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[Texas Appleseed](#), [Texas Association of Community Development Corporations \(TACDC\)](#), [Business and Community Lenders \(BCL\)](#), [Responsible Business Lending Coalition](#), and [Small Business Majority](#) thank you for this opportunity to offer written comments regarding a rulemaking proposal posted in the Texas Register, proposing amendments to 7 TAC §§86.301 - 86.307, 86.310 - 86.313, 86.320 - 86.322.

Our comments on the rule proposal focus on implementing the newly adopted Chapter 398 in the Texas Finance Code in a manner that provides maximum transparency and protections for Texas small businesses seeking capital. Chapter 398 was adopted due to significant concerns expressed by lenders and small business owners related to commercial sales-based financing transactions.

Testimony in favor of the law highlighted concerns regarding a lack of transparent terms and pricing as well as predatory collections methods:

- One small business owner shared his experience with a commercial sales-based financing transaction promising one thing and delivering another. Though payments were supposed to be based on revenue, pre-set withdrawal amounts meant that, "[When] cash flow goes down...you have overdraft fees on top of fees and it really just gets into a difficult position."<sup>1</sup>
- An attorney shared her experiences with commercial sales-based financing providers using abusive collection remedies that prevent small business owners from paying their vendor. She mentioned that there was "no due process or opportunity for the borrower to contest it"<sup>2</sup>.
- Lastly, a lender shared their struggles assisting small businesses who fell victim to deceptive commercial sales-based financing practices. The lender noted that they tried to pay off a small business' commercial sales-based financing debts. However, the commercial sales-based financing provider sold off the debts, refused to tell the lender

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<sup>1</sup> Garza, Alan, Testimony before House Committee on Pensions, Investments, & Financial Services, Texas House of Representatives, 89th Legislature. April 14, 2025. Hearing on HB 700, [Transcript/Video](#) (1:43:05).

<sup>2</sup> Schober, Teresa, Testimony before House Committee on Pensions, Investments, & Financial Services, Texas House of Representatives, 89th Legislature. April 14, 2025. Hearing on HB 700, [Transcript/Video](#) (1:52:15).

who they sold the debt to, and filed a UCC-1 lien against the small business.<sup>3</sup> The lender noted that “the need for transparency and oversight is essential to small businesses” here in Texas.<sup>4</sup>

Chapter 398 aims to bring fair and transparent practices to the commercial sales-based financing market and address harms to Texas small businesses. We support the proposed rules overall, but urge the Texas Finance Commission to address the important concerns outlined in this comment to ensure that the rules align with the letter and spirit of the law.

## Overview

Our recommendations and concerns focus on three priority areas that are consistent with the text of the law and associated rulemaking authority laid out in Ch. 398 of the Texas Finance Code:

1. Ensuring timeliness, clarity, and accuracy of mandated disclosures;
2. Identifying and clearly defining abusive acts and practices, as outlined in Chapter 398; and
3. Prohibiting certain automatic debit transactions

## Detailed Comments

### 1. Ensuring timeliness, clarity, and accuracy of mandated disclosures

Chapter 398 includes multiple detailed provisions associated with disclosures. The law requires that the disclosures be provided on or before the time an offer for financing is made and integrates those disclosures into the agreement by requiring them to be signed by the potential recipient of the advance as part of the application process.<sup>5</sup> The law also permits the Office of Consumer Credit Commissioner to bring an enforcement action for failure to comply with the disclosure requirements.<sup>6</sup>

#### Timeliness

With regard to the timeliness of disclosures, we would like to emphasize the importance of the proposed language in 7 TAC §86.310 (a). It requires commercial sales-based financing providers to deliver the disclosure: “in writing at or before the time the provider extends a specific offer to the recipient.”<sup>7</sup>

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<sup>3</sup> Chase, Brandon, Testimony before House Committee on Pensions, Investments, & Financial Services, Texas House of Representatives, 89th Legislature. April 14, 2025. Hearing on HB 700, [Transcript/Video](#) (1:57:45).

<sup>4</sup> Ibid.

<sup>5</sup> Tex. Fin. Code §§398.051(a) and 398.052 (2025).

<sup>6</sup> Tex. Fin. Code §398.005(b)(1)(B) (2025).

<sup>7</sup> 7 Tex. Admin. Code §86.310 (a) (2025).

To ensure full compliance with the letter of law, which requires the disclosure to be signed by the recipient as part of the application, we recommend changing the language to say: "in writing ~~at~~ or before the time the provider extends a specific offer to the recipient or finalizes the application for the commercial sales-based financing transaction, whichever occurs sooner."

This proposed new language aligns with the letter and spirit of the law, ensuring that the recipient has adequate knowledge of the financing terms and time to understand and compare options. In a study by the Federal Reserve Bank of Cleveland on small business credit lending experiences, nearly all of the small business owners in the focus group mentioned that "clear disclosure of product costs and terms would be helpful, particularly early in the application process, rather than at closing."<sup>8</sup> The study affirmed that a timely and factually correct disclosure led small business owners to make decisions that benefitted their financial well-being.

### Clarity

We strongly believe that this rulemaking should include a model disclosure form. Having a model disclosure and encouraging commercial sales-based financing providers to use it would benefit Texas small businesses by ensuring clear, comparable, and comprehensible disclosures. Having effective disclosures also promotes strong market competition principles. At the Texas Finance Commission meeting to discuss the proposed rules, one commissioner mentioned how federally-mandated model mortgage disclosures have "certainly helped...[as] you don't have to worry if you're...wrong or not wrong".<sup>9</sup> While mortgage disclosures are a separate form of financing, she mentioned that model disclosure forms for commercial sales-based financing "would be a great idea whether the legislature does it or not" as the forms can be "adjusted as you go along if [the form] comes from [the OCCC]."<sup>10</sup>

Research has shown that re-formatting complex financial data into a standardized form leads people to make more financially responsible decisions. In one study on financial products, participants who received a standardized disclosure were 54% more likely to make sound financial planning decisions compared to other participants who received traditional, non-standardized disclosures.<sup>11</sup> While Chapter 398 does not require a model disclosure, the rule could create a model to support effective implementation of the specific disclosure requirements and create a compliance safe harbor if the model is correctly used.

### Accuracy

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<sup>8</sup> Wiersch, Ann, Barbara Lipman, Kim Wilson, and Lucas Misera. 2022. "[Clicking for Credit: Experiences of Online Lender Applicants from the Small Business Credit Survey](#)". *Federal Reserve Bank of Cleveland, Community Development Reports*.

<sup>9</sup> Texas Finance Commission. 2026, February 20. *Finance Commission Meeting - February 20, 2026*. [Agenda, Audio transcript](#) (1:25:10).

<sup>10</sup> Ibid.

<sup>11</sup> NYU Tandon School of Engineering. 2017. "[Interactive 'nutrition label' for financial products helps investors make better choices](#)." *ScienceDaily*.

We are deeply concerned with the language proposed in 7 TAC §86.310 (c), as it enables companies to engage in a "bait and switch," by including terms in the initial disclosure that is signed by the recipient and then later changing the terms that the parties had agreed to. This provision is counter to the requirements in Chapter 398 and will enable false or deceptive disclosures by commercial sales-based financing providers.

The statutory requirement that the provider obtain the recipient's signature on the disclosure makes the disclosure a component of the transaction agreement that should not be changed after it is acknowledged and agreed to.<sup>12</sup> We urge you to amend this provision to instead establish a clear obligation on the part of the provider to ensure that the information provided on the disclosure form is true and accurately reflects the terms of the contract. We believe this change to be essential in aligning the proposed rules with the letter of the law. If 7 TAC §86.310 (c) is maintained as it is written, commercial sales-based financing providers will be legally permitted to revise the terms of their signed contractual agreement at a potential cost to the small business. We recommend replacing the current language in 7 TAC §86.310 (c) with the following language to ensure that the commercial sales-based financing company provide accurate information in the disclosure:

(c) The commercial sales-based financing provider must ensure that the information provided on the disclosure form is true and accurately reflects the terms of the contract. The terms stated on the disclosure form shall be considered part of the contract.

## **2. Identifying and clearly defining abusive acts and practices, as outlined in Chapter 398**

With regard to unfair, deceptive, and abusive acts and practices outlined in Chapter 398, we would like to underscore the importance of maintaining all existing language in 7 TAC §86.312 (b) as it clearly delineates acts and practices that could potentially harm small business in Texas.

We would like to highlight certain provisions that are particularly important and a few additional key unfair, deceptive, or abusive practices that should be added to the proposal.

### Highlighted Provisions:

#### *Redirected Payments*

In particular, 7 TAC §86.312 (b) (12) identifies the act of a commercial sales-based financing provider "instructing a recipient to redirect payment amounts to the provider, where the amounts were previously scheduled to be paid to another person (e.g., a creditor or factor)" as a deceptive practice.<sup>13</sup> This is an important provision to maintain as it protects small business owners from

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<sup>12</sup> Tex. Fin. Code §398.052 (2025).

<sup>13</sup> 7 Tex. Admin. Code §86.312 (b) (12) (2025).

falling even further behind on other obligated debts in a period of decreased business revenue. In 2024, the Small Business Credit Survey, a collaboration of all Federal Reserve Banks in the U.S., found that 71% of small businesses had outstanding debt.<sup>14</sup> Among the small businesses that were denied all or some of the financing they were seeking to acquire, 41% were denied because they already had too much debt.<sup>15</sup> Debt has already saddled a vast majority of small businesses in the U.S., giving commercial sales-based financing providers the ability to redirect payments meant for other obligations has the potential to compound financial hardship for Texas small businesses.

### *Mischaracterizing Transactions*

Further, 7 TAC §86.312 (b) (14) notes that the practice of a commercial sales-based financing provider “improperly characterizing a transaction as ‘business’ or ‘commercial’ transaction when the advanced funds are extended primarily for individual, family, or household use” is considered a deceptive practice.<sup>16</sup> We believe it is imperative to maintain this language to ensure that consumers do not face adverse financial outcomes. If a commercial sales-based financing provider labels a transaction as “commercial” or “business” when the money is actually going to pay an individual’s rent, medical bills, or other personal expenses, the provider can essentially evade the entire protection framework around consumer lending.

### Additional Proposals:

#### *Misleading Marketing & Pricing Quotes*

As for expanding 7 TAC §86.312 (b) to include more abusive and deceptive acts and practices, we are deeply concerned that commercial sales-based financing providers can bypass the intent of Chapter 398 since there is no clear reference to misleading pricing quotes and misrepresenting short-term products as long-term.

We strongly urge the Texas Finance Commission to add the following items to §86.312 (b)(1):

#### (D) quoting pricing in misleading ways, including but not limited to:

(i) Describing the price of credit as percentage rate that is not an annual interest rate or APR, such as “X% fee rate” or “Y% factor rate,” particularly when those “rates” diverge materially from the Annual Percentage Rate;

(ii) Describing the price of credit as “simple interest” when referring to a nonannual rate as opposed to a noncompounding annual rate that a reasonable person would understand “simple interest” to mean;

(iii) Describing the price of credit as an “interest rate” when describing a daily, weekly, or monthly rate and not an annual rate; and

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<sup>14</sup> Federal Reserve Banks. 2025. [“2025 Report on Employer Firms: Findings from the 2024 Small Business Credit Survey.”](#) *Small Business Credit Survey*.

<sup>15</sup> Ibid.

<sup>16</sup> 7 Tex. Admin. Code §86.313(b)(14) (2025).

To illustrate the need for addressing deceptive pricing practices, a 2018 Federal Reserve study affirmed that many small business owners ascribed any number presented as a percentage to be an interest rate or APR.<sup>17</sup> For example, we spoke with a preschool owner who nearly had to shut down her preschool and laid off her teachers because a merchant cash advance she took out was far beyond the businesses’ ability to repay and was draining her family’s personal savings. When she agreed to this financing, she had understood it to have an interest rate of 13%, based on the contract excerpt below:

Merchant's Legal Name: _____ Preschool LLC		DBA Name: _____ Preschool	
Address: _____		Business Phone: _____	
Type of entity (check one): <input type="checkbox"/> Corporation <input type="checkbox"/> Sole Proprietorship <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Other			

  

<b>Purchase Price</b> The dollar amount Purchaser is paying for the Amount Sold.	<b>Amount Sold</b> The dollar value of the Future Receivables being sold.	<b>Discount Charge</b> The difference between the Purchase Price and the Amount Sold.	<b>Daily Percentage</b> The percentage of Future Receivables Merchant agrees to remit to Purchaser each day.
\$ <u>9,500.00</u>	\$ <u>13,490.00</u>	\$ <u>3,990.00</u>	<u>13</u> %

In fact, what she believed to be a 13% interest rate computed to an equivalent APR of 235%. No wonder the drain on her cashflow was greater than she expected. This business was able to avoid closure and layoffs only by refinancing into a lower-rate loan from a Community Development Financial Institution (CDFI).

The preschool owner’s situation is common. Federal reserve research has found that small business financing companies can utilize “rates” that look or like an interest rate or APR to misguide small businesses into unnecessarily expensive financing. The Federal Reserve system’s head of small business research gave an example of this confusion: A “9% simple interest rate” equates to a 46% APR and a “4% fee rate” equates to a 45% APR.<sup>18</sup> These examples are set out in a Federal Reserve research publication on the need for more transparent small business financing disclosures, in this table below:<sup>19</sup>

<sup>17</sup> Board of Governors of the Federal Reserve System. 2018. [“Browsing to Borrow: ‘Mom & Pop’ Small Business Perspectives on Online Lenders.”](#)

<sup>18</sup> The Aspen Institute. 2025, March 27. *Ensuring that Innovation Benefits Small Businesses: The Role of Guardrails [Video]*. YouTube. <https://www.youtube.com/watch?v=0qxn8MTZwYc&t=705s>

<sup>19</sup> Board of Governors of the Federal Reserve System. 2019. [“Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites.”](#) Federal Reserve.

Table 3. Estimated APRs for select online products		
Rate advertised on website	Product details	Estimated APR equivalent
1.15 factor rate	<ul style="list-style-type: none"> <li>Total repayment amount \$59,000</li> <li>Fees: 2.5% set-up fee; \$50/month administrative fee</li> <li>Term: none (assume repaid in six months)</li> <li>Daily payments (assume steady payments five days/week)</li> </ul>	Approximately 70% APR
4% fee rate	<ul style="list-style-type: none"> <li>Total repayment amount \$56,500</li> <li>Fee rate: 4% (months 1–2), 1.25% (months 3–6)</li> <li>Fees: none</li> <li>Monthly payments</li> <li>Term: six-month term</li> </ul>	Approximately 45% APR
9% simple interest	<ul style="list-style-type: none"> <li>Total repayment amount \$54,500</li> <li>Fees: 3% origination fee</li> <li>Weekly payments</li> <li>Term: six-month term</li> </ul>	Approximately 46% APR

Source: Authors' calculations, based on product descriptions on company websites.

Most importantly, the Federal Reserve showed that these prices can be deceptive in the legal sense, in that a reasonable person would be materially misled and harmed. The research found that this “non-standard terminology also proved challenging for focus group participants trying to compare online offerings with traditional credit products.”<sup>20</sup>

Commercial sales-based financing providers have the opportunity to take advantage of this dynamic and knowingly mislead consumers into thinking the product is a lower cost than what it truly is whether through a misleading price quote or a misleading description of long-term use of the product. We believe that adding these specific instances of misleading representation to the list of unfair, deceptive, and abusive acts will further protect Texas small businesses. The disclosure aligns with the requirements laid out in Chapter 398, particularly §398.005, that presents clear information on the total cost of the transaction for the small business.<sup>21</sup>

Ultimately, the Federal Reserve research demonstrates that APR disclosure is an essential part of transparent pricing.

<sup>20</sup> Board of Governors of the Federal Reserve System. 2019. [“Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites.”](#) *Federal Reserve*.

<sup>21</sup> Tex. Fin. Code §398 (2025).

With respect to marketing, we also suggest addressing the unfair, deceptive, and abusive representations about product use. It is common for high-cost, short-term financing to be marketed and justified as being for an emergency purpose, when in fact the business model is to recruit the borrower into an ongoing cycle of renewing this financing over and over. To address this, we propose the following language:

(E) misleadingly marketing short-term products for long-term use:

### **3. Prohibiting certain automatic debit transactions**

Automatic debit prohibition falls under the authority of the Texas Finance Commission to identify and prohibit certain deceptive acts as providers that the commission considers unfair as prescribed in Texas Finance Code §398.005.<sup>22</sup> Section 398.056 prohibits commercial sales-based financing providers and brokers from establishing a mechanism for an automatic debit from a deposit account unless they hold a “validly perfected security interest in the recipient’s account” as defined in Chapter 9, Business & Commerce Code.<sup>23 24</sup> Further, 7 TAC §86.312 (b) (6) notes how an automatic debit in violation of §398.056 or this subchapter is classified as an unfair, deceptive, or abusive act.<sup>25</sup>

#### Checks & Automatic Debits

Building upon 7 TAC §86.312 (b) (6), 7 TAC §86.313 (b) defines automatic debits to mean debits that are “authorized in advance to occur more than one time or on a recurring basis.”<sup>26</sup> To account for situations where prewritten checks are used to the same effect as a recurring electronic payment, the following language was added to the definition of automatic debits: “An automatic debit includes a situation in which a recipient provides more than one prewritten check to a provider in advance for payments under a commercial sales-based financing transaction.”<sup>27</sup> Without the added language covering pre-written checks as a form of automatic debiting, commercial sales-based financing providers will be able to evade the regulatory intent of Chapter 398.

#### Violation by a Third Party

Additionally, 7 TAC §86.313 (e) delineates that a commercial sales-based financing provider cannot accept a disqualifying automatic debit payment (under Chapter 9, Business & Commerce Code) nor can the provider direct a third party to complete a disqualifying debit.<sup>28 29</sup> The initial guardrails set in Texas Finance Code §398.056 prohibit all automatic debit transactions unless

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<sup>22</sup> Tex. Fin. Code §398.005 (2025).

<sup>23</sup> Tex. Fin. Code §398.056 (2025).

<sup>24</sup> 9 Tex. Bus. & Comm. Code (2025).

<sup>25</sup> 6 Tex. Admin. Code §86.312(b)(6) (2025).

<sup>26</sup> 7 Tex. Admin. Code §86.313(b) (2025).

<sup>27</sup> Ibid.

<sup>28</sup> 7 Tex. Admin. Code §86.313(e) (2025).

<sup>29</sup> 9 Tex. Bus. and Comm. Code (2025).

the provider holds a “validly perfected security interest in the recipient’s account”.<sup>30</sup> While this guardrail helps reduce deceptive automatic debit transactions, each provision under 7 TAC §86.313, especially (e), provides additional protection to small business owners against deceptive commercial sales-based financing practices. The intent of HB 700 included preventing automatic debits that are not qualified under Chapter 398. If the language in 7 TAC §86.313 (e) is removed, a third party could bypass the bill’s regulatory intent and fulfill disqualifying automatic debits on behalf of the commercial sales-based financing provider.

## Conclusion

Thank you for considering our comments. Overall, we recommend revising the proposed rules to:

- Ensure timeliness, clarity, and accuracy of mandated disclosures, including a compliance safe harbor via model disclosure form.
- Identify and clearly define abusive acts and practices, as outlined in Chapter 398, particularly redirected payments, mischaracterizing transactions, and misleading marketing and price quotes.
- Prohibit certain automatic debit transactions, including those pre-written via check and those designed to evade regulations via third party.

These changes are true to the letter and intent of Chapter 398 and will better help support small businesses across the state.

As you consider additional ways to support and protect Texas small businesses, we also recommend that Texas adopt the [Small Business Borrowers’ Bill of Rights](#). Doing so would enhance current law so that small businesses can make the best financing decisions for their business.

We appreciate the opportunity to share our concerns about the impacts of the rules on Texans.

Sincerely,

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<sup>30</sup> Tex. Fin. Code §398.056 (2025).

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