

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 84. Motor Vehicle Installment Sales
Chapter 86. Retail Creditors

The Finance Commission of Texas (commission) proposes amendments to §§84.203, 84.204, 84.205, 84.302, 84.308, 84.309, 84.707, 84.708, 84.709, 84.804, and 84.808 in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales; and proposes new §86.202 in 7 TAC, Chapter 86, concerning Retail Creditors.

In general, the purpose of the rule changes in 7 TAC, Chapters 84 and 86 is to implement four bills that the Texas Legislature passed in the 2017 legislative session: HB 2339, HB 2949, SB 1052, and SB 1199. The proposed rule changes relate to the following issues: trade-in credit agreements, documentary fees, debt cancellation agreements, deferments, and depreciation benefit service contracts.

HB 2339 adds new §348.125 to the Texas Finance Code, authorizing a retail seller to provide a trade-in credit agreement in connection with a motor vehicle retail installment transaction. The bill defines a trade-in credit agreement as "a contractual arrangement under which a retail seller agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the retail installment contract in connection with which the trade-in credit agreement is offered if the motor vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied toward the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller." The bill includes disclosure requirements, refunding requirements, a limitation on the

amount charged, and a requirement that the seller be insured under a contractual liability reimbursement policy approved by the Texas Department of Insurance.

HB 2949 amends Texas Finance Code, §348.006, to specify that a retail seller is not required to notify the agency of an increased documentary fee if the seller charges a documentary fee that is less than or equal to an amount presumed reasonable by rule of the commission.

SB 1052 moves provisions regarding debt cancellation agreements that require insurance from Chapter 348 to a new Chapter 354 of the Texas Finance Code. The bill allows these agreements to be provided in a Chapter 345 retail installment transaction for certain covered vehicles, including a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The bill also allows the OCCC to agree to extend the 45-day approval period for debt cancellation agreements by an additional 45 days, and specifies refunding and recordkeeping requirements when a debt cancellation agreement terminates due to early payoff of a retail installment contract.

SB 1052 also amends Texas Finance Code, §348.114, which relates to deferment charges. The bill limits the deferment charge provision to contracts using the add-on method or scheduled installment earnings method. The bill also adds new §348.114(c), which provides that in a contract using the true daily earnings method, the holder may defer one or more installments, and time

price differential continues to accrue on the unpaid balance at the rate agreed to in the contract. At the time of the deferment, the holder must provide a written notice stating that finance charge will continue to accrue.

SB 1199 amends Texas Occupations Code, §1304.003, to authorize a depreciation benefit optional member program. The bill defines a depreciation benefit optional member program as "a service contract financed under Chapter 348 or 353, Finance Code, that pays to the buyer, as a credit toward the purchase of a replacement vehicle at a participating dealer, an amount less than or equal to the difference between the purchase price and actual cash value for a total constructive loss." These depreciation benefit service contracts would be subject to the same requirements that currently apply to service contracts under Chapter 1304 of the Occupations Code, including the requirement that the provider be registered with the Texas Department of Licensing and Regulation, the requirement to maintain a reimbursement insurance policy and a funded reserve account, disclosure requirements, and refunding requirements.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held an online stakeholder meeting where attendees asked questions through a webinar. The agency did not receive any informal written precomments other than the questions received through the webinar.

The individual purposes of the amendments and new rule are provided in the following paragraphs.

A proposed amendment to §84.203(a) specifies that the rule on deferment charges does not apply to an amendment described

by Texas Finance Code, §348.114(c), to defer all or part of one or more payments for a retail installment transaction that employs the true daily earnings method. In addition, throughout §84.203, the proposal deletes references to the maximum deferment charge for transactions using the true daily earnings method. These amendments to §84.203 are intended to implement SB 1052's amendments to Texas Finance Code, §348.114, which provide that the continuing accrual of time price differential in a transaction using the true daily earnings method is not a deferment charge.

During the stakeholder meeting, one attendee asked what is required for a deferment in a transaction using the true daily earnings method, other than the notice described in Texas Finance Code, §348.114(c), as added by SB 1052. This issue is outside the intended scope of the amendments to §84.203, which specify that §84.203 does not apply to this type of deferment. As amended by the proposal, §84.203 would apply only to transactions using the add-on method or the scheduled installment earnings method. The agency will consider providing further guidance on this issue in the near future, in updates to the agency's advisory guidance for deferments in motor vehicle retail installment transactions.

A proposed amendment to §84.204 adds a new subsection (j), providing that a retail seller may not include a benefit under a trade-in credit agreement in the "Dealership Allowance for Trade-In" section of the disclosure of equity standard form. This amendment is intended to avoid confusion in the calculation of the trade-in allowance, which is limited to the value of the trade-in vehicle. Under Texas Tax Code, §152.002(b)(5), "the value of a motor

vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle, including any cash payment to the buyer under Section 348.404 or 353.402, Finance Code" is excluded from the total consideration for sales tax purposes. The Texas Comptroller of Public Accounts uses the term "trade-in allowance" to refer to the value of the vehicle for purposes of this exclusion from sales tax. Texas Comptroller of Public Accounts, Motor Vehicle Tax Guidebook at x, II-2 (2011). The benefit under a trade-in credit agreement is separate from the value of the trade-in vehicle itself. For this reason, the benefit under a trade-in credit agreement should not be included in the trade-in allowance shown on the disclosure of equity.

A proposed amendment to §84.205(b)(1) specifies that a documentary fee of \$150 or less is presumed reasonable under Texas Finance Code, §348.006(f). In addition, throughout §84.205, the proposal deletes references to the current requirement to provide a notification for a documentary fee that is greater than \$50 but less than or equal to \$150. These amendments are intended to implement HB 2949, which specifies that a retail seller is not required to notify the agency of an increased documentary fee if the seller charges a documentary fee that is less than or equal to an amount presumed reasonable by rule of the commission. \$150 is the same amount that the agency presumes reasonable under current §84.205(b)(2). The commission adopted \$150 as a reasonable documentary fee amount in 2016. This amount was based on the agency's ongoing review of documentary fee cost analyses, as well as document-related costs for Texas motor vehicle dealerships. The rule's current requirement to provide both a notification

and a cost analysis for a documentary fee over \$150 would remain in place.

Until HB 2949 goes into effect on September 1, 2017, sellers are required to continue complying with current law, and may not charge a documentary fee over \$50 without first notifying the agency.

Proposed amendments to §84.302, §84.308, and §84.309 contain updated citations to the new Chapter 354 of the Texas Finance Code, as added by SB 1052. In addition, an amendment to §84.309(d) acknowledges that the agency may agree to extend the normal 45-day approval period for debt cancellation agreements for an additional 45 days. This amendment is intended to implement SB 1052, which permits the agency to agree to these deadline extensions in new Texas Finance Code, §354.005(b).

In §84.707, the proposal amends the recordkeeping requirements for retail sellers that assign retail installment contracts. The amended recordkeeping requirements relate to trade-in credit agreements and depreciation benefit service contracts.

In §84.707(d)(2), proposed new subparagraphs (N) and (O) identify records that a seller must maintain for trade-in credit agreements, including a copy of the agreement, refunding records, and documentation used to process a claim. These amendments are intended to ensure that the agency can verify the seller's compliance with Texas Finance Code, §348.125, as added by HB 2339. These recordkeeping requirements are generally similar to requirements for other ancillary products. If any claims are administered by a party other than the seller, the seller should

be able to obtain these records from the administrator.

In §84.707(d)(2), proposed new subparagraph (P) requires the seller to maintain records relating to depreciation benefit service contracts, including evidence of the amount of any credit, and any documentation obtained by the seller to process a benefit. This amendment is intended to ensure that the agency can verify that any benefit under a depreciation benefit service contract is accurately reflected on the retail installment contract.

During the stakeholder meeting, attendees asked several questions about the recordkeeping requirements for depreciation benefit service contracts. One attendee asked how long records must be maintained. The depreciation benefit service contract records would be subject to the general requirement in Texas Finance Code, §348.517(b), and current §84.707(d)(6) and §84.708(e)(9) to maintain records for the later of four years from the date of the retail installment contract, or two years from the date of the final entry. Another attendee asked whether records are required to be maintained in electronic or paper form. The depreciation benefit service contract records would be subject to the general provisions in current §84.707(c) and §84.708(c), which allow a licensee to maintain records using a legible paper or manual recordkeeping system, an electronic recordkeeping system, an optically imaged recordkeeping system, or a combination of these. Another attendee asked which party is the "seller" for purposes of the recordkeeping rules. Throughout §84.707 and §84.708, the term "seller" refers to the seller of the motor vehicle, which is not necessarily the provider of the service contract. Service contract providers are subject to separate

recordkeeping requirements under Texas Occupations Code, §1304.155.

In §84.707(d), proposed new paragraph (6) requires the seller to maintain a copy of any contractual liability reinsurance policy required for trade-in credit agreements under new Texas Finance Code, §348.125(c), as added by HB 2339. This new paragraph also requires the seller to maintain a register or be able to generate a report reflecting agreements that were satisfied or denied. These amendments are intended to ensure that the agency can verify the seller's compliance with Texas Finance Code, §348.125, as added by HB 2339.

In §84.708, the proposal amends the recordkeeping requirements for retail sellers that collect installments on retail installment contracts. The amended recordkeeping requirements relate to deferments, trade-in credit agreements, and depreciation benefit service contracts. In §84.708(e)(2), new subparagraph (R) requires sellers to maintain written deferment agreements and deferment notices. These amendments are intended to ensure that the licensee can verify the seller's compliance with Texas Finance Code, §348.114, as amended by SB 1052. Other amendments throughout §84.708 conform to the previously discussed amendments to §84.707 relating to trade-in credit agreements and depreciation benefit service contracts.

In §84.709, the proposal amends the recordkeeping requirements for holders taking assignment of retail installment contracts. The amended recordkeeping requirements relate to deferments and debt cancellation agreements. In §84.709(e)(2), proposed new subparagraph (J) conforms to the previously discussed amendment to §84.708(e)(2) relating to deferments. In

addition, a proposed amendment to §84.709(e)(3)(A)(v) specifies that a holder must maintain refunding records if it receives or issues a refund for certain ancillary products, including debt cancellation agreements.

In §84.804, the proposal amends a list of authorized itemized charges to include a charge for a trade-in credit agreement and a charge for a depreciation benefit service contract.

In §84.808(8), proposed new paragraphs (F) and (G) specify that a benefit provided under a trade-in credit agreement or depreciation benefit service contract must be included in the downpayment and included in the line of the retail installment contract labeled "other (describe)." As discussed previously, the benefit under a trade-in credit agreement is separate from the value of the trade-in vehicle itself, and should not be included in the trade-in allowance. Disclosing the trade-in credit agreement benefit on the "other" line of the downpayment section helps ensure that the buyer understands the benefit amount and is not misled into believing that the benefit is part of the trade-in allowance. Similarly, disclosing a depreciation benefit on the "other" line of the downpayment section helps ensure that the buyer understands the benefit amount.

During the stakeholder meeting, one attendee asked how the initial charge for the trade-in credit agreement should be disclosed, and asked whether proposed §84.808(8)(F) applies only to the transaction where the buyer receives a benefit under the agreement. To clarify, there are two retail installment transactions relevant to the trade-in credit agreement: the first transaction in which the buyer purchases the

agreement, and the second transaction in which the buyer trades in the vehicle and receives a benefit under the agreement. In the first transaction, the initial charge for the trade-in credit agreement should be listed in the retail installment contract's itemization of amount financed, in the itemized charges not included in the cash price. This requirement is specified by Texas Finance Code, §348.005(4), as amended by HB 2339, and proposed §84.804(4)(R). For example, the seller may list the initial charge on line 4.O., "Other charges," of the model itemization of amount financed at §84.808(8)(A). In the second transaction, the benefit under the agreement should be disclosed in the retail installment contract's itemization of amount financed, on the "other" line of the downpayment section. Proposed §84.808(8)(F) applies only to the transaction where the buyer receives a benefit under the agreement.

Proposed new §86.202 provides that a debt cancellation agreement for a retail installment contract involving the purchase of a covered vehicle described by Texas Finance Code, §354.001(2), including a motorcycle, recreational vehicle, all-terrain vehicle, camper, boat, personal watercraft, or personal watercraft trailer, is subject to the submission requirements and appeal procedures of §84.309. This new rule is intended to implement SB 1052, which allows debt cancellation agreements to be provided in a Chapter 345 retail installment transaction for certain covered vehicles, including a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The agency will begin accepting submissions of debt cancellation agreements for these Chapter 345 covered vehicles starting July 1, 2017.

During the stakeholder meeting, one attendee asked when registrants may start offering debt cancellation agreements for Chapter 345 covered vehicles. These agreements are not authorized until SB 1052 goes into effect on September 1, 2017. In addition, any Chapter 345 debt cancellation agreement must be approved by the agency before a seller uses it. Another attendee asked a similar question about depreciation benefit service contracts. These contracts are not authorized until SB 1199 goes into effect on September 1, and are subject to requirements that generally apply to service contracts under Texas Occupations Code, Chapter 1304. Similarly, trade-in credit agreements in connection with retail installment transactions are not authorized until HB 2339 goes into effect on September 1, 2017. Before offering a trade-in credit agreement, a seller must ensure that it is insured under a contractual liability reimbursement policy under Texas Finance Code §348.125(c), as added by HB 2339.

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 amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will be more easily enforced, will be consistent with legislation recently passed by the legislature, and will provide guidance and clarity to motor vehicle sales finance licensees.

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 complying with the proposed changes contained in §§84.707, 84.708, and 84.709 concerning recordkeeping, and new §86.202 concerning debt cancellation agreements.

In reference to §§84.707, 84.708, and 84.709 concerning recordkeeping, the agency anticipates that licensees may encounter the following costs to comply with the proposal: 1) labor costs, 2) costs to generate new records not currently kept, and 3) programming costs for licensees that utilize electronic recordkeeping systems. 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.

Regarding the costs of recordkeeping, it is important to note that trade-in credit agreements and depreciation benefit service contracts are optional products. Licensees have the option of not offering these products, in which case there will be no costs incurred for those licensees. The agency anticipates that the fees charged in connection with these agreements will cover costs of complying with the recordkeeping requirements, resulting in a neutral cost to licensees required to comply with the proposal. In addition, the current rules at §§84.707(d)(2), 84.708(e)(2), 84.709(e)(2) already require licensees to keep transaction documents showing compliance with Chapter 348, and the current rules at §84.707(d)(2)(A)(v) and §84.708(e)(2)(A)(vi) already require sellers to keep copies of any agreements or disclosures signed by the retail buyer applicable to the transaction. In

other words, even in the absence of the proposed recordkeeping amendments, licensees would still generally be required to keep copies of written deferment agreements, deferment-related notices, and trade-in credit agreements.

In reference to proposed §86.202, concerning debt cancellation agreements, the purpose of proposed new §86.202 is partly to specify that form submitters for debt cancellation agreements covering Chapter 345 vehicles must comply with current §84.309 and pay a \$250 submission fee. The \$250 amount, which the commission adopted in 2016, is based on the average time spent by OCCC employees to process the submission, review the agreement, and draft follow-up correspondence. The OCCC believes that this fee is necessary and prudent to recover the cost of the agency's resources to review these agreements within the 45-day statutory deadline.

It is important to note that debt cancellation agreements are an optional product. Licensees and registrants have the option of not offering debt cancellation agreements, in which case there will be no costs incurred for those licensees and registrants. For Chapter 345 registrants who opt to provide debt cancellation agreements in connection with their retail installment contracts, there would be an initial economic cost consisting of the \$250 submission fee in §84.309(c), as provided by proposed §86.202. The agency anticipates that the fees charged in connection with debt cancellation agreements will cover costs of complying with the recordkeeping requirements, resulting in a neutral cost to registrants required to comply with the proposal.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees and registrants. However, due to several factors resulting in varying, uncertain, and unpredictable costs, the agency would like to invite comment from licensees and registrants 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 to comply with recordkeeping requirements and debt cancellation agreement submission fees, 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.

All of the amendments and the new rule are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are proposed under Texas Finance Code, §348.006(f), as amended by HB 2949, which authorizes the commission to adopt a rule establishing a documentary fee amount presumed to be reasonable, and Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules necessary to enforce §348.006.

Under proposed new §86.202, a person submitting a debt cancellation agreement for a Chapter 345 covered vehicle will be required to pay a filing fee under current §84.309(c). This new rule is authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

Chapter 84. Motor Vehicle Installment Sales

§84.203. Deferment Charge.

(a) Definition. A "deferment charge" means a charge to defer the payment date of

a scheduled payment or partial payment on a contract. A deferment charge prescribed by this section may occur in a retail installment transaction that employs the precomputed add-on method for regular payment contracts using the sum of the periodic balances or [;] the scheduled installment earnings method [~~or the true daily earnings method~~]. This section applies only to an amendment relating to the deferment of all or a part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract. This section does not apply to an amendment described by Texas Finance Code, §348.114(c), to defer all or part of one or more payments for a retail installment transaction that employs the true daily earnings method. The parties to a retail installment sales contract may agree to modify the terms of the transaction as long as the amendment conforms to the requirements of Texas Finance Code, Chapter 348, Subchapter B.

(b) - (c) (No change.)

(d) Computation of deferment charge. A holder of a retail installment sales contract under Texas Finance Code, Chapter 348 may calculate the deferment charge by any method of calculation as long as the deferment charge does not exceed the maximum amount permitted by Texas Finance Code, §348.114 and this section.

(1) - (2) (No change.)

~~[(3) True daily earnings method.]~~

~~[(A) Base deferment charge. For a regular or an irregular payment contract employing the true daily earnings method, a holder may assess, charge, and~~

~~collect a base deferment charge computed by:]~~

~~[(i) — Multiplying — the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:]~~

~~[(I) — the — maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or]~~

~~[(II) — a lower rate agreed to by the parties, which may be the contract rate; and]~~

~~[(ii) — multiplying — the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.]~~

~~[(B) — Additional — deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:]~~

~~[(i) — premiums — for continuing in force any insurance coverages provided by the retail installment contract; and]~~

~~[(ii) — any — additional necessary official fees:]~~

~~[(C) — Minimum — deferment charge. The minimum deferment charge authorized under this paragraph is \$1.00.]~~

~~[(D) — Accrual of time price differential. For a contract using the true daily earnings method, all time price~~

~~differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge. If the holder agrees to a base deferment charge that is less than the amount of time price differential that would otherwise have accrued on the deferred installments during the deferment period, then it must waive the accrued time price differential on the deferred installments for the deferment period in excess of the base deferment charge the holder agreed to. The deferment charge does not include time price differential that accrues on amounts other than the deferred installments, nor does it include time price differential that accrues outside of the deferment period.]~~

(e) (No change.)

(f) False, misleading, or deceptive representation. A holder may not make a false, misleading, or deceptive representation relating to a deferment charge. [For example, in a contract using the true daily earnings method, a holder may not make an offer to the retail buyer such as "Payment Holiday Pay Only \$25" if the total deferment charge, including all time price differential that the holder will charge on the deferred installment for the deferment period, exceeds \$25.] If a holder makes a false, misleading, or deceptive representation regarding a deferment charge, then the deferment charge is subject to refunding under subsection (e).

§84.204. Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle.

(a) - (i) (No change.)

(j) Benefit under trade-in credit agreement. A retail seller may not include a benefit under a trade-in credit agreement in

the "Dealership Allowance for Trade-In" section of the disclosure of equity standard form.

§84.205. Documentary Fee.

(a) Purpose. Under Texas Finance Code, §348.006(e), before a retail seller charges a documentary fee greater than \$150 [~~\$50~~], the seller must provide the OCCC with a written notification of the maximum amount of the documentary fee the seller intends to charge. The OCCC may review the amount of the documentary fee for reasonableness. This section describes the requirements for the notification and cost analysis.

(b) General requirements.

(1) \$150 [~~\$50~~] or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of \$150 [~~\$50~~] or less. A documentary fee of \$150 or less is presumed reasonable under Texas Finance Code, §348.006(f).

~~[(2) Over \$50, up to \$150. Before charging a documentary fee greater than \$50, but less than or equal to \$150, a seller must provide a notification to the OCCC. A seller is not required to provide a cost analysis before charging a documentary fee in this range. The OCCC will presume a documentary fee of \$150 or less to be reasonable.]~~

(2) [~~(3)~~] Over \$150. Before charging a documentary fee greater than \$150, a seller must provide a notification and a cost analysis to the OCCC.

(c) Notification.

(1) Generally. Before charging a documentary fee greater than \$150 [~~\$50~~], a seller must provide a written notification to the OCCC, stating the amount of the maximum documentary fee that the seller intends to charge.

(2) - (3) (No change.)

(4) Transfer of ownership. In the event of a transfer of ownership described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), if the transferee intends to charge a documentary fee greater than \$150 [~~\$50~~], then the transferee must provide a documentary fee notification for each licensed location or registered office that the transferee will operate. The transferee must provide the notification no later than the 30th calendar day following the transfer of ownership. If the transferee has not filed a notification on or before the 30th calendar day following the transfer of ownership, then it must cease charging a documentary fee greater than \$150 [~~\$50~~]. The transferee may not charge a greater amount than the amount described in the transferor's previous notification until the transferee has provided a complete notification listing the amount that the transferee intends to charge. If the transferor did not previously provide a documentary fee notification, then the transferee may not charge a documentary fee greater than \$150 [~~\$50~~] until it has provided a complete notification listing the amount it intends to charge.

(5) Failure to provide notification. A seller violates this subsection if the seller:

(A) charges a documentary fee greater than \$150 [~~\$50~~] without first

providing a complete notification to the OCCC; or

(B) (No change.)

(6) Restitution and order to lower documentary fee. If a seller violates this subsection, then the OCCC may take an action, including ordering the seller to do one or more of the following:

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

(D) cease charging a documentary fee greater than \$150 [~~\$50~~] for a specified period of time.

(7) Restitution amount. If a seller does not provide a complete notification to the OCCC, then the amount of restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus \$150 [~~\$50~~] (for each buyer). If the seller provides a notification but charges a documentary fee greater than the amount described in the notification, then the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus the amount of its filing (for each buyer).

(d) Cost analysis.

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

(6) Restitution and order to lower documentary fee. If a seller violates this subsection by charging a documentary fee over \$150 that is not supported by a complete cost analysis or that includes costs that are not reasonable, then the OCCC may order the seller to provide restitution to affected buyers and lower its documentary fee prospectively. For each buyer, the

restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received, minus \$150, minus other restitution paid under subsection (c)(6) - (7) of this section. In addition, the OCCC may order a seller to cease charging a documentary fee greater than \$150 [~~\$50~~] for a specified period of time if the seller violates this subsection.

§84.302. Authorized Credit Insurance and Debt Cancellation Agreements.

(a) - (g) (No change.)

(h) Debt cancellation agreements. Debt cancellation agreements are not credit insurance. For retail installment sales transactions involving ordinary vehicles, debt cancellation agreements that cancel all or part of the retail buyer's obligation to repay the retail installment sales contract based upon the occurrence of death, disability, or unemployment of the retail buyer are not authorized to be sold or written with a Chapter 348 motor vehicle retail installment sales contract. A debt cancellation agreement may be offered in connection with a Chapter 348 motor vehicle retail installment sales transaction and included as a term of, or modification to, the retail installment sales contract if the debt cancellation agreement is written in compliance with:

(1) Texas Finance Code, §348.124 and §84.308 of this title; or

(2) Texas Finance Code, Chapter 354 [~~Chapter 348, Subchapter G~~].

§84.308. Debt Cancellation Agreements Not Requiring Insurance.

(a) Purpose and scope. The Texas Finance Code allows a debt cancellation agreement to be included in a motor vehicle retail installment sales contract involving an ordinary vehicle subject to Texas Finance Code, Chapter 348 as an itemized charge. This section outlines the parameters under which a retail seller or holder may provide a debt cancellation agreement for total loss or theft of an ordinary vehicle in connection with a Chapter 348 retail installment sales contract. This section applies only to debt cancellation agreements that do not require insurance coverage. This section does not apply to a debt cancellation agreement under Texas Finance Code, Chapter 354 [Subchapter G of Chapter 348].

(b) - (k) (No change.)

§84.309. Debt Cancellation Agreements Requiring Insurance.

(a) Purpose and scope. This section applies to a debt cancellation agreement described by Texas Finance Code, Chapter 354, that includes insurance coverage as part of the retail buyer's responsibility to the holder [~~as provided by Texas Finance Code, §348.601(a)~~]. Debt cancellation agreements must be submitted to the OCCC for approval, as provided by Texas Finance Code, §354.005(a) [§348.604(a)]. The denial of a debt cancellation agreement may be appealed to the Finance Commission of Texas, as provided by Texas Finance Code, §354.005(d) [§348.604(e)]. This section describes the requirements for submitting a debt cancellation agreement to the OCCC and the requirements for appealing the denial of a debt cancellation agreement to the commission.

(b) - (c) (No change.)

(d) OCCC's notice of approval or denial. No later than the 45th day after the OCCC receives a debt cancellation agreement submission, the OCCC will send a notice of approval or a notice of denial to the person who submitted the agreement, as provided by Texas Finance Code, §354.005(b) [§348.604(b)]. On the written request of the person who submitted the agreement, the OCCC may agree in writing to extend the approval period for an additional 45 days. The date of approval or denial is the date on which the OCCC sends the notice of approval or denial. The OCCC may deny approval of a debt cancellation agreement if the agreement excludes language required by Texas Finance Code, §354.003 [§348.602] and §354.004 [§348.603], or if it contains any inconsistent or misleading provisions.

(e) (No change.)

(f) Contested case. If a person appeals the denial of a debt cancellation agreement under subsection (e), then the appeal will be a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions). The burden of proof is on the appellant to show that the agreement should have been approved under Texas Finance Code, §354.005 [§348.604].

(g) - (i) (No change.)

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).

(a) - (c) (No change.)

(d) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (M) (No change.)

(N) for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer;

(ii) evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(iii) documentation of any refund provided upon cancellation of a trade-in credit agreement.

(O) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement;

(ii) evidence of the amount of any credit applied under the trade-in credit agreement; and

(iii) any documentation used to process a claim, including:

(I) any proof of insurance settlement documents obtained from the retail buyer;

(II) any accident record or vehicle condition report obtained to process a claim; and

(III) any supplemental claim records supporting the approval or denial of the claim.

(P) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) evidence of the amount of any credit applied under the depreciation benefit optional member program; and

(ii) any documentation obtained by the licensee to process the benefit.

(3) - (5) (No change.)

(6) Trade-in credit agreement records. Each licensee that enters a trade-in credit agreement or provides a benefit in connection with a trade-in credit agreement must:

(A) maintain a copy of any contractual liability reimbursement policy related to the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(B) maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(7) [~~(6)~~] Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. For licensees who assign retail installment sales contracts, the final entry may be the date of the assignment if the licensee makes no other entries on the account after the assignment. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the

state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).

(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must

include copies of the following records or documents, unless otherwise specified:

(A) - (Q) (No change.)

(R) for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) a copy of any written deferment agreement; and

(ii) any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).

(S) for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer;

(ii) evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(iii) documentation of any refund provided upon cancellation of a trade-in credit agreement.

(T) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement;

(ii) evidence of the amount of any credit applied under the trade-in credit agreement; and

(iii) any documentation used to process a claim, including:

(I) any proof of insurance settlement documents obtained from the retail buyer;

(II) any accident record or vehicle condition report obtained to process a claim; and

(III) any supplemental claim records supporting the approval or denial of the claim.

(U) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) evidence of the amount of any credit applied under the depreciation benefit optional member program; and

(ii) any documentation obtained by the licensee to process the benefit.

(3) - (8) (No change.)

(9) Trade-in credit agreement records. Each licensee that enters a trade-in credit agreement or provides a benefit in connection with a trade-in credit agreement must:

(A) maintain a copy of any contractual liability reimbursement policy related to the trade-in credit agreement, as

required by Texas Finance Code, §348.125(c); and

(B) maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(10) [~~9~~] Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) (No change.)

§84.709. *Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).*

(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (I) (No change.)

(J) for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) a copy of any written deferment agreement; and

(ii) any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) - (iv) (No change.)

(v) for a retail installment sales contract where the licensee receives or issues a refund of insurance charges, debt cancellation agreements or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) - (IV) (No change.)

(vi) (No change.)

(B) - (C) (No change.)

(4) - (9) (No change.)

(f) (No change.)

§84.804. Disclosures and Contract Provisions Required by Texas Finance Code.

A retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. The contract must include the following disclosures and provisions, as applicable:

(1) - (3) (No change.)

(4) The amounts of any itemized charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may include the following charges as applicable and any other charges that are authorized to be included in the itemized charges under Texas Finance Code, Chapter 348:

(A) - (P) (No change.)

(Q) Automobile club membership; [-]

(R) Trade-in credit agreement;

(S) Depreciation benefit optional member program.

(5) - (8) (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) - (7) (No change.)

(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) - (E) (No change.)

(F) Benefit under trade-in credit agreement. A benefit provided under a trade-in credit agreement must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "trade-in credit agreement benefit."

(G) Benefit under depreciation benefit optional member program. A benefit provided under a depreciation benefit optional member program must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "depreciation benefit."

(9) - (45) (No change.)

Chapter 86. Retail Creditors

Subchapter B. Retail Installment Contract

§86.202. Debt Cancellation Agreements.

A debt cancellation agreement for a retail installment contract involving the purchase of a covered vehicle described by Texas Finance Code, §354.001(2), including a motorcycle, recreational vehicle, all-terrain vehicle, camper, boat, personal watercraft, or personal watercraft trailer, is subject to the submission requirements and appeal procedures of §84.309 of this title (relating to Debt Cancellation Agreements Requiring Insurance).

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 June 16, 2017.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner