

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

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 84, §§84.707, 84.708, and 84.709, concerning Motor Vehicle Installment Sales. The proposed changes affect rules contained in Subchapter G, concerning Examinations.

In general, the purpose of the amendments to 7 TAC, Chapter 84 is to update and clarify rules regarding recordkeeping for motor vehicle retail installment transactions. The proposed amendments will help ensure that licensees maintain records that are necessary for the Office of Consumer Credit Commissioner (OCCC) to verify compliance with the law, while also allowing some flexibility to account for the recordkeeping practices of licensees.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholder meeting where attendees provided oral precomments. Based on input from stakeholders, the agency circulated a second draft of the proposed changes. In total, the agency received five written precomments. Certain concepts recommended by stakeholders have been incorporated into this proposal, and the agency appreciates the thoughtful input provided by stakeholders.

Proposed amendments to §§84.707(d)(2)(J), 84.708(e)(2)(K), and 84.709(e)(2)(D) specify an alternative method for maintaining copies of debt cancellation agreements. The amendments add the word "complete," in order to specify that a licensee is generally required to maintain a complete

copy of the debt cancellation agreement in the retail installment sales transaction file. In addition, a proposed amendment to §84.708(e)(2)(D) adds the phrase "or takes assignment of" to specify that a licensee is required to maintain any debt cancellation agreement that it takes assignment of. As an alternative to the general requirement to maintain the complete agreement in the transaction file, the amendments allow a licensee to maintain any page of the agreement with transaction-specific information, a general master copy of the agreement, and policies and procedures to ensure that the master copy accurately reflects what was used in individual transactions. The alternative method for maintaining agreements is based on precomments in which stakeholders explained that it is typical for licensees to maintain only the first page of a debt cancellation agreement (containing signatures and transaction-specific information) in a particular transaction file, and to maintain a master copy of the agreement in general business files.

One precommenter requests guidance about what would constitute a verifiable method for ensuring that the master copy of the debt cancellation agreement is accurate, and noted that approved debt cancellation agreements are maintained by the OCCC. It is important for a licensee to have a complete copy of each debt cancellation agreement form it uses, in order to ensure that the licensee can comply with its responsibilities under the agreement. For example, the text of the debt cancellation agreement will state the method for calculating refunds, and this will determine how the licensee should calculate the refund in the event of prepayment in full

of the retail installment contract. Tex. Fin. Code §354.004(10), §354.007(f). Licensees should not rely on the OCCC to re-create the version of the agreement that was used in a particular transaction. If licensees do not maintain at least a master copy of the debt cancellation agreement, then there is no way for the OCCC to verify that licensees are using approved agreements. Regarding the verifiable method for ensuring accuracy, the method could vary depending on whether a licensee uses a paper system, an electronic system, or a combination. The policies and procedures should describe how the licensee verifies that the master copy is the same version of the agreement that was provided to a particular buyer. In the case of retail sellers that offer debt cancellation agreements, this could include an explanation of how a particular buyer's agreement is generated from the master copy. If a licensee uses multiple forms or multiple revisions of the same form, then the licensee's policies and procedures should include some form of version control, to ensure that the licensee has accounted for differences among forms and can identify the specific form used in any particular transaction.

Proposed new §§84.707(d)(2)(Q), 84.708(e)(2)(V), and 84.709(e)(2)(K) specify that a licensee must maintain any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and its implementing regulations. The proposal explains that a licensee must either maintain any privacy notice in the transaction file, or must maintain a general master copy of the notice and policies and procedures to ensure that the master copy accurately reflects what was used in individual transactions.

These amendments regarding the privacy notice are a response to an official interpretation request that the agency received

from a law firm representing a client that provides training to licensed motor vehicle dealers. The requestor asks whether a privacy notice must be maintained in the retail installment sales transaction file. The request was published in the *Texas Register* on December 1, 2017 (42 Tex Reg 6832). The agency did not receive any briefs or proposals on the request by the 31-day deadline. The agency requested additional information from stakeholders on how to maintain copies of privacy notices. In a precomment, one stakeholder explains: "Privacy notices are not stored with individual customer accounts because the notice is not unique and is provided to every customer. Licensees maintain the current version of the privacy notice, as well as past notices." Based on this precomment, the proposed amendments allow a licensee to either maintain the privacy notice in the transaction file, or to maintain a general copy together with policies and procedures. As with the debt cancellation agreements described previously, if a licensee uses multiple forms or multiple revisions of the same form, then the licensee's policies and procedures should include some form of version control, to ensure that the licensee has accounted for differences among forms and can identify the specific form used in any particular transaction.

One precommenter questions the OCCC's authority to require licensees to keep the privacy notice, because the privacy notice is a federal requirement and is not specifically described by Texas Finance Code, Chapter 348. The OCCC believes that the commission and OCCC have this authority for three reasons. First, Texas Finance Code, §348.008(b) and §348.009(b) explain that applicable statutes and federal disclosure requirements apply to a Chapter 348 retail installment transaction. Second, the OCCC has a responsibility to determine that the

financial responsibility and general fitness of licensees are sufficient to warrant the belief that the business will be operated lawfully and fairly, and that the forms and contracts used by licensees are appropriate and adequate to protect the interests of buyers. Tex. Fin. Code §348.504(a)-(b). These determinations are part of the license approval process, and if the OCCC later discovers that these conditions have not been met, then the OCCC has the authority to revoke the business's license. Tex. Fin. Code §348.508(3). Third, the OCCC has statutory authority to "investigate the license holder's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter." Tex. Fin. Code §348.514. A privacy notice pertains to a Chapter 348 retail installment transaction, because it describes how the licensee will use the buyer's personal financial information obtained in connection with the transaction. For these reasons, rules requiring licensees to maintain privacy notices are consistent with the commission's authority to adopt rules to enforce Chapter 348, as provided by Texas Finance Code, §11.304 and §348.513(a)(1).

Proposed amendments to §84.708(e)(3)(A)(iv) and §84.709(e)(3)(A)(iv) specify that a licensee must maintain payment histories with itemized payment entries and payment breakdowns. The purpose of these amendments is to ensure that OCCC staff can verify that the licensee has complied with the provisions of the Texas Finance Code that limit authorized charges.

Christina Cuellar Hoke, Manager of Accounting, 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.

Rudy Aguilar, Director of Consumer Protection, 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 amendments will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. In addition, the amendments will provide additional flexibility to account for different ways in which licensees maintain records.

The agency anticipates that any cost to persons who are required to comply with the amendments will be minimal. In general, licensees are already required to maintain retail installment transaction records under current §84.707(d)(2), §84.708(e)(2), and §84.709(e)(2), which require licensees to "maintain documents which show the licensee's compliance with applicable law . . . includ[ing] applicable state and federal laws and regulations." At the stakeholder meeting and in precomments, stakeholders indicated that licensees are currently maintaining portions of debt cancellation agreements with transaction-specific information, are currently maintaining master copies of privacy notices, and are currently able to produce payment histories in response to an examination or investigation. Based on these current practices identified by stakeholders, the agency anticipates that any additional cost of complying with the proposed amendments will be minimal.

For licensees that do not have current policies and procedures to address recordkeeping of debt cancellation agreements and privacy notices, there may be some labor costs related to developing policies and training employees. These costs could vary among licensees, but it is anticipated that any labor costs would be minimal. It is important

to note that debt cancellation agreements are an optional product. Licensees have the option of not offering debt cancellation agreements, in which case there will be no costs incurred for those licensees to maintain the agreements. Some of the costs of recordkeeping are offset by the commission received by the retail seller for offering and selling a debt cancellation agreement. In some other cases, a holder also receives a portion of the debt cancellation agreement fee, which can also offset some recordkeeping costs for the holder.

In order to obtain more complete information, the agency would like to invite comments from licensees on any costs involved to comply with the proposed amendments, as well as any alternatives to lessen those costs while achieving the purpose of the proposed amendments.

The agency is not aware of any adverse economic effect on small business, micro-businesses, or rural communities 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 impact on small business, micro-businesses, or rural communities, as well as any alternative methods of achieving the purpose of this proposal to minimize the impact on small business, micro-businesses, or rural communities.

During the first five years the proposed amendments will be in effect, the amendments will not create or eliminate a government program. Implementation of the amendments will not require the creation of new employee positions or the elimination of existing employee positions. The proposed rule changes do not require an increase or decrease in fees paid to the agency. The proposal

amends §§84.707, 84.708, and 84.709, resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposal does not repeal any existing regulations. The proposed rule changes do not increase or decrease the number of individuals subject to the motor vehicle regulations in Chapter 84. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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 rule.comments@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 amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce 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 statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

Title 7, Texas Administrative Code

Chapter 84, Motor Vehicle Installment Sales

§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) - (I) (No change.)

(J) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment

sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (7) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(K) - (P) (No change.)

(Q) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and its implementing regulations, the Federal Trade Commission's Privacy Rule, 16 C.F.R. Part 313, and Regulation P, 16 C.F.R. Part 1016. As an alternative to maintaining the privacy notice in the retail installment sales transaction file, the licensee may maintain both of the following in its general business files:

(i) a complete master copy of each privacy notice form used by the licensee during the period described by paragraph (7) of this subsection;

(ii) policies and procedures that show a verifiable method for ensuring that the master copy of the privacy notice

accurately reflects the privacy notice used in each individual transaction.

(3) - (7) (No change.)

§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) - (J) (No change.)

(K) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of

the debt cancellation agreement provided to the retail buyer. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (10) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(L) - (U) (No change.)

(V) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 16 C.F.R. Part 1016. As an alternative to maintaining the privacy notice in the retail installment sales transaction file, the licensee may maintain both of the following in its general business files:

(i) a complete master copy of each privacy notice form used by the licensee during the period described by paragraph (10) of this subsection;

(ii) policies and procedures that show a verifiable method for ensuring that the master copy of the privacy notice accurately reflects the privacy notice used in each individual transaction.

(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) - (iii) (No change.)

(iv) payment history information:

(I) itemized payment entries showing date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) for a transaction using the true daily earnings method, if requested during an examination or investigation, a breakdown for each payment showing the amount applied toward principal, time price differential, late charges, and any other charges;

(III) [~~II~~] if requested during an examination or investigation, a payoff amount that denotes amounts applied to principal, time price differential, default, deferment, or other authorized charges;

(v) - (vi) (No change.)

(B) (No change.)

(4) - (10) (No change.)

(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) - (C) (No change.)

(D) for a retail installment sales transaction in which the licensee issues or takes assignment of a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (9) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(E) - (J) (No change.)

(K) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 16 C.F.R. Part 1016. As an alternative to maintaining the privacy notice in the retail installment sales transaction file, the licensee may maintain both of the following in its general business files:

(i) a complete master copy of each privacy notice form used by the

licensee during the period described by paragraph (9) of this subsection;

(ii) policies and procedures that show a verifiable method for ensuring that the master copy of the privacy notice accurately reflects the privacy notice used in each individual transaction.

(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) - (iii) (No change.)

(iv) payment history information:

(I) itemized payment entries showing date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) for a transaction using the true daily earnings method, if requested during an examination or investigation, a breakdown for each payment showing the amount applied toward principal, time price differential, late charges, and any other charges;

(III) if requested during an examination or investigation, a payoff amount that denotes amounts applied to

principal, time price differential, default,
deferment, or other authorized charges;

(v) - (vi) (No change.)

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

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

(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 February 16, 2018.

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