.34(a)(8), reads: "If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due."

(6) [~~(8)~~] After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest for contracts using the scheduled installment earnings method. A licensee may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(7) [~~(9)~~] Prepayment clause. The model prepayment clause options read:

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

(8) [~~(10)~~] Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(e)(8)(A) *{See attached amendments, renumbered from 7 TAC §90.603(e)(10)(A).}*

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(e)(8)(B) *{Renumbered from 7 TAC §90.603(e)(10)(B) with no changes.}*

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.603(e)(8)(C) *{See attached amendments, renumbered from 7 TAC §90.603(e)(10)(C).}*

(9) [~~(11)~~] Deferment. The model provision regarding deferment reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend

the payment. The extra interest will be figured under the Finance Commission rules."

(10) [~~(12)~~] Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A licensee may always choose a lesser amount. The model fee for dishonored check provision reads: "I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(11) [~~(13)~~] Default. The model provision specifying the conditions causing default reads:

Figure: 7 TAC §90.603(e)(11) *{Renumbered from 7 TAC §90.603(e)(13) with no changes.}*

(12) [~~(14)~~] Property insurance. The model provision regarding property insurance reads:

Figure: 7 TAC §90.603(e)(12) *{Renumbered from 7 TAC §90.603(e)(14) with no changes.}*

(13) [~~(15)~~] Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:

Figure: 7 TAC §90.603(e)(13) *{Renumbered from 7 TAC §90.603(e)(15) with no changes.}*

(14) [~~(16)~~] Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(15) [~~(17)~~] Statement of truthful information. The model provision specifying that the borrower gave truthful information reads: "I promise that all information I gave you is true."

(16) [~~(18)~~] Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may

use any remedy allowed by the Loan Agreement."

(17) [~~(19)~~] No waiver of the lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(18) [~~(20)~~] Collection expenses. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees."

(19) [~~(21)~~] Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(20) [~~(22)~~] Usury savings. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(21) [~~(23)~~] Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(22) [~~(24)~~] Prior agreements. For loan agreements exceeding $50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model clause stating that there are no prior agreements between the parties regarding the loan agreement reads: "This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(23) [~~(25)~~] Note secured by deed of trust. The model clause stating that the note is secured by a deed of trust reads: "In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note."

(24) [~~(26)~~] Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(25) OCCC [~~(27) Complaints and inquiries~~] notice. Under §90.105 of this title (relating to OCCC [~~Complaints and inquiries~~] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and

examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." [~~"The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579."~~]

(26) [~~(28)~~] Collateral. The model clause regarding the collateral reads: "The Property is subject to the Contract lien. I am responsible for all obligations in this Note."

(27) [~~(29)~~] Preservation of claims and defenses. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(28) [~~(30)~~] Signature blocks. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The licensee may also provide additional signature lines for witness signatures. The model signature block reads:

Figure: 7 TAC §90.603(e)(28) *{Renumbered from 7 TAC §90.603(e)(30) with no changes.}*

(f) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan deed of trust for use in a transaction that allows for withdrawals or multiple advances.

(1) Definitions. The model definitions section reads:

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

(C) "Lender" is _____. Lender's address is _____. Lender's NMLS ID is _____. The loan originator's name is _____. The loan originator's NMLS ID is _____.

(D) - (O) (No change.)

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601 et seq.~~]) and Regulation X (12 C.F.R. Part 1024) [~~(24 C.F.R. Part 3500)~~], as [~~they might be~~] amended [~~from time to time~~], or any additional or successor legislation or

regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) - (T) (No change.)

(2) - (35) (No change.)

§90.604. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien home improvement contracts plain language model clauses:

(1) For transactions involving a security interest in the consumer's principal dwelling, the Truth in Lending Act, 15 U.S.C. §1635(a), and Regulation Z, 12 C.F.R. §1026.23(b), require the creditor to deliver to the consumer a notice of the right to rescind the transaction. Model forms for the notice of the right to rescind are available at 12 C.F.R. Part 1026, Appendix H, Model Forms H-8 and H-9. [~~Regulation Z of the Truth in Lending Act provides a right of rescission form that must be provided to consumers in a transaction involving the consumer's principal dwelling.~~] The Truth in Lending Act right of rescission form for use in a transaction involving the consumer's principal dwelling reads:

Figure: 7 TAC §90.604(a)(1) (No change.)

(2) - (11) (No change.)

(12) A licensee may place its NMLS ID number, the individual residential mortgage loan originator's name, or the originator's NMLS ID on any portion of a document requiring this information, including the signature page. To the extent allowed by Regulation Z, 12 C.F.R. §1026.36(g), and the official commentary to that section, a licensee may omit:

(A) the licensee's NMLS ID number, if the licensee does not have an NMLS ID number and is not legally required to obtain one; and

(B) the individual residential mortgage loan originator's NMLS ID number, if the originator does not have an NMLS ID number and is not legally required to obtain one.

(13) [~~(12)~~] A sample model contract that does not allow for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(13) *{See attached amendments, renumbered from 7 TAC §90.604(a)(12).}*

(14) [~~(13)~~] A sample model promissory note that does not allow for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(14) *{See attached amendments, renumbered from 7 TAC §90.604(a)(13).}*

(15) [~~(14)~~] A sample model contract that allows for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(15) *{See attached amendments, renumbered from 7 TAC §90.604(a)(14).}*

(16) [~~(15)~~] A sample model promissory note that allows for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(16) *{See attached amendments, renumbered from 7 TAC §90.604(a)(15).}*

(17) [~~(16)~~] A sample model deed of trust that allows for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(17) *{See attached amendments, renumbered from 7 TAC §90.604(a)(16).}*

(b) (No change.)

Subchapter G. Spanish Disclosures

§90.701. Applicability.

(a) If a contract for a loan under Chapter 342, Subchapters E, F, or G is negotiated in Spanish, then the [~~a~~] licensee must deliver a Spanish disclosure specified in §90.703(a) of this title (relating to Form of Disclosure) to the debtor [~~in Spanish no later than consummation of the contract~~].

(b) If a retail installment transaction under Chapter 348 is negotiated in Spanish, then the [~~a~~] licensee may (but is not required to) [~~, may but is not required to,~~] deliver a Spanish disclosure specified in §90.703(b) [~~§90.703~~] of this title [~~(relating to Form of Disclosure)~~] to the debtor [~~in Spanish~~].

(c) (No change.)

*§90.703. Form of Disclosure. {Repeal and replace. This section is being reorganized with **new language in bold**.}*

(a) **For a loan under Chapter 342, Subchapters E, F, or G, if the licensee negotiates a term described by §90.702(a) of this title (relating to Negotiation in Spanish), then the licensee must deliver a Spanish disclosure described by this subsection to the debtor. The disclosure must be completed with amounts that are accurate within the tolerances described by Regulation Z, 12 C.F.R. Part 1026.**

(1) For loans negotiated in Spanish that are subject to Chapter 342, Subchapter E, the licensee must provide, no later than the consummation of the loan:

(A) a Spanish translation of the loan contract that includes the disclosure form under Regulation Z, 12 C.F.R. **§1026.18**; or

(B) a copy of the "Notificación de Crédito Al Consumidor (Préstamo a Plazos)" as prescribed in the following figure:

Figure: 7 TAC §90.703(a)(1)(B) *{Renumbered from 7 TAC §90.703(a)(2) with no changes.}*

(2) For loans negotiated in Spanish that are subject to Chapter 342, Subchapter F, the licensee must provide, no later than consummation of the loan:

(A) a Spanish translation of the loan contract that includes the disclosure form under Regulation Z, 12 C.F.R. **§1026.18**; or

(B) copies of both the "Notificación de Crédito Al Consumidor (Préstamo)," and the "Conceptos Financieros."

(i) The "Notificación de Crédito Al Consumidor (Préstamo)," for which the lender should select an appropriate late charge option, is presented in the following figure:

Figure: 7 TAC §90.703(a)(2)(B)(i) *{Renumbered from 7 TAC §90.703(a)(3)(A) with no changes.}*

(I) Late Charge Option 1: "Late Charge: If I don't pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(II) Late Charge Option 1 Spanish Translation: "Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso será el 5% de la cantidad del pago."

(III) Late Charge Option 2: "Late Charge: For a loan that has an amount financed of less than $100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of $100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of $10 or 5% of the amount of the installment."

(IV) Late Charge Option 2 Spanish Translation: "Cargos por Retrasos: Para un préstamo en el cual la cantidad fínanciada es menor de $100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad fínanciada es de $100 o más, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de $10 o 5% de la cantidad del pago atrasado, lo que sea mayor."

(ii) The "Conceptos Financieros" are presented in the following figure:

Figure: 7 TAC §90.703(a)(2)(B)(ii) *{Renumbered from 7 TAC §90.703(a)(3)(B) with no changes.}*

(3) For loans negotiated in Spanish that are subject to Chapter 342, Subchapter G, the licensee must provide copies of both of the following TILA-RESPA integrated disclosures in Spanish:

(A) No later than the date required for the loan estimate under Regulation Z, 12 C.F.R. §1026.19(e), the licensee must provide to the debtor a copy of the "Estimación de Préstamo" provided by 12 C.F.R. Part 1026, Appendix H, Model Forms H-28(A) through H-28(E) and H-28(I). The licensee must select an appropriate model form based on the type of loan.

(B) No later than the date required for the closing disclosure under Regulation Z, 12 C.F.R. §1026.19(f), the licensee must provide to the debtor a copy of the "Declaración de Cierre" provided by 12 C.F.R. Part 1026, Appendix H, Model Forms H-28(F) through H-28(H) and H-28(J). The licensee must select an appropriate model form based on the type of loan.

(b) If a retail installment transaction under Chapter 348 is negotiated in Spanish, then the licensee may at its option deliver one or both of the following to the debtor:

(1) a Spanish translation of the retail installment sales contract that includes the disclosure form under Regulation Z, 12 C.F.R. §226.18 **or §1026.18**; or

(2) a copy of the "Notificación de Crédito Al Consumidor (Contrato de Menudeo a Plazos para Vehículo Automotor)," for which the licensee should select the appropriate late charge payment option, as presented in the following figure:

Figure: 7 TAC §90.703(b) *{Renumbered from 7 TAC §90.703(a)(5) with no changes.}*

(c) Licensees may delete inapplicable provisions contained in a model disclosure described by this section, **except for the TILA-RESPA integrated disclosures required under subsection (a)(3).**

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 16, 2015.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

Amended Figure: 7 TAC §84.808(7) (348 TILA Disclosure)

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.	**Total Sale Price** The total cost of my purchase on credit, including down payment of $_____
%	**$**	**$**	**$**	**$**

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

Security: You will have a security interest in the motor vehicle being purchased.
Late Charge: [**Sum of the periodic balances method:**] [[~~**True daily earnings:**~~]] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. [**Scheduled installment earnings or true daily earnings method:**] [[~~**Scheduled Installment Earnings Method or sum of the periodic balances:**~~]] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.
Prepayment: [**True daily earnings method:**] If I pay all that I owe early, I will not have to pay a penalty. [**Sum of the periodic balances or scheduled installment earnings method:**] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.
Additional information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

Amended Figure: 7 TAC §84.808(8)(A) (348 Itemization of Amt. Financed, Sales Tax Advance)

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] $_____(1)

2. Downpayment =
[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]
Gross trade-in $_____
- payoff by Seller $_____
= net trade-in $_____
[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]
+ cash $_____
+ Mfrs. Rebate $_____
+ other (describe) _____ $_____
Total downpayment $_____(2)

3. Unpaid balance of cash price (1 minus 2) $_____(3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
   A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____ $_____
   B. Cost of physical damage insurance paid to insurance company $_____
   C. Cost of optional coverages with physical damage insurance paid to insurance company $_____
   D. Cost of optional credit insurance paid to insurance company or companies $_____
      Life
      Disability
   E. Debt cancellation agreement fee paid to the Seller $_____
   F. Official fees paid to government agencies $_____
   G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)] $_____
   H. Sales tax [*Optional addition*: (if not included in cash price)] $_____
   I. Other taxes [*Optional addition*: (if not included in cash price)] $_____
   J. Government license and [~~and/or~~] registration fees $_____
   K. Government certificate of title fee $_____
   L. Government vehicle inspection fees $_____
      to state $_____ to inspection station $_____
   M. Deputy service fee paid to dealer $_____
   N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [*Option to insert Spanish translation of disclosure here*.]** $_____
   O. Other charges (Seller must identify who is paid and describe purpose)
      to_____for_____ $_____
      to_____for_____ $_____
      to_____for_____
      $_____
   Total other charges and amounts paid to others on my behalf
   $_____(4)

5. **Amount Financed** (3 + 4) $_____(5)

[*Optional caption*: Seller will pay taxes, title fee, license and registration fees, and part of the inspection fee to government agencies. Seller will retain the documentary fee and the deputy service fee. [~~Taxes, title fee, license fee, and any state inspection fee (*except for $7.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the~~] Seller may also retain part or all of the inspection fee, insurance, service contracts, and other charges.]

[*Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."*]

Amended Figure: 7 TAC §84.808(8)(B) (348 Itemization of Amt. Financed, Sales Tax Deferred)

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] $_____(1)

2. Downpayment (A + B) =
   A. [*If netting add*: (if negative, enter "0" and see Line 4.A. below)]
   Gross trade-in $_____
   - payoff by Seller $_____
   = net trade-in $_____
   B. [*If not netting add*: (if negative enter "0" and see Line 4.A. below)]
   + cash $_____
   + Mfrs. Rebate $_____
   + other (describe) _____ $_____
   Total downpayment $_____(2)

3. Unpaid balance of cash price (1 minus 2) $_____(3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
   A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____ $_____
   B. Cost of physical damage insurance paid to insurance company $_____
   C. Cost of optional coverages with physical damage insurance paid to insurance company $_____
   D. Cost of optional credit insurance paid to insurance company or companies $_____
      Life
      Disability
   E. Debt cancellation agreement fee paid to the Seller $_____
   F. Official fees paid to government agencies $_____
   G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)] $_____
   H. Other taxes [*Optional addition*: (if not included in cash price)] $_____
   I. Government license and [~~and/or~~] registration fees $_____
   J. Government certificate of title fee $_____
   K. Government vehicle inspection fees $_____
      to state $_____ to inspection station $_____
   L. Deputy service fee paid to dealer $_____
   M. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [*Option to insert Spanish translation of disclosure here*.]** $_____
   N. Other charges (Seller must identify who is paid and describe purpose)
      to_____for_____ $_____
      to_____for_____ $_____
      to_____for_____ $_____

   Total Itemized Charges upon which the Finance Charge is assessed $_____(4)

5. Total Unpaid Balance Plus Itemized Charges Upon which the Finance Charge is assessed. (3+4) $_____(5)
6. Total Sales Tax (Upon Which No Finance Charge is Assessed) $_____(6)
7. **Amount Financed** (5+6) $_____(7)

   Finance Charge (Not Assessed Upon Sales Tax) $_____

[*Optional caption*: Seller will pay taxes, title fee, license and registration fees, and part of the inspection fee to government agencies. Seller will retain the documentary fee and the deputy service fee. [~~Taxes, title fee, license fee, and any state inspection fee (*except for $7.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the~~] Seller may also retain part or all of the inspection fee, insurance, service contracts, and other charges.]

[*Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."*]

Amended Figure: 7 TAC §84.808(11) (348 Physical Damage Insurance)

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. The maximum deductible is $_____. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[*Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.*]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐$_____
Comprehensive	___	☐$_____
Fire, Theft, and Combined Additional Coverage	___	☐$_____
Other	___	☐$_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. **[*Note: Alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.808(12).*]**

☐$_____ Towing and Labor Costs Reimbursement ☐$_____ Rental Reimbursement

☐$_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.
Buyer's Signature: _____ Date: _____

Amended Figure: 7 TAC §84.809(b) (348 Retail Installment Sales Contract)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)

BUYER _____
ADDRESS _____
CITY _____ STATE _____ZIP_____
PHONE _____

SELLER/CREDITOR _____
ADDRESS _____
CITY _____ STATE _____ZIP _____
PHONE _____

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

PROMISE TO PAY
The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	☐ New ☐ Demonstrator ☐ Factory Official/Executive ☐ Used	USE FOR WHICH PURCHASED ☐ PERSONAL, FAMILY OR HOUSEHOLD ☐ BUSINESS OR COMMERCIAL ☐ AGRICULTURAL

Trade-in: Year_____ Make_____ Model_____ VIN_____ License No._____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	**FINANCE CHARGE** The dollar amount the credit will cost me. $	**Amount Financed** The amount of credit provided to me or on my behalf. $	**Total of Payments** The amount I will have paid after I have made all payments as scheduled. $	**Total Sale Price** The total cost of my purchase on credit, including down payment of $_____ $

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

Security: You will have a security interest in the motor vehicle being purchased.
Late Charge: [**Sum of the periodic balances method:**] [[~~**True daily earnings:**~~]] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. [**Scheduled installment earnings or true daily earnings method:**] [[~~**Scheduled Installment Earnings Method or sum of the periodic balances:**~~]] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.
Prepayment: [**True daily earnings method:**] If I pay all that I owe early, I will not have to pay a penalty. [**Sum of the periodic balances or scheduled installment earnings method:**] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.
Additional information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] $_____(1)

2. Downpayment =
[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]
Gross trade-in $_____
- payoff by Seller $_____
= net trade-in $_____
[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]
+ cash $_____
+ Mfrs. Rebate $_____
+ other (describe) _____ $_____
Total downpayment $_____(2)

3. Unpaid balance of cash price (1 minus 2) $_____(3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
   A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____ $_____
   B. Cost of physical damage insurance paid to insurance company $_____
   C. Cost of optional coverages with physical damage insurance paid to insurance company $_____
   D. Cost of optional credit insurance paid to insurance company or companies $_____
      Life
      Disability
   E. Debt cancellation agreement fee paid to the Seller $_____
   F. Official fees paid to government agencies $_____
   G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)] $_____
   H. Sales tax [*Optional addition*: (if not included in cash price)] $_____
   I. Other taxes [*Optional addition*: (if not included in cash price)] $_____
   J. Government license and [~~and/or~~] registration fees $_____
   K. Government certificate of title fee $_____
   L. Government vehicle inspection fees $_____
      to state $_____ to inspection station $_____
   M. Deputy service fee paid to dealer $_____
   N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [*Option to insert Spanish translation of disclosure here*.]** $_____
   O. Other charges (Seller must identify who is paid and describe purpose)
      to_____for_____ $_____
      to_____for_____ $_____
      to_____for_____
      $_____
   Total other charges and amounts paid to others on my behalf
   $_____(4)

5. **Amount Financed** (3 + 4) $_____(5)

[*Optional caption*: Seller will pay taxes, title fee, license and registration fees, and part of the inspection fee to government agencies. Seller will retain the documentary fee and the deputy service fee. [~~Taxes, title fee, license fee, and any state inspection fee (*except for $7.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the~~] Seller may also retain part or all of the inspection fee, insurance, service contracts, and other charges.]

[*Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."*]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	**DATE DUE**

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. The maximum deductible is $_____. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[*Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.*]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐$_____
Comprehensive	___	☐$_____
Fire, Theft, and Combined Additional Coverage	___	☐$_____
Other	___	☐$_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. **[*Note: Alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.808(12).*]**

☐$_____ Towing and Labor Costs Reimbursement ☐$_____ Rental Reimbursement

☐$_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES AND DEBT CANCELLATION AGREEMENT

Optional insurance coverages and debt cancellation agreement. The granting of credit will not be dependent on the purchase of either the insurance coverages or the debt cancellation agreement described below. It will not be provided unless I sign and agree to pay the extra cost. [***At creditor's option, the following may be added:***] The credit approval process will not be affected by whether or not I buy these insurance coverages or the debt cancellation agreement. [*Note: If this form is used for commercial transactions, a creditor has the option to bold the language in the preceding paragraph.*]

Coverage	Term in Months	Premium or Fee
GAP*	_____	☐ $_____
Invol. Unemployment	_____	☐ $_____
Debt cancellation agreement**	_____	$_____
Liability Insurance	_____	☐ $_____

$_____ per person $_____ property damage
$_____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

**YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT. I can cancel the debt cancellation agreement without charge for a period of 30 days from the date of this contract, or for the period stated in the debt cancellation agreement, whichever period ends later.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. A debt cancellation agreement is not insurance and is regulated by the Office of Consumer Credit Commissioner.

For the premiums or fees included above, I want the related optional coverages and debt cancellation agreement.

Buyer's Signature: _____ Date: _____

[*Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.*]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. [***At creditor's option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐Credit Life, one buyer $_____ ☐Credit Life, both buyers $_____ Term _____
☐Credit Disability, one buyer $_____ ☐Credit Disability, both buyers $_____ Term _____

[***Optional additional sentence for balloon payment contracts:***] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. [***Optional additional language for true daily earnings method contracts:***] Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.
Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[*Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.*]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.
(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.
(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____Buyer _____Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[**Regular transaction using sum of the periodic balances method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A_2: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00 per year. This rate is not the same as the Annual Percentage Rate. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of $____ per $100.00 per year. This rate is not the same as the Annual Percentage Rate.

[**True daily earnings method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

[**Scheduled installment earnings method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of

the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: **If the buyer's signature is dated)** I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: **If the buyer's signature is not dated)** I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)

(OPTION C: **If the buyer's signature is not dated)** I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: **If the buyer's signature is dated or not dated)** I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

_____	_____	_____	_____
Buyer	Date	Seller	Date
_____	_____		
Co-Buyer	Date		

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

OCCC [~~CONSUMER CREDIT COMMISSIONER~~] NOTICE. For questions or complaints about this contract, contact (insert name of creditor) at (insert creditor's phone number and, at creditor's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to this contract. If a complaint or question cannot be resolved by contacting the creditor, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov. [~~To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579, and can be contacted relative to any inquiries or complaints.~~]

OTHER TERMS AND CONDITIONS

[**Sum of the periodic balances method and scheduled installment earnings method:**] **HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY** If I prepay in full, I may be entitled to a refund of part of the Finance Charge. [**Sum of the periodic balances method:**] You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00.) [**Scheduled installment earnings method:**] You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional: You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than $1.00.) [**Flexible contract forms designed to accommodate alternative methods:**] You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a

term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00.

HOW YOU WILL APPLY MY PAYMENTS [**True daily earnings method:**] You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.

HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY [**True daily earnings method:**] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY [**Scheduled installment earnings or sum of the periodic balances method:**] If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

(Option A: Refinancing the balloon payment) If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii)) I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

AGREEMENT TO KEEP MOTOR VEHICLE INSURED I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. The insurer must be authorized to do business in Texas. (Optional Provisions: [~~Language Provision:~~] The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage. The maximum deductible is $_____.)

YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

PHYSICAL DAMAGE INSURANCE PROCEEDS I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES [**True daily earnings method:**] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [**Scheduled installment earnings method or sum of the periodic balances:**] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

APPLICATION OF CREDITS Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

TRANSFER OF RIGHTS You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

SECURITY INTEREST To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

USE AND TRANSFER OF THE MOTOR VEHICLE I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

CARE OF THE MOTOR VEHICLE I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. If you sell the motor vehicle in a public or private sale, you [~~You~~] will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE [**Sum of the periodic balances method or scheduled installment earnings method**:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

SERVICING AND COLLECTION CONTACT You may try to contact me at any mailing address, e-mail address, or phone number I give you, as the law allows. You may try to contact me in writing (including mail, e-mail, and text messages) and by phone (including prerecorded or artificial voice messages and automatic telephone dialing systems).

RETURNED CHECK FEE I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

INTEGRATION AND SEVERABILITY CLAUSE This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

APPLICABLE LAW Federal law and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE

PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

In this box only, the word "you" refers to the Buyer.

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation:

Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

Amended Figure: 7 TAC §90.203(b)(7)(A) (342-E Add-On Brackets)

"Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- $18.00 per $100.00 per year on that portion of the cash advance that is $2,010 [~~$1,500.00~~] or less; and

- $8.00 per $100.00 per year on that portion of the cash advance that is greater than $2,010 [~~$1,500.00~~] through $16,750 [~~$12,500.00~~].

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than $1.00."

Amended Figure: 7 TAC §90.203(b)(7)(C)
(342-E Three-Tiered Brackets, Scheduled Installment Earnings)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,350.00 [~~$2,500.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,350.00 [~~$2,500.00~~] through $7,035.00 [~~$5,250.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,035.00 [~~$5,250.00~~] through $16,750.00 [~~$12,500.00~~]. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

Amended Figure: 7 TAC §90.203(b)(7)(E) (342-E Three-Tiered Brackets)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,350.00 [~~$2,500.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,350.00 [~~$2,500.00~~] through $7,035.00 [~~$5,250.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,035.00 [~~$5,250.00~~] through $16,750.00 [~~$12,500.00~~]. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

Amended Figure: 7 TAC §90.204(a)(7) (342-E Scheduled Installment Earnings Note)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ **DATE OF NOTE** _____

CREDITOR / LENDER _____ **BORROWER** _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	Amount Financed The amount of credit provided to me or on my behalf.	Total of Payments The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.
If checked, Borrower is giving a security interest in:
☐Motor Vehicle ☐Property Purchased with the Money from this Loan ☐Personal Property ☐Other
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. Amount Financed: (2+3+4) **$**_____

2. Amount given to me directly **$**_____

3. Amount paid on my account (Net Balance - Prior Account) **$**_____

4. Amount paid to others on my behalf (A + B + C +D + E + F) **$**_____
(You may be retaining a portion of this amount.)

A. Cost of personal property insurance paid to insurance company **$**_____

B. Cost of single-interest insurance paid to insurance company **$**_____

C. Cost of optional credit insurance paid to insurance company or companies

Life **$**_____

Disability **$**_____

Involuntary Unemployment Insurance **$**_____

Total C: **$**_____

D. Non-Filing Insurance paid to insurance company **$**_____

E. Official fees paid to government agencies **$**_____

F. Payable to:_____ **$**_____

Payable to:_____ **$**_____

Payable to:_____ **$**_____

Total F: **$**_____

5. Prepaid Finance Charge (Administrative Fee) **$**_____

I will be in default if:
- I do not timely make a payment;
- I break any promise I made in this agreement;
- I allow a judgment to be entered against me or the collateral;
- I sell, lease, or dispose of the collateral;
- I use the collateral for an illegal purpose; or
- you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Personal Property Insurance **$**_____ Term _____

☐ Single Interest Insurance (Vehicle) **$**_____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

☐ Credit Life, one borrower **$**_____ ☐ Credit Life, both borrowers **$**_____ Term ____

☐ Credit Disability, one borrower **$**_____ ☐ Credit Disability, both borrowers **$**_____ Term ____

☐ Credit Involuntary Unemployment Insurance, one borrower **$**_____ Term ____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs.
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov. [~~This lender is licensed and examined by the State of Texas -Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579.~~]

I agree to the terms of this contract. I received a completed copy on _____.

X_____
Borrower
X_____
Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

[~~Recibi la Forma Informe de Prestamo~~ _____]
[~~*I received the Spanish Disclosure.*~~]

Amended Figure: 7 TAC §90.204(a)(8) (342-E True Daily Earnings Note)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ **DATE OF NOTE** _____

CREDITOR / LENDER _____ **BORROWER** _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	Amount Financed The amount of credit provided to me or on my behalf.	Total of Payments The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.
If checked, Borrower is giving a security interest in:
☐Motor Vehicle ☐ Property Purchased with the Money from this Loan ☐Personal Property ☐Other
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the cash advance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. [~~If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.~~]

I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. **Amount Financed: (2+3+4)** **$**_____
2. **Amount given to me directly** **$**_____
3. **Amount paid on my account (Net Balance - Prior Account)** **$**_____
4. **Amount paid to others on my behalf (A + B + C +D + E + F)** **$**_____
   (You may be retaining a portion of this amount.)
   - **A. Cost of personal property insurance paid to insurance company** **$**_____
   - **B. Cost of single-interest insurance paid to insurance company** **$**_____
   - **C. Cost of optional credit insurance paid to insurance company or companies**
     - **Life** **$**_____
     - **Disability** **$**_____
     - **Involuntary Unemployment Insurance** **$**_____
     - **Total C:** **$**_____
   - **D. Non-Filing Insurance paid to insurance company** **$**_____
   - **E. Official fees paid to government agencies** **$**_____
   - **F. Payable to:**_____ **$**_____
     - **Payable to:**_____ **$**_____
     - **Payable to:**_____ **$**_____
     - **Total F:** **$**_____
5. **Prepaid Finance Charge (Administrative Fee)** $_____

I will be in default if:
- I do not timely make a payment;
- I break any promise I made in this agreement;
- I allow a judgment to be entered against me or the collateral;
- I sell, lease, or dispose of the collateral;
- I use the collateral for an illegal purpose; or
- you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Personal Property Insurance **$**_____ Term _____

☐ Single Interest Insurance (Vehicle) **$**_____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

☐ Credit Life, one borrower $_____ ☐ Credit Life, both borrowers $_____ Term ____

☐ Credit Disability, one borrower $_____ ☐ Credit Disability, both borrowers $_____ Term ____

☐ Credit Involuntary Unemployment Insurance, one borrower $_____ Term ____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs.
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov. [~~This lender is licensed and examined by the State of Texas -Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579.~~]

I agree to the terms of this contract. I received a completed copy on _____.

X_____
Borrower
X_____
Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

[~~Recibi la Forma Informe de Prestamo _____~~]
[~~*I received the Spanish Disclosure.*~~]

Amended Figure: 7 TAC §90.304(a)(7) (342-F Add-On Note)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ **DATE OF NOTE** _____

CREDITOR / LENDER _____ **BORROWER** _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	**FINANCE CHARGE** The dollar amount the credit will cost me. $	Amount Financed The amount of credit provided to me or on my behalf. $	Total of Payments The amount I will have paid after I have made all payments as scheduled. $

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment.

Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE FINANCE CHARGE

Acquisition Charge……..$ _____

Installment Account Handling Charge……..$ _____

ITEMIZATION OF THE AMOUNT FINANCED

Previous Account……..# _____
Late Charge on Previous Account……..$ _____
Previous Balance……..$ _____
Less Refund……..$ _____
Net Balance Renewed……..$ _____
Cash to me……..$ _____
Amount Financed……..$ _____

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due.

I can make a whole payment early. The acquisition charge on this loan will not be refunded if I pay off early. If I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than $1.00.

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov. [~~This lender is licensed and examined by the State of Texas -Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579.~~]

X_____
Borrower

X_____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.
[~~Reciba la Forma Informa de Prestamo~~ _____]
[~~*I received the Spanish Disclosure.*~~]

New Figure: 7 TAC §90.304(a)(8) (342-F Scheduled Installment Earnings Note)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ **DATE OF NOTE** _____

CREDITOR / LENDER _____ **BORROWER** _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	**FINANCE CHARGE** The dollar amount the credit will cost me. $	Amount Financed The amount of credit provided to me or on my behalf. $	Total of Payments The amount I will have paid after I have made all payments as scheduled. $

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment.

Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge and I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE FINANCE CHARGE

Acquisition Charge……..$ _____

Interest Charge (Installment Account Handling Charge)…$ _____

ITEMIZATION OF THE AMOUNT FINANCED

Previous Account……..# _____
Late Charge on Previous Account……..$ _____
Previous Balance……..$ _____
Less Refund……..$ _____
Net Balance Renewed……..$ _____
Cash to me……..$ _____
Amount Financed……..$ _____

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. I can make a whole payment early.

The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, I may save part of the interest charge. However, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded. You don't have to refund or credit any amount less than $1.00.

If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment. If I don't pay all I owe by the date the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due. If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X_____
Borrower

X_____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

New Figure: 7 TAC §90.304(a)(9) (342-F True Daily Earnings Note)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ **DATE OF NOTE** _____

CREDITOR / LENDER _____ **BORROWER** _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	**FINANCE CHARGE** The dollar amount the credit will cost me. $	Amount Financed The amount of credit provided to me or on my behalf. $	Total of Payments The amount I will have paid after I have made all payments as scheduled. $

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment.

Prepayment: If I pay off early, I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, and any required repayment in full before the scheduled date.

ITEMIZATION OF THE FINANCE CHARGE

Acquisition Charge……..$ _____

Interest Charge (Installment Account Handling Charge)…$ _____

ITEMIZATION OF THE AMOUNT FINANCED

Previous Account……# _____
Late Charge on Previous Account……..$ _____
Previous Balance……..$ _____
Less Refund……..$ _____
Net Balance Renewed……..$ _____
Cash to me……..$ _____
Amount Financed……$ _____

I promise to pay the unpaid principal balance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. I can make any payment early.

The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded.

If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X_____
Borrower

X_____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

New Figure: 7 TAC §90.403(b)(2)(C) (342-G Home Equity Payment Schedule)

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Amended Figure: 7 TAC §90.403(b)(6)(A) [~~§90.403(b)(8)(A)~~]
(342-G Home Equity Scheduled Installment Earnings Finance Charge & Refunds)

"The annual rate of interest is ___%. This interest rate may be different from the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Amended Figure: 7 TAC §90.403(b)(6)(C) [~~§90.403(b)(8)(C)~~]
(342-G Home Equity True Daily Earnings Finance Charge & Refunds)

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest."

Amended Figure: 7 TAC §90.404(a)(8) [~~§90.404(a)(7)~~] (342-G Home Equity Note)

TEXAS HOME EQUITY NOTE
(Fixed Rate – Second Lien)

THIS IS AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

CREDITOR/LENDER_____
CREDITOR/LENDER NMLS ID _____
LOAN ORIGINATOR _____
LOAN ORIGINATOR NMLS ID _____
ADDRESS _____
_____

DATE OF NOTE _____
ACCOUNT/CONTRACT NO. _____
BORROWER _____
ADDRESS _____
_____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

Security: You will have a security interest in my homestead.
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution. Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

2. LATE CHARGE

General Late Charge: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. High-Cost Mortgage Loan Late Charge: If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may be different from the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest.

6. FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the homestead unless you agree in writing;
d. I sell, lease, or dispose of the homestead;
e. I use the homestead for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

☐ Property Insurance $_____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower	$_____	Credit Life, both borrowers	$_____	Term _____
Credit Disability, one borrower	$_____	Credit Disability, both borrowers	$_____	Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____

_____
Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____
Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and the spouse of each owner unless the owner or spouse obtained this loan by actual fraud.

If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than the law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

18. HOMESTEAD IS SUBJECT TO THE LIEN OF THE SECURITY DOCUMENT

The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law.

20. OCCC [~~COMPLAINTS AND INQUIRIES~~] NOTICE

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

[~~This lender is licensed and examined by the State of Texas – Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems.~~]

[~~Office of Consumer Credit Commissioner~~]
[~~2601 North Lamar Boulevard, Austin, Texas 78705-4207~~]
[~~www.occc.state.tx.us~~]
[~~(800) 538-1579~~]

21. COLLATERAL

The homestead described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document. This document must be signed at the office of the Lender, an attorney at law, or a title company.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Amended Figure: 7 TAC §90.404(a)(9) [~~§90.404(a)(8)~~] (342-G Home Equity Security Document)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME EQUITY SECURITY DOCUMENT (Second Lien)

This Security Document is not intended to finance Borrower's acquisition of the Property.

THIS SECURITY DOCUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note.
Your address is _____. Your NMLS ID is _____. You are the beneficiary under this Security Document.
The loan originator's name is _____. The loan originator's NMLS ID is _____.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____(maturity date).

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute. The Riders include *(check box as applicable):*

☐ Texas Home Equity Condominium Rider
☐ Texas Home Equity Planned Unit Development Rider
☐ Other: _____

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, administrative rules, local ordinances, judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: (i) damage or destruction of My Homestead; (ii) condemnation or other taking of all or any part of My Homestead; (iii) conveyance instead of condemnation; or (iv) misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note plus (ii) any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601 *et seq.*~~]) and Regulation X (12 C.F.R. Part 1024) [~~(24 C.F.R. Part 3500)~~], as [~~they might be~~] amended [~~from time to time~~], or any additional or successor legislation or regulation that governs the same subject

matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this loan, I give you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, My Homestead located in _____ County at *(Street Address) (City*) *(State) (Zip Code*) and further described as:

(Legal Description)

The security interest in My Homestead includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. To the extent required by law, the security interest is limited to homestead property. No additional real or personal property secures the Loan Agreement.

This Security Document secures:

a. repayment of the Note, and all extensions and modifications of the Note; and
b. the completion of my promises and agreements under the Loan Agreement.

I warrant that I own My Homestead and have the right to grant you an interest in it. I also warrant that My Homestead is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to My Homestead. I will be responsible for your losses that result from a conflicting ownership right in My Homestead. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the loan only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over your security interest in My Homestead under the Loan Agreement;
b. leasehold payments or Ground Rents on My Homestead, if any; and
c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

a. to permit you to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to My Homestead that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on My Homestead, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of My Homestead is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to My Homestead against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in My Homestead, my contents in My Homestead or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of My Homestead, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore My Homestead unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon My Homestead you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon My Homestead, fail to respond to the offer of settlement, or you foreclose on My Homestead, I assign to you:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering My Homestead.

You may apply the proceeds to repair or restore My Homestead or to the amount that I owe.

HOMESTEAD

I now occupy and use the property secured by this Security Document as my Texas homestead.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

CONDITIONS CAUSING ACTUAL FRAUD

I commit actual fraud under Section 50(a)(6)(C), Article XVI of the Texas Constitution if I or any person acting at my direction or with my knowledge or consent:

a. gives you materially false, misleading, or inaccurate information or statements;
b. fails to provide material information regarding the loan; or
c. commits any other action or inaction that is determined to be actual fraud.

Material representations include statements concerning my occupancy of My Homestead as a Texas homestead, the statements and promises contained in any document that I sign in connection with the Loan Agreement, and the execution of an acknowledgment of fair market value of My Homestead as described in the Loan Agreement. If I commit actual fraud I will be in default of the Loan Agreement and may be held personally liable.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in My Homestead, including protecting or assessing the value of My Homestead, and securing or repairing My Homestead. You may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect your interest in My Homestead or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon My Homestead.

In order to protect your interest in My Homestead, you may:

a. pay amounts that are secured by a lien on My Homestead which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

You may enter My Homestead to secure it. To secure My Homestead, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure My Homestead. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If My Homestead is damaged, Miscellaneous Proceeds will be applied to restore or repair My Homestead. You will only do this if your interest in My Homestead will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect My Homestead to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in My Homestead will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of My Homestead. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of My Homestead immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of My Homestead immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of My Homestead immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon My Homestead you may apply Miscellaneous Proceeds either to restore or repair My Homestead, or to the amount I owe.

Damage to My Homestead caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to My Homestead and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair My Homestead or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

a. has no duty to pay the sums secured by this Security Document;
b. is not a surety or guarantor;
c. only grants the person's interest in My Homestead under the terms of this Security Document; and
d. grants the person's interest in My Homestead to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution.

The lien against My Homestead is a voluntary lien and is a written agreement that shows the consent of each owner and each owner's spouse. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

a. reduce the amount to the amount permitted; or
b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in My Homestead.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in My Homestead" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of My Homestead under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in My Homestead and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure you that your interest in My Homestead will remain intact; and
e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in My Homestead without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. If a different company services the Loan Agreement, the servicing duties to me will be transferred.

You or I must give notice of any violation of the Loan Agreement to the other and the opportunity to address the alleged violation before starting or joining any legal action. You and I will give each other a reasonable amount of time to address the alleged violation. If the law provides a specified time period that must be given to address a violation, that time period will be a reasonable time for purposes of this paragraph. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

You and I intend to strictly follow the provisions of the Texas Constitution that relate to the Loan Agreement (Section 50(a)(6), Article XVI of the Texas Constitution).

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. The Loan Agreement is being made on the condition that you have a reasonable amount of time to correct any violation of Applicable Law. I will notify you of any violation and give you a reasonable amount of time to comply before taking any action. I will cooperate with your reasonable effort to correct the Loan Agreement. You will forfeit all principal and interest as required by Applicable Law if you have:

a. received my notice;
b. had a reasonable amount of time to correct the violation; and
c. failed to correct the violation.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of the Texas Constitution and Texas law. If any promise, payment, duty or provision of the Loan Agreement is in conflict with the Applicable Law, then the promise, payment, duty or provision will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where My Homestead is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in My Homestead. I will not do or allow anyone else to do, anything affecting My Homestead:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of My Homestead.

The presence, use, or storage on My Homestead of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of My Homestead are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving My Homestead and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of My Homestead.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting My Homestead is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date you give me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of My Homestead.

You will inform me of my right to reinstate after acceleration and my right to bring a court action to contest the alleged default or to assert any other defense to the acceleration and sale. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell My Homestead or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

This lien against My Homestead may be foreclosed upon only by a court order. You may, at your option, follow any rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"). The power of sale granted by the Loan Agreement will be exercised according to the Rules. I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding.

POWER OF SALE

You have a fully enforceable lien on My Homestead. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure except as limited by the Texas Supreme Court. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell My Homestead to the highest bidder for cash in one or more parcels and in any order the Trustee determines. You may purchase My Homestead at any sale. The Rules will prevail in a conflict between the procedures and the Rules. If a conflict arises, the conflicting provision will be corrected in order to comply.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to My Homestead that cannot be defeated; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to My Homestead against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If My Homestead is sold through a foreclosure sale governed by this Section, I or any person in possession of My Homestead through me, will give up possession of My Homestead without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

You will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under Section 50(a)(6), Article XVI of the Texas Constitution.

NON-RECOURSE LIABILITY

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You are entitled to these rights whether you acquire the liens or debts by assignment or the holder releases them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document, subject to limitation of personal liability described below. The Texas Constitution provides that the Loan Agreement is given without personal liability against each owner of My Homestead and the spouse of each owner. Personal liability may be obtained if the Loan Agreement was obtained by actual fraud. This means that, unless actual fraud is found by a court, you are only able to enforce your rights under the Loan Agreement against My Homestead. You are not able to seek personal liability against the owner of My Homestead or the spouse of an owner. If the Loan Agreement is obtained by actual fraud, then I will be personally liable for the payment of any amounts due under the Loan Agreement. This means that a personal judgment could be obtained against me for a deficiency as a result of a foreclosure sale of My Homestead. A personal judgment would subject my other assets for the payment of the debt.

Unless prohibited by the Texas Constitution, this Section will not:

a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement;
b. affect your right to any promise or condition of the Loan Agreement.

PROCEEDS

I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender.

NO ASSIGNMENT OF WAGES

I have not assigned wages as security for the Loan Agreement.

ACKNOWLEDGMENT OF FAIR MARKET VALUE

You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at your option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, without any further act, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely, without liability, upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

WAIVER OF ADDITIONAL COLLATERAL

I agree that you waive all terms in any of your current or future loan documentation that:

a. creates a default of the Loan Agreement by a default of another obligation that is not secured by My Homestead;

b. provides for collateral other than My Homestead (including cross collateralization or dragnet provisions);
c. creates personal liability for me for the Loan Agreement (unless this loan was obtained by actual fraud); or
d. creates a personal guaranty.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE SIGNED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

I MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN AGREEMENT WITHOUT PENALTY OR CHARGE.

_____ _____(seal)
-Borrower

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____

_____(seal)
-Borrower

_____(seal)
-Borrower

(Acknowledgment on following page)

New Figure: 7 TAC §90.503(b)(2)(C) (342-G Purchase Money Payment Schedule)

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Figure: 7 TAC §90.503(b)(6)(A) [~~§90.503(b)(8)(A)~~]
(342-G Purchase Money Scheduled Installment Earnings Finance Charge & Refund)

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.503(b)(6)(C) [~~§90.503(b)(8)(C)~~]
(342-G Purchase Money True Daily Earnings Finance Charge & Refund)

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe."

Amended Figure: 7 TAC §90.504(a)(8) [~~§90.504(a)(7)~~] (342-G Purchase Money Note)

PURCHASE MONEY NOTE
(Fixed Rate – Second Lien)

CREDITOR/LENDER_____
CREDITOR/LENDER NMLS ID _____
LOAN ORIGINATOR _____
LOAN ORIGINATOR NMLS ID _____
ADDRESS _____
_____

DATE OF NOTE _____
ACCOUNT/CONTRACT NO. _____
BORROWER _____
ADDRESS _____
_____

PROPERTY ADDRESS: _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

Security: You will have a security interest in my homestead.
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

2. LATE CHARGE

General Late Charge: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. High-Cost Mortgage Loan Late Charge: If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

6. FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the Property unless you agree in writing;
d. I sell, lease, or dispose of the Property;
e. I use the Property for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because I default under any debt not secured by the Property.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance $_____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower	$_____	Credit Life, both borrowers	$_____	Term _____
Credit Disability, one borrower	$_____	Credit Disability, both borrowers	$_____	Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____
Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____
Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding immediate payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

18. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Security Document, dated _____, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Document describes how and under what conditions I may be required to make immediate payment in full of any amounts that I owe under this Note.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

20. OCCC [~~COMPLAINTS AND INQUIRIES~~] NOTICE

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

[~~The (name of Lender or Note Holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of Lender or Note Holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:~~]

[~~In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207~~]
[~~Telephone No.: (800) 538-1579~~]
[~~Fax No.: (512) 936-7610~~]
[~~E-mail: consumer.complaints@occc.state.tx.us~~]
[~~Website: www.occc.state.tx.us~~]

21. COLLATERAL

The collateral described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower
_____(Seal)
-Borrower

_____(Seal)
-Borrower
_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Amended Figure: 7 TAC §90.504(a)(9) [~~§90.504(a)(8)~~]
(342-G Purchase Money Security Document)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

PURCHASE MONEY SECURITY DOCUMENT
(Second Lien)

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have made a loan to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note.
Your address is _____. Your NMLS ID is _____. You are the beneficiary under this Security Document.
The loan originator's name is _____. The loan originator's NMLS ID is _____.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the Purchase Money Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____(maturity date).

(G) "Property" means the real estate that is described below under the heading "Transfer of Rights in the Property."

(H) "Riders" means all Riders to this Security Document that I execute. The Riders include (*check box as applicable*):

☐ Texas Purchase Money Condominium Rider
☐ Texas Purchase Money Planned Unit Development Rider
☐ Other: _____

(I) "Applicable Law" means all controlling applicable federal, Texas and state constitutions, statutes, regulations, administrative rules, local ordinances, and judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section _____ of this Security Document.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601 *et seq.*~~]) and Regulation X (12 C.F.R. Part 1024) [~~(24 C.F.R. Part 3500)~~], as [~~they might be~~] amended [~~from time to time~~], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of me" means any party that has taken title to the Property, whether or not that party has assumed my obligations under the Loan Agreement.

(Q) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this Loan Agreement I give you a security interest in the Property including existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City*) *(State) (Zip Code*) and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

This Security Document secures:

a. repayment of the Note, and all extensions and modifications of the Note; and
b. the completion of my promises and agreements under the Loan Agreement.

I promise that I own the Property and have the right to grant you an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for your losses that result from a conflicting ownership right in the Property. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the Loan Agreement only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over your security interest in the Property under the Loan Agreement;
b. leasehold payments or Ground Rents on the Property, if any; and
c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

a. to permit you to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of the Property is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to the Property against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of the Property, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore the Property unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or you foreclose on the Property, I assign to you:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering the Property.

You may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if you release the insurance or condemnation proceeds for the damage to or the taking of the Property. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the work. If this Security Document secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. You or your agent may inspect the Property. You may inspect the interior of the Property with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. You may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect your interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon the Property.

In order to protect your interest in the Property, you may:

a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

You may enter the Property to secure it. To secure the Property, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure the Property. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. You will only do this if your interest in the Property will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect the Property to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in the Property will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, you may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

a. has no duty to pay the sums secured by this Security Document;
b. is not a surety or guarantor; and
c. only grants the person's interest in the Property under the terms of this Security Document.

The lien against the Property is a voluntary lien and is a written agreement that shows the consent of each owner. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

a. reduce the amount to the amount permitted; or
b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in the Property.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to the Property address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in the Property" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of the Property is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in the Property and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure you that your interest in the Property will remain intact; and
e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date you give me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

You will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell the Property or seek other remedies allowed by Applicable Law without further

notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that I have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due.

Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.

POWER OF SALE

You have a fully enforceable lien on the Property. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, you, at your option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. You may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to the Property; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

Upon payment of all that I owe under this Loan Agreement, you will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. If you cannot, you will provide me with a discharge and release of all obligation under the loan. I will pay only the cost of recording the release of lien.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document.

Unless prohibited by Applicable Law, this Section will not:

a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement; or
b. affect your right to any promise or condition of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at your option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

SUBROGATION

If I ask, you will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. You will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. You own these things whether the lien or debt is transferred to you or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Security Document cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

REQUEST FOR NOTICE OF DEFAULT
----------AND FORECLOSURE UNDER SUPERIOR----------
MORTGAGES OR SECURITY DOCUMENTS

You and I request that the holder of any mortgage, security document or other claim with a lien that has priority over this Security Document give you Notice, at your address listed on page 1 of this Security Document, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

_____ _____(seal)
-Borrower

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____(seal)
-Borrower

STATE OF TEXAS
County of _____

Before me, a notary public, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20____.

(Seal) _____
Notary Public

Amended Figure: 7 TAC §90.603(c)(1)(B)
(342-G Home Improvement Single Advance Note Identification)

"CREDITOR/LENDER_____
CREDITOR/LENDER NMLS ID _____
LOAN ORIGINATOR _____
LOAN ORIGINATOR NMLS ID _____
ADDRESS (include county) _____
_____

DATE OF NOTE _____
ACCOUNT/CONTRACT NO. _____
BORROWER _____
ADDRESS (include county) _____
_____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: $_____

Terms of Payment (principal and interest) _____"

New Figure: 7 TAC §90.603(c)(4)(C)
(342-G Home Improvement Single Advance Payment Schedule)

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

Amended Figure: 7 TAC §90.603(c)(8)(A) [~~§90.603(c)(10)(A)~~]
(342-G Home Improvement Single Advance Scheduled Installment Earnings Finance Charge & Refund)

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Amended Figure: 7 TAC §90.603(c)(8)(C) [~~§90.603(c)(10)(C)~~]
(342-G Home Improvement Single Advance True Daily Earnings Finance Charge & Refund)

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe."

Amended Figure: 7 TAC §90.603(e)(1)(B)
(342-G Home Improvement Multi-Advance Note Identification)

"CREDITOR/LENDER_____
CREDITOR/LENDER NMLS ID _____
LOAN ORIGINATOR _____
LOAN ORIGINATOR NMLS ID _____
ADDRESS (include county) _____
_____

DATE OF NOTE _____
ACCOUNT/CONTRACT NO. _____
BORROWER _____
ADDRESS (include county) _____
_____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: _____

Terms of Payment (principal and interest): _____"

New Figure: 7 TAC §90.603(e)(4)(C)
(342-G Home Improvement Multi-Advance Payment Schedule)

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

Amended Figure: 7 TAC §90.603(e)(8)(A) [~~§90.603(e)(10)(A)~~]
(342-G Home Improvement Multi-Advance Scheduled Installment Earnings Finance Charge & Refund)

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Amended Figure: 7 TAC §90.603(e)(8)(C) [~~§90.603(e)(10)(C)~~]
(342-G Home Improvement Multi-Advance True Daily Earnings Finance Charge & Refund)

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe."

Amended Figure: §90.604(a)(13) [~~§90.604(a)(12)~~]
(342-G Home Improvement Single Advance Contract)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME IMPROVEMENT MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT AND POWER OF SALE

(Second Lien)

DATE_____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies. The Lender's NMLS ID is (NMLS ID of Lender). The loan originator's name is (name of loan originator with primary responsibility for the origination). The loan originator's NMLS ID is (NMLS ID of originator).

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____dollars (U.S. $_____) when the Work is completed.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;

2. sell and grant all or part of the Property "AS IS":

   a. to the highest bidder for cash;
   b. subject to prior liens and exceptions to conveyance and warranty; and
   c. without representation or warranty;

3. pay the proceeds of the sale, in this order:

   a. expenses of foreclosure, including Trustee's reasonable fee;
   b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
   c. any amount required by law to be paid; and
   d. any balance to me; and

4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

_____
Owner

_____
Owner

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of owner)_____.

_____
Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of contractor)_____.

_____
Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to __(third party lender)_____.

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of contractor)_____.

_____
Notary Public

(Seal)

Amended Figure: 7 TAC §90.604(a)(14) [~~§90.604(a)(13)~~]
(342-G Home Improvement Single Advance Note)

Mechanic's Lien Note
(Second Lien- Home Improvement)

CREDITOR/LENDER _____
CREDITOR/LENDER NMLS ID _____
LOAN ORIGINATOR _____
LOAN ORIGINATOR NMLS ID _____
ADDRESS (include county) _____
_____

DATE OF NOTE _____
ACCOUNT/CONTRACT NO. _____
BORROWER _____
ADDRESS (include county) _____
_____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: _____

Terms of Payment (principal and interest): _____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

Security: You will have a security interest in the following described property: (property description)_____
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

SECURITY FOR PAYMENT

Liens created in the Contract secure this Note. You will have a security interest in the following described property: (property description) _____

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale dated _____ between Contractor and Owner.

(D) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(E) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated_____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest. I have promised to pay this debt in regular periodic payments and to pay the debt in full not later than _____.

BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method:
I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

True Daily Earnings Method:
I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

LATE CHARGE

General Late Charge: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. High-Cost Mortgage Loan Late Charge: If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due.

AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

DEFERMENT

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules.

FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the loan agreement;
c. I allow a lien to be entered against the Property unless you agree in writing;
d. I sell, lease, or dispose of the Property;
e. I use the Property for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default.

PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance $_____ Term _____

CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower	$_____	Credit Life, both borrowers	$_____	Term _____
Credit Disability, one borrower	$_____	Credit Disability, both borrowers	$_____	Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____
Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____
Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

STATEMENT OF TRUTHFUL INFORMATION

I promise that all information I gave you is true.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this loan agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this loan agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the loan agreement.

NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this loan agreement to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than applicable law allows.

SAVINGS CLAUSE

If any part of this loan agreement is declared invalid, the rest of the loan agreement remains valid. If any part of this loan agreement conflicts with any law, that law will control. The part of the loan agreement that conflicts with any law will be modified to comply with the law. The rest of the loan agreement remains valid.

PRIOR AGREEMENTS

This written loan agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this loan agreement must be in writing. Both you and I have to sign written agreements.

APPLICATION OF LAW

Federal law and Texas law apply to this loan agreement.

OCCC [~~COMPLAINTS AND INQUIRIES~~] NOTICE

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

[~~The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:~~]

[~~Office of Consumer Credit Commissioner~~]
[~~2601 North Lamar Boulevard, Austin, Texas 78705-4207~~]
[~~www.occc.state.tx.us~~]
[~~(800) 538-1579~~]

COLLATERAL

The Property is subject to the Contract lien.

I am responsible for all obligations in this Note.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Amended Figure: §90.604(a)(15) [~~§90.604(a)(14))~~]
(342-G Home Improvement Multi-Advance Contract)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME IMPROVEMENT MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT, POWER OF SALE, AND DEED OF TRUST

(Second Lien)

DATE_____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies. The Lender's NMLS ID is (NMLS ID of Lender). The loan originator's name is (name of loan originator with primary responsibility for the origination). The loan originator's NMLS ID is (NMLS ID of originator).

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____dollars (U.S. $_____) when the Work is completed.

NOTE PAYABLE TO LENDER

In exchange for money from the Lender to you, I have signed a Note to the Lender in the amount of _____dollars (U.S. $_____).

LIEN TO SECURE NOTE

To secure the amounts Lender provides to you, and the interest payable to Lender, I give you, and you transfer to Lender, the Lien. The Note is secured by a deed of trust, which I will sign. The deed of trust will renew and extend the Lien created by this Contract.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

EXCEPTIONS TO CONVEYANCE AND WARRANTY

The exceptions to conveyance and warranty are:

(*List any exceptions to conveyance and warranty*.)

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

OWNER'S PROMISES AND RIGHTS

I promise that:

1. I own the Property in "fee simple," subject to the section in this Contract named "Exceptions to Conveyance and Warranty"; and

2. I will provide notice to Lender if I learn of a lien or claim for labor or material on the Property that relates to the Contract.

You agree that I have the following rights:

1. Despite anything to the contrary in this Contract, Lender may keep all amounts under sections 53.101 and 53.081 of the Texas Property Code until thirty days after the Work is completed;

2. I may deduct enough money from payments on the Note to the Lender to pay a lien or claim for labor or material provided to you that you are obligated to pay. I will still owe the amount in the Note; and

3. Without affecting the lien created by this Contract, I may use insurance proceeds to restore destroyed or damaged property for a loss occurring before the Work is completed.

OWNER'S DUTIES

I agree to:

1. pay timely all taxes and assessments on the Property;

2. preserve the lien's priority as it is established in this Contract;
3. pay all prior lien notes that I am responsible to pay and abide by all prior lien instruments;

4. because this Contract is for improvements to the Property, keep the Property other than those improvements in good repair and condition during the Work;

5. except to the extent that you are required to insure the Work during its progress, keep at my cost and expense, and in a form acceptable to you or your transferees, insurance policies having the following coverages issued by an insurance company or companies authorized to engage in the insurance business in Texas with a financial rating acceptable to you or your transferees:

   a. property insurance covering all improvements located on the Property in an amount not more than the actual amount of unpaid debt or the amount of their full replacement cost, whichever is less, containing a standard mortgage clause, provided that the amounts of coverage meet all coinsurance requirements of the policy;

   b. flood insurance, if the property is located in a flood hazard area; and

   c. any other insurance coverage that you or your transferees may reasonably require;

6. deliver the insurance policy to you within ten days of the date of the Contract and deliver renewals to you at least fifteen days before expiration;

7. I MAY PROVIDE THE INSURANCE REQUIRED OF ME BY THIS CONTRACT EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH LIKE COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS;

8. comply with all laws, ordinances, and restrictive covenants applicable to the Property; and

9. keep any buildings occupied as required by the insurance policy.

CONTRACTOR'S DUTIES

You agree that:

1. Until the Work is completed, you will insure the Work against loss or damage. You will insure the Work in the amount of any unpaid debt or the full replacement cost, whichever is less. The parties to this Contract will be beneficiaries of this insurance according to their respective interests. If you do not provide this insurance, you will bear any loss to the Work.

2. If any other lien or claim is filed against the Property, you will pay for its removal or provide a statutory bond.

CONTRACTOR'S RIGHTS

You have the following rights:

1. You may appoint in writing a substitute Trustee.

2. After completing the Work, you may apply any insurance proceeds to either (a) reduce the Note or (b) repair or replace damaged or destroyed improvements.

3. If I fail to carry out any of my duties other than providing insurance, you may carry out the duty. On demand, I will repay you for any amount paid. This amount will include attorneys' fees to an attorney who is not your employee. I will also pay you interest at the contract rate in the Note. If I repay you after the full Note amount is due, I will repay you the after maturity interest rate in the Note. Any amount to be repaid will be secured by this Contract.

4. If I default on the Note or this Lien is foreclosed, I will repay you for reasonable fees to an attorney who is not your employee. I will also repay you for court, collection, and foreclosure costs. The amount to be repaid will be secured by this Contract.

5. After notice of default plus twenty-one days, you may:

   a. declare the unpaid principal balance and earned interest on the Note immediately due;
   b. ask Trustee to foreclose this Lien and to give notice of the foreclosure sale under the Texas Property Code; and
   c. buy the Property at any foreclosure sale and then credit the amount of the bid on the Note.

   Notice of default is given when deposited with the United States Postal Service (certified mail, return receipt requested), addressed to me at my current mailing address or, if my current mailing address is unknown, to my last known address as shown in the records of the holder of the debt.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;

2. sell and grant all or part of the Property "AS IS":

   a. to the highest bidder for cash;
   b. subject to prior liens and exceptions to conveyance and warranty; and
   c. without representation or warranty;

3. pay the proceeds of the sale, in this order:

   a. expenses of foreclosure, including Trustee's reasonable fee;
   b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
   c. any amount required by law to be paid; and
   d. any balance to me; and

4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

GENERAL PROVISIONS

1. If you are dismissed from the Work, or you do not complete the Work, the Note amount will be reduced by the amount reasonably necessary to complete the Work. If you are not the Note holder, the holder may complete the Work.

2. This Contract is executed, acknowledged, and delivered before any labor has been performed or any material has been furnished for the Work. This Contract is entered into by all Owners with the consent of each Owner's spouse.

3. If any of the Property is sold under this Contract, I will immediately move from the Property. If I fail to do so, I will become a Tenant at Sufferance of the purchaser, subject to Forcible Detainer.

4. Statements in any Trustee's deed conveying the Property are assumed to be true.

5. The Lien is prior to liens created later, even if the Note is extended or part of the Property is released.

6. Payments will be applied first to satisfy any portion of the Note that is not secured by this Contract.

7. I transfer to you all condemnation proceeds. I also transfer to you all proceeds from a private sale in lieu of condemnation. I further transfer to you all damages caused by public works on or near the Property. After deducting any expenses, including attorneys' fees and court and other lawful costs, you will either release any remaining amounts to me or apply them to reduce the Note. I will immediately give you notice of any actual or threatened proceeding for a taking of all or part of the Property.

8. You do not elect remedies by continuing under this Contract, beginning foreclosure, or pursuing any other remedy.

9. As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.

10. I do not have to pay interest or other amounts that are more than Applicable Law allows.

11. Where appropriate, singular nouns and pronouns include the plural.

12. The word "may" gives sole discretion without imposing any duty to take action.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

_____
Owner

_____
Owner

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of owner)_____.

_____
Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of contractor)_____.

_____
Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to (third party lender)_____.

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by (name of contractor)_____.

_____
Notary Public

(Seal)

Amended Figure: 7 TAC §90.604(a)(16) [~~§90.604(a)(15)~~]
(342-G Home Improvement Multi-Advance Note)

Mechanic's Lien Note
(Second Lien- Home Improvement)

CREDITOR/LENDER _____
CREDITOR/LENDER NMLS ID _____
LOAN ORIGINATOR _____
LOAN ORIGINATOR NMLS ID _____
ADDRESS (include county) _____
_____

DATE OF NOTE _____
ACCOUNT/CONTRACT NO. _____
BORROWER _____
ADDRESS (include county) _____
_____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount:_____

Terms of Payment (principal and interest): _____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	**Amount of Payments**	**When Payments Are Due**

Security: You will have a security interest in the following described property: (property description)_____
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

SECURITY FOR PAYMENT

The Deed of Trust and the Lien created in the Contract secure this Note. You will have a security interest in the following described property: (property description)_____

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

LATE CHARGE

General Late Charge: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. High-Cost Mortgage Loan Late Charge: If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due.

AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not

subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

DEFERMENT

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules.

FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the Property unless you agree in writing;
d. I sell, lease, or dispose of the Property;
e. I use the Property for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default.

PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If

I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance $_____ Term _____

CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower $_____ Credit Life, both borrowers $_____ Term _____

Credit Disability, one borrower $_____ Credit Disability, both borrowers $_____ Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____

Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

STATEMENT OF TRUTHFUL INFORMATION

I promise that all information I gave you is true.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe

under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

THIS NOTE SECURED BY A DEED OF TRUST

In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

OCCC [~~COMPLAINTS AND INQUIRIES~~] NOTICE

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

[~~The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:~~]

[~~Office of Consumer Credit Commissioner~~]
[~~2601 North Lamar Boulevard, Austin, Texas 78705-4207~~]
[~~www.occc.state.tx.us~~]
[~~(800) 538-1579~~]

COLLATERAL

The Property is subject to the Contract lien.

I am responsible for all obligations in this Note.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES

WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Amended Figure: 7 TAC §90.604(a)(17) [~~§90.604(a)(16)~~]
(342-G Home Improvement Deed of Trust)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME IMPROVEMENT DEED OF TRUST

ASSIGNMENT OF CONTRACTOR'S LIEN

(Second Lien)

DEFINITIONS

(A) "Borrower" is _____. Borrower's address is _____.

(B) "Contractor" is _____. Contractor's address is _____.

(C) "Lender" is _____. Lender's address is _____.
Lender's NMLS ID is _____. The loan originator's name is _____. The loan originator's NMLS ID is _____.

(D) "Trustee" is _____. Trustee's address is _____.

(E) "I" or "me" means _____, the grantor under this Deed of Trust and the person who signed the Note ("Borrower").

(F) "Loan Agreement" means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me.

(G) "Deed of Trust" means this document, which is dated _____, together with all riders to this document.

(H) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is _____ dollars (U.S. $_____) plus interest.

(I) "Property" means the property at (list address of the Property), whose legal description is (list legal description of the Property).

(J) "Applicable Law" means all controlling applicable federal, state, and local law.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Deed of Trust.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Deed of Trust.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601 et seq.~~]) and Regulation X (12 C.F.R. Part 1024) [~~(24 C.F.R. Part 3500)~~], as [~~they might be~~] amended [~~from time to time~~], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest" means any party that has taken title to the Property.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. Such an arrangement usually takes the form of a long-term "ground lease."

(S) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(T) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

TRANSFER OF RIGHTS IN THE PROPERTY

I give the Property to Trustee to ensure Lender is repaid the debt evidenced by my Note dated _____ and any renewal or extension, to ensure Lender is repaid any sums (with interest) Lender advances to protect the security of this Deed of Trust, and to guarantee my promises. I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City*) *(State) (Zip Code*) and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

I promise that I own the Property and have the right to grant Lender an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for Lender's losses that result from a conflicting ownership right in the Property. Any default under my agreements with Lender will be a default of this Deed of Trust.

LENDER AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to Lender unpaid, Lender may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as Lender directs. Lender will apply my payments against the Loan Agreement only when they are received at the designated location. Lender may change the location for payments if Lender gives me notice.

Lender may return any partial payment that does not bring the account current. Lender may accept any payment or partial payment that does not bring the account current without losing Lender's rights to refuse full or partial payments in the future. I will not use any offset or claim against Lender to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay Lender an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over Lender's security interest in the Property under the Loan Agreement;
b. leasehold payments or Ground Rents on the Property, if any; and
c. premiums for any insurance Lender requires under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, Lender may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give Lender all notices of amounts to be paid. I will pay Lender the Funds for Escrow Items unless Lender, at any time, waives my duty to pay Lender. Any escrow waiver must be in writing. If Lender waives my duty to pay Lender the Funds, I will pay, at Lender's direction, the amounts due for waived Escrow Items. If Lender requires, I will give Lender receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If Lender grants me an escrow waiver, Lender may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, Lender may use any right given to Lender in the Loan Agreement. Lender may pay waived Escrow Items and require me to repay Lender. Lender may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If Lender cancels the waiver, I will pay Lender all Funds that are then required under this Section.

At any time Lender may collect and hold Funds in an amount:

a. to permit Lender to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount Lender may require under RESPA.

Lender will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including Lender, if Lender's deposits are insured) or in any Federal Home Loan Bank.

Lender will timely pay Escrow Items as required by RESPA. Lender will not charge me a fee for maintaining or handling my escrow account. Lender is not required to pay me any interest on the amounts in my escrow account. Lender will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, Lender will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, Lender will notify me, and I will pay Lender the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. Lender will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Deed of Trust. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Deed of Trust unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to Lender and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to Lender); or
c. obtain an agreement from the holder of the lien that is satisfactory to Lender.

If Lender determines that any part of the Property is subject to a lien that can take priority over this Deed of Trust, Lender may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I WILL INSURE THE CURRENT AND FUTURE IMPROVEMENTS TO THE PROPERTY AGAINST LOSS BY FIRE, HAZARDS INCLUDED WITHIN THE TERM "EXTENDED COVERAGE," AND ANY OTHER HAZARDS INCLUDING EARTHQUAKES AND FLOODS, AS LENDER MAY REQUIRE. I WILL KEEP THIS INSURANCE IN THE AMOUNTS (INCLUDING DEDUCTIBLE LEVELS) AND FOR THE PERIODS THAT LENDER REQUIRES. LENDER MAY CHANGE THESE INSURANCE REQUIREMENTS DURING THE TERM OF THE LOAN AGREEMENT. I HAVE THE RIGHT TO CHOOSE AN INSURANCE CARRIER THAT IS ACCEPTABLE TO LENDER. LENDER WILL EXERCISE LENDER'S RIGHT TO DISAPPROVE REASONABLY. I MAY PROVIDE ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. Lender may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, Lender may obtain insurance at Lender's option and at my expense. Lender is not required to purchase any type or amount of insurance. Any insurance Lender buys will always protect Lender, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe Lender for the cost of any insurance that Lender buys under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date Lender made the payment. Lender will give me notice of the amounts I owe under this Section.

Lender may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name Lender as mortgagee or a loss payee. I will give Lender all insurance premium receipts and renewal notices, if Lender requests. If I obtain any optional insurance to cover damage or destruction of the Property, I will name Lender as a loss payee. In the event of loss, I will give notice to Lender and the insurance company. Lender may file a claim if I do not file one promptly. Lender will apply insurance proceeds to repair or restore the Property unless Lender's interest will be reduced or it will be economically unreasonable to perform the Work. Lender may hold the insurance proceeds until Lender has had an opportunity to inspect the Work and Lender considers the Work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the Work is completed. Lender will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if Lender's interest will be reduced or if the Work will be economically unreasonable to perform. Lender will pay me any excess insurance proceeds. Lender will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property Lender may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from Lender, then Lender may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or Lender forecloses on the Property, I assign to Lender:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering the Property.

Lender may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my

obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE DEED OF TRUST

Lender may do whatever is reasonable to protect Lender's interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. Lender may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect Lender's interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon the Property.

In order to protect Lender's interest in the Property, Lender may:

a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

Lender may enter the Property to secure it. To secure the Property, Lender may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Lender has no duty to secure the Property. Lender is not liable for failing to take any action listed in this Section. Any amounts Lender pays under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. Lender will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to Lender. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. Lender will only do this if Lender's interest in the Property will not be reduced and if the work will be economically reasonable to perform. Lender will have the right to hold Miscellaneous Proceeds until Lender inspects the Property to ensure the work has been completed to Lender's satisfaction. Lender must make the inspection promptly. Lender may release proceeds for the work in a single payment or in multiple payments as the work is completed. Lender is not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if Lender's interest in the Property will be reduced or the work will be economically unreasonable to perform. Lender will pay me any excess Miscellaneous Proceeds. Lender will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

Lender will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. Lender will apply the Miscellaneous Proceeds even if all payments are current. Lender will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then Lender will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then Lender will apply Miscellaneous Proceeds to the amount I owe in the following manner:
    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

Lender and I can agree otherwise in writing. Lender will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, Lender may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If Lender gives me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to Lender within thirty days, Lender may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, Lender will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later.

JOINT AND SEVERAL LIABILITY, DEED OF TRUST EXECUTION, SUCCESSORS OBLIGATED

I understand that Lender may seek payment from only me without first looking to any other Borrower.

Any person who signs this Deed of Trust, but not the Note:

a. will not have to repay the Note;
b. is not a surety or guarantor; and,

c. only gives a security interest in the Property under this Deed of Trust.

The Lien against the Property is voluntary. Each owner and each owner's spouse consent to the Lien. Lender and I may modify the Loan Agreement in writing. Lender must approve my successor in writing. My successor will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless Lender releases me in writing. The Loan Agreement will extend to Lender's assigns or successors.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

MAILING OF NOTICES TO BORROWER

Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, Lender will give me copies of all documents I sign.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits.

If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement.

LENDER, CONTRACTOR, AND I PROMISE AND AGREE:

ACCELERATION AND REMEDIES

Lender will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date Lender gives me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

Lender will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, Lender has the option to require immediate payment in full of all I owe. If Lender is not paid all I owe, Lender may sell the Property or seek other remedies allowed by Applicable Law without further notice. Lender may collect Lender's reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

POWER OF SALE

Lender has a fully enforceable lien on the Property. Lender's remedies for my default include an efficient means of foreclosure under the law. Lender and the Trustee have all powers to conduct a foreclosure. If Lender chooses to use the power of sale, Lender will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. Lender will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or

before the date in the notice, Lender, at Lender's option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. Lender may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to the Property; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop Lender from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. Lender is paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. Lender is paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure Lender that Lender's interest in the Property will remain intact; and
e. I comply with any reasonable requirement to assure Lender that my ability to pay what I owe will remain intact.

Lender may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without Lender's permission.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received.

RELEASE

Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. Lender may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at Lender's option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional, or successor Trustee will receive the title, rights, remedies, powers, and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement, or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

ASSIGNMENT OF CONTRACTOR'S LIEN, COMMENCEMENT OF WORK

Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a Lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the lien created by this Deed of Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the Property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or material delivered before the Contract was executed.

SUBROGATION

If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

RENEWAL AND EXTENSION

The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and Applicable Law.

Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will override any conflicting provision of the Loan Agreement.

Lender's right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give Lender written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. Lender will have no obligation for an Environmental Cleanup.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

Lender is entitled to all rights, superior title, liens, and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. Lender may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Deed of Trust is responsible for each promise and duty in the Deed of Trust.

Unless prohibited by Applicable Law, this Section will not:

a. impair in any way the Loan Agreement or Lender's right to collect all that I owe under the Loan Agreement;
b. affect Lender's right to any promise or condition of the Loan Agreement.

DEFAULT

Any default of my agreements with Lender will be a default of this Deed of Trust.

REQUEST FOR NOTICE OF DEFAULT
----------AND FORECLOSURE UNDER SUPERIOR----------
MORTGAGES OR DEEDS OF TRUST

Lender and I request that the holder of any mortgage, deed of trust or other claim with a lien that has priority over this Deed of Trust give Lender notice, at Lender's address listed on this Deed of Trust, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

By:_____

_____ _____(Seal)
-Borrower

Printed Name:_____
(Please Complete)

_____(Seal)
-Borrower

_____

Printed Name:_____
(Please Complete)

_____(Seal)
-Borrower

_____(Seal)
-Borrower

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of owner)_____.

_____
Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by ___(name of contractor)_____.

_____
Notary Public

(Seal)

September 30, 2015

Ms. Laurie Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

Re: Texas proposed amendments to 7 TAC Ch. 84 – motor vehicle installment sales

Dear Ms. Hobbs:

On behalf of the American Financial Services Association ("AFSA"),[1] thank you for providing us with the opportunity to comment on the Finance Commission of Texas' ("Commission") proposed amendments to 7 TAC Chapter 84 concerning motor vehicle installment sales (published in *Texas Register* Vol. 40, No. 36). We appreciate the Commission's consideration of our precomments regarding the draft proposed amendments and the revisions made to the proposal to address some of our concerns. Specifically, clarifying that the required Flesch-Kincaid Grade Level Score of the contract can be based on Microsoft Word's readability statistics function and permitting licensees to use the prior model contract language until December 31, 2016.

We further believe the proposed model contract for motor vehicle retail installment sales (proposed Figure 7 TAC § 84.809(b)) should be amended to include language for obtaining the consumer's prior express consent to receive text messages or cell phone calls for account servicing and collection, consistent with the Telephone Consumer Protection Act ("TCPA").[2]

AFSA members contact their customers for a variety of reasons – to tell the customer that there is a fraud alert on an account, a payment is due, a work-out plan is available, or with some other account servicing message. The most expedient and effective way to reach many of customers is to call, e-mail, or text them on their cell phones, especially if they travel or work out of town and may not receive mail for a period of time. If it is not the only way to reach the customer, it is often the way that a customer prefers to be contacted. For these reasons, we suggest the inclusion of the following language in the model contract:

> "Servicing and Collection Contacts: I agree that you may try to contact me in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. I also agree that you may try to contact me in these and

[1] Founded in 1916, the American Financial Services Association (AFSA) is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including mortgages, payment cards, retail sales finance, traditional installment loans, and vehicle financing/leasing. AFSA members do not provide payday or vehicle title loans. AFSA is based in Washington, D.C.
[2] 47 U.S.C. § 227

240

other ways at any address or telephone number I provide you, even if the telephone number is a cell phone number or the contact results in a charge to me."

Thank you in advance for your consideration of our suggestions. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 952-922-6500 or [redacted].

Sincerely,

Danielle Fagre Arlowe
Senior Vice President, State Government Affairs
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006

TADA
Texas Automobile Dealers Association

1108 Lavaca, Suite 800
Austin, Texas 78701
Phone: 512-476-2686
www.tada.org

September 10, 2015

Ms. Laurie Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705-4207

Sent via email: laurie.hobbs@occc.texas.gov

Re: Proposed Amendments to 7 TAC Chapter 84
Motor Vehicle Installment Sales
40 *TexReg* 5608, et seq. (September 4, 2015)

Dear Ms. Hobbs:

I appreciate Mr. Rigby, Mr. Nance, and you taking the time to discuss the proposed amendments as published in the September 4, 2015, *Texas Register* (40 *TexReg* 5608, et seq.) regarding 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales at the agency's September 9th Stakeholder Meeting.

As we discussed, the Model Clauses in § 84.808 and the published Figures that appear in the *Texas Register* are extremely useful for the members of TADA as well as to providers and publishers of forms. In addition, a buyer's order used by a franchised dealer may follow or track language from the agency's published *Texas Register* Figures. Finally, it is more useful and more readily understood to see the model clauses in a graphic form versus reading the printed word.

The proposed Model Clause regarding the inspection fee for a contract subject to the Texas Finance Code in § 84.808(8)(E) states:

> (E) Inspection fee. Under Texas Transportation Code, § 548.509, at the time of registration, the Texas Department of Motor Vehicles or a county assessor-collector will collect a portion of the inspection fee to be remitted to the state. The creditor may disclose the inspection fee by either of the following methods:

> (i) including the portion remitted to the state in the "Government license and registration fees" section, and the portion remitted to the inspection station in the "Government vehicle inspection fees" section; or
>
> (ii) including the entire inspection fee in the "Government vehicle inspection fees" section, with the amounts paid to the state and the inspector documented immediately below the section with the following language: "To State $_____" and "To Inspection Station $_____."

On behalf of the industry, TADA requests that option § 84.808(8)(E)(ii) be shown in a graphic such as published in Figure 7 TAC §§ 84.808(8)(A), 84.808(8)(B), or 84.809(b) (*See* 40 *TexReg* 5815, 40 *TexReg* 5816, 40 *TexReg* 5819) as the industry relies upon the graphics and not just the printed word. In point of fact, the graphics are more readily relied upon by the industry.

With respect to proposed 7 TAC § 84.808(8)(E)(i), TADA is concerned that if a licensee/creditor includes an **inspection fee**, or a portion of the inspection fee, in the "*Government license and registration fees*" itemized charge line on the retail installment contract, even if it is the portion remitted to the state, and then itemizes the portion of the inspection fee that is maintained or remitted to the inspection station in the "Government vehicle inspection fees section," that the inclusion of any inspection fee in a license and registration fee line will be misinforming the consumer and may be, at best, confusing to both the buyer and to the seller.

The statutory provision referenced in the proposal, Transportation Code § 548.509[1], states the county assessor-collector that registers a motor vehicle **subject to an inspection fee** collects **at the time of registration** the portion of the **inspection fee** that is required to be remitted to the state.

The inspection fee does not become a registration fee because it is remitted with the registration fee or when registering a vehicle–it is an inspection fee.

Again, TADA appreciates the proposed option and requests that the 7 TAC § 84.808(8)(E)(ii) proposal be included in a graphic in order for the industry, printers, and forms providers to refer to

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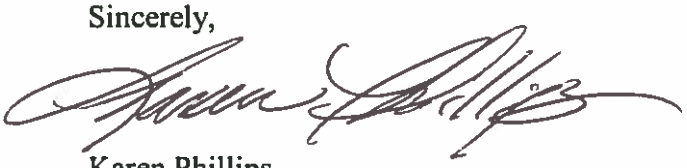
[1]TEX. TRANSP. CODE ANN. § 548.509: "The Texas Department of Motor Vehicles or a county assessor-collector that registers a motor vehicle that is subject to an inspection fee under this chapter shall collect at the time of registration of the motor vehicle the portion of the inspection fee that is required to be remitted to the state. The Texas Department of Motor Vehicles or the county assessor-collector shall remit the fee to the comptroller." (Vernon Supp. 2014).

the graphic for consistency and a clear understanding of the agency's proposal and intent. The graphic is necessary because the graphic is often referred to in lieu of the printed word.

If you have any question, please do not hesitate to contact me.

Sincerely,



Karen Phillips
General Counsel/EVP

c: Michael Rigby
General Counsel
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Matt Nance
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Texas Independent Automobile Dealers Association

September 11, 2015

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

Dear Ms. Hobbs:

On behalf of the Texas Independent Automobile Dealers Association (TIADA) I want to thank you for the opportunity to comment on the proposed amendments to 7 TAC Chapter 84 regarding plain language contract provisions.

TIADA appreciates the proposed option regarding inspection fees found at 7 TAC §84.808(8)(E)(ii). However, we would like to request that a graphic be included for consistency and to help provide the industry a clear understanding of this option.

The association appreciates the opportunity to comment on this rule review. Please feel free to contact me directly with any questions or concerns you may have.

Sincerely,

Danny Langfield
TIADA Deputy Executive Director

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments, New Rules, and Repeals in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review

PURPOSE: The purpose of the proposal regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039. The proposed amendments include clarifying changes regarding definitions, license applications, and fees. Proposed new sections outline examination authority and recordkeeping requirements, including a list of documents that credit access businesses are required to maintain. Other proposed new rules relate to separation between credit access businesses and third-party lenders, requirements for each extension of consumer credit, and criminal charges against consumers. Section 83.4003 is being proposed for repeal and being replaced with a reorganized rule regarding the review of criminal history. The content of current §83.4004 has been incorporated into proposed new §83.4003. Section 83.3012 concerning provisional licenses is being proposed for repeal, as this rule is no longer necessary.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments, new rules, and repeals in 7 TAC, Chapter 83, Subchapter B for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments, new rules, and repeals in 7 TAC, Chapter 83, Subchapter B.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 83. Regulated Lenders and Credit Access Businesses
Subchapter B. Rules for Credit Access Businesses

The Finance Commission of Texas (commission) proposes amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, 83.4002, and proposes new §§83.4003 (repeal and replace), 83.5003, 83.5004, 83.5005, 83.5006, and 83.5007 in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses. In addition, the commission proposes the repeal of §83.3012, §83.4003 (repeal and replace), and §83.4004.

In general, the purpose of the proposal regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The proposed amendments include clarifying changes regarding definitions, license applications, and fees. Proposed new sections outline examination authority and recordkeeping requirements, including a list of documents that credit access businesses are required to maintain. Other proposed new rules relate to separation between credit access businesses and third-party lenders, requirements for each extension of consumer credit, and criminal charges against consumers.

Section 83.4003 is being proposed for repeal and being replaced with a reorganized rule regarding the review of criminal history. The content of current §83.4004 has been incorporated into proposed new §83.4003. Section 83.3012 concerning provisional licenses is being proposed for repeal, as this rule is no longer necessary.

This is the first of two anticipated rule actions for credit access businesses. The agency anticipates that the second action, to be published in a later issue of the *Texas Register*, will include rule amendments on the following issues: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6165). The commission received no comments in response to that notice.

The agency circulated an early draft of proposed changes to interested stakeholders and received some informal precomments. Certain concepts recommended by the precommenters have been incorporated into this proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the proposed amendments, new rules, and repeals are outlined in the paragraphs to follow.

Section 83.1002 provides general definitions to be used throughout the chapter. The proposed amendments to this section contain definitions for the terms "multiple payment auto title loan," "multiple payment payday loan," "single payment auto title loan," and "single payment payday loan." The agency intends to apply these definitions for purposes of the requirements for recordkeeping (proposed §83.5004), data reporting (current §83.5001), and disclosures (current §§83.6001 through

83.6008). Two precommenters expressed concern about these definitions. One precommenter recommended "deferred presentment transaction" instead of "payday loan," due to the limited uses of the phrase "payday loan" in Texas Finance Code, Chapter 393. However, the agency believes that the term "payday loan" is appropriate, because it is widely used by the industry, and Texas Finance Code, §393.221(2) specifies that the term "[d]eferred presentment transaction . . . is also referred to as a payday loan." The other precommenter recommended the terms "installment pay day loans" and "installment auto title loan" instead of terms beginning with "multiple payment," because the precommenter believed that this more closely corresponds to how the products are marketed. However, the agency has consistently used the phrases "multiple payment" and "multi-payment" in the rule for consumer disclosures at §83.6007 and the accompanying figures.

A proposed amendment to §83.3001(2)(A) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §83.3002(1)(A)(iv)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process.

Proposed amendments to §83.3006 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. Proposed new §83.3006(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties or third-party lenders, criminal history, regulatory actions, or court judgments. Proposed new §83.3006(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

A proposed amendment to §83.3010(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

A proposed amendment to §83.3010(g)(1)(B) contains a technical correction for the method of calculating the volume-based portion of the annual assessment fee. Currently, the rule provides that the volume-based fee will not exceed "$0.03 per each $1,000 advanced . . . in accordance with the most recent quarterly report filing required by Texas Finance Code, §393.627." However, the total dollar amount of extensions of consumer credit is not part of the information the OCCC

currently requests on the quarterly report. Rather, this information is requested on the annual report. For this reason, the proposed amendment specifies that the fee will be based on the most recent annual report under §83.5001. This amendment is intended to provide technical clarification.

Section 83.3012 is proposed for repeal because it is no longer necessary. The agency issued provisional licenses during 2012 (the first year in which credit access businesses were licensed), but no longer issues provisional licenses.

Proposed amendments to §83.4002 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address). The amendments replace current language stating that notice is given upon mailing in a properly addressed envelope.

Proposed new §83.4003 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a credit access business license. This section replaces the current §83.4003 and §83.4004, which are proposed for repeal. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a credit access business. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a credit access business, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Proposed new §83.5003 describes the OCCC's examination authority for credit access businesses. This section implements Texas Finance Code, §393.622(a)(3), which allows the commission to "adopt rules with

respect to periodic examination" of credit access businesses by the agency, as well as Texas Finance Code, §393.622(b), which authorizes the commission to "adopt rules . . . to allow the commissioner to review, as part of a periodic examination, any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services." Subsection (a) provides that the OCCC may periodically examine each place of business of a licensee. Subsection (b) requires licensees to allow the OCCC to access their offices and make copies of records. Subsection (c) provides that the OCCC's examination authority includes the authority to examine third-party lender agreements. Subsections (d) and (e) allow the OCCC to take witness and records statements during an examination, and specifies the requirements of these statements. Unlike the other chapters of the Texas Finance Code that provide examination authority to the OCCC, Chapter 393 does not include express authority to take oaths. For this reason, under subsections (d) and (e), the OCCC may obtain unsworn witness and records, rather than sworn affidavits. Both statements would require an acknowledgment that the statements could be used in an enforcement action in which the licensee is a party.

Proposed new §83.5004 describes the recordkeeping requirements for credit access businesses. Paragraph (1) requires a transaction register showing the name of each consumer, the transaction number, and the type of transaction. Paragraph (2) outlines the information that must be included in the record of an individual consumer's account. Paragraph (2)(A) identifies the records that must be kept for every transaction, including required disclosures and any agreements with the consumer. Paragraph (2)(B) identifies additional records for transactions that the licensee services or collects, including account histories, documentation of repossessed collateral, litigation records, and records of criminal charges. Paragraph (2)(C) specifies the time period for maintaining the information in the individual consumer's file, which generally must be kept for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. This provision is intended to ensure that the licensee keeps transaction records at least until the time specified in applicable statutes of limitations, including the four-year limitations period in Texas Finance Code, §393.505. Paragraph (4) requires a licensee to maintain the required in-store fee schedule and notices. Paragraph (5) requires a licensee to maintain online disclosures and copies of web pages used to access online disclosures. Paragraph (6) requires a licensee to maintain advertisements. Paragraph (7) requires a licensee to maintain credit applications and adverse action records for the time period specified in Regulation B, 12 C.F.R. §1002.12(b). Paragraph (8) requires a licensee to maintain an index of transfers, assignments, and sales. Paragraph (9) requires a licensee to maintain an index of litigation, criminal charges, and repossessions. Paragraph (10) requires a licensee to maintain records of its registration and surety bond as a credit services organization. Paragraph (11) requires a licensee to maintain an official correspondence file for communications with the OCCC. Paragraph (12) requires a licensee to maintain general business records showing its compliance with applicable laws.

One precommenter requested a delayed implementation period for the recordkeeping requirements in §83.5004. As of the effective date of the rules, a licensee will be required to maintain any records described by §83.5004 that are in the licensee's possession. However, the agency is willing to consider a delayed implementation date for generating new records (such as the transaction register or the index of litigation, criminal charges, and repossessions) in order to comply with the rule. The agency invites comments about the amount of time that would be required in order to generate any new records not currently maintained.

Proposed new §83.5005 describes the requirements for separation between credit access businesses and third-party lenders. Subsection (a) describes the general separation requirement for credit access businesses and third-party lenders. Subsection (b) explains that the relationship must be consistent with special agency. Subsection (c) prohibits the credit access business from sharing its fee with the third-party lender.

This rule helps ensure that credit access businesses comply with Texas Finance Code, §393.001(3), which provides that a credit services organization's services include obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit "by others." Because a credit access business is a type of credit services organization, this means that a credit access business must be a separate entity from any third-party lender that provides an extension of credit to a consumer. The credit access business and third-party lender must operate independently. The agency is aware of two published court decisions analyzing the separation between credit services organizations and lenders under Texas law. First, in *Lovick v. Ritemoney Ltd.*, 378 F.3d 433 (5th Cir. 2004), the Fifth Circuit analyzed whether the relationship between a credit services organization and a lender was consistent with special agency for purposes of Chapter 393 and Texas usury laws. The court determined that the relationship was consistent with special agency, based primarily on four facts: (1) the credit services organization was not the same entity as the lender, (2) the credit services organization did not select underwriting criteria for making loans (instead, the credit services organization applied criteria selected by the lender), (3) the credit services organization's fee was not passed on to the lender, and (4) the credit services organization's fee did not directly benefit the lender. *Lovick*, 378 F.3d at 440-44. According to the court, the fact that the credit services organization and lender shared an exclusive relationship was not sufficient to create a general-agency or joint-participant relationship that would lead to a violation of Texas usury law. *Id.* at 439-40. Second, in *In re Grayson*, 488 B.R. 579, 589 (S.D. Tex. Bankr. 2012), a Texas bankruptcy court rejected a debtor's allegation that a credit services organization and lender were not truly independent and operated as a combined entity. Although the lender developed the software to prepare agreements between the credit services organization and lender, the court found that the facts did not support the debtor's allegation.

Two precommenters discussed the requirements for separation between credit access businesses and third-party lenders. One precommenter noted that some credit access businesses perform an initial credit evaluation to determine whether they will provide services for the consumer, before

applying the lender's separate underwriting criteria to determine whether the loan will be made. In response to this precomment, proposed subsection (b) specifies that a licensee "may not select the underwriting criteria used in determining whether the lender will make a loan to the consumer." Another precommenter suggested that the requirement that the credit access business be a "separate legal entity" from the third-party lender was insufficient, stating that this would provide credit access businesses with a loophole to get around the separation requirement. In response to this precomment, subsection (a) specifies that a credit access business "must operate independently from any third-party lender." The agency believes that with this language, the rule includes the necessary requirements to ensure that a credit access business assists in obtaining extensions of credit "by others," consistent with the case law discussed above.

Proposed new §83.5006 specifies that each extension of consumer credit that a licensee assists a consumer in obtaining must comply with all requirements that apply to the original extension of consumer credit. This means, for example, that if the credit access business helps the consumer obtain a renewal or refinance, it must provide new disclosures and a new contract for credit access business services. The proposed rule helps ensure that licensees comply with all of Chapter 393's requirements for each extension of consumer credit. Under Texas Finance Code, §393.001(4), "Extension of consumer credit' means the right to defer payment of debt offered or granted primarily for personal, family, or household purposes or to incur the debt and defer its payment." In examinations, the agency has found that certain licensees have renewed loans automatically, or renewed loans with no documentation other than a single-page renewal notice. These practices do not comply with the requirements throughout Chapter 393 to provide disclosures and enter a contract in connection with an extension of consumer credit.

Proposed new §83.5007 contains requirements regarding criminal charges against consumers. Subsection (a) provides that a credit access business may not threaten or pursue criminal charges related to a debit authorization in the absence of criminal activity. Subsection (b) provides that a licensee may not threaten or pursue a criminal charge unless it "possesses specific evidence that is sufficient to prove that the consumer violated a criminal law." Subsection (c) provides that the fact that a payment device is dishonored is not sufficient evidence to file a criminal charge.

This rule helps ensure that credit access businesses comply with Texas Finance Code, §393.201(c)(3), which provides that a contract between a credit access business and a consumer must "contain a statement that a person may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction in the absence of forgery, fraud, theft, or other criminal conduct." Under Texas Finance Code, §393.204, a credit access business's breach of a contract with a consumer is a violation of Chapter 393. In other words, Chapter 393 prohibits a credit access business from threatening or pursuing criminal charges against a consumer in the absence of criminal conduct. In addition, under Texas Finance Code, §393.626, a violation of Texas Finance Code, Chapter 392 (the Texas Debt Collection Act) is a violation of Chapter 393, Subchapter G.

Under Texas Finance Code, §392.301(a)(6), debt collectors are prohibited from "threatening to file a charge, complaint, or criminal action against a debtor when the debtor has not violated a criminal law."

In order to comply with these requirements, a credit access business must ensure that it possesses specific evidence sufficient to prove that the consumer violated a criminal law. If a credit access business lacks this evidence, then it may not pursue criminal charges (although it may be able to pursue a civil action as allowed by law). In particular, if the credit access business alleges that a consumer committed theft by check or issuance of a bad check, the licensee must have evidence that the consumer acted intentionally or knowingly. Although the Texas Penal Code, §31.06(a) and §32.41(b) provides a presumption of theft by check or issuance of a bad check when a check is dishonored, this presumption does not apply to post-dated checks. By definition, under Texas Finance Code §341.001(6), a deferred presentment transaction involves an agreement that "the check will not be cashed or deposited or the authorized debit will not be made until a designated future date." This means that additional evidence that the consumer acted knowingly or intentionally, in addition to the fact that the payment device is dishonored, is necessary to prove that the consumer committed theft by check or issuance of a bad check. For this reason, the fact that a payment device is dishonored is not sufficient evidence of criminal conduct.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rule changes are in effect, the public benefit anticipated as a result of the changes will be increased protection of consumers, clear and consistent regulations for credit access businesses, and enhanced compliance with the law.

Additional economic costs may be incurred by a person required to comply with this proposal. The agency anticipates that any costs resulting from the proposal would involve fulfilling certain requirements in the proposed recordkeeping rule, §83.5004. The three main types of potential costs the agency anticipates licensees may encounter in complying with the proposal are: 1) labor costs, 2) costs involved to maintain records for longer periods than they are currently maintained, 3) costs involved to generate new records not currently kept, and 4) programming costs for licensees that utilize electronic recordkeeping systems.

For licensees that utilize manual or electronic recordkeeping systems, the anticipated costs may include expenses related to employee training to review and implement the new recordkeeping requirements. These costs would vary widely among licensees depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to create or maintain a licensee's records.

For licensees that utilize manual or electronic recordkeeping systems, the anticipated costs would include expenses required to generate new records not currently kept. In particular, the proposed provisions that may result in the generation of new records are: 1) §83.5004(1)

(transaction register), 2) §83.5004(2)(B)(i)(IX) and (X) (individual payment entries and refunds for each consumer's transaction file), 3) §83.5004(8) (index of transfers, assignments, and sales), 4) §83.5004(9) (index of litigation, criminal charges, and repossessions). The amount of potential costs would vary considerably and be impossible to predict, as much will depend on how licensees currently maintain certain records, and the ability of licensees to produce certain records not retained with their current recordkeeping systems. However, based on the agency's experience with other licensees that maintain similar registers and indexes, such records should be easily produced from existing records (e.g., software program query or report).

Some licensees who use or lease specialized computer software programs for their business may experience some additional costs. These costs are impossible to predict, as much will depend on the particular licensee's current software system and the amount of programming changes required to comply with the proposal. Some training may be necessary to teach employees how to use existing or updated software to produce the records contemplated by the rule. The amount of software training necessary for each licensee is impossible to predict due to several variable factors, such as number of employees, amount of previous training conducted, and current knowledge of employees.

In relation to software programming, it is the agency's experience that today's credit access business transactions involve highly automated software systems. The agency expects that many licensees will select computer programs that will result in any marginal costs increases being relatively low.

First, licensees should already be maintaining a majority of the required records outlined in proposed new §83.5004 in order to comply with mandated quarterly and annual reporting requirements. In order to provide accurate reports, licensees must maintain detailed transaction records, including the type of transaction and all charges imposed in connection with the transaction. Second, most of these records should be maintained in order to demonstrate compliance with the law during examinations and investigations. Third, retention of the records outlined in proposed §83.5004 is a prudent business practice, and complying with these requirements helps ensure that licensees can properly address inquiries from the OCCC, federal regulators, and consumers.

The agency has attempted to lessen any potential costs by providing flexibility in the recordkeeping rules, which allow paper, electronic, or optically imaged systems. As noted earlier, this proposal incorporates the ability to access several items, or produce the information in the form of a report or list, which if generated from an electronic system, does not have to be maintained as a separate file or record. The agency has also allowed for certain records to be maintained at a centralized location, thus reducing the costs of keeping records at multiple locations, and providing examination access to these records at a particular location upon request. Additionally, the agency is considering a delaying implementation date for the generation of new records, which will help minimize potential costs.

Overall, the agency anticipates that any costs involved to comply with the proposal

will be minimal for most licensees. However, due to several factors resulting in varying, uncertain, and unpredictable costs, the agency would like to invite comment from licensees on any costs involved to comply with the proposal, as well as any alternatives to lessen those costs while achieving the purpose of the proposal.

Aside from the previously outlined costs, there will be no other effects on individuals required to comply with the rule changes as proposed.

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

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 commission.

These rule changes are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, proposed new §83.5003 and §83.5004 are proposed under Texas Finance Code, §393.622(a)(3), which authorizes the commission to adopt rules regarding periodic examinations of credit access businesses by the OCCC, and under Texas Finance Code, §393.622(b), which authorizes the commission to adopt rules regarding the review of third-party lender agreements.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.1002. Definitions.

Words and terms used in this division that are defined in Texas Finance Code, Chapter 393 have the same meanings as defined in Chapter 393. The following words and terms, when used in this division, will have the following meanings, unless the context clearly indicates otherwise.

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

(4) Multiple payment auto title loan--An auto title loan that is not a single payment auto title loan.

(5) Multiple payment payday loan--A payday loan that is not a single payment payday loan.

(6) [~~(4)~~] OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(7) Single payment auto title loan--An auto title loan for which the entire principal balance, interest, and all fees required under the terms of the transaction, including fees required to be paid to a credit access business, are due in a single payment.

(8) Single payment payday loan--A payday loan for which the entire principal balance, interest, and all fees required under the terms of the transaction, including fees required to be paid to a credit access business, are due in a single payment.

§83.3001. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393, have the same meanings as defined in Chapter 393. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Principal party--An adult individual with a substantial relationship to the applicant by ownership of more than 10% of the applicant, or having control of the proposed credit access business of the applicant. The following individuals are principal parties:

(A) a proprietor holding a 100% ownership interest [~~proprietors, including spouses with community property interest~~];

(B) - (H) (No change.)

§83.3002. Filing of New Application.

An application for issuance of a new credit access business license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iii) (No change.)

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of the individual holding a 100% ownership interest in the business and the name of any individual [~~who owns and who is~~] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [~~All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.~~]

(II) - (VI) (No change.)

(B) - (E) (No change.)

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

§83.3006. Updating Application and Contact Information. [~~*Reportable Actions After Application.*~~]

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license [~~, must be reported~~] within 10 calendar days after the person has knowledge of the [~~action, fact, or~~] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the names of principal parties;

(2) the names of third-party lender organizations;

(3) criminal history;

(4) actions by regulatory agencies; or

(5) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§83.3010. Fees.

(a) - (b) (No change.)

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [~~A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record.~~]

(d) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each license consisting of:

(A) (No change.)

(B) a volume fee based upon the volume of business that consists of an amount not to exceed $0.03 per each $1,000 advanced for license holders whose operations occur within Texas Finance Code, Chapter 393 in accordance with the most recent annual report required by §83.5001 of this title (relating to Data Reporting Requirements) [~~quarterly report filing required by Texas Finance Code, §393.627~~].

(2) - (4) (No change.)

§83.4002 Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §393.613, notice of delinquency in the payment of an annual assessment fee is

given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC, if the licensee has provided an e-mail address [~~upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service~~].

§83.4003. Denial, Suspension, or Revocation Based on Criminal History. **{{This section will replace current sections 83.4003 and 83.4004, both of which will be repealed.}}**

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.3010 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a credit access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing credit access business services involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person,

failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the

applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the license application;

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §393.614(a)(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a) and §393.614(a).

§83.5003. Examinations.

(a) Examination authority. The OCCC may periodically examine each place of business of a licensee and investigate the licensee's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to business regulated under Texas Finance Code, Chapter 393.

(b) Access to records. A licensee must allow the OCCC to examine the licensee's place of business and make a copy of an item that may be investigated under subsection (a) of this section.

(c) Third-party lender agreements. The OCCC's examination authority includes the authority to review all agreements between a licensee and any third-party lender with which the licensee contracts to provide services under Texas Finance Code, Chapter 393.

(d) Witness statements. In connection with an examination, the OCCC may obtain

witness statements that pertain to business regulated under Texas Finance Code, Chapter 393. A witness statement must be signed and dated, and must include an acknowledgment that the statement may be introduced in an enforcement action in which the licensee is a party.

(e) Records statements. In connection with an examination, the OCCC may obtain statements regarding records maintained by the licensee that pertain to business regulated under Texas Finance Code, Chapter 393. A records statement must be signed and dated by a witness, and must include acknowledgments of the following:

(1) a statement of the witness's positon and duties at the licensee;

(2) a statement that the witness is familiar with the manner in which records are created and maintained by virtue of duties and responsibilities;

(3) the number of pages of attached records;

(4) a statement that the records are original records or exact duplicates of the original records;

(5) a statement that the records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth;

(6) a statement the records were made by, or from information transmitted by, persons with knowledge of the matters set forth;

(7) a statement that the records were kept in the course of regularly conducted business activity;

(8) a statement that it is the regular practice of the business activity to make the records; and

(9) an acknowledgment that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party.

§83.5004. Files and Records Required.

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and maintained in accordance with generally accepted accounting principles. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Transaction register. A licensee must maintain a transaction register, or be able to produce this information within a reasonable amount of time. Each record in the register must contain the transaction number, the date of the transaction, the last name of the consumer, the total fees payable to the licensee, the total of payments, and the type of transaction (single payment payday loan, single payment auto title loan, multiple payment payday loan, or multiple payment auto title loan). Each record in the transaction register must be retained for four years from the date of the transaction, or two years from the date of the final entry made

on the consumer's account, whichever is later.

(2) Consumer's transaction file. A licensee must maintain a paper or electronic transaction file for each individual transaction under Texas Finance Code, Chapter 393, or be able to produce this information within a reasonable amount of time. The transaction file must contain documents that show the licensee's compliance with applicable state and federal law, including Texas Finance Code, Chapter 393. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the transaction file if the electronic record can be accessed upon request.

(A) The transaction file must include the following documentation for each transaction under Texas Finance Code, Chapter 393:

(i) any agreement between the consumer and the licensee, including the contract described by Texas Finance Code, §393.201, with all provisions required by that section, as well as the notice of cancellation described by Texas Finance Code, §393.202;

(ii) any agreement between the consumer and the lender, including the promissory note;

(iii) documentation referencing which agreements between the licensee and a third-party lender apply to the transaction, including any guarantee or letter of credit issued by the licensee;

(iv) all legally required disclosures provided in connection with the transaction, including:

(I) the consumer disclosure required by Texas Finance Code, §393.223, and §83.6007 of this title (relating to Consumer Disclosures);

(II) the credit services organization disclosure required by Texas Finance Code, §393.105;

(III) any disclosures provided under the Truth in Lending Act, 15 U.S.C. §§1601-1667f, and Regulation Z, 12 C.F.R. Part 1026;

(IV) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 12 C.F.R. Part 1016;

(V) any notice to cosigner provided under the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.3;

(v) the consumer's credit application and any other written or recorded information used in evaluating the application;

(vi) any document signed by a co-borrower, co-signor, or other guarantor in connection with the transaction;

(vii) any documentation of whether the consumer is a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. Part 232, including the identification of covered borrower described by 32 C.F.R. §232.5;

(viii) complete documentation of any ancillary products (including insurance or an automobile club) offered to the consumer or purchased by the consumer in connection with the transaction;

(ix) complete documentation of all payments made by or to the licensee during the transaction and all payments made by or to the third-party lender at the inception of the transaction (including the amount of each payment, the source of each payment, and the recipient of each payment);

(x) any other documentation created or obtained by the licensee in connection with the transaction.

(B) The transaction file must include the following documentation if the licensee services or collects a loan in connection with a transaction under Texas Finance Code, Chapter 393, or if the licensee otherwise obtains this documentation in the course of business:

(i) Consumer's account record. The licensee must maintain an account record containing at least the following information:

(I) loan number or another unique number identifying the transaction;

(II) loan schedule and terms itemized to show the number of installments and the due date and amount of each installment, including installments payable to the licensee;

(III) name, address, and telephone number of consumer;

(IV) names and addresses of co-borrowers, if any;

(V) principal balance;

(VI) total interest charges;

(VII) all fees paid to the licensee;

(VIII) amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(IX) individual payment entries for all payments described by subparagraph (A)(ix) of this paragraph, and any other payments made by the consumer during the transaction, itemized to show the date payment was received (dual postings are acceptable if date of posting is other than date of receipt), actual amounts received for application to due amounts, and actual amounts paid for default, deferment, or other authorized charges;

(X) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to consumers, with refund amounts itemized to show interest charges refunded;

(XI) collection contact history, including a written or electronic record of each contact made by a licensee with the consumer or any other person and each contact made by the consumer with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(XII) corrective entries to the consumer's account record, if justified, including the reason and supporting documentation for each corrective entry.

(ii) Payday loan records. For a payday loan, the transaction file must include documentation relating to the personal check or authorization to debit a deposit account accepted in connection with the loan.

(iii) Auto title loan records. For an auto title loan, the transaction file must include all documentation relating to the attachment and perfection of a security interest in the motor vehicle, including any of the following documentation obtained by the licensee:

(I) the security agreement;

(II) if obtained by the licensee or the third-party lender, the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(III) if executed by the licensee or the third-party lender, an application for certificate of title (Texas Department of Motor Vehicles Form 130-U for Texas vehicles);

(IV) if obtained by the licensee or the third-party lender, a title application receipt (Texas Department of Motor Vehicles Form VTR-500-RTS for Texas vehicles), or a similar document evidencing the filing of the application for certificate of title and payment of required fees and taxes.

(iv) Repossession records. The transaction file must include complete documentation of any repossession initiated by the licensee, including:

(I) any condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(II) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the consumer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(III) for a vehicle disposed of in a public or private sale as permitted by the Texas Business and Commerce Code, §9.610, the following documents:

(-a-) one of the following notices:

(-1-) a copy of the notification of disposition as sent to the consumer and other obligors as required by Texas Business and Commerce Code, §9.614; or

(-2-) a copy of the waiver of the notice of intended disposition prescribed by subitem (-1-) of this item, as applicable, signed by the consumer and other obligors after default;

(-b-) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as

circumstances surrounding a dealer-only auction, internet sale, or other type of private disposition;

(-c-) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(-d-) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(-e-) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the consumer or other person entitled to the surplus;

(-f-) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business and Commerce Code, §9.616, if requested by the consumer;

(-g-) a copy of the waiver of the deficiency letter if the licensee elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(IV) for a vehicle disposed of using the strict foreclosure method permitted by the Texas Business and Commerce Code, §9.620 and §9.621, the following documents:

(-a-) one of the two following notices:

(-1-) a copy of the proposal to accept collateral in full satisfaction of the obligation; or

(-2-) for a transaction where 60% or more of the principal balance has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the consumer and other obligors after default;

(-b-) for a transaction where the consumer rejects the offer under item (-a-)(-1-) or (-2-) of this subclause, a copy of the consumer's signed objection to retention of the collateral;

(-c-) copies of the records reflecting the total satisfaction of the obligation.

(iv) Litigation records. The transaction file must include complete documentation of any litigation filed by a licensee against a consumer, or by a consumer against the licensee, including all pleadings, the terms of settlement (if a settlement was entered), documentation of any mediation or arbitration, the final judgment (if the court entered a final judgment), and records of all payments received after judgment, properly identified and applied. If the licensee maintains the complete documentation of litigation at a centralized location other than the licensed location or branch office, then the licensee's transaction file may include a written summary of the status of the litigation, rather than complete documentation of the litigation. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the

complete documentation so that the OCCC can examine it.

(v) Criminal charge records. The transaction file must include complete documentation of any criminal charge or complaint filed by a licensee against a consumer, showing the licensee's compliance with Texas Finance Code, §393.201(c)(3) and §83.5007 of this title (relating to Criminal Charges Against Consumers). This must include any written evidence of criminal conduct, a written summary of any oral statement submitted to law enforcement, any police report, and any court records obtained by the licensee.

(vi) Claim records for insurance or ancillary products. The transaction file must include complete documentation of any claims or disbursement of money related to insurance or another ancillary product provided in connection with the transaction.

(vii) Transfer records. The transaction file must include transfer, assignment, or sale records for any loan transferred, assigned, or sold to or from another person.

(C) The transaction file and its contents must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. However, this retention period does not apply to the credit services organization disclosure required by Texas Finance Code, §393.105, which must be kept for two years from the date on which it is provided to the consumer, as provided by Texas Finance Code, §393.106.

(3) Agreements between licensee and third-party lender. A licensee must maintain all documentation of its current agreements with third-party lenders, including copies of the agreement, any guarantees or letters of credit, and underwriting guidelines issued by the lender. The documentation must show the licensee's compliance with §83.5005 of this title (relating to Separation Between Credit Access Business and Third-Party Lender). The licensee may maintain this documentation at a centralized location other than the licensed location or branch office if the agreements apply to multiple locations. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it. If an agreement terminates, documentation of the agreement must be maintained until the latest of:

(A) four years from the date of the last consumer transaction subject to the agreement;

(B) two years from the date of the final entry made on the consumer's account in the last consumer transaction subject to the agreement;

(C) one year from the date of termination of the agreement; or

(D) the OCCC's next examination of the licensee (if the documentation is maintained at a centralized location, this refers to the next examination of the centralized location).

(4) In-store fee schedule and notices. The in-store fee schedule and notices required by Texas Finance Code, §393.222(a), and §83.6003(a) of this title must be available for inspection by the

OCCC in a conspicuous location visible to the general public. If a licensee amends the in-store fee schedule or notices, it must maintain documentation of the previous versions of the schedule or notices for one year from the date of amendment or until the next examination by OCCC staff, whichever is later. The licensee may maintain the documentation of previous in-store fee schedules and notices at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(5) Website and online disclosures. If a licensee maintains a website, it must make the website available to the OCCC for inspection. The website must include a fee schedule to show the licensee's compliance with §83.6003(b) of this title, and applicable consumer disclosures to show the licensee's compliance with §83.6007(f) of this title. If a licensee amends the website's fee schedule, consumer disclosures, or method of accessing the fee schedule or consumer disclosures, the licensee must maintain documentation of the previous version of the website to show compliance with §83.6003(b) of this title and §83.6007(f) of this title. This must include the home page, any pages used in accessing the fee schedule and disclosures, and copies of the previously used fee schedule and disclosures. The licensee must maintain this documentation for one year from the date of amendment or until the next examination by OCCC staff, whichever is later. This paragraph does not require a licensee to maintain previously used pages of the website that were not the home page or pages used in accessing the fee schedule and consumer disclosures. The licensee may maintain the documentation of previous versions of the website at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(6) Advertisements. A licensee must maintain advertising and solicitation records, including examples of all written and electronic communications soliciting transactions (including advertisements at the place of business, scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for one year from the date of use or until the next examination by OCCC staff, whichever is later. If any language other than English is used in any advertising material, a true and correct translation must be maintained along with the advertising material. The licensee may maintain the documentation of advertising at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(7) Adverse action records. Each licensee must maintain adverse action

records for all applications relating to Texas Finance Code, Chapter 393 transactions. Adverse action records must be maintained according to the record retention requirements in Regulation B, 12 C.F.R. §1002.12(b). The current retention period is 25 months for consumer credit. These records include the loan application, any written or recorded information used in evaluating the application, the adverse action notice (if required), the notice of incompleteness (if applicable), and counteroffer notice (if applicable).

(8) Index of transfers, assignments, and sales. The licensee must maintain (or be able to produce within a reasonable period of time) an index of all loans transferred, assigned, or sold to or from another person, including a third-party lender, or to a different location of the licensee. Each record in the index must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. (For transfers from the licensee, the date of transfer is the date of the final entry.)

(9) Index of litigation, criminal charges, and repossessions. A licensee must maintain (or be able to produce within a reasonable period of time) an index of each litigation action and criminal charge filed by or against the licensee, as well as each repossession initiated by the licensee. The index must show the consumer's name, account number, and date of action. Each record in the index must be retained for a period of four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(10) Registration and surety bond records. A licensee must maintain documentation of its registration as a credit services organization with the Texas Secretary of State, including its registration statement and registration certificate, to show its compliance with Texas Finance Code, §393.101. A licensee must maintain complete documentation of any surety bond obtained by the licensee under Texas Finance Code, §393.401, and any surety bond required by the OCCC under Texas Finance Code, §393.605. If a registration or surety bond terminates, the licensee must maintain the documentation for one year after the date of termination or until the next examination by OCCC staff, whichever is later.

(11) Official correspondence file. A licensee must maintain an official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC (including quarterly and annual reports), examination reports issued by the OCCC, and notices of relocation described by §83.3008 of this title (relating to Relocation of Licensed Office).

(12) General business records. A licensee must maintain any other business records showing its compliance with applicable law, including accounting records showing that the licensee maintains net assets required by Texas Finance Code, §393.611, records used to compile quarterly and annual reports, records of disbursement of funds between the licensee and third-party lenders, receipts, bank statements, and any master insurance policies.

§83.5005. Separation Between Credit Access Business and Third-Party Lender.

(a) Generally. A licensee assists consumers in obtaining extensions of credit

by others, as provided by Texas Finance Code, §393.001(3). A licensee must operate independently from any third-party lender that makes a loan in connection with a transaction under Texas Finance Code, Chapter 393. A licensee must be a separate legal entity from any third-party lender.

(b) Special agency. The relationship between the licensee and a third-party lender must be limited to special agency. A licensee may not engage in a general agency or joint-venture relationship with a third-party lender. A licensee may not select the underwriting criteria used in determining whether the lender will make a loan to the consumer, but a licensee may apply underwriting criteria selected by the third-party lender.

(c) Fee sharing. No portion of a fee charged by the licensee may be passed on to the third-party lender. A fee charged by a licensee may not directly benefit a third-party lender.

§83.5006. Requirements Applicable to Each Extension of Consumer Credit.

(a) Generally. Each extension of consumer credit that a licensee obtains for a consumer or assists a consumer in obtaining must meet all requirements applicable to the original extension of consumer credit, including the disclosure and contract requirements described by Texas Finance Code, §§393.105, 393.201, 393.202, 393.203, and 393.223.

(b) Extensions of consumer credit. An extension of consumer credit under subsection (a) includes:

(1) an original extension of consumer credit;

(2) any transaction in which all or a portion of the principal balance, fees, or interest due under an outstanding extension of consumer credit becomes due on a later date; and

(3) any extension of consumer credit that consists of debt arising from principal, fees, or interest that was not paid in full under an outstanding or previous extension of consumer credit.

§83.5007. Criminal Charges Against Consumers.

(a) Generally. A licensee may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction under Texas Finance Code, Chapter 393, in the absence of forgery, fraud, theft, or other criminal conduct, as provided by Texas Finance Code, §393.201(c)(3).

(b) Evidence required. A licensee may not threaten or pursue a criminal charge against a consumer unless the licensee possesses specific evidence that is sufficient to prove that the consumer violated a criminal law.

(c) Dishonored payment device. The fact that a payment device (such as a check or debit authorization) is dishonored is not sufficient evidence for a licensee to file a criminal charge.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 16, 2015.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on New 7 TAC, §82.5, Concerning Contested Case Hearing Notice, Response, and Default

PURPOSE: The purpose of the new rule is to clarify the notice requirements for a contested case hearing, and allow the Office of Consumer Credit Commissioner to informally dispose of contested cases by default, as authorized by Section 2001.056 of the Texas Government Code.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve new 7 TAC §82.5 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment new 7 TAC §82.5.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 82. Administration
§82.5. Contested Case Hearing Notice, Response, and Default

The Finance Commission of Texas (commission) proposes new 7 TAC §82.5, concerning Contested Case Hearing Notice, Response, and Default.

In general, the purpose of the new rule is to clarify the notice requirements for a contested case hearing, and allow the Office of Consumer Credit Commissioner (OCCC) to informally dispose of contested cases by default, as authorized by Section 2001.056 of the Texas Government Code.

The OCCC expends considerable resources preparing for and conducting contested case hearings where the respondent fails to appear at the hearing. The new rule would allow the OCCC to informally dispose of a contested case where the respondent fails to file a written response to the notice of hearing, or fails to appear at the hearing.

The agency circulated an early draft of the proposed new rule to interested stakeholders and held a stakeholders meeting. The agency received several informal precomments, many providing clarifying suggestions. Certain concepts recommended by the precommenters have been incorporated into this proposal and the agency appreciates the thoughtful input provided by stakeholders.

Subsection (a) of proposed §82.5 sets forth the requirements for a notice of a contested case hearing. These requirements follow the standards described in Sections 2001.051, 2001.052, and 2001.054 of the Texas Government Code, as well as the Finance Commission's notice requirements found at 7 Texas Administrative Code §9.11, and the State Office of Administrative Hearings' notice requirements found at 1 Texas Administrative Code §155.401.

Subsection (b) requires a respondent to file a written response to a notice of hearing, and describes the contents of the written response. This is consistent with Texas Rule of Civil Procedure 239, which authorizes a party to obtain a judgment by default if the responding party fails to timely file an answer to a petition. The Texas Rules of Civil Procedure serve as authority to resolve procedural issues under both the Finance Commission's procedures under 7 Texas Administrative Code §9.2(a), and the State Office of Administrative Hearings' procedures under 1 Texas Administrative Code §155.3(g).

Subsection (c) sets forth certain disclosures that the OCCC must include in its notice of a contested case hearing. These disclosures provide a respondent in plain language with notice of and opportunity to comply with the applicable rules and statutes. Specifically, the disclosures notify the respondent that he or she must file a written response, that failure to file a response or appear at the hearing will result in default, and that he or she may be represented by an attorney and submit evidence and argument to contest the allegations. These disclosures are consistent with Sections 2001.051, 2001.052, 2001.053, 2001.056(4), and 2001.087 of the Texas Government Code, as well as the

Finance Commission's notice requirements and default procedures found at 7 Texas Administrative Code §9.11(b) and §9.12, and the State Office of Administrative Hearings' notice requirements and default procedures found a 1 Texas Administrative Code §155.401 and §155.501.

Subsection (d) defines what constitutes default by a respondent. Default occurs when a respondent fails to file a written response, or fails to appear at the scheduled hearing. This definition is consistent with Section 2001.056(4) of the Texas Government Code, as well as the Finance Commission's default procedures found at 7 Texas Administrative Code §9.12, and the State Office of Administrative Hearings' default procedures found at 1 Texas Administrative Code §155.501.

Section (e) defines the effect of default by a respondent. If a respondent defaults, the allegations described in the notice of contested case hearing are deemed admitted as true, and the OCCC may informally dispose of the case and impose the sanctions. This provision is consistent with Section 2001.056(4) of the Texas Government Code, as well as the Finance Commission's default procedures found at 7 Texas Administrative Code §9.12 (deeming the defaulting party to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense), and the State Office of Administrative Hearings' default procedures found at 1 Texas Administrative Code §155.501 (allowing default upon inclusion of a disclosure that the factual allegations listed in the notice could be deemed admitted).

Subsection (f) requires the OCCC to ask the administrative law judge to find, and present evidence to prove, that the respondent has defaulted after proper notice, and that the allegations described in the notice are deemed admitted as true. The administrative law judge then remands the case to the commissioner for issuance of a final order. This provision is consistent with Sections 2001.056(4) and 2001.054 of the Texas Government Code, as well as the Finance Commission's default procedures found at 7 Texas Administrative Code §9.12, and the State Office of Administrative Hearings' default procedures found at 1 Texas Administrative Code §155.501. This provision is also consistent with Sections 14.208(b), 14.257(c), and 14.260 of the Texas Finance Code, as well as the individual licensing, revocation, and sanctioning provisions subject to the OCCC's authority under the Texas Finance Code.

Subsection (g) allows the commissioner to issue a final order upon remand from the administrative law judge following the respondent's default. The commissioner's order may find that the respondent has defaulted after proper notice, that the allegations described in the notice are deemed admitted as true, and impose the sanctions described in the notice.

Subsection (h) allows a respondent to file a motion to set aside the default order and reopen the record. The motion must be filed before the default order becomes final. The motion will be granted if the respondent can establish that its failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident. This provision is consistent with Section 2001.054 of the Texas Government Code, as well as the Finance Commission's motion procedures

found at 7 Texas Administrative Code §9.17, and the State Office of Administrative Hearings' motion and default procedures found at 1 Texas Administrative Code §155.305 and §155.501(f).

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule.

For each year of the first five years §82.5 is in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed new rule will be that the commission's rules will conform to current practice of administrative agencies, will be more easily understood by persons required to comply with the rules, and will be more easily enforced.

There is no anticipated cost to persons who are required to comply with the new rule as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the new rule as proposed.

Comments on the proposed new rule 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. 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 proposed new rule published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rule is proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The rule is further proposed under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

§82.5. Contested Case Hearing Notice, Response, and Default.

(a) Notice of contested case hearing. The agency will serve each party to a contested case with reasonable notice of the hearing. The agency will also provide a pawnshop with a copy of the initial notice served on the pawnshop's employee. The initial notice will be served not less than 20 days before the hearing. Each subsequent notice will be served not less than 10 days before the hearing. The agency will serve the initial notice by personal service, commercial delivery service, or registered or certified United States mail, return receipt requested.

Service by mail or commercial delivery service shall be complete upon deposit of the document, post-paid and properly addressed, in the mail or with a commercial delivery service. The notice must include:

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of statutes and rules involved;

(4) a short, plain statement of the factual matters asserted; and

(5) the required disclosures set forth in subsection (c).

(b) Required written response to notice. A respondent must file a written response to the initial notice of a contested case hearing no later than 20 days after the agency issues the notice. The response may generally deny the allegations contained in the notice. The response may also specifically deny or assert any issue of law or fact related to the allegations contained in the notice.

(c) Required disclosures in notice. The notice of a contested case hearing must include the following disclosure in 12-point, bold-face type: "You must file a written response to this notice within 20 days of this notice. Your written response may generally deny the allegations in this notice. Your written response may also specifically deny or assert any issue of law or fact related to the allegations contained in this notice. If you fail to file a written response by the deadline, you will waive your right to a hearing, the allegations in this notice will be regarded as true, the hearing will be cancelled, and the sanctions will be imposed without a hearing. If you file a written response, but then fail to attend the hearing, you will waive your right to a hearing, the allegations in this notice will be regarded as true, the hearing will be cancelled, and the sanctions will be imposed without a hearing. You may represent yourself, or appear by an authorized representative, including an attorney of your choice. You may also, directly or through an attorney, contest the admissibility of evidence and cross-examine the witnesses against you. You may also respond and present evidence and argument on each issue involved in this case."

(d) What constitutes default. The following constitute a default by a respondent in a contested case:

(1) the respondent's failure to file a written response as required by this section; or

(2) the respondent's failure to appear in person or by legal representative on the day and at the time set for hearing in a contested case, if the respondent filed a written request.

(e) Effect of default. If a respondent defaults, the respondent waives the right to a hearing, the allegations described in a notice of a contested case hearing are deemed admitted as true, the sanctions described in the notice may be ordered, and the agency may informally dispose of the matter as permitted by Section 2001.056 of the Texas Government Code, without the necessity of a hearing.

(f) Determination of default. The agency may ask the administrative law judge to make a finding of default. The request may be made orally or through a written motion.

The agency must present evidence to the administrative law judge that the respondent has defaulted, including proof of service. Upon receipt of sufficient evidence, the administrative law judge may issue a finding that:

(1) concludes the respondent has defaulted;

(2) describes how the notice of hearing was served on the respondent in accordance with this section;

(3) describes how the respondent failed to file a response or appear the hearing;

(4) finds that the allegations described in the notice are deemed admitted as true; and

(5) remands the case to the commissioner for issuance of a final order.

(g) Final order after default. If the administrative law judge remands the case to the commissioner based on a finding of default, the commissioner may issue a final order that:

(1) concludes the respondent has defaulted;

(2) describes how the notice of hearing was served on the respondent in accordance with this section;

(3) describes how the respondent failed to file a response or appear the hearing;

(4) finds that the allegations described in the notice are deemed admitted as true; and

(5) imposes the sanctions described in the notice.

(h) Motion to set aside and reopen. If the commissioner issues a final order based on default, the respondent may file a motion to set aside the default order and reopen the record.

(1) The respondent must file the motion no later than 20 days after the commissioner issues the final order.

(2) The commissioner must grant the motion if the respondent establishes that the respondent's failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident.

(3) The respondent's motion to set aside and reopen is not a motion for rehearing, is not a substitute for a motion for rehearing, has no effect on the deadline to file a motion for rehearing, and has no effect on the time period for ruling on a motion for rehearing.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 16, 2015.

Michael Rigby
General Counsel
Office of Consumer Credit Commissioner

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89, Regarding Contested Case Procedure

PURPOSE: The purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the OCCC.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 4. Credit Card Surcharge Appeal Procedures

Part 5. Office of Consumer Credit Commissioner
Chapter 83. Regulated Lenders and Credit Access Businesses
Chapter 84. Motor Vehicle Installment Sales
Chapter 85. Pawnshops and Crafted Precious Metal Dealers
Chapter 88. Consumer Debt Management Services
Chapter 89. Property Tax Lenders

The Finance Commission of Texas (commission) proposes amendments to the following sections of Title 7 of the Texas Administrative Code: §4.105, concerning the rules applicable to a contested case hearing on a credit card surcharge violation occurring on or before August 31, 2013; §83.307, concerning the rules applicable to a regulated lender license application denial hearing; §83.3007, concerning the rules applicable to a credit access business license application denial hearing; §84.608, concerning the rules applicable to a motor vehicle installment sales license application denial hearing; §85.206, concerning the rules applicable to a pawnshop employee license application denial hearing; §85.304, concerning the rules applicable to a pawnshop license application denial hearing; §85.607, concerning the rules applicable to a pawnshop license revocation, suspension, and surrender hearing; §88.103, concerning the rules applicable to a consumer debt management services registration application denial hearing; and §89.307, concerning the rules applicable to a property tax lender license application denial hearing.

In general, the purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the Office of Consumer Credit Commissioner.

The agency circulated an early draft of the proposed amendments to interested stakeholders and held a stakeholders meeting where the following background of the amendments was provided.

The commission has previously adopted rules of procedure applicable to a contested case hearing conducted by an administrative law judge employed by or contracted by a finance agency. *See*, 7 Tex. Admin. Code §9.1. The Office of Consumer Credit Commissioner (OCCC) has recently contracted with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. SOAH applies its own procedural rules to all matters referred to SOAH, unless otherwise required by statute or rule. 1 Tex. Admin. Code §155.1(a).

Concurrent with these proposed rule amendments, the commission is proposing amendments to §9.1(a) of Title 7 (relating to Definitions and Interpretation; Severability; proposed new title: "Application, Construction, and Definitions") to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and a which rules apply to a hearing conducted by SOAH. The amended subsection (a) in §9.1 is proposed to read: "This chapter governs contested case

hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Title 7, Part 1 (relating to the Finance Commission of Texas), contains one reference to the Chapter 9 rules of procedure concerning credit card surcharge violations regulated by the OCCC under Chapter 4. Section 4.105(b) identifies the rules of procedure applicable to a contested case hearing regarding a credit card surcharge violation occurring on or before August 31, 2013. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Title 7, Part 5 (relating to the OCCC), contains eight references to the Chapter 9 rules of procedure. The proposed amendments replace these references with references to the rules of procedure made applicable by the amendment to §9.1(a) of Title 7, described earlier. Accordingly, the proposed amendments will clarify that Chapter 9 rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and SOAH rules of procedure apply to a hearing conducted by SOAH.

Section 83.307(d) identifies the rules of procedure applicable to a regulated lender license application denial hearing. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 83.3007(d) identifies the rules of procedure applicable to a credit access business license application denial hearing. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 84.608(d) identifies the rules of procedure applicable to a motor vehicle installment sales license application denial hearing. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.206(g) identifies the rules of procedure applicable to a pawnshop employee license application denial hearing. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.304(e) identifies the rules of procedure applicable to a pawnshop license application denial hearing. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.607 identifies the rules of procedure applicable to a pawnshop license revocation, suspension, and surrender hearing. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 88.103(d) identifies the rules of procedure applicable to a consumer debt management services registration application denial hearing. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 89.307(d) identifies the rules of procedure applicable to a property tax lender license application denial hearing. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years that the amendments to §§4.105, 83.307, 83.3007, 84.608, 85.206, 85.304, 85.607, 88.103, and 89.307 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will conform to current practice of administrative agencies, will be more easily understood by persons required to comply with the rules, and will be more easily enforced.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments 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. 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 commission.

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further proposed under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

Title 7, Texas Administrative Code

Part 1. Finance Commission of Texas

Chapter 4. Credit Card Surcharge Appeal Procedures

§4.105. Contested Case on Credit Card Surcharge

(a) (No change.)

(b) A contested case under this chapter is subject to Texas Government Code, Chapter 2001, and the rules of procedure applicable under Section 9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~]. To the extent of any conflict between this chapter and Chapter 9, this chapter prevails.

(c) (No change.)

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

§83.307. Processing of Application

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under Section 9.1(a) of this title (relating to (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Subchapter B. Rules for Credit Access Businesses

§83.3007. Processing of Application

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under Section 9.1(a) of this title (relating to (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Chapter 84. Motor Vehicle Installment Sales

§84.608. Processing of Application

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under Section 9.1(a) of this title (relating to (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter A. Rules of Operation for Pawnshops

Division 2. Pawnshop License

§85.206. Processing of Application

(a) - (f) (No change.)

(g) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. Also, upon a proper and timely protest pursuant to subsection (e) of this section, a hearing will be set. This hearing will be conducted within 60 days of the date of the appeal or protest unless the parties agree to an extension of time or the administrative law judge grants an extension of time pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and the rules of procedure applicable under Section 9.1(a) of this title (relating to (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision either approving or denying the license.

(h) (No change.)

Division 3. Pawnshop Employee License

§85.304. Processing of Application

(a) - (d) (No change.)

(e) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and the rules of procedure applicable under Section 9.1(a) of this title (relating to (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~]. When a hearing is requested following an initial license application denial, the hearing will be held within 60 days after a request for a hearing is made unless the parties agree to

an extension of time. The commissioner will make a final decision approving or denying the license application after receipt of the proposal for decision from the administrative law judge.

(f) (No change.)

Division 6. License Revocation, Suspension, and Surrender

§85.607. Hearings

Hearings held under this subchapter will be held in accordance with the rules of procedure applicable under Section 9.1(a) of this title (relating to (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], the Administrative Procedure Act, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence.

Chapter 88. Consumer Debt Management Services

§88.103. Processing of Application

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the applicant has 30 days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under Section 9.1(a) of this title (relating to (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Chapter 89. Property Tax Lenders

§89.307. Processing of Application

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under Section 9.1(a) of this title (relating to (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on October 16, 2015.

Michael Rigby
General Counsel
Office of Consumer Credit Commissioner

C.

Texas Department of Banking

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: September 28, 2015

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2015							
	8/31/2013		8/31/2014		11/30/2014		2/28/2015		5/31/2015		8/31/2015	
Industry Profile *(# / Assets in billions)*												
# Banks	283	$202.6	273	$225.2	266	$228.4	265	$237.0	262	$241.7	256	$240.7
# Trust Co. (1)	21	$27.0	21	$40.5	21	$41.3	21	$96.9	21	$98.0	20	$97.1
# FBA/FBB	10	$82.1	10	$93.6	10	$92.0	10	$87.1	9	$90.3	9	$89.2
Examinations Performed												
Banks	145		125		24		27		28		39	
Trust Co.	35		32		9		7		0		12	
FBA/FBB	6		2		0		1		1		0	
Bank Uniform Financial Institution Composite Ratings												
1	125	44.2%	128	46.9%	126	47.4%	127	47.9%	126	48.1%	127	49.6%
2	136	48.1%	132	48.3%	130	48.9%	128	48.3%	127	48.5%	122	47.7%
3, 4, & 5	22	7.8%	13	4.8%	10	3.7%	10	3.8%	9	3.4%	7	2.7%
Non-Rated	0	-	0	-	0	-	0	-	0	-	0	-

(1) - Fiduciary assets for non-exempt trust companies only.

The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5 to be a problem institution. In the last economic recession, problem banks peaked in June of 2010 at 58. However, as illustrated in the table above, problem bank numbers have steadily decreased, and as of September 28, 2015, problem banks totaled 8. Aided by improved economic conditions, problem bank numbers have returned to pre-recession levels, which we consider to be a range between 3% and 5% of the total number of institutions. Entities with significant oil and gas exposure are being closely monitored as a protracted period of low oil prices could result in additional asset quality problems for some institutions and lead to an increase in the number of problem banks.

Administrative/Enforcement Actions *(Number outstanding as of the date indicated)*			**FY 2015**			
	8/31/2013	**8/31/2014**	**11/30/2014**	**2/28/2015**	**5/31/2015**	**8/31/2015**
Banks - Safety and Soundness						
Formal	12	5	3	3	3	2
Informal	26	21	21	19	17	14
Banks - Bank Secrecy Act (BSA)						
Formal	0	0	1	1	1	1
Informal	3	1	0	0	0	0
Banks - Information Technology (IT)						
Formal	0	0	0	0	0	0
Informal	2	4	3	2	2	2
Trust Departments of Banks and Trust Companies						
Formal	0	0	0	0	0	0
Informal	1	1	1	1	1	2
Total Administrative/Enforcement Actions						
Formal	12	5	4	4	4	3
Informal	32	27	25	22	20	18
Total	**44**	**32**	**29**	**26**	**24**	**21**

Formal actions include Orders to Cease and Desist, Consent Orders and Written Agreements.
Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions.
Orders of Supervision, Orders of Conservatorship and Compliance actions are not included.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	**FY 2014**	**FY 2015**
Commercial Banks (All / DOB Only)	80% / 72%	94% / 93%
IT	89% / 87%	95% / 95%
Trust	94% / 94%	97% / 100%
Foreign Banks *(FRB)*	100%	100%
Trust Companies *(DOB)*	97%	97%
IT	93%	100%

For fiscal year 2015, the Division exceeded all performance targets for conducting examinations in a timely manner.

Division Highlights

- Cybersecurity Threats: Phillip Hinkle participated in a working group of The Federal Financial Institutions Examination Council, or FFIEC, that released the Cybersecurity Assessment Tool (CAT) on 6-30-15. This tool was developed by the federal bank regulatory agencies to assist bank managers in assessing their inherent risks to cyber threats and measuring their cybersecurity preparedness needed to handle such an event. Though use of this tool by bank managers is optional, measuring and preparing for cyber risks is not. Commissioner Cooper issued Industry Notice 2015-8 on 9-15-15 alerting the industry about this useful tool and outlining the Department's expectations regarding cybersecurity assessments. The notice advised bank managers to use the CAT to assess and measure their bank's preparedness no later than 12-31-15. The Department's staff will begin reviewing completed cybersecurity assessments at all information technology exams starting after 1-1-16. Most of these examinations will be performed by one of the Department's IT Specialists. To ensure that the remaining staff is well versed on the importance of this issue, Director of IT Security Examinations Hinkle will be traveling to each of the Department's regional offices to train commercial bank examiners on the implementation of the CAT and the importance of banks addressing this issue. To date, two of the four regional training sessions have been completed.
- Oil and Gas Risk Analysis: As previously reported, agency staff continues to assess the risks associated with bank lines of business directly dependent upon oil and gas production as well as areas of indirect exposure. Review Examiner Whitson conducted a special risk assessment of 59 Texas banks that were known to be actively involved in oil and gas lending. In addition, staff continues to work closely with the FDIC and Federal Reserve Bank of Dallas to perform follow-up reviews at banks with potentially higher risk profiles. Many of these reviews will be completed by calendar year-end. To date, no material supervisory concerns have been identified.
- Special Operations and Conferences:
  - Director Robinson, Regional Review Examiner Adekoya, and Senior Examiner Willardson participated in the CSBS Deputy's Seminar held in Charleston, South Carolina from 7-27-15 to 7-29-15.
  - Agency staff held an Assistant Examiner School in Plano the week of 8-17-15. This internal school was organized by Director Robinson with several staff members participating in the training curriculum. The school is designed to supplement the training of assistant examiners with approximately 12 months of experience.
  - Commissioner Cooper, Deputy Commissioner Bacon and Director Purdom held a meeting with FDIC Regional Director Kristie Elmquist in Austin on 8-17-15. The purpose of the meeting was to discuss supervisory issues that affect both agencies.
  - Director Purdom gave a presentation to bankers at the Financial Institutions Conference sponsored by Padgett Stratemann in San Antonio on 8-26-15.
  - Commissioner Cooper, Deputy Commissioner Bacon, Directors Frasier and Rodriguez, and Review Examiner Wu participated in the CSBS Board Meeting and Strategic Planning Session held in Brewster, Massachusetts from 8-31-15 to 9-3-15. Commissioner Cooper served as the facilitator for the strategic planning session.

- Regional Director Walker participated in a Cybersecurity Awareness Program sponsored by the FDIC in Dallas on 9-1-15. The program focused on the importance of establishing a bank culture of technical, managerial, and directorate collaboration to address cyber risks in an environment where cyber risk events are increasing in volume and sophistication.
- Director Frasier and Senior Analyst Largent participated in a De Novo Bank Training Session sponsored by CSBS and the FDIC held in Dallas on 9-14-15 and 9-15-15. The purpose of the event was to review the processes for evaluating de novo applications for bank charter and deposit insurance.
- Commissioner Cooper participated in the Grant Thornton Financial Services Symposium held in Irving on 9-17-15.
- Commissioner Cooper, Deputy Commissioner Bacon, Director Frasier, Regional Director Davenport, Regional Review Examiner Adekoya and Financial Analyst Lena participated in the Independent Bankers Association of Texas Annual Convention held in Galveston from 9-20-15 to 9-22-15. Commissioner Cooper served as a panelist on a regulatory roundtable during the convention.

Federal Capital Programs: The table below provides a snapshot of the two federal capital programs.

Federal Programs	**Troubled Asset Relief Program** *(TARP)* as of 09/09/2015 (2)	**Small Business Lending Fund** *(SBLF)* as of 08/31/2015
Number of Applicants	80	23
Number of Banks that Received Funds	21	12
Total Amount Distributed ***($ in millions)***	$2,837.7	$255.7
Number of Banks with Outstanding Funds	0	9
Total Amount Outstanding ***($ in millions)***	$0	$139.6

(2) - The U.S. Treasury sold some TARP debt at auction to private investors. In many cases, this debt is still outstanding, even though it is no longer payable to the U.S. Treasury.

Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities DBF

Date: September 28, 2015

Subject: Summary of the Corporate Division Activities

Corporate Activities	Applications and Notices Processed							
Entities	**FY2013**	**FY2014**	**FY2015**	4Q14	1Q15	2Q15	3Q15	4Q15
***Banks and Bank-related (holding companies, etc.)**	197	271	236	78	45	57	73	61
Foreign Banks	1	0	6	0	0	1	2	2
Trust Companies	11	13	8	2	3	2	2	1
MSBs	21	23	32	3	7	4	7	13
PCSEAs	3	11	3	3	0	1	1	1
CVEs	4	3	3	0	0	3	0	0
Cemetery Brokers	-	4	4	0	0	2	0	2
Other (Use of Name)	67	41	50	12	10	12	11	16
Totals	304	366	342	98	65	82	96	96

	Background Checks Completed							
Entities	**FY2013**	**FY2014**	**FY2015**	4Q14	1Q15	2Q15	3Q15	4Q15
#Banks and Bank-related (holding companies, etc.)	71	111	24	6	4	16	1	3
Foreign Banks	0	0	0	0	0	0	0	0
Trust Companies	8	10	0	0	8	0	0	0
MSBs	130	108	137	14	43	29	33	18
Other	1	0	0	0	0	0	0	0
Totals	210	229	161	20	55	45	34	21

 # - Includes all types of applications and notices for each entity.

Entities/Activities	Application and Notices Under Review (as of September 28, 2015)
*Banks and bank-related (holding companies, etc.)	24
Foreign Banks	1
Trust Companies	1
MSBs	13
PCSEAs	0
CVEs	0
Cemetery Broker	2
Other (Use of Name)	1
Totals	42

Division Highlights

- The volume of filings processed this fiscal year-to-date in 2015 is down slightly from 2014, primarily due to fewer bank branch related applications received. Applications received have remained steady over the course of the summer with no real noticeable seasonality.

- Chartering, Conversion, and Merger Activity – The following transactions consummated in the fourth quarter of the 2015 fiscal year:
    - *Banks*
        - Meridian Bank Texas, Fort Worth, merged with and into UMB Bank, N.A., Kansas City, Missouri.
        - First Bank & Trust, Lubbock, completed its merger acquisition of First National Bank of Colorado City, Colorado City.
        - Veritex Community Bank, Dallas, completed its merger acquisition of Independent Bank of Texas, Irving.
        - Memorial City Bank, Houston, merged with and into CommunityBank of Texas, N.A., Beaumont.
        - Texas Bank and Trust Company, Longview, completed its merger acquisition of Vision Bank-Texas, Richardson.
        - Texas Leadership Bank, Royse City, merged with and into Guaranty Bank & Trust, N.A., Mount Pleasant.
        - The Elkhart State Bank, Elkhart, completed its voluntary dissolution and liquidation.
    - *Trust Companies*
        - N/A

- Conferences and Committee Meetings – Corporate participation included the following conferences and external committee meetings:
    - Director of Corporate Activities Dan Frasier participated in the Conference of State Bank Supervisors (CSBS) Strategic Planning Session in Brewster, Massachusetts, the week of August 30th.

- Director Frasier and Corporate Analyst Mark Largent taught sessions in the CSBS-FDIC De Novo Conference in Dallas on September 14th and 15th.
- Director Frasier was one of the Department representatives at the Annual IBAT Convention in Galveston on September 20th through the 22nd.

To: Finance Commission Members

From: Russell Reese, Director of Special Audits

Date: September 28, 2015

Subject: Summary of the Special Audits Division Activities

Special Audits					FY 2015							
Entity	**FY2013**		**FY2014**		**1st**		**2nd**		**3rd**		**4th**	
Industry Profile (# / Assets (billions))												
MSB	135	$96.2	136	$96.0	141	$96.4	142	$96.4	143	$95.7	142	$104.0
PFC	389	$3.3	381	$3.4	386	$3.4	386	$3.6	385	$3.6	383	$3.6
PCC	244	$275.8	242	$286.6	242	$291.4	242	$293.5	242	$299.1	243	$298.0
CB	-	-	4	n/a	4	n/a	6	n/a	7	n/a	8	n/a
PCSEA	11	n/a	11	n/a	11	n/a	11	n/a	11	n/a	11	n/a
CVE	3	n/a	3	n/a	3	n/a	2	n/a	2	n/a	2	n/a
Examinations Performed												
MSB		94	93		28		23		21		25	
MSB Limited Scope		1	0		0		0		1		1	
MSB Accepted other State		14	6		0		3		2		2	
PFC		254	295		59		59		67		74	
PFC Limited Scope		8	10		1		1		2		2	
PCC		177	179		44		60		57		50	
PCC Limited Scope		6	6		0		0		0		1	
Ratings (# / %) Assigned to All Regulated Entities												
1	278	37%	319	43%	316	42%	335	45%	350	47%	340	45
2	362	48%	355	48%	367	49%	348	46%	333	44%	332	44
3,4, & 5	114	15%	66	9%	65	9%	67	9%	69	9%	78	10
Noncompliance with Examination Priorities (Past Due)												
MSB		9	15		9		5		6		8	
PFC		41	1		3		3		4		4	
PCC		31	4		5		2		8		3	
Enforcement Actions												
MSB		2	3		1		4		3		1	
PFC		7	1		2		2		4		2	
PCC		6	0		0		0		0		0	
PCSEA		0	0		0		0		0		0	

NOTES:
PCC $ amounts reflected in the millions.
Limited scope examinations do not receive a rating.

Division Activities:

Below is a breakdown on all past due examinations:

- The 15 past due Special Audit examinations are on average 30 days past due.
- Our current examination schedule reflects that six of the past due examinations were completed in September 2015 and seven past due examinations will be completed in October 2015.
- Our current examination schedule reflects that one past due PFC and one past due PCC examination are in legal proceedings, which prohibited the completion of the examinations.
- Special Audits met all performance measures for the fourth quarter of FY 15.

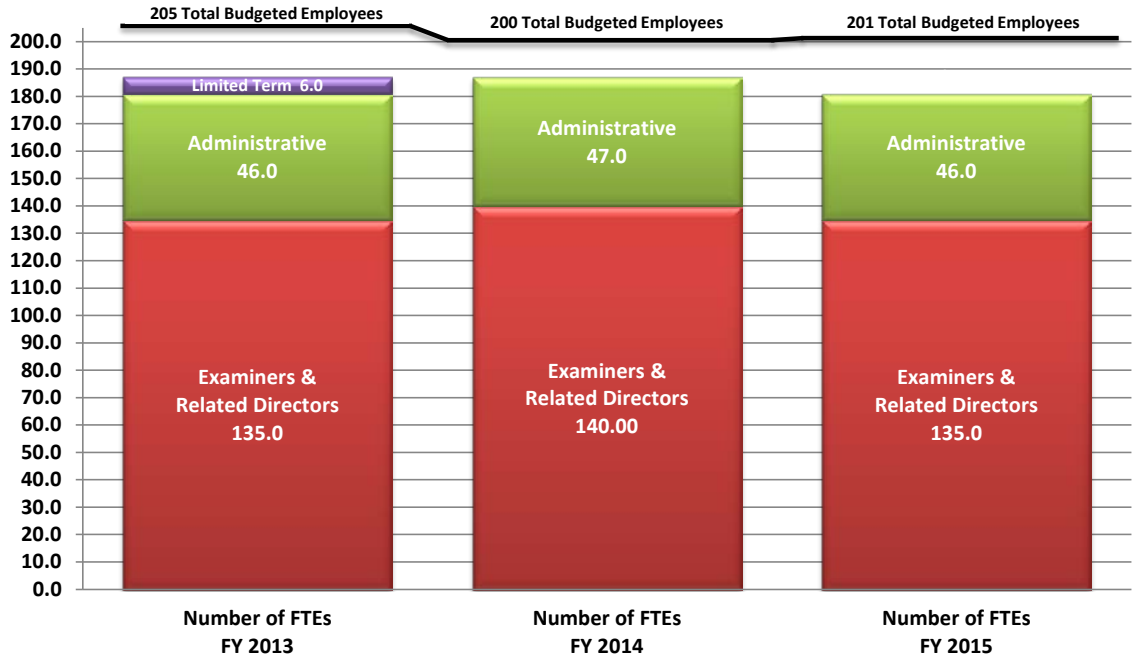
On September 1st one PFC/PCC examiner and one MSB examiner were hired and will be stationed in the Houston and Austin Regions, respectively.

On September 14th the Commissioner issued an Emergency Order to Cease and Desist Activity, to Seize Records and Funds, and to Cancel a Permit (Order), relating to the sale of trust-funded prepaid funeral contracts by El Paso Mission Funeral Home, Inc. (El Paso Mission), of El Paso, Texas. El Paso Mission violated Texas Finance Code Chapter 154 by falsifying cancellation documents in order to withdraw customer funds from trust. Although the Order is effective immediately, El Paso Mission has the right to request a hearing no later than October 14th, or the Order becomes final.

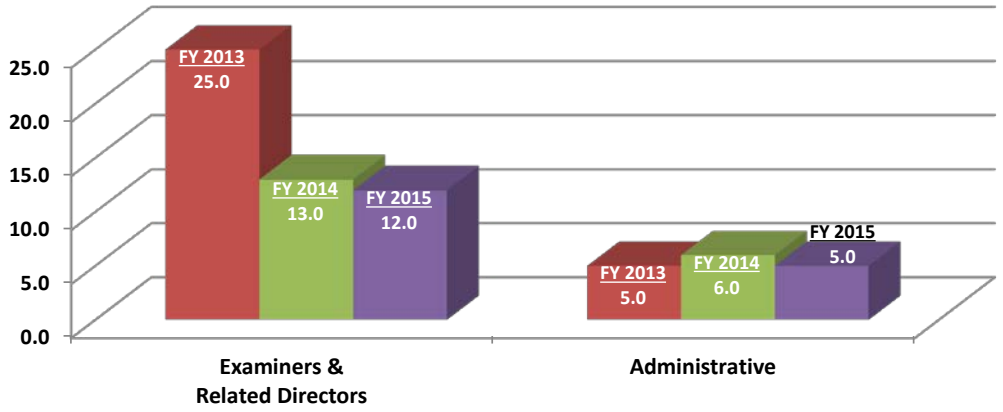
On September 21st, the owner of IntelliPayment, LLC (IntelliPayment), New York, New York, notified the Department that his company was no longer providing automobile loan payment services for Texas customers and has refunded any monies due those customers. This notification was required under a Consent Order issued by the Commissioner on May 18th. IntelliPayment was providing accelerated automobile loan payment services for Texas consumers without a money service business license. The Order also required IntelliPayment to pay the Department a penalty of $43,780, which it has done. IntelliPayment has been instructed to provide final Texas business activity records by September 30th.

Texas Department of Banking

Employee Data for Fiscal Years 2013, 2014 and 2015 as of 8/31/15



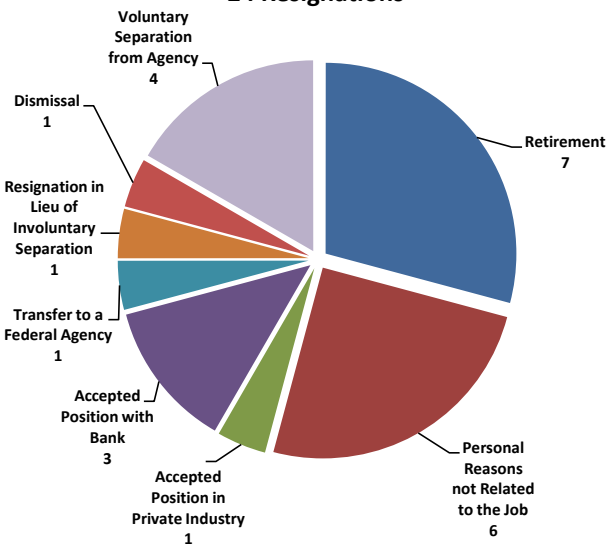
New Hire Data for Fiscal Years 2013, 2014 and 2015



FY 2015 Employee Turnover Reasons

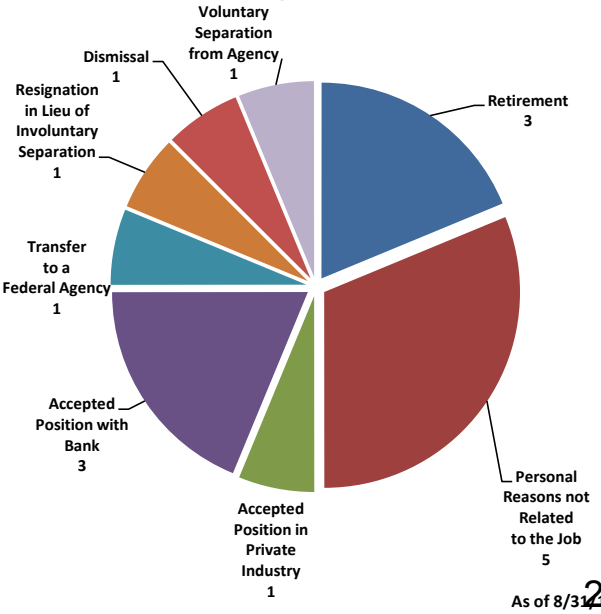
All Employees

24 Resignations



Financial Examiners Only

16 resignations



As of 8/31/15

Actual Performance for Outcome Measures
Fiscal Year 2015
For Period Ending August 2015

Type/Objective/Measure	2015 Target	2015 YTD	Percent of Annual Target
1-1 QUALITY BANK REGULATION			
1. % BANKS EXAMINED	85.00%	93.72%	110.26%
	* The measure exceeds projections this fiscal year due to a reduction in problem institutions as well as merger and consolidation activity.		
1-2 QUALITY NON-BANK REGULATION			
1. % MSB LICENSEES EXAMINED	90.00%	94.12%	104.58%
1-3 CORPORATE ACTIVITIES			
1. % B&T, MSB, PCSEA APPS COMPLETED	95.00%	94.98%	99.98%

* Varies by 5% or more from target.

Actual Performance for Explanatory Measures
Fiscal Year 2015
For Period Ending August 2015

Type/Strategy/Measure	2015 Target	2015 YTD	Percent of Annual Target
Explanatory/Input Measures			
1-1-1 BANK EXAMINATION			
1. % ASSETS IN SAFE & SOUND BANKS	95.00%	97.27%	102.39%

Actual Performance for Output/Efficiency Measures

Fiscal Year 2015

For Period Ending May 2015

Type/Strategy/Measure	2015 Target	2015 Quarter	2015 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1 BANK EXAMINATION				
1. # BANK EXAMINATIONS PERFORMED				
Quarter 1	107	24	24	22.43%
Quarter 2	107	28	52	48.60%
Quarter 3	107	29	81	75.70%
Quarter 4	107	39	120	112.15%
The measure exceeds projections due to performing more joint examinations in this quarter than projected.				
2. # TRUST/IT EXAMINATIONS PERFORMED				
Quarter 1	235	54	54	22.98%
Quarter 2	235	53	107	45.53%
Quarter 3	235	64	171	72.77%
Quarter 4	235	75	246	104.68%
1-2-1 NON-BANK EXAMINATION				
1. # SPECIAL AUDIT LICENSEES EXAMINED				
Quarter 1	560	132	132	23.57%
Quarter 2	560	146	278	49.64%
Quarter 3	560	150	428	76.43%
Quarter 4	560	155	583	104.11%
1-3-1 APPLICATION PROCESSING				
1. # LICENSE APPLICATIONS COMPLETED				
Quarter 1	322	65	65	20.19%
Quarter 2	322	85	150	46.58%
Quarter 3	322	96	246	76.40%
Quarter 4	322	96	342	106.21%
The number of filings completed exceeded expectations due to an unexpected surge in filings received related to branch applications, office closures, and use of names involving the word "bank" or "trust".				

* Varies by 5% or more from target.

Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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www.dob.texas.gov

To: Finance Commission Members

From: Wendy Rodriguez, Director of Strategic Support

Date: October 1, 2015

Subject: Summary of the Strategic Support Division Activities

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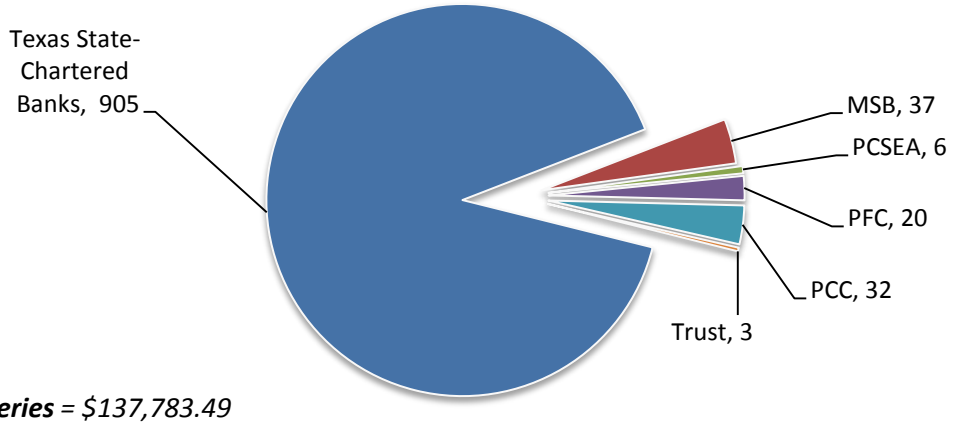
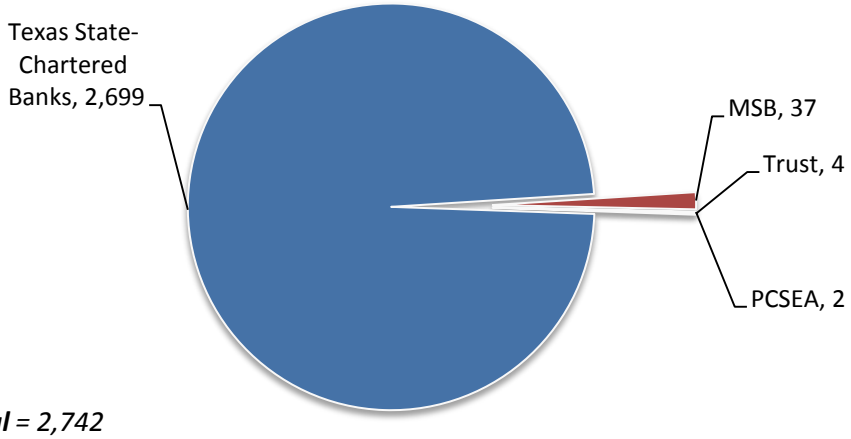
Complaints on Regulated Entities
September 2014 - August 2015



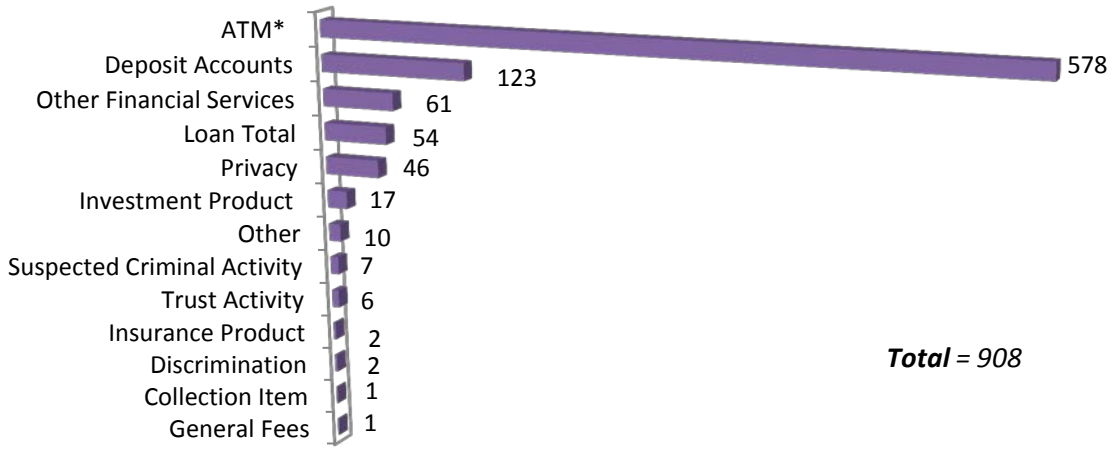
Recoveries *= $137,783.49*
Total *= 1,003*

Inquiries on Regulated Entities
September 2014 - August 2015



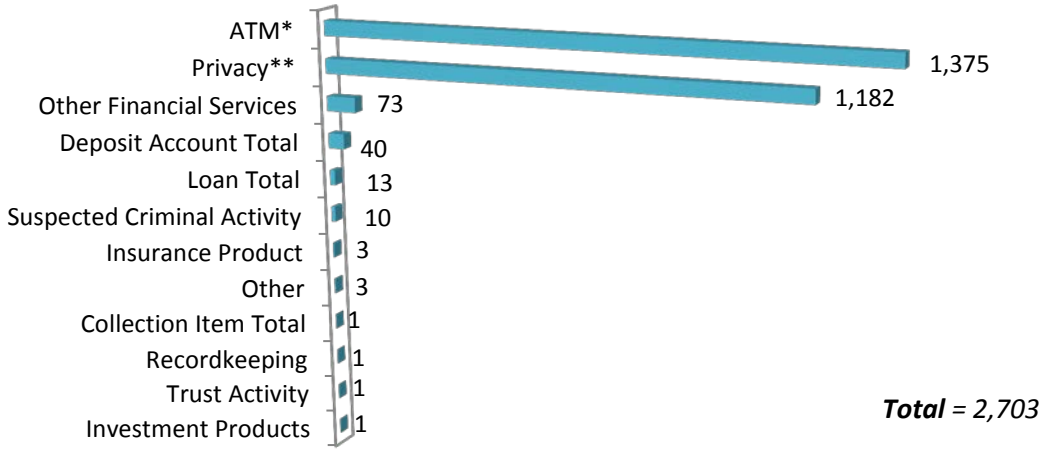
Total *= 2,742*

State-Chartered Banks and Trust Companies
Complaints by Type
September 2014 - August 2015



**High activity related to annual privacy notice containing the Department's contact information. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.*

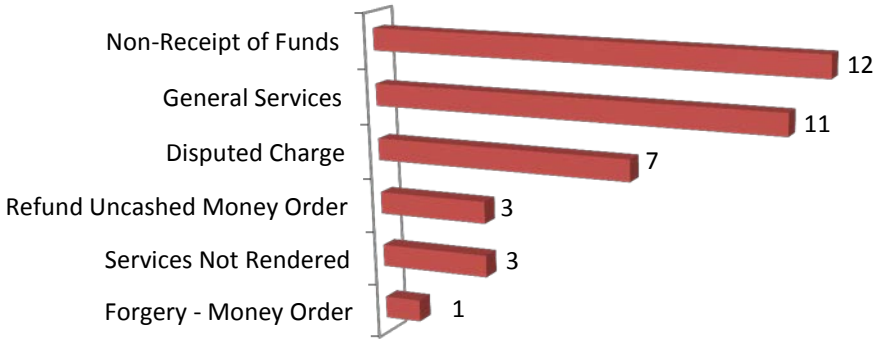
State-Chartered Banks and Trust Companies
Inquiries by Type
September 2014 - August 2015



** Activity related to consumers inquiring about their personal accounts and outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they could not get through to entity.*

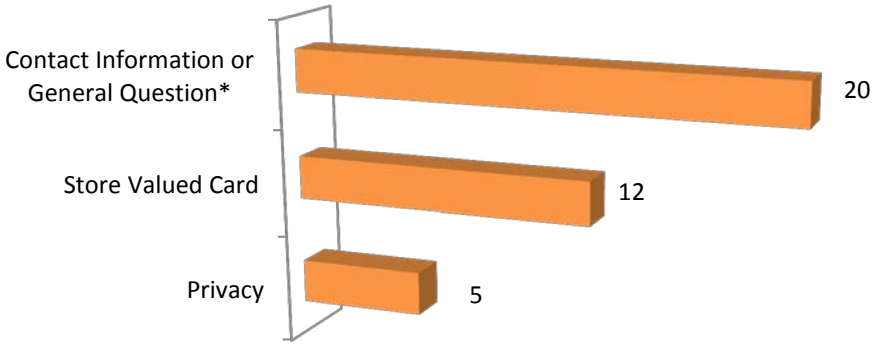
***High activity related to annual privacy notice containing the Department's contact information.*

Money Services Businesses
Complaints by Type
September 2014 - August 2015



Total: 37

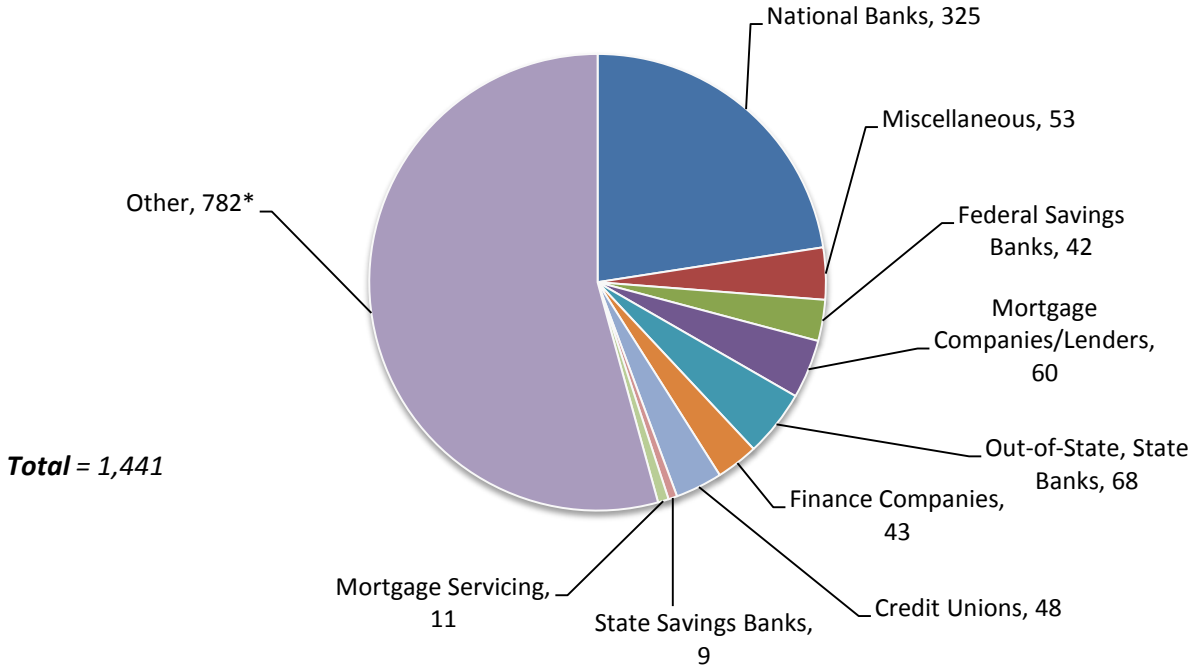
Money Services Businesses
Inquiries by Type
September 2014 - August 2015



Total: 37

**Activity related to customers needing company contact information or general questions best answered by company.*

Complaints and Inquiries Against Nonregulated Entities
September 2014 - August 2015



** The number of consumers using the Ask a Question feature on our website without providing notice of the type of entity has increased in the last 12 months.*

Average Number of Days to Close a Complaint

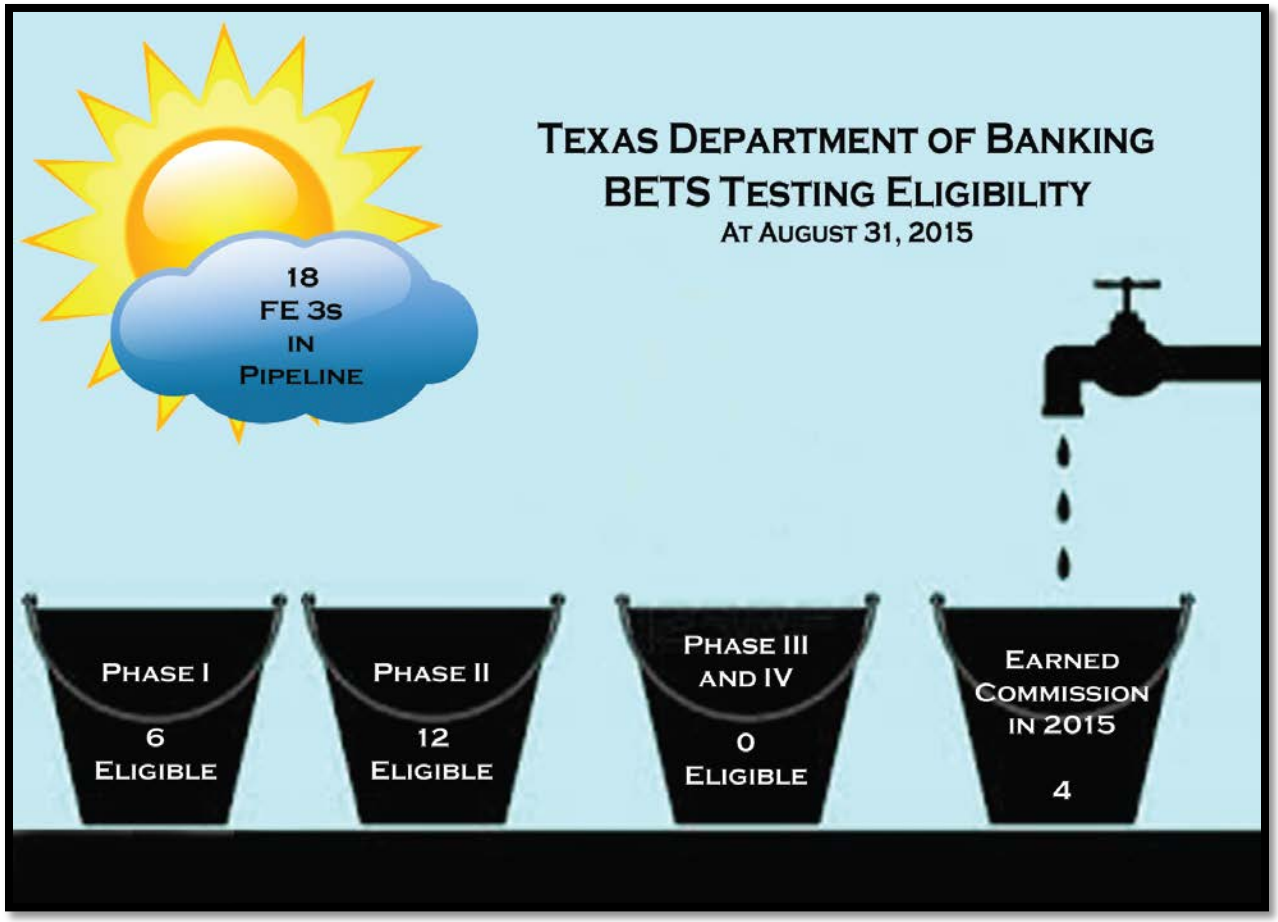
Type	Sept. 2014 – Aug. 2015
State-Chartered Banks	21
Trust	7
PCSEA	6
PFC/PCC	33
MSB	45

CANS Activity
January 1, 2011 – August 31, 2015

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	236	1,742
Texas State-Chartered Savings Banks	30	59
Federal Savings Banks	10	283
State Credit Unions	132	1,282
Federal Credit Unions	229	1,273
National Banks	167	642
Out-of-State State-Chartered Banks	11	0
Out-of-State National Banks	4	68
Total	**819**	**5,349**

Bank Examination Testing System (BETS) Activity

	FY 2012	FY 2013	FY 2014	FY 2015
Number of Candidates Passing Each Phase				
I. General Knowledge	6	3	5	8
II. Loan Analysis	5	8	2	2
III. Panel	4	10	2	4
IV. Test Bank	3	11	1	4
Total FE3	20	16	14	19
Promotions				
From FE3 to FE4 ***(Commissioned Examiner)***	3	9	2	4



Other Divisional Items:

- The September edition of the Condition of the Texas State Banking System report is available with financial data as of June 30, 2015.

- Bills passed in the 84th Texas Legislature impacting the Finance Code and Health & Safety Code have been incorporated into the Law and Guidance Manual on the website. The update is through September 30, 2015.

- The Department will be hosting financial education Train-the-Trainer sessions in fiscal year 2016. The two workshops are scheduled for October in Houston and November in San Antonio. Two additional sessions will be hosted in Dallas and Lubbock in May or June. The goal is to provide hands on training to financial institutions, teachers, government agencies, non-profit organizations and community leaders who are interested in delivering financial education to their communities.

- The Department will be launching its redesigned Electronic Crimes Task Force website (http://www.ectf.dob.texas.gov/index.htm) in late October 2015. The site has been given a facelift with a dynamic, mobile-friendly design.

- **Policies and Procedures**
    - Two Supervisory Memorandums related to Trust Company Examination Frequency (SM 1004) and Trust Company Level II Examinations (SM 1033) were revised as of September 30, 2015.

- **Examiner Council**
    - The Council reviewed examination procedures and has revised or is in the process of revising the Planning & Control, Audit, Borrowed Funds/Liquidity, Capital, and Loans & Leases procedures. Changes to these procedures will be implemented by October 1, 2015.
    - The Council recommended changes to Examiner Bulletins regarding guidelines for procedures and work papers for commercial, trust, and IT examinations. These revised bulletins were issued to bank and trust supervision examination staff on September 30, 2015.

Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 /877-276-5554
www.dob.texas.gov

Memorandum

TO: **Finance Commission Members**

FROM: **Catherine Reyer, General Counsel**

DATE: **October 1, 2015**

RE: **Legal Division Update**

Litigation

Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas. Plaintiffs filed this case on February 6, 2014, appealing the Banking Commissioner's order requiring them to pay $56,000 in administrative penalties for numerous violations of Health and Safety Code provisions governing cemeteries. The case was heard by Judge Scott Jenkins on April 30, 2015. Judge Jenkins issued an order on May 4 affirming the Commissioner's order. The cemetery owner has filed an appeal to the Third Court of Appeals, but has not obtained a supersedeas bond; therefore, the penalty from our administrative action is due and owing. We have referred the matter to the Collections Division of the OAG.

State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery, Cause No. 2013-DCL-2248-B, In the 138th Judicial District Court of Cameron County, Texas. This is a case initially filed to seek the appointment of a receiver. A suitable buyer for the cemetery has not been located. SB 656 by Eltife was signed by the Governor and became effective on May 15. This new legislation will allow the Commissioner to consider filing a petition in district court to modify the terms of the perpetual trust fund in order to facilitate a potential change in ownership of the cemetery and removal from perpetual care status. The current owner is negotiating with a potential buyer.

State of Texas v. House Savings Investment, LLC, et al, Cause No. D-1-GV-13-000763, In the 353rd District Court of Travis County, Texas**.** On July 26, 2013, the district court issued a temporary restraining order and appointed a temporary receiver under the authority of Chapter 151, Texas Finance Code, to take control of two companies performing money services business activities (bi-monthly mortgage payments). An agreed permanent injunction and appointment of permanent receiver order was entered by the court on August 13, 2013. The receiver closed the company offices in Houston and is continuing to administer the estate, investigate misappropriation of customer funds, prosecute litigation against third parties, and pursue and recover estate assets. On September 11, 2015, the receiver filed an unopposed motion to approve the sale of eight residential properties owned by two of the defendants.

Contested Case Hearings

In re eDeposit Corporation, Docket No. BM-1504-15-058(DW). eDeposit is alleged to have engaged in the business of money transmission without a license, processing 59 transactions for customers in Texas totaling $141,499.21 from January 2014 to November 2014. The Department issued an Order to Cease and Desist Activity on March 11, 2015. A hearing has been continued until October 8, 2015.

Orders

Since the last Legal Division memo was prepared, the Commissioner issued eight orders, including the following final public orders:

- Order No. 2015-016a, dated 8/17/2015; Consent Order, Kashmere Gardens Funeral Home, Inc., Houston, TX

- Order No. 2015-018, dated 8/12/2015; Agreed Order, Prevision Integral de Servicios Funerarios, S.A. de C.V. and La Paz Funeral Home, El Paso, TX

- Order No. 2015-019, dated 8/14/2015; Cancelling Charter, The Elkhart State Bank, Elkhart, TX

- Order No. 2015-020, Dated 9/14/2015; Emergency Cease and Desist Activity to seize records and funds, and to Cancel a Permit, El Paso Mission Funeral Home, El Paso, TX

2. Discussion of and Possible Vote to Adopt New 7 TAC §33.4, Concerning Payment Processors.

PURPOSE: New §33.4 is proposed for adoption to exclude from money services business (MSB) licensure two types of payment processors that might otherwise be required to obtain money transmission licenses under Finance Code Chapter 151. The new rule will clarify regulatory requirements and allow the department to more efficiently enforce the Texas Money Services Act (Act).

RECOMMENDED ACTION: No comments were received on new 7 TAC §33.4. The Department recommends that the Commission approve adoption of the new rule in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC §33.4 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §33.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §33.4, concerning payment processors. The section is adopted without changes to the proposed text as published in the September 4, 2015 issue of the *Texas Register* (40 TexReg 5605), and will not be republished.

The new rule excludes from money services business (MSB) licensure two types of payment processors that might otherwise be required to obtain money transmission licenses under Finance Code Chapter 151. The new rule clarifies regulatory requirements and allows the department to more efficiently enforce the Texas Money Services Act (Act).

Finance Code §151.003(10) authorizes the commission to adopt rules that exclude from licensing any person, transaction, or class of persons or transactions on a finding that licensing the person or transaction is not necessary to achieve the purposes of the Act. The purposes of the Act, as expressed in Finance Code §151.102, are to preserve and protect the safety and soundness of MSBs, to protect the interests of purchasers of money services, and to protect against money laundering and similar financial crimes. The department has found that regulation of the payment processors described in the new rule is not necessary to achieve these aims.

New §33.4 expands and clarifies two exclusions that already exist under Texas law. First, Finance Code §151.003(7) excludes a person acting as an intermediary on behalf of a license holder to assist in transmitting funds after they are received by the license holder. The rationale behind this exclusion is that because regulation of the license holder is designed to achieve the goals of the Act with respect to the entire transaction, additional regulation of any intermediaries is unnecessary. New §33.4(c) extends this reasoning to payment processors acting on behalf of a non-license-holder that has been excluded or exempted from licensing. The rationale behind this provision is that the reasons a person selling money services does not need a license – for example, because the person is a bank and is therefore already heavily regulated – extend to any intermediaries acting on that person's behalf.

Second, as expressed in the department's Legal Opinion 14-01, a payment processor who is appointed in a written contract as a merchant's agent to receive payments is not conducting money transmission. That is because under the common law doctrine of agency, payment to the merchant is complete upon receipt of funds by the agent. New §33.4(d) expands the application of Legal Opinion 14-01 to some situations where there is no explicit agency appointment in a contract. Provided that the requirements of new §33.4(d) are met, under Texas common law the processor is an agent of the merchant even absent an express contractual appointment. Consequently, under those circumstances neither the payment processor nor the merchant is conducting money transmission. Essentially

then, new §33.4(d) merely codifies existing Texas law.

The Department received no comments regarding the proposed sections.

The new rule is adopted pursuant to Finance Code, §151.102 which authorizes the commission to adopt rules to administer and enforce Chapter 151, and pursuant to Finance Code §151.003(10) which authorizes the commission to adopt rules that exclude from licensing a person, transaction, or a class of persons or transactions.

Finance Code, §151.003 and §151.302 are affected by the new section.

§33.4. Payment Processors.

(a) Policy. The Texas Department of Banking (Department) is committed to carrying out its legislative mandate under Finance Code Chapter 151 with respect to money services businesses (MSBs) while minimizing the regulatory burden where possible. Specifically, the Legislature has charged the Department with the following threefold mandate: to preserve and protect the safety and soundness of MSBs; to protect the interests of purchasers of money services and the public; and to protect against drug trafficking, terrorist funding, and money laundering or related financial crimes. But when issuing a license is not required to achieve this mandate, the Legislature has also authorized the Finance Commission to adopt rules that exclude from licensure any person, transaction, or class of persons or transactions that might otherwise require a license under Chapter 151. Because the nature of the transactions involved presents low risk to purchasers of money services, low risk of money laundering or related financial crimes, and low risk to the safety and soundness of MSBs, the Department has found that requiring certain classes of payment processors to obtain money transmission licenses is not necessary to achieve the goals of its mandate under Chapter 151.

(b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context clearly indicates otherwise.

(1) "Payment processor" means a person employed, directly or indirectly, by one of the parties to a transaction to handle the funds involved in order to complete the transaction.

(2) “Consumer-facing entity” means a person who interacts with a consumer in order to sell or offer the person's goods or services.

(3) "Funds" means money or monetary value as defined by Finance Code §151.301(b)(3).

(c) Downstream Payment Processors. A payment processor that acts as an intermediary between a consumer-facing entity that has incurred an outstanding money transmission obligation to a consumer, and the consumer's designated recipient, does not need a license under Finance Code Chapter 151, provided that the consumer-facing entity:

(1) is properly licensed, excluded under

Finance Code §151.003, or has been granted an exemption under Finance Code §151.302(c);

(2) provides a receipt to the consumer identifying the consumer-facing entity as the provider of money services in the transaction; and

(3) bears sole responsibility to satisfy the outstanding obligation to the consumer, including the obligation to make the consumer whole in connection with any failure to transmit the funds.

(d) Point of Sale Payment Processors. A payment processor that receives funds from a consumer on behalf of a consumer-facing entity selling goods or services other than money services does not need a license under Chapter 151, provided that:

(1) the consumer-facing entity, upon receipt of funds by the payment processor, immediately either:

(A) provides the purchased goods and services; or

(B) credits the consumer for the full amount of the funds received by the payment processor, which credit is not revocable by the consumer-facing entity, and evidences this credit in writing; and

(2) the consumer-facing entity is obligated to provide the purchased goods and services regardless of whether the payment processor transmits the funds.

3. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §§6.1-6.6 Concerning Banking Development Districts

PURPOSE: New Chapter 6 (§§6.1-6.6) implements Texas Finance Code Chapter 279, which requires the Finance Commission to administer and monitor a banking development district program to encourage the establishment of branches of financial institutions in areas where there is a demonstrated need for such financial services. Finance Code §279.052 requires the commission, in consultation with the Texas Economic Development and Tourism Office (within the Office of the Governor), to adopt rules regarding the criteria for the designation of banking development districts, and requires the commission to initially adopt these rules not later than January 1, 2016. (The Credit Union Commission is similarly required to administer and monitor a credit union development district program and adopt rules not later than January 1, 2016.)

Chapter 279 authorizes a local government to apply for the designation of a banking or credit union development district and authorizes a financial institution or credit union to apply to open a branch in a proposed development district at the time the local government submits the application. The governing body of a local government in which a banking or credit union development district has been established may designate the financial institution or credit union located in the district as a banking district depository or credit union district depository, as applicable. The comptroller of public accounts is also authorized to deposit public funds with a district depository if the comptroller designates the financial institution or credit union as a state depository.

RECOMMENDED ACTION: The Department received one comment noting that Texas law does not require a financial institution or a credit union to be federally insured in order to qualify as a depository, contrary to the language proposed for the definitions set forth in §6.2(5) and (8). The Department agrees and has modified those definitions for adoption. In addition, a typographical error was corrected in §6.3(b)(3) by removing a duplicate phrase. The Department recommends that the Commission approve adoption of the proposed rules with these nonsubstantive changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC §§6.1-6.6 with nonsubstantive changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 6. Banking Development Districts
7 TAC §§6.1-6.6

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §§6.1-6.6, concerning banking development districts. The sections are adopted with nonsubstantive changes to the proposed text as published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5602), and will not be republished.

Finance Code, Chapter 279, requires the commission to administer and monitor a banking development district program to encourage the establishment of branches of financial institutions in areas where there is a demonstrated need for banking services. Chapter 279 became effective on September 1, 2015, see Acts 2015, 84th Legislature, R.S., Chapter 967, §1. The Texas Credit Union Commission is similarly required to administer and monitor a credit union development district program to encourage the establishment of branches of credit unions in areas where there is a demonstrated need for such services.

Under Finance Code, Chapter 279, a local government may apply for the designation of a banking or credit union development district if a financial institution or credit union is participating and intends to apply to open a branch in a proposed development district at the time the local government submits the application.

Finance Code, §279.052, requires the commission, in consultation with the Texas Economic Development and Tourism Office (within the Office of the Governor) to adopt rules regarding the criteria for the designation of banking development districts. (Finance Code, §279.102, imposes the same requirement on the Texas Credit Union Commission.) The commission must initially adopt these rules not later than January 1, 2016, see Acts 2015, 84th Legislature, R.S., Chapter 967, §2.

As adopted, §6.1 states the purpose of the chapter and clarifies that establishing a banking development district does not affect requirements applicable to reinvestment zones and tax abatement agreements pursuant to the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Government Code, Chapters 311 and 312, respectively). Section 6.2 provides definitions applicable to the chapter. Definitions in the statute are repeated for ease of use.

Content requirements for an application are set forth in adopted §6.3, and §6.4 sets out how an application will be processed.

Adopted §6.5 sets out the criteria for the designation of a banking development district, consisting of the five, statutorily required factors from Finance Code, §279.052(b), and two additional factors. The two additional factors are the physical size and cohesiveness of the proposed district, and the history of a lack of banking services in the proposed district.

Finally, §6.6 imposes a minimal reporting requirements on the local government applicant in order to permit the commission to "monitor" the program as required by Finance Code, §279.051. The only required notice would inform the commission when a financial institution opens or closes a branch in an approved banking development district.

The Department received one comment regarding the proposed sections, pointing out that Texas law does not require a financial institution or a credit union to be federally insured in order to qualify as a depository, contrary to the language proposed for the definitions set forth in §6.2(5) and (8). The Department agrees and has modified those definitions for adoption. In addition, a typographical error was corrected in §6.3(b)(3) by removing a duplicate phrase.

The amendment is adopted pursuant to Finance Code, §279.052(a), which requires the commission to adopt rules to implement Subchapters B and D of Chapter 279 with respect to financial institutions in banking development districts. As required by Finance Code, §279.052(b), the commission consulted with the Texas Economic Development and Tourism Office regarding the criteria for the designation of banking development districts.

Chapter 6. Banking Development Districts

§6.1. Purpose; scope.

(a) This chapter implements Finance Code, Chapter 279, by providing application requirements for a municipality or county that seeks to establish a banking development district in conjunction with a financial institution.

(b) This chapter does not affect or circumvent:

(1) requirements under the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Government Code, Chapters 311 and 312, respectively), including requirements for designation of an area as a municipal or county reinvestment zone or for authorization to enter into a tax abatement agreement; or

(2) any required regulatory approval for a financial institution that seeks to establish a branch in a banking development district.

§6.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Alternative providers" means check cashers, licensed money transmitters, licensed lenders, and licensed residential mortgage lenders.

(2) "Banking services" include deposit taking, check-cashing, and origination of residential mortgages, commercial mortgages, or other secured or unsecured consumer or commercial loans.

(3) "Branch" means a full-service main office or branch office of a financial institution or credit union.

(4) "Commission" means the Finance Commission of Texas.

(5) "Credit union" means a [~~federally insured~~] state or federal credit union.

(6) "Department" means the Texas Department of Banking.

(7) "District" means a banking development district under this chapter.

(8) "Financial institution" means a [~~federally insured~~] state or national bank, a state or federal savings bank, or a state or federal savings and loan association.

(9) "Local government" means a municipality or county.

§6.3. Application Requirements.

(a) Basic application. A local government, in conjunction with a financial institution, may submit an application to the commission for the designation of a proposed banking development district, as provided by §6.4 of this title (relating to Submission and Processing of Application). The application must include the following information to the extent available:

(1) identification of the local government applicant and evidence of the approval of the application by its governing body;

(2) identification of the participating financial institution by type and name, and identification of its primary state and/or federal regulator;

(3) a description of the geographic area comprising the proposed district, including a map that identifies the borders of the proposed district;

(4) a compilation and explanation of the population demographics included within the proposed district, including the number of residents and the percentage of the population that can be described as comprised of, for example, elderly (age 64 and over), disabled, non-English speaking, and identifiable racial, ethnic or other minorities;

(5) a compilation and explanation of economic indicators pertinent to the proposed district, to the extent available, including per capita annual income, median household annual income, unemployment data, percentage of the population at or below the poverty level, and percentage of the population receiving public assistance within the proposed district;

(6) a description of the type and nature of commercial businesses located in the proposed district, including the number and percentage of which constitute small business, as that term is defined by Government Code §2006.001(2);

(7) a compilation and summary of significant business developments within the past three years, including corporate restructurings, plant closings, other business closings, and recent or proposed business openings or expansions;

(8) the location, number, and proximity of sites where banking services are available in or near the proposed district, including branches of financial institutions

and credit unions, and deposit-taking ATMs other than those located at branches;

(9) a compilation and description of alternate providers in the proposed district;

(10) a description of the anticipated impact that additional banking services would have on potential economic development within the proposed district.

(b) Optional information. An application for designation of a banking development district may also include:

(1) a description of other local government and community initiatives proposed to be undertaken and coordinated with establishment of the proposed district;

(2) indications of community support or opposition for the application, as evidenced by letters from entities such as local chambers of commerce, local businesses, community-based organizations, non-profit organizations, government officials, or community residents; and

(3) such other information that the applicant believes will demonstrate that the proposed district meets the standards set forth in §6.5 of this title [~~of this title~~] (relating to Criteria for Approval).

§6.4. Submission and Processing of Application.

(a) The application must be submitted to the commission in care of the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705. No filing fee is required.

(b) On or before the 15th day after initial submission of an application, the department shall issue a written notice informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and specific additional information is required. The applicant must supply any additional information requested by the department on or before the 61st day after the date of initial submission of the filing. Upon a finding of good and sufficient cause, the department shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(c) After the issuance of written notice informing the applicant that the application is complete and accepted for filing, the department shall evaluate the application to the extent necessary to make a written recommendation to the commission under the criteria set forth in §6.5 of this title. The department shall submit the completed application and the department's recommendation to the commission for decision at the next regularly scheduled meeting of the commission, which must be on or before the 120th day after the date the completed application is accepted for filing.

(d) If the finance commission approves the application, the department shall notify the interested parties as required by Finance Code, §279.055(b).

§6.5. Criteria for Approval.

In determining whether to approve an application for the designation of a banking development district, the commission shall

take into consideration the following criteria:

(1) the location, number, and proximity of sites where banking services are available in the proposed district;

(2) consumer needs for banking services in the proposed district;

(3) the economic viability and local credit needs of the community in the proposed district;

(4) the existing commercial development in the proposed district;

(5) the impact additional banking services would have on potential economic development in the proposed district;

(6) the physical size and cohesiveness of the proposed district; and

(7) the history of the availability of banking services in the proposed district.

§6.6. Monitoring.

(a) A local government that receives approval for a district under this chapter shall notify the department in writing on or before the 21st day after the date:

(1) the financial institution opens a branch in the district and the address of the branch; and

(2) the financial institution closes a branch in the district.

(b) On behalf of the commission, the department may request periodic status reports from the local government in order to ensure that the needs of the community located in the district are being met in an appropriate manner.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

From: Shari Shivers [mailto:Shari.Shivers@cud.texas.gov]
Sent: Friday, October 09, 2015 11:30 AM
To: Jobe, Everette
Subject: FYI, Proposed Development District Rules

Everette,

Some of our state chartered credit unions are privately insured. I'm emailing you to point out some language that might cause confusion.

In the preamble to 7 TAC §§6.1-6.6, it states that "[d]efinitions of 'financial institution' and 'credit union' are modified slightly to clarify that an eligible depository must be federally insured" and proposed 7 TAC §6.2(5) defines credit union as "a federally insured state or federal credit union." Unfortunately, there is no statutory authority requiring credit union depositories to be federally insured.

Under Section 279.151(b), Finance Code, "The governing body of a local government in which a credit union development district has been designated under Subchapter C may by resolution designate a credit union located in the district as a credit union district depository for purposes of this subchapter." Further, under Section 279.152(a), Finance Code, "A local government may deposit public funds with a …credit union designated as a credit union district depository under Section 279.151." Additionally, under Section 279.152(b), Finance Code, "If the comptroller designates the credit union as a state depository under Subchapter C, Chapter 404, Government Code, the comptroller may deposit public funds with a credit union designated as a credit union district depository under Section 279.151(b)." However, Section 279.001(1), Finance Code, defines credit union to mean "a state or federal credit union." There is no requirement for a credit union to be federally insured.

Section 404.031, Government Code, does contain collateral requirements incumbent on the depository; however, even under Subsection (e) of that section, "'financial institution' has the meaning assigned by Section 201.101(1), Finance Code." Section 201.101(1)(D), Finance Code, defines credit union as "a credit union chartered under Chapter 122 or similar laws of another state." Nothing in Chapter 122, Finance Code, requires credit unions to be federally insured.

Please call me if you have any questions.

Thanks,
Shari

Shari Shivers
Assistant Commissioner
and General Counsel
Credit Union Department – State of Texas
512.832.4804/shari.shivers@cud.texas.gov

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §3.36 and §3.37, Concerning Bank Assessments.

PURPOSE: Amendments to §3.36 revise the section to conform to changes in §3.37 concerning the manner in which assessments applicable to state banks are calculated. Amendments to §3.37 increase the amount of each bank's annual assessment to offset increased operational costs of the department, beginning with the quarterly installment due in March 2016. In addition, assessment rates may be adjusted for inflation beginning in September 2017.

The increase in bank assessments will support bank supervision functions and will not subsidize other regulatory responsibilities of the department. The increased revenue will permit the department to uphold the professional standards that the Texas banking industry deserves and has come to expect by providing its examiners the tools and training needed to effectively regulate an increasingly complex banking industry for the foreseeable future.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC §3.36 and §3.37. The Department recommends that the Commission approve adoption of the amended rule without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC §3.36 and §3.37 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 3. State Bank Regulation
Subchapter B. General
7 TAC §3.36 and §3.37

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §3.36, concerning annual assessments and specialty examination fees, and §3.37, concerning the calculation of annual assessment for banks. The amendments are adopted without changes to the proposed text as published in the September 4, 2015 issue of the *Texas Register* (40 TexReg 5599), and will not be republished.

Amendments to §3.36 revise the section to conform to changes in §3.37 concerning the manner in which assessments applicable to state banks are calculated. Amendments to §3.37 increase the amount of each bank's annual assessment to offset increased operational costs of the department, beginning with the quarterly installment due in March 2016. In addition, assessment rates are to be adjusted for inflation beginning in September 2017.

The assessment system for state banks, set forth in §3.36 and §3.37, determines how much each state bank must pay for supervision by the department. This system has advantages for both the department and state banks, in that it allows banks to calculate and accrue for the amounts due to the department in support of its supervisory functions; provides an equitable structure by which banks pay for the costs of supervision; allows the department to more accurately predict and manage its cash flows; allows the department to more adequately provide for and schedule necessary staff training; and avoids the inordinate accumulation of excess funds.

Section 3.36 provides that each bank's assessment is calculated annually effective September 1 of each year and is paid to the department by electronic payment/ACH transfer in quarterly installments to be debited effective September 15, December 15, March 15, and June 15 of each year, or by other means if directed by the department. Section 3.37 provides a table that specifies calculations and rates for assessment fees and sets out the steps for calculating a bank's annual assessment as described in §3.36. As reflected in the table, a state bank's assessment is calculated on the basis of its assessable assets using two factors: the base assessment amount and the marginal assessment rate applicable to the bank's assessable asset group. In addition, the department levies a surcharge on a bank that requires increased supervisory resources, currently reflected by the bank's assigned examination frequency.

The adopted increase in bank assessments will support bank supervision functions and will not subsidize other regulatory responsibilities of the department. The increased revenue will permit the department to uphold the professional standards that the Texas banking industry deserves and has come to expect by providing its examiners the tools and training needed to effectively regulate an increasingly complex banking industry for the foreseeable future. Further, the Department possesses bilateral authority in regulatory matters under its cooperative bank examination agreements with the

Federal Deposit Insurance Corporation and with the Federal Reserve Bank of Dallas. Retaining this stature requires the Department to maintain staff and processes that equal or exceed federal standards. The department has a solid history of fiscal responsibility and will continue to carefully and prudently evaluate the amount of funds needed to fulfill the department's statutory responsibilities.

As amended, §3.37(a) the marginal assessment rates reflect increases of 12 percent for assessable asset groups 1-9, and by 14.75 percent for assessable asset groups 10-14 (assessable assets in excess of $10 billion). The base assessment amounts are also increased as a result because each base assessment amount is the sum of the assessments applicable to all lower-tier assessable asset groups. In addition, the factor determining whether a surcharge is to be applied will no longer be based on a bank's assigned examination frequency, but instead will be based on a bank's CAMELS composite rating as determined at the bank's most recent examination. The CAMELS score is a numerical rating assigned by supervisors to reflect their assessment of the overall financial condition of a bank and in fact is a major determinant of examination frequency. The score ranges from 1 (low risk) to 5 (high risk). As amended, a CAMELS composite rating of 1 or 2 will generate an assessment multiplier of 1.0, meaning there is no additional surcharge. A CAMELS composite rating of 3, 4 or 5 will generate an assessment multiplier of 2.0, meaning a surcharge equal to the calculated assessment is applied, and the total billable annual assessment would be double that applicable to a similar-sized bank with a CAMELS composite rating of 1 or 2. Finally, a bank with assessable assets of $500 million or less and a CAMELS composite rating of 1 or 2 will apply a multiplier of 0.875.

Amended §3.37(b) will automatically escalate marginal assessment rates annually based on the percentage change in an inflation index, beginning September 1, 2017. The inflation index is the Gross Domestic Product Implicit Price Deflator (GDPIPD), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. Effective each September 1, the marginal assessment rates (and the derivative base assessment amounts) set forth in §3.37(a) will be revised upward (or downward) by an amount equal to the percentage change in the GDPIPD index values from the first quarter value of the previous calendar year to the first quarter value of the current calendar year (the previous March-to-March period).

An increase in the GDPIPD will automatically increase marginal assessment rates, but it will not necessarily result in a proportionate increase in annual assessments. As provided by §3.36(g), the department may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations, specifically with respect to bank and trust supervision.

Section §3.36 is amended primarily to conform to and be consistent with changes in §3.37(a). However, with respect to the fiscal year beginning September 1, 2015, new paragraph (4) of §3.36(d) will require the last two quarterly installments of the

fiscal year to be based on the new assessment rates.

The Department received no comments regarding the proposed amendments.

The amended sections are adopted pursuant to Finance Code, §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

§3.36. Annual Assessments and Specialty Examination Fees.

(a) Authority. The assessment schedule contained in this section is made under the authority contained in the Finance Code, §31.003(a)(4) and §204.003(b).

(b) Definitions. The following words and terms, when used in this section, §3.37 of this title (relating to Calculation of Annual Assessment for Banks), or §3.38 of this title (relating to Calculation of Annual Assessment for Foreign Bank Branches and Agencies), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Assessable assets--The sum of on-book assets and average off-book assets of a bank, foreign bank branch, or foreign bank agency.

(2) Average off-book assets--The average of the off-balance sheet items reported by a bank, foreign bank branch, or foreign bank agency in its most recent March 31st call report and the three immediately preceding call reports, as adjusted under subsection (c) of this section.

(3) Call report--The FFIEC quarterly, consolidated report of condition and income (including domestic and foreign subsidiaries) prepared and filed by a bank, foreign bank branch, or foreign bank agency under state and federal law.

(4) CAMELS composite rating--A bank's composite rating under the Uniform Financial Institutions Rating System (UFIRS), as described more fully in Supervisory Memorandum 1001, assigned by the department to a state bank in connection with its most recent examination by the department or by a federal bank regulatory agency.

(5) FFIEC--The Federal Financial Institutions Examination Council.

(6) On-book assets--The total assets reported by a bank, foreign bank branch, or foreign bank agency on the balance sheet contained in its most recent March 31st call report.

(c) Calculation of average off-book assets. As a component of assessable assets, a bank, foreign bank branch, or foreign bank agency must calculate a four-quarter average

of off-book assets specifically as instructed in the assessment form applicable to the institution, using the most recent March 31st call report and the three preceding call reports. In general, the bank, foreign bank branch, or foreign bank agency must sum all line items for which values are included on "Schedule RC-L-Off-Balance Sheet Items," which could result in assets of the institution, with the exception of:

(1) Amount of financial standby letter of credit conveyed to others;

(2) Amount of performance standby letter of credit conveyed to others;

(3) Participations in acceptances conveyed to others by the reporting bank, foreign bank branch, or foreign bank agency; and

(4) All line items related to derivative products as identified by the department.

(d) Annual assessment. Effective September 1 of each year, the department will establish the annual assessment for each bank, foreign bank branch, and foreign bank agency under subsections (f) and (g) of this section.

(1) The assessment for a bank is based on its assessable assets and calculated in the manner described in §3.37 of this title. Upon receipt of written notice from the department, the bank must pay the assessment to the department in quarterly installments by electronic payment/ACH debited effective September 15, December 15, March 15, and June 15 of each year, or by another method if directed to do so by the department.

(2) The assessment for a foreign bank branch or a foreign bank agency is based on its assessable assets and calculated in the manner described in §3.38 of this title. Upon receipt of a written invoice from the department, the foreign bank branch or foreign bank agency must pay the assessment to the department in quarterly installments, due on or before September 15, December 15, March 15, and June 15 of each year, or by another method if directed to do so by the department.

(3) A foreign bank representative office shall pay an annual assessment fee of $2,500 to cover the cost of examinations and all associated expenses unless the foreign bank also maintains a foreign bank branch or foreign bank agency in this state subject to assessment under paragraph (2) of this subsection. Upon receipt of a written invoice from the department, each foreign bank representative office to which this paragraph applies must pay its annual assessment to the department in a single installment, due on or before September 15 of each year. The department may require each foreign bank representative office to pay the annual assessment fee through electronic funds transfer.

(4) Notwithstanding paragraph (1) of this subsection, the annual assessment established for the fiscal year beginning September 1, 2015, must be recalculated for each bank on March 1, 2016, using the revised table in §3.37(a). The two remaining quarterly installments due on or before March 15 and June 15, 2016, must be based on the recalculated assessment. In other

words, subject to possible reduction under Subsection (g) of this section, the quarterly installments due on or before March 15 and June 15, 2016, will each be in an amount equal to 25 percent of the assessment as recalculated on March 1, 2016.

(e) Review of assessment factors. The department will review all appropriations, revenue sources, expenditure patterns, and other revenues and costs related to examination and supervision of banks, foreign bank branches, foreign bank agencies, and present to the finance commission no less frequently than once each biennium such information and a calculation chart that sets forth the annual assessment factors.

(f) Interim adjustments.

(1) If the size, condition, or other characteristics of a bank, foreign bank branch or foreign bank agency change sufficiently during a year to cause the institution to fall into a different assessable asset group or to be subject to a new or different surcharge based on a change in the institution's CAMELS composite rating, the department will adjust the annual assessment to the appropriate amount beginning with the first billed quarterly installment after the change.

(2) In the event of an acquisition or merger involving a surviving state bank, foreign bank branch, or foreign bank agency, the department will adjust the annual assessment to reflect the result of the acquisition or merger beginning with the first billed quarterly installment after the consummation of the transaction. The asset group will be calculated on the basis of the combined assessable assets of the surviving institution.

(3) A financial institution that becomes subject to this section during a fiscal year as a result of conversion, merger, branching, or other change during a fiscal year must pay to the department an assessment beginning in the quarter of the conversion, merger, or other change to reflect only the quarter or quarters of the year in which the institution is subject to this section.

(4) Each bank, foreign bank branch, and foreign bank agency must pay to the department the full quarterly installment of the assessment for the next three-month period on the due date of the installment without proration for any reason.

(g) Adjustment of an installment. The banking commissioner may, after review and consideration of actual and projected revenues and expenditures in the current fiscal year, lower the aggregate amount of an installment and bill each institution subject to assessment a proportionally lower amount, without the prior approval of the finance commission.

(h) Specialty examination fees.

(1) Examinations of fiduciary activities and other special examinations and investigations, including but not limited to examinations of bank holding companies, interstate branches of state banks in Texas as host state, affiliates, and third-party contractors, are subject to a separate charge to cover the cost of time and expenses incurred in these examinations.

(2) The fee for an examination under this subsection will be calculated at a rate not to exceed $110 per examiner hour, to recoup the salary expense of examiners plus a proportionate share of department overhead allocable to the examination function. The banking commissioner in the exercise of discretion may lower the rate in connection with a specific examination or investigation for equitable reasons, without the prior approval of the finance commission.

(3) In connection with an examination under this subsection, the regulated entity or other legally responsible party shall pay to the department the examination fee set forth in paragraph (2) of this subsection, and shall also pay to the department an amount for actual travel expenses incurred by the examiners, including mileage, public transportation, food, and lodging.

(i) Special assessments. The finance commission may approve a special assessment to cover material expenditures, such as major facility repairs and improvements and other extraordinary expenses.

§3.37. Calculation of Annual Assessment for Banks.

(a) Bank assessment calculation table. The annual assessment for a state bank is calculated as described in this section and paid as provided by §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table, as such values may be periodically adjusted in the manner provided by Subsection (b) of this section. The unadjusted values in the following table are effective until September 1, 2017:

Figure: 7 TAC §3.37(a)

(b) Required adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

Figure: 7 TAC §3.37(a)

First determine the bank's assessable asset group, then:

Steps	Assessment Calculation:	Assessable Asset Group:						
		1	**2**	**3**	**4**	**5**	**6**	**7**
1.	For assessable assets of at least (in thousands)	$0	$10,000	$25,000	$40,000	$70,000	$100,000	$250,000
	But not greater than (in thousands):	$10,000	$25,000	$40,000	$70,000	$100,000	$250,000	$1,000,000
2.	Take the total assessable assets over (in thousands):	$0	$10,000	$25,000	$40,000	$70,000	$100,000	$250,000
3.	And multiply by the **marginal assessment rate**:	0.789600	0.448000	0.212800	0.208320	0.201600	0.123200	0.082880
4.	Add this result to the **base assessment amount**:	$2,789	$10,685	$17,405	$20,597	$26,847	$32,895	$51,375
5.	Multiply the total by the factor corresponding to the bank's CAMELS composite rating (as defined in §3.36(b)):							
	a. Rating of 3, 4 or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
	b. Rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0
6.	And multiply the total by 0.875 if bank has assessable assets of $500 million or less and a CAMELS composite rating of 1 or 2.							

Steps	Assessment Calculation:	Assessable Asset Group:						
		8	**9**	**10**	**11**	**12**	**13**	**14**
1.	For assessable assets of at least (in thousands):	$1,000,000	$5,000,000	$10,000,000	$20,000,000	$40,000,000	$60,000,000	$80,000,000
	But not greater than (in thousands):	$5,000,000	$10,000,000	$20,000,000	$40,000,000	$60,000,000	$80,000,000	-----
2.	Take the total assessable assets over (in thousands):	$1,000,000	$5,000,000	$10,000,000	$20,000,000	$40,000,000	$60,000,000	$80,000,000
3.	And multiply by the **marginal assessment rate**:	0.073920	0.067200	0.053933	0.032130	0.020655	0.013770	0.009180
4.	Add this result to the **base assessment amount** of:	$113,535	$409,215	$745,215	$1,284,545	$1,927,145	$2,340,245	$2,615,645
5.	And multiply the total by the factor corresponding to the bank's CAMELS composite rating:							
	a. Composite rating of 3, 4, or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
	b. Composite rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0

Discussion of and Possible Vote to Take Action on the Re-adoption of the Completed Rule Reviews of:

5. 7 TAC, Part 2, Chapter 15, Concerning Corporate Activities

6. 7 TAC, Part 2, Chapter 17, Concerning Trust Company Regulation

7. 7 TAC, Part 2, Chapter 19, Concerning Trust Company Loans and Investments

8. 7 TAC, Part 2, Chapter 21, Concerning Trust Company Corporate Activities

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC Chapters 15, 17, 19, and 21 were published in the *Texas Register* as required on August 28, 2015 (40 TexReg 5475-5476). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapters 15, 17, 19, and 21 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC Chapters 15, 17, 19, and 21 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC Chapters 15, 17, 19, and 21 continue to exist, and that those rules be readopted.

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication of Amendments to 7 TAC §21.24, Concerning Family Trust Companies.

PURPOSE: Finance Code §182.011 and §182.012 were amended effective September 1, 2015, to materially revise the requirements for exemption as a family trust company. In general, prior to September 1, 2015, a trust company could obtain an exemption from certain otherwise applicable requirements if it restricted its client services to individuals related within the fourth degree of affinity or consanguinity to an individual who controls the trust company, and to certain of their related interests. Effective September 1, 2015, the exemption is available to a trust company that serves only individuals related within the seventh degree to a shared common ancestor and their related interests, provided the trust company is wholly owned by family members.

Proposed amendments to §21.24 will implement the new statutory changes and provide guidance to both existing and future proposed family trust companies.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC §21.24 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 21. Trust Company Corporate Activities
Subchapter B. Trust Company Chartering and Powers
7 TAC §21.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §21.24, regarding exemptions for family trust companies.

Finance Code §182.011 and §182.012 were amended effective September 1, 2015, by Sections 5 and 6 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250, §§5-6), to materially revise the requirements for exemption as a family trust company. In general, prior to September 1, 2015, a trust company could obtain an exemption from certain otherwise applicable requirements if it restricted its client services to individuals related within the fourth degree of affinity or consanguinity to an individual who controls the trust company, and to certain of their related interests. Effective September 1, 2015, the exemption is available to a trust company that serves only individuals related within the seventh degree to a shared common ancestor and their related interests, provided the trust company is wholly owned by family members, see Finance Code §182.011(a).

Section 21.24 specifies the information that must be contained in an application for exemption as a family trust company, and further specifies the specific provisions of the Trust Company Act (Finance Code, Title 3, Subtitle F), from which a trust company may request an exemption, subject to conditions or limitations imposed by the banking commissioner. Proposed amendments to Subsection (a) will clarify the definition of "family member" by eliminating ambiguities in Finance Code, §182.011(a-1)(2), and define the term "key employee" as required by Finance Code, §182.011(a-1)(1)(C).

As proposed, §21.24(c) would be amended to delete existing paragraph (1) and renumber the subsequent paragraphs accordingly. An exempt family trust company is no longer required to request confidential treatment of its call report because Finance Code, §181.107(c), was amended effective September 1, 2015, to make such call reports confidential by law.

Proposed new §21.24(f) would establish one year as a reasonable transition period for terminating services to a former key employee or to a formerly revocable trust that is no longer an eligible family client. The banking commissioner is proposed to be empowered to grant an extension of up to one year based on a finding that additional time is needed for the trust company to appropriately discharge its fiduciary duty to affected beneficiaries, notwithstanding its demonstrated good faith efforts to terminate the ineligible relationship.

Proposed new §21.24(g) would extend the revised statutory exemption scheme to a family trust company that was granted exempt status prior to September 1, 2015.

However, the control person named in its certificate of formation would be deemed to be the shared common ancestor for purposes of determining family client eligibility under Finance Code, §182.011, unless the trust company amends its certificate of formation to name a new shared common ancestor.

Finally, the proposed amendments to §21.24 that are not discussed in this preamble are nonsubstantive and proposed solely to conform the text to new law and the proposed, substantive amendments to §21.24.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five-year period the section as proposed will be in effect, the public benefit anticipated as a result of enforcing this section is the clarification of highly complex and recently amended statutory standards to aid the industry in compliance.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed, no adverse economic effect on small businesses or micro-businesses, and no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on November 30, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed pursuant to Finance Code §181.003, which grants the commission authority to adopt rules to implement and clarify applicable law, and Finance Code §182.011(e)(2)-(4), which grants the commission authority to adopt rules (1) specifying the provisions of Finance Code, Title 3, Subtitle F that are subject to an exemption request, (2) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption, and (3) defining or further defining terms used in Finance Code §182.011.

Finance Code §182.011 and §182.012 are affected by the proposed amendments.

§21.24. Exemptions for Family Trust Companies [~~Administering Family Trusts~~].

(a) Definitions. Definitions in Finance Code, §182.011(a-1), are incorporated herein by reference except for the term "family member." As used in this section and in Finance Code, Title 3, Subtitle F (the Trust Company Act), the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Family" means individuals who are related within the seventh degree of affinity or consanguinity to a shared common ancestor.

(2) "Family member" means each individual included in the definition of "family," provided that a foster child is considered the child of the foster parent and a person for whom a guardian was appointed before the person's 18th birthday is considered the child of the guardian. The term "family member" also includes the shared common ancestor.

(3) "Key employee" means the president of the trust company, any of its officers in charge of a principal business unit, division or function (such as administration or finance), an officer who performs a policymaking function for the trust company, or another person who performs similar policymaking functions for the trust company.

[~~Compliance required. Pursuant to Finance Code, §182.011 and §182.012, a trust company, which does not transact business with the public, may request in writing that it be exempted from specified provisions of the Trust Company Act. The banking commissioner may grant the request in whole or in part if the trust company does not transact business with the public. A trust company does not transact business with the public if it acts as a corporate fiduciary for accounts in which all beneficiaries are related within the fourth degree of affinity or consanguinity to the person who controls the trust company. A trust company administering family trusts which request exemption from specified provisions of the Trust Company Act, must comply with this section.~~]

(b) Application for exemption.

(1) Pursuant to Finance Code, §182.011 and §182.012, a trust company may request in writing that it be exempted from specified provisions of the Trust Company Act, if it has only family clients, transacts business solely on behalf of family clients and their related interests, is wholly owned, directly or indirectly, legally or beneficially, by one or more family members, and does not hold itself out to the general public as a corporate fiduciary for hire. [~~A trust company seeking an exemption on the basis that it serves only family interests, as described in Finance Code §182.011(a), administering family trusts which seeks exemption from specified provisions of the Trust Company Act, shall file an application, together with the appropriate filing fee required by §21.2 of this title (relating to Filing and Investigation Fees), with the banking commissioner.~~]

(2) The application must:

(A) be accompanied by the appropriate filing fee required by §21.2 of this title (relating to Filing and Investigation Fees);

(B) specify the specific exemptions requested and the reasons or justification for requesting the exemptions; and [~~. The application must also~~]

(C) include a copy of the trust company's certificate of formation containing, or a proposed amendment to the

certificate of formation that would cause it to [~~which must~~] contain, the following statement in its purposes clause: "The sole purpose for which the trust company is organized is to act as a corporate fiduciary for accounts in which all beneficiaries are related within the seventh [~~fourth~~] degree of affinity or consanguinity to _____ (name of common ancestor), and their related interests to the extent permitted by the Texas Finance Code or applicable rules and regulations [~~person who controls the trust company)~~]."

[~~(2) A person who has beneficial ownership of sufficient outstanding shares of a class of voting securities to constitute control of a state trust company may be designated as the control person for purposes of Finance Code, §182.011(a) and this section. Such identification of a beneficial shareholder as the controlling person is permissive and does not affect determinations of control made pursuant to Finance Code, §183.001.~~]

(c) Exemption. Subject to conditions or limitations being imposed by the banking commissioner, a family trust company [~~administering family trusts~~] may request exemption from the following provisions of the Trust Company Act:

(1) [~~the requirement of Finance Code, §181.107(c), providing that the report of assets portion of a statement of condition and income is a public record.~~]

[~~(2)~~] the requirement of Finance Code, §183.103(a), that five is the minimum number of directors, managers, or managing participants that can be specified in the certificate of formation, provided that the certificate of formation must specify the number of directors, managers, or managing participants, consistent with paragraph (2) [~~(3)~~] of this subsection;

(2) [~~(3)~~] the requirement of Finance Code, §183.103(a), that the number of directors, managers, or managing participants of a trust company cannot be less than five or more than 25, the majority of whom must be residents of this state, provided that the board of a trust company seeking exemption under this section must consist of not fewer than three or more than 25 directors, managers, or managing participants, at least one of whom must be a resident of this state;

(3) [~~(4)~~] the restrictions of Finance Code, §183.109(a)-(c), regarding transactions with management and affiliates;

(4) [~~(5)~~] the limitations of Finance Code, §184.002, on investment in trust company facilities;

(5) [~~(6)~~] the limitations of Finance Code, §184.101, on securities investments, provided that the exemption request must address each limitation and the reasons for exemption separately;

(6) [~~(7)~~] the restrictions of Finance Code, §184.102, regarding transactions in state trust company shares or participation shares;

(7) [~~(8)~~] the limitations of Finance Code, §184.003, on other real estate investments; and

(8) [~~(9)~~] the limitations of Finance Code, §§184.201-184.203, regarding lending limit and lease financing transaction restrictions, provided that no loans may be made from a trust company's minimum restricted capital amount.

(d) Notice to applicant. The banking commissioner shall issue a written notice as required by §21.4 of this title (relating to Required Information and Abandoned Filings) informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(e) Notice to clients [~~beneficiary~~]. A family trust company [~~administering family trusts~~] which has been granted an exemption under subsection (c) of this section must provide each family client [~~beneficiary of the family trust~~] with a copy of the exemption granted by the banking commissioner. The trust company must maintain an acknowledged receipt of such notice in its files.

(f) Transition period for certain former family clients. Pursuant to Finance Code, §182.011(a-1)(1)(C) and (I), a family trust company may continue providing services to a former key employee or a formerly revocable trust that is no longer an eligible family client for a period of one year after the date of the disqualifying event. The banking commissioner may grant an extension of up to one year in response to a written request if the commissioner determines that:

(1) the trust company has acted diligently and in good faith in its efforts to terminate the disqualified relationship in a manner consistent with its fiduciary duties; and

(2) additional time is needed to avoid harm to the affected beneficiaries and appropriately discharge the trust company's fiduciary duties with respect to the disqualified relationship.

(g) Effect on existing family trust company. A family trust company with exemptions granted prior to September 1, 2015, under Finance Code, §182.011 and §182.012, is not required to take any action to preserve its exemption as a result of changes in law made by Acts 2015, 84th Leg., R.S., Ch. 250, §5. However, unless and until any such family trust company amends its certificate of formation to name a new shared common ancestor, the control person named in its certificate of formation is considered to be the shared common ancestor for purposes of determining eligibility of family members under Finance Code, §182.011, and this section.

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication of Amendments to 7 TAC §17.23, Concerning Trust Company Call Reports.

PURPOSE: Amendments to §17.23 would revise the section to conform to statutory amendments effective September 1, 2015, made by Sections 3 and 7 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250), to make confidential the statement of condition and income (call report) of an exempt trust company, and to require the trust company's annual certification that it is maintaining the conditions and limitations of its exemption to be submitted with the company's call report.

Proposed amendments to §17.23(b)(2) will revise the due date for an exempt trust company to file its call report from January 31 to April 30 of each year, and to simultaneously file its annual certification of exempt status required by Finance Code §182.013(a). Section 17.23(f) is proposed to be amended to incorporate the changes in law regarding confidentiality of call reports. Finally, conforming changes are proposed in §17.23(g)(2).

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC §17.23 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 17. Trust Company Regulation
Subchapter B. Examination and Call Reports
7 TAC §17.23

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §17.23, regarding trust company call reports.

Finance Code §181.107(c) and §182.013(a), were amended effective September 1, 2015 by Sections 3 and 7 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250, §§3 and 7), which make confidential the statement of condition and income (call report) of an exempt trust company, and require the trust company's annual certification that it is maintaining the conditions and limitations of its exemption to be submitted with the company's call report. The statutory amendments further make clear that these provisions apply to all exempt trust companies, whether exempt under Finance Code §182.011 or §182.019.

Proposed amendments to §17.23(b)(2) will revise the due date for an exempt trust company to file its call report from January 31 to April 30 of each year, and to simultaneously file its annual certification of exempt status required by Finance Code §182.013(a).

Section 17.23(f) is proposed to be amended to incorporate the changes in law regarding confidentiality of call reports. Finally, conforming changes are proposed in §17.23(g)(2).

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five-year period the section as proposed will be in effect, the public benefit anticipated as a result of enforcing this section is the enhanced ability of an exempt trust company to consult with accounting professionals before filing its annual reports and certifications.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed, no adverse economic effect on small businesses or micro-businesses, and no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on November 30, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed pursuant to Finance Code §181.003, which authorizes the commission to adopt rules to implement and clarify applicable law, and pursuant to Finance Code §181.107(b)(1), which empowers the commission to adopt rules requiring trust companies to file their statements of condition and income with the banking commissioner at specified intervals.

Finance Code §181.107 and §182.013 are affected by the proposed amendments.

§17.23. Call Reports.

(a) [No change.]

(b) Reporting requirements of trust companies.

(1) [No change.]

(2) Exempt [~~Family~~] trust companies. Each trust company that is exempt pursuant to Finance Code, §182.011 or §182.019 [~~and §182.012, and §21.24 of this title (relating to Exemptions for Trust Companies Administering Family Trusts),~~] shall file an annual call report with the banking commissioner no later than April 30 [~~January 31~~] of each year relating to the preceding calendar year, accompanied by its annual certification, required by Finance Code, §182.013(a), that the trust company is maintaining the conditions and limitations of its exemption.

(3) [No change.]

(c)-(e) [No change.]

(f) Confidentiality. Call reports filed under subsection (b)(2) of this section are confidential as provided by [~~Pursuant to~~] Finance Code, §181.107(c)(2). Call [~~§181.107(b) and (c) and 181.301, call~~] reports filed under subsection (b)(1) [~~(b) of this section~~] are public information except for those portions designated as confidential by the banking commissioner [~~to the extent that such reports are considered public records~~], and may be published or otherwise disclosed to the public. Special call reports filed pursuant to subsection (c) of this section and non-public portions of call reports filed pursuant to subsection (b) of this section are confidential, subject only to such disclosure as may be permitted by Finance Code, §§181.301, et seq. or by §3.111 of this title (relating to Confidential Information).

(g) Reports containing significant errors and penalties for failure to file or for filing a report with false or misleading information.

(1) [No change.]

(2) Exempt [~~Family~~] trust companies. Failure of a trust company that is exempt pursuant to Finance Code, §182.011 or §182.019 [~~and §182.012, and §21.24 of this title~~] to make, file, or submit a timely call report or a special call report as required by this section is grounds for revocation of its exempt status.

(3) [No change.]

D.

Department of Savings and Mortgage Lending

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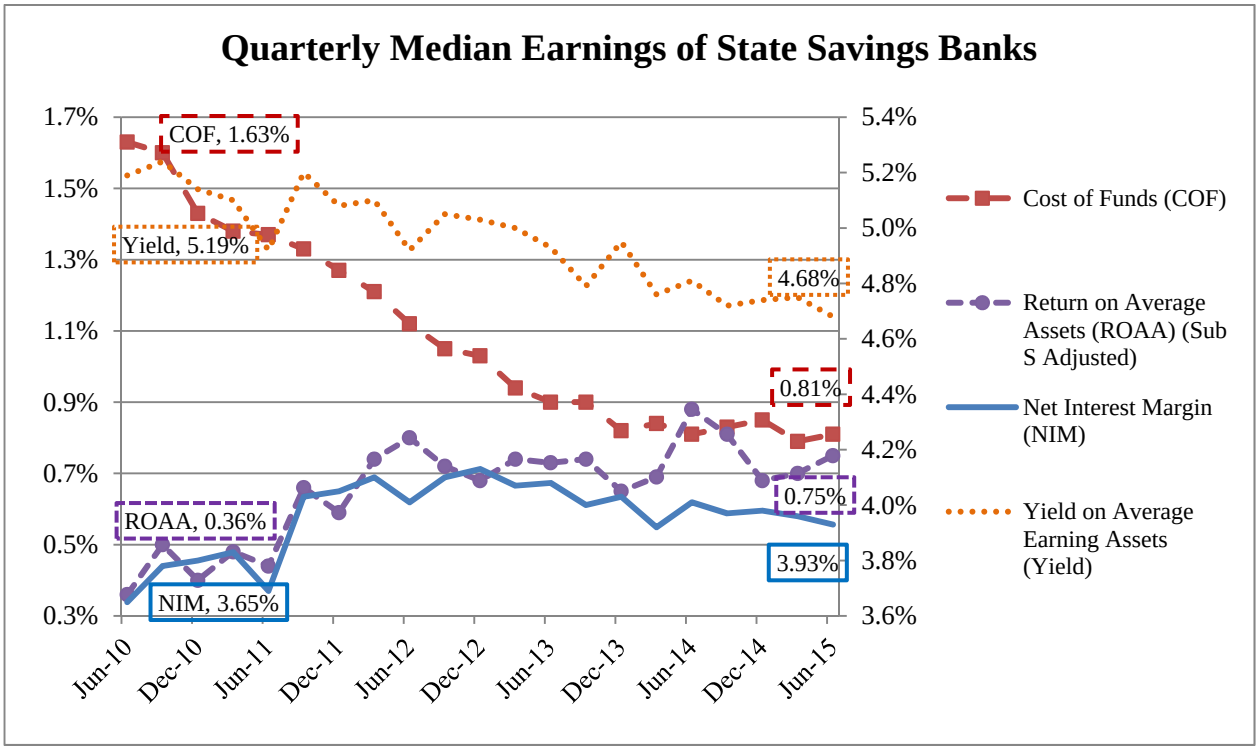
D. Texas Department of Savings and Mortgage Lending

1. Industry Status and Departmental Operations – State Savings Bank Activity:

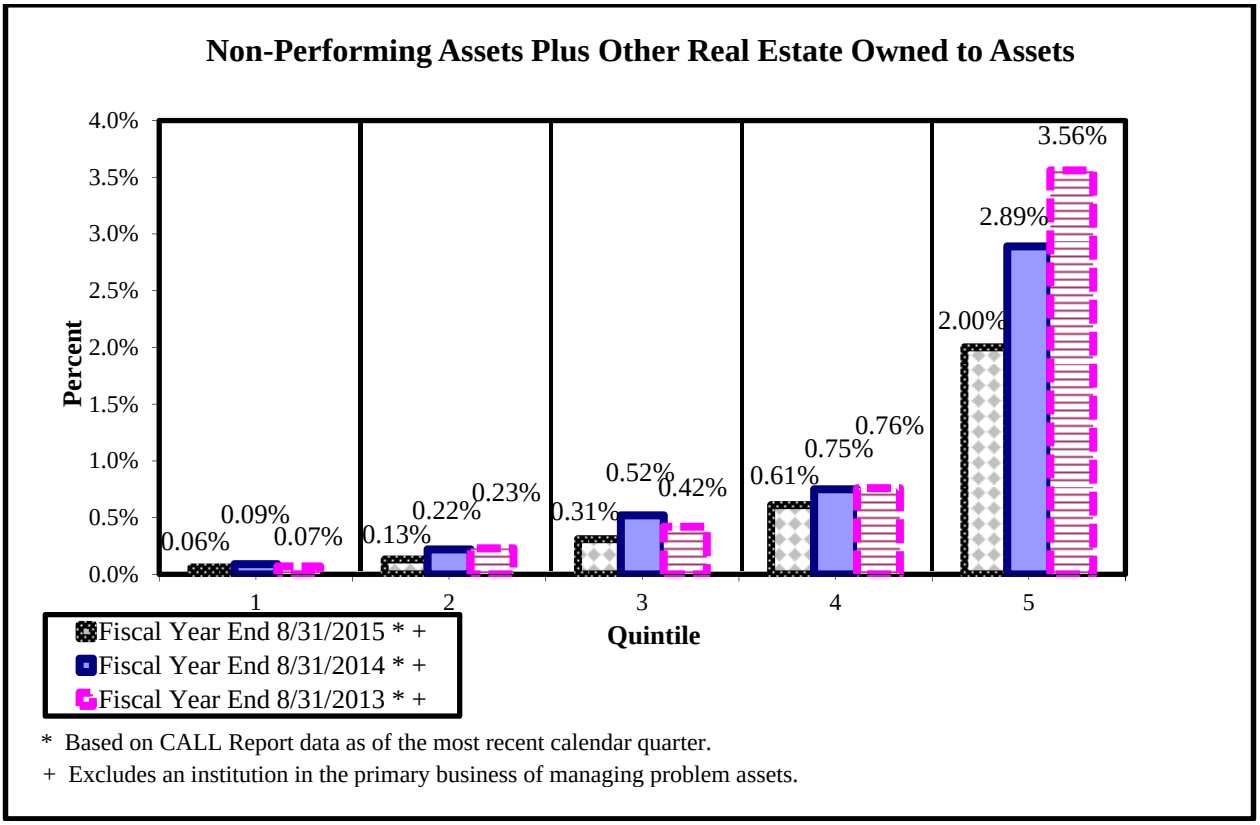
a. Industry Status

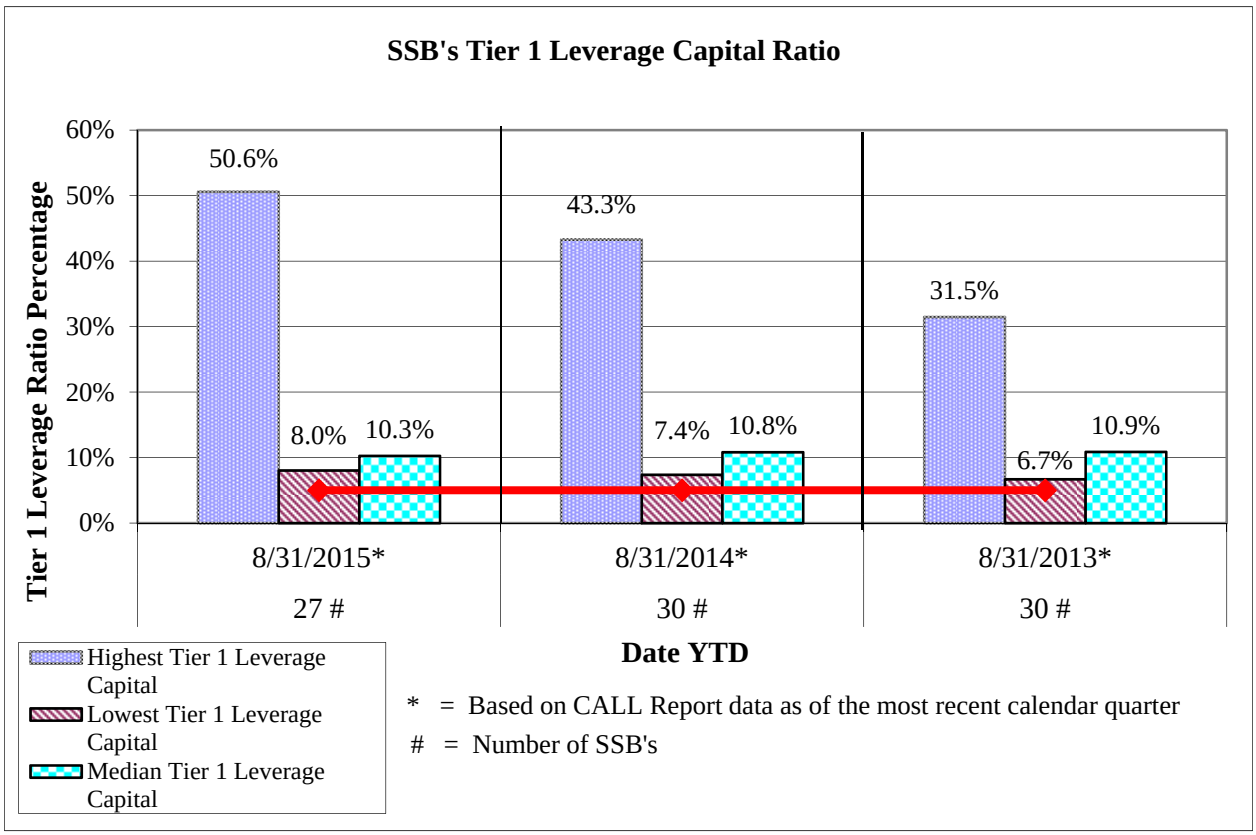
State-chartered savings bank assets under the Department's jurisdiction totaled $11.8 billion as of June 30, 2015, which is 11.1% greater than the asset size of the industry one year prior. The total number of state savings banks remains 27.



The annualized return on average assets for savings banks again improved slightly in the second quarters of calendar year 2015. Increased profitability occurred in 59% of savings banks in this period. All but one savings bank reported positive profits for the second quarter. The median net interest margin continued a slow decline to 3.93% as a result of declining asset yields and stable cost of funds.

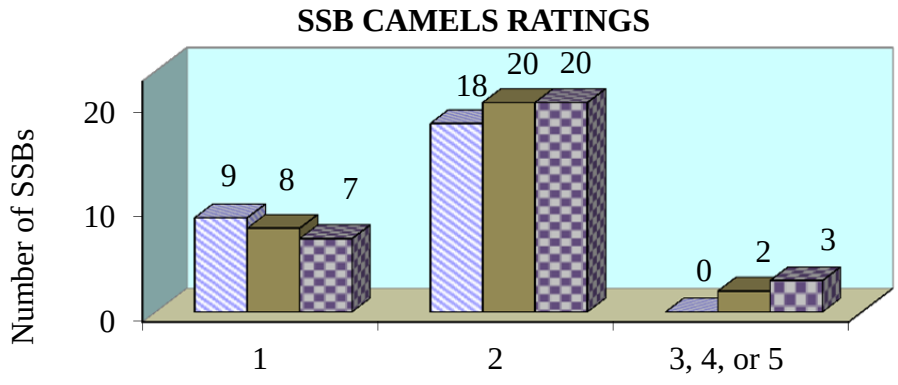
As indicated in the following chart, nonperforming assets in state-chartered savings banks remains low, with a median of 0.31% percentage of total assets and 2.95% of total equity capital plus the allowance for loan and lease losses.





State savings banks capital levels remain strong as represented by a median 10.3% Tier 1 Leverage Ratio. Quarterly growth in equity came through $56.2 million in net income, $2.1 million in stock

sales, and $0.5 million in parent company injections, offset by $49.2 million in dividends and $3.2 million in other comprehensive losses (such as unrealized losses on investments).



Number of Institutions at Fiscal Year End 8/31/2015 (27 total)

Number of Institutions at Fiscal Year End 8/31/2014 (30 total)

Number of Institutions at Fiscal Year End 8/31/2013 (30 total)

	8/31/2015	8/31/2014	8/31/2013
Number of Examiners	13	14.5	17.5
Institutions per Examiner	2.1	2.1	1.7
*Assets per Examiner (Thousands of Dollars)	908,755	733,176	565,239
Percent of Examiners Fully-Commissioned	76.92%	79.31%	65.71%
**Number of Examinations & Visitations Performed	25	31	31
**Percent of Examinations Performed within Time Frames	100%	100%	100%

* asset figures based on Call Report Data as of most recent calendar quarter
** fiscal year-to-date, examinations performed every 6-18 months

All state savings banks continue to be rated a composite 1 or 2.

b. Savings Bank Charter and Merger Activity

On May 26, 2015, an application was received for Triumph Community Bank, NA, Moline, IL, to merge with and into its sister bank, Triumph Savings Bank, SSB, Dallas, TX with the resulting bank being Triumph Savings Bank, SSB. The merger became effective on October 1, 2015.

On September 21, 2015, an application was received regarding the merger of College Savings Bank, a New Jersey savings bank, with and into NexBank, SSB, Dallas, Texas.

On September 29, 2015, an application was received regarding the merger of First Community Bank, N.A., Sugar Land, Texas, with and into Pioneer Bank, SSB, Dripping Springs, Texas.

c. Other Items

The Department held its 8th Annual Thrift Industry Day on September 17, 2015; it was successful and well attended by industry professionals. Guest speakers were State Representative William Metcalf and Mary Beth Quist from CSBS. Additionally, Department staff presented at the event. The agenda and presentations are available on the Department's website.

Chief Supervisory Analyst Jonathan D. Finley and guest banker James Dyess, President/CEO Horizon Bank, SSB, Austin, attended the 3rd annual Federal Reserve System/CSBS Community Banking in the 21st Century Conference.

Commissioner Jones and Department staff attended FDIC Banker Outreach. Additionally, Commissioner Jones recently participated on a regulatory panel at IBAT's Annual Conference and attended the 3rd quarter FFIEC-SLC meeting.

2. Industry Status and Departmental Operations – Mortgage Lending Activity:

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 09/30/2015	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
Auxiliary	8	n/a	
CUSO	3	2	
FSC	1	n/a	
Independent Contractor	77	n/a	
Mortgage Company	1,048	413	
Mortgage Banker	376	2,022	
Mortgage Servicer	152	n/a	
Totals	**1,665**	**2,437**	**20,448**

For FY2015, the Department received 7,868 applications for licenses and 67,461 other filings. During the year the licensing section approved 6,739 applications and processed 10,269 sponsorship changes.

The licensing section is preparing for the coming renewal period, November 1st – December 31st. Companies that have not filed or have outstanding deficiencies related to mortgage call reports and individuals that have not completed the required continuing education will not be able to submit renewal until the issue(s) are resolved.

b. Mortgage Examinations

For FY2015 a total of 403 mortgage examinations were conducted covering 8,239 licensees. The number of examinations is higher when compared to FY2014 and the number of licensees examined increased by 154%. The sharp increase in the number of licensees examined is a direct result of large mortgage banker and mortgage company examinations being conducted during FY2015. The current examination cycle is less than 36 months; which exceeds the recommendation of the State Auditor's Office and the CSBS Mortgage Accreditation best practice recommendation of 60 months.

Annual in-house mortgage examiner training was held on September 21st and 22nd in Austin. We had one outside speaker which presented on compliance with the new TILA RESPA Integrated Disclosures which went in effect on October 3, 2015.

Below is a breakdown of mortgage examination results by compliance rating for FY2015. As shown in the chart, the stratification of examination ratings during the past twelve months reflects a declining trend in the 1 rated category and an increasing trend in the 4 and 5 categories when compared to FY2014. The increase in the 4 and 5 rated categories can be attributed to first time examinations or repeat violations. Each of the four companies which received a 5 rating entered into agreed orders to surrender their Texas license in lieu of revocation.

Mortgage Examination Compliance Ratings

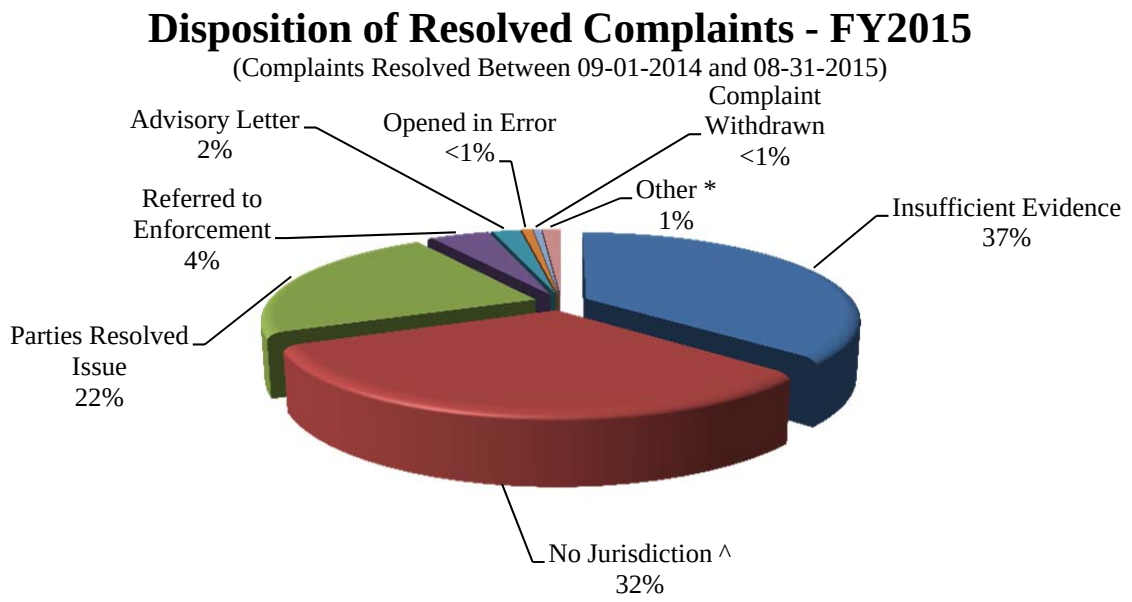
(Percentages exclude exams of "Not Rated" entities which have not originated loans in the prior 24 months.)

	# Mortgage Exams	Rated "1"	%	Rated "2"	%	Rated "3"	%	Rated "4"	%	Rated "5"	%
Fiscal Year 2013											
9/1/12 - 8/31/13	**526**	**122**	**23%**	**221**	**42%**	**140**	**27%**	**42**	**8%**	**1**	**<1%**
Fiscal Year 2014											
9/1/13 - 8/31/14	**366**	**74**	**20%**	**160**	**44%**	**113**	**31%**	**19**	**5%**	**0**	**0%**
Fiscal Year 2015	**403**	**38**	**9%**	**175**	**44%**	**132**	**33%**	**51**	**13%**	**4**	**1%**
9/1/14 -8/31/15											

c. Consumer Complaints/Legal Issues

During FY2015, a total of 931 complaints were received. This represents an insignificant change when compared to FY2014. Loan servicing complaints represented 60% of the total number of complaints received during FY2015 compared to 61% in FY2014. The loan servicing complaint category is dominated by payment and escrow account disputes. As of August 31, 2015, there were a total of 106 open complaints with 93% of the complaints aged less than 90 days. There were no complaints aged over 180 days at the end of the quarter.

The following chart shows the nature of the disposition of consumer complaints resolved in FY2015.



Total complaints resolved in FY2015 = 907

^ The "No Jurisdiction" category includes: complaint against exempt entities/individuals (No Jurisdiction-Exempt), complaints regarding issues outside the Department's authority (No Jurisdiction Over Issue), and complaints against entities/individuals with expired licenses (No Jurisdiction-License Expired).

* The "Other" category includes: Information Only, Failure to Go Forward, Consolidated with Another File, and No Investigation

Enforcement Activity: During the period of August 01, 2015 through September 30, 2015, the Department reports the following Enforcement Activity:

Disciplinary Cases
Notices of Hearings Issued: 1
Hearings Held: 0
Final Orders as a Result of a Hearing: 13
Orders to Cease and Desist: 18
Orders to Take Affirmative Action: 13
Agreed Orders to Cease and Desist: 2
Agreed Orders to Take Affirmative Action: 13
Orders of Suspension: 0
Agreed Orders of Suspension: 0
Orders Lifting Suspension: 0
Final Orders Revoking License: 0
Formal Advisory Letters: 25
Other Orders
- Amended Orders to Cease and Desist: 0
- Amended Orders to Take Affirmative Action: 0
- Orders Rescinding Prior Order: 3
- Orders of Dismissal: 3

Appeals of License Denials
Notices of Hearings Issued: 0
Appeals Received: 3

Hearings Held: 0
Final Orders as a Result of a Hearing: 2
Dismissal Orders: 2
Agreed Orders: 0

Non-Sufficient Funds (NSF)
Letters Issued: 1

Recovery Fund
Notices of Hearings Issued: 0
Hearings Held: 0
Final Orders as a Result of a Hearing: 0

Collection Cases Referred to the Attorney General
Collection Cases Referred to the Attorney General: 0

Legal Issues: There were no Recovery Fund claims paid during the period of August 01, 2015 through September 30, 2015.

d. Other Items

During September, Directors Florence and O'Shields participated in training seminars regarding TRID. The Association of Texas Mortgage Professionals put the seminars together and they were held in El Paso and Harlingen.

Commissioner Jones and Director O'Shields presented at the September monthly meetings of the Austin Mortgage Banker Association and the San Antonio Mortgage Banker Association. They provide updates regarding the Department. Additionally, the Commissioner attended Texas Mortgage Banker Association's 15th Annual Reverse Mortgage Day.

On November 17, 2015, the Department will hold its 3rd Annual Mortgage Industry Seminar in Dallas.

Savings & Mortgage Lending
Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure	2015 Target	2015 Actual	2015 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1 BANK EXAMINATION					
1. THRIFT EXAMINATION AND SUPERVISION					
Quarter 1	38	6	6	15.79%	*
The Department examines state chartered savings banks jointly with the FDIC, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
Quarter 2	38	5	11	28.95%	*
The Department examines state chartered savings banks jointly with the FDIC and FRBD, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
Quarter 3	38	10	21	55.26%	*
The Department examines state chartered savings banks jointly with the FDIC and FRBD, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
Quarter 4	38	4	25	65.79%	*
The Department examines state chartered savings banks jointly with the FDIC and FRBD, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
2-1-1 1. # NEW LIC/ORIGINATORS APPROVED					
Quarter 1	6,500	1,452	1,452	22.34%	
Quarter 2	6,500	1,430	2,882	44.34%	*
The number of applications submitted is outside of the Department's control; therefore, the number of applications processed is ultimately affected in the same manner. The Department anticipates meeting and exceeding this goal for the year.					
Quarter 3	6,500	1,761	4,643	71.43%	
Quarter 4	6,500	2,096	6,739	103.68%	
2-1-2 MORTGAGE EXAMINATION					
1. NUMBER OF LICENSEES INSPECTED					
Quarter 1	3,600	1,387	1387	38.53%	*
Two large mortgage examinations were completed in the first quarter of FY 2015 which accounted for 49% of the total number of licensees examined for the period. This type of concentration should not continue over the remaining quarters of FY 2015.					
Quarter 2	3,600	3,823	5210	144.72%	*
One large mortgage banker examination was completed in the second quarter of FY 2015 which accounted for 70% of the total number of licensees examined for the period. This type of concentration should not continue over the remaining quarters of FY 2015.					
Quarter 3	3,600	1,363	6573	182.58%	*
One large mortgage banker examination was completed in the second quarter of FY 2015 which accounted for 70% of the total number of licensees examined for the period. This type of concentration should not continue over the remaining quarters of FY 2015.					
Quarter 4	3,600	1,666	8239	228.86%	*
One large multi-state mortgage committee examination report in which we participated was issued during this quarter in addition to three large mortgage banker exams being completed this quarter. The target measure for FY 2016 will be increased to account for the mortgage examination area being fully staffed with no examiners being in a training status.					
3-1-1 COMPLAINT AND INQUIRY PROCESS					
1. # COMPLAINTS PROCESSED					
Quarter 1	900	199	199	22.11%	
Quarter 2	900	199	398	44.22%	
Quarter 3	900	229	627	69.67%	
Quarter 4	900	280	907	100.78%	

* Varies by 5% or more from target.

Savings & Mortgage Lending
Actual Performance for Outcome Measures

Outcome Measures-Key				
THRIFT SAFETY AND SOUNDNESS				
1-1-1	BANK EXAMINATION			
	Annual	100%	100%	100%
	Percentage of Thrifts Receiving Examinations When Due			
1-1-2	SAFE AND SOUND THRIFTS			
	Annual	90%	100%	111%
	Percentage of Safe and Sound Thrifts to Total Thrifts			
	Due to the attention of regulators and bank management, the institutions that encountered challenges during the recent recession have worked through the major issues.			
1-1-3	SAFE AND SOUND ASSETS			
	Annual	90%	100%	111%
	Percentage of Safe and Sound Assets to Total Thrift Assets			
	Due to the attention of regulators and bank management, the institutions that encountered challenges during the recent recession have worked through the major issues.			
MORTGAGE BROKER LICENSING				
2-1-1	RENEW ONLINE			
	Annual	100%	100%	100%
	Percentage of Mortgage Originators Who Renew Online			
COMPLAINT AND INQUIRY PROCESSING				
3-1-1	TIMELY RESPONSE			
	Annual	90%	99%	110%
	Percentage of Complaints, Requests, and Inquiries Answered within Ten Days			
	Additional staff training and improved processes account for the increased efficiency.			
Explanatory Measures-Key				
THRIFT SAFETY AND SOUNDNESS				
1-1-1	THRIFT INDUSTRY			
	Annual	28	27	96%
	Number of State-Chartered Savings Institutions			
1-1-2	THRIFT INDUSTRY	$12.00	$11.80	98.33%
	Annual			
	Dollar Amount of Assets under Regulation (in Billions)			

* Varies by 5% or more from target.

3. Fiscal/Operations Activity:

a. <u>Funding Status/Audits/Financial Reporting</u>

Funding Status/Budget – Staff have closed out FY2015 and submitted all financial reports to the Comptroller's office as required.

Audits – The internal auditors Garza/Gonzales are in the process of conducting the FY2016 risk assessment.

b. <u>Staffing</u>

As of October 1, 2015, the Department was staffed at 53 regular full time employees with 64 full time employees available.

On October 1, 2015, Lindsay Brown joined the Department's legal team. She is a graduate of Stetson University College of Law in Florida and did her undergraduate work at George Washington University. Prior to joining the Department she was a prosecutor in Florida and has experience with judicial foreclosures.

Two thrift financial examiners have submitted their resignations. One transferred to another state agency, effective September 30, 2015 and the other will go to work in the private sector, effective October 15, 2015.

Multiple vacancies are posted and in different stages of the hiring process.

c. Gift Reporting

None

d. Other Items

None

4. Discussion and Possible Vote to Take Action on the Adoption of Proposed Amendments to 7 TAC §80.201, concerning loan status forms, §80.203 concerning advertising, and §80.204 concerning books and records

PURPOSE: The purpose of the amendments to §80.201 are to add clarifying language. Amendments to §80.203 are to update the advertising requirements to more closely resemble those in Chapter 81 for Mortgage Bankers and Residential Mortgage Loan Originators. Amendments to §80.204 are to provide for the new Truth in Lending Act (TILA) Real Estate Settlement Procedures Act (RESPA) new integrated disclosures which were effective October 3, 2015.

RECOMMENDED ACTION: The Department recommends the Finance Commission adopt the amended rule.

RECOMMENDED MOTION: I move we adopt the amendments to 7 TAC §§80.201, 80.203 and 80.204.

Title 7. Banking and Securities
Part 4. Texas Department of Savings and Mortgage Lending
Chapter 80. Texas Residential Mortgage Loan Companies
7 TAC §§80.201; 80.203; and 80.204

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §80.201 concerning loan status forms, §80.203 concerning advertising and §80.204 concerning books and records, as published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5606).

7 TAC §80.201(a) formerly required that whenever a conditional qualification was provided to a mortgage applicant, written confirmation of conditional qualification was required to include the information in Form A, Figure: 7 TAC §80.201(a). As amended, §80.201(a) will clarify that whenever a conditional qualification is provided to prospective mortgage applicants as well as to mortgage applicants, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §80.201(a).

7 TAC §80.203 subsection (b)(2) contains the advertising requirements of residential mortgage loans offered by or through a mortgage company or originator. As amended, §80.203(b)(2) will more closely resemble the advertising requirements of residential mortgage loans offered by or through mortgage bankers or originators contained in 7 TAC §81.203(b)(2).

7 TAC §80.204(b) lists the mortgage applications books and records that must be maintained by each company or originator. As amended §80.204(b) will incorporate the integrated disclosure requirements of TILA / RESPA effective October 3, 2015.

The Department did not receive any comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code §11.306, which authorizes the Finance Commission to adopt residential mortgage loan origination rules as provided by Chapter 156 and under §156.102, which provides that the Finance Commission may adopt rules to ensure compliance with Chapter 156, to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and to adopt rules regarding the books and records required to be kept.

§80.201. Loan Status Forms

(a) Except as otherwise provided by subsection (c) of this section, when provided to a <u>prospective mortgage applicant or</u> mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §80.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed:

Attached Graphic [No change.]

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

(b) [No change.]

(c) [No change.]

§80.203. Advertising.

(a) [No change.]

(b) [No change.]

(1) [No change.]

(2) Except as provided in subsection (c) of this section[~~, if the person who caused the advertisement to be published is an originator~~] the advertisement shall contain:

(A) the name of the originator followed by the name of the sponsoring mortgage company as designated in the records of the Commissioner as of the date of the advertisement; [~~phrase "Residential Mortgage Loan Originator";~~]

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number; and

(C) the company's physical office or branch office street address in Texas. [~~name of the company, as designated in the records of the Commissioner as of the date of the advertisement, through or for whom the originator conducts the advertised mortgage origination activities; and~~]

[~~(D) the company's physical office or branch office street address in Texas.~~]

(3) [No Change.]

(4) [No Change.]

(c) [No Change.]

§80.204. Books and Records.

(a) [No change.]

(b) Mortgage Application Records. Each company or originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial signed and dated residential mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the signed and dated disclosure statement required by Finance Code, Chapter 156 and §80.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; [~~and~~]

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith

Estimate fee itemization worksheet,[;] if applicable; and[.]

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) [No Change.]

(3) [No Change.]

(c)-(h) [No Change.]

Certification

The agency herby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending

5. Discussion and Possible Vote to Take Action on the Adoption of Proposed Amendments to 7 TAC §81.200, concerning required disclosures, §81.201 concerning loan status forms, and §81.204 concerning books and records.

PURPOSE: The purpose of the amendments to §81.200 are to provide a statutory update within the Texas Mortgage Banker Disclosure Notice. Amendments to §81.201 are to add clarifying language. Amendments to §81.204 are to provide for the new Truth in Lending Act (TILA) Real Estate Settlement Procedures Act (RESPA) new integrated disclosures which were effective October 3, 2015.

RECOMMENDED ACTION: The Department recommends the Finance Commission adopt the amended rule.

RECOMMENDED MOTION: I move we adopt the amendments to 7 TAC §§81.200, 81.201, and 81.204

Title 7. Banking and Securities
Part 4. Texas Department of Savings and Mortgage Lending
Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators
7 TAC §§81.200; 81.201 and 81.204

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §81.200 concerning required disclosures, §81.201 concerning loan status forms and §81.204 concerning books and records, as published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5607).

7 TAC §81.200(a) requires an originator to provide a Texas Mortgage Banker Disclosure Notice to a residential mortgage loan applicant and the form notice formerly referred to §157.007 of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, Chapter 157, Texas Finance Code. Section 157.007 was previously renumbered as §157.0021, therefore the Texas Mortgage Banker Disclosure Notice as amended will now refer to §157.0021.

7 TAC §81.201 formerly required that whenever a conditional qualification was provided to a mortgage applicant, written confirmation of conditional qualification was to include the information in Form A, Figure: 7 TAC §81.201(a). As amended, §81.201(a) will clarify that whenever a conditional qualification is provided to prospective mortgage applicants as well as to mortgage applicants, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §81.201(a).

7 TAC §81.204(b) lists the mortgage applications books and records that must be maintained by each originator. As amended §81.204(b) will incorporate the integrated disclosure requirements of TILA / RESPA effective October 3, 2015.

The Department did not receive any comments regarding the proposed amendments.

The amendments are adopted pursuant to Texas Finance Code §157.0023, which provides that the Finance Commission may adopt rules necessary to implement or fulfill the purpose of Chapter 157, as well as rules and forms for use by mortgage bankers, and to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

§81.200. Required Disclosures

(a) [No Change.]

Attached graphic

(b) [No change.]

(c) [No change.]

(d) [No change.]

§81.201. Loan Status Forms

(a) Except as otherwise provided by subsection (c) of this section, when provided to a <u>prospective mortgage applicant or</u> mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §81.201(a). This information can be provided by utilizing Form A or an alternate

form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed: Figure: 7 TAC §81.201(a)

Form A

[No change.]

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

(b) [No change.]

(c) [No change.]

§81.204. Books and Records

(a) [No change.]

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) A residential mortgage loan file for each mortgage loan application received; each file shall contain at a minimum the following:

(A) a copy of the initial signed and dated mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the disclosure statement required by Finance Code, §157.0021 [~~§157.007~~] and §81.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; [~~and~~]

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and[~~.~~]

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) [No Change.]

(3) [No Change.]

(c)-(h) [No Change.]

Certification

The agency herby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending

Figure: 7 TAC § 81.200(a)

TEXAS MORTGAGE BANKER DISCLOSURE

Residential Mortgage Loan Originator: _____

NMLS ID: _____

Pursuant to the requirements of Section 157.0021 [~~157.007~~] of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, Chapter 157, Texas Finance Code, you are hereby notified of the following:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR A LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEB SITE AT WWW.SML.TEXAS.GOV.

THIS DISCLOSURE WAS DELIVERED TO THE CONSUMER:

☐ IN PERSON

☐ BY FAX

☐ BY E-MAIL

☐ OTHER_____

DATE DELIVERY INITIATED: _____