



MOTOR VEHICLE ADVISORY BULLETIN

Disclosure of Equity

In 2009, the Texas Legislature passed House Bill 2438 (HB 2438) to help lessen confusion about the amount of equity remaining on vehicles that buyers trade in when purchasing another vehicle under a retail installment contract. The bill gave authority to the Texas Finance Commission to adopt a rule containing the standard disclosure form to be provided to buyers when a trade-in motor vehicle is involved in a retail installment transaction. (*See* 7 Texas Administrative Code §84.204 at <http://www.sos.state.tx.us/tac/index.shtml>.)

The Finance Commission adopted the new rule and the standard disclosure form in December 2009 to carry out the legislature's intent in providing more clear information on the amount of equity in a buyer's trade-in motor vehicle. The rule provides the standard form for the disclosure of equity that must be given to the buyer before a trade-in motor vehicle may be accepted when the buyer is purchasing another vehicle under a retail installment contract. Dealers must begin using the standard form on March 1, 2010.

Use of Estimated Amounts

In addition to HB 2438 and the rule referenced above, the disclosures of the amount financed and cash price are also governed by the federal Truth in Lending Act (TILA). The disclosures required by the bill and the rule are not the same disclosures required by TILA. The disclosure of equity is a state requirement and the TILA disclosures are a federal requirement. The disclosure of equity standard form ("equity disclosure form") uses some of the same categories of information as the TILA disclosures. To the extent that the equity disclosure form uses the same category of information as the TILA disclosures, the dealer should use the same amounts for both disclosures. The use of the same information will avoid confusion on the part of consumers and any court reviewing the documents.

TILA requires that if a dealer knows the actual figures (i.e., exact dollar amounts) for the amounts contained on a consumer disclosure, the dealer must use the actual figures.

If the actual figures are unknown, the dealer must include the amounts based on the best information reasonably available at the time of the disclosure and must clearly state that the amounts are estimates. (*See* Regulation Z - Truth in Lending Act, 12 C.F.R. §226.17(c).)

Any estimated amounts included on the equity disclosure form must be clearly marked with the word "estimated" in close proximity to the amounts being estimated.

A dealer cannot have the word "estimated" pre-printed on its equity disclosure forms or have the word "estimated" included as a default setting when generating the disclosure. A dealer must review each buyer's purchase to determine whether the actual figures are known for the equity disclosure form. Thus, the word "estimated" cannot be added to every equity disclosure form as a matter of standard policy or practice.