



NOTICE OF PRECOMMENT DRAFT & ONLINE WEBINAR
Plain Language Rule Review
September 15, 2022 at 10:00 a.m.

The Office of Consumer Credit Commissioner (OCCC) will hold an online webinar on September 15, 2022, at 10:00 a.m. During the webinar, the OCCC will discuss the September 7 precomment draft of rule review amendments relating to plain language contracts for regulated lenders. The OCCC will also accept informal written precomments until 5:00 p.m. on September 29. The OCCC plans to present these rules for proposal at the Finance Commission's October 28 meeting.

Summary of Rule Amendments

The precomment draft includes amendments to the following sections of the OCCC's rules for plain language contracts at 7 Tex. Admin. Code Ch. 90:

- Section 90.103 would be amended to update the list of readable typefaces used in plain language contracts. The revised list of typefaces is intended to account for electronic contracts and screen reading, and is based on accessibility guidance from the U.S. Department of Health and Human Services.
- Section 90.104 would be amended to clarify and reorganize requirements for submitting a non-standard plain language contract. The amended section generally lists provisions and requirements that lenders are already required to comply with. In particular, the amended language specifies that the contract must be consistent with Texas and federal law. A contract containing illegal provisions is misleading to consumers and is not "easily understood by the average consumer" as required by Section 341.502 of the Texas Finance Code. The amendments would also move the rule's submission form requirements into a single subsection.

Participating in Webinar

Stakeholders are invited to listen and participate in the online webinar. Please follow the instructions available at: <https://attendee.gotowebinar.com/register/2780965498631829259>

Submission of Informal Precomments

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

Precomments submitted to the OCCC are generally public. Please redact all confidential information before submitting precomments to the OCCC.

Informal precomments on the OCCC's September 7 precomment draft must be received by 5:00 p.m. on September 29, 2022.

OCCC Plain Language Rule Review Amendments
9/7/2022 Precomment Draft

Title 7, Texas Administrative Code

Part 5. Office of Consumer Credit Commissioner

Chapter 90. Chapter 342, Plain Language Contract Provisions

Subchapter A. General Provisions

§90.103. Format

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

(c) Titles and headings. 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. 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 uses clauses other than [does not use] the model contract provisions. Before a licensee uses a non-standard contract, the contract must be submitted to the OCCC for review under Texas Finance Code, §341.502(c). A non-standard contract: [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.]

(1) must be written in plain language designed to be easily understood by the average consumer, as required by Texas Finance Code, §341.502(a);

(2) must be printed in an easily readable font and type size, as required by Texas Finance Code, §341.502(a) and §90.103 of this title (relating to Format);

(3) must be consistent with Texas law and federal law;

(4) must include a notice with the OCCC's contact information, as required by Texas Finance Code, §14.104 and §90.105 of this title (relating to OCCC notice); and

(5) must comply with the requirements described in subsection (c) of this section, including the maximum Flesch-Kincaid Grade Level score;

(6) must be accompanied by a complete submission form containing the information required by subsection (d) of this section.

(b) Disapproval. If a non-standard contract filing fails to comply with one or more of the requirements listed in subsection (a) of this section, then the OCCC may disapprove the filing under Texas Finance Code, §341.502(c). A licensee must cease using a disapproved contract immediately after an order of disapproval takes effect, as provided by Texas Finance Code, §341.502(d). [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 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) Contract filing [Filing] requirements. Copies of the loan contract [Contract filings must be identified as to the transaction type. Contract filings] must be submitted in accordance with the OCCC's instructions and 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 text-searchable PDF format so that the contract may be visually reviewed in its entirety. The page size must be 8.5 inches by 11 inches or 8.5 inches by 14 inches. The PDF may not be locked or restricted in a way that prohibits comparison of different versions of the contract.

(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).

(d) Submission form. A non-standard contract must be accompanied by a written submission form prescribed by the OCCC. The submission form must be completed in accordance with the OCCC's instructions and the following requirements: [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.]

(1) Transaction subchapter. The submission form must identify the subchapter of Texas Finance Code, Chapter 342 under which the contract will be used (Subchapter E, Subchapter F, or Subchapter G).

(2) Contact person. The submission form must identify an individual as the contact person for the contract filing, and must include the individual's name, address, phone number, and email address. If a contract is submitted by a person other than a licensee, then the contract must be accompanied by a dated letter that contains a description of the anticipated users of the contract, and designates the legal counsel or other designated contact person for that filing.

(3) Certification of readability. The submission form must include 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 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.