

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 7. BANKING AND SECURITIES

### PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

#### CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

##### SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) proposes amendments to §83.503 (relating to Administrative Fee) and §83.605 (relating to Limitation on Acquisition Charge) in 7 TAC Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The rules in 7 TAC Chapter 83, Subchapter A govern regulated lenders licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 342. In general, the purpose of the proposed rule changes is to adjust the maximum administrative fee and acquisition charge, in order to ensure that the rules reflect administrative costs of closing a loan.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received four written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §83.503 would adjust the maximum administrative fee for a consumer loan under Texas Finance Code, Chapter 342, Subchapter E. The proposed amendments would also prescribe a method for annually adjusting the administrative fee based on the consumer price index (CPI). The commission is authorized to set the maximum amount of the administrative fee under Texas Finance Code, §342.201(g). Currently, §83.503(a) sets the maximum administrative fee at \$100. The commission adopted the \$100 maximum amount in 2013. As the commission explained in its preamble to the adoption, the administrative fee "compensates the lender for the administrative costs of closing a loan and providing money to the borrower." 38 TexReg 5705 (Aug. 30, 2013).

Proposed amendments to §83.605 would adjust the maximum acquisition charge for a consumer loan under Texas Finance Code, Chapter 342, Subchapter F. The proposed amendments would also prescribe a method for annually adjusting the acquisition charge based on CPI. The commission is authorized to set the maximum amount of the acquisition charge under Texas Finance Code, §342.201(g). Currently, §83.605(a) sets the maximum acquisition charge at the lesser of 10% of the cash ad-

vance or \$100. The commission adopted the \$100 maximum amount in 2013. As the commission explained in its preamble to the adoption, the administrative fee "compensates the lender for performing the administrative activities related to making the loan and the risk involved in engaging in the transaction." (38 TexReg 5705).

Under the proposed amendments to §83.503, the maximum administrative fee would be set at \$125 through June 2025 and would then be adjusted annually based on the consumer price index (CPI). Under the proposed amendments to §83.605, the maximum acquisition charge would be set the lesser of 12.5% of the cash advance or \$125 through June 2025, and the \$125 amount would be adjusted annually based on CPI. CPI is a measure of the change over time in prices paid by consumers. CPI is widely used as a measure of inflation and the overall price level in an economy. The U.S. Bureau of Labor Statistics explains that CPI is "the most widely used measure of inflation" and that CPI is "used to adjust other economic series for price change." U.S. Bureau of Labor Statistics, Consumer Price Indexes Overview (Jan. 23, 2023). The process for adjusting the fee amounts based on CPI is similar to the process that the Texas Legislature has specified to adjust rate bracket amounts under Texas Finance Code, §§341.201-341.204, and to adjust debt management fee amounts under Texas Finance Code, §394.2101. The OCCC and the commission believe that the CPI-based methodology in the amendments would provide an effective method for the administrative fee and acquisition charge to keep pace with increases in costs.

Between September 2013 (when the \$100 administrative fee went into effect) and November 2023, the CPI for Urban Wage Earners and Clerical Workers increased approximately 31% (from 230.537 to 301.224). In addition to CPI, other indexes increased during this period. Comments from lenders suggest that the wages, office space, and technology are significant categories of costs. During this period, the seasonally adjusted Employment Cost Index for private industry workers (a measure of compensation for civilian workers) increased approximately 35% (from 119.0 to 160.7). The Commercial Real Estate Price Index increased approximately 64% (from 212,305 to 348,923). The Producer Price Index for Information Technology Technical Support and Consulting Services increased approximately 24% (from 103.900 to 128.939). Taken as a whole, this information strongly supports the conclusion that costs have increased for lenders since 2013.

The Federal Reserve Board and Fannie Mae have projected that inflation will continue into 2024 and 2025. The Federal Reserve Board has estimated core inflation at a median value of 2.4% for 2024 (with a range from 2.3% to 3.0%) and a median value of 2.2% for 2025 (with a range from 2.0% to 2.6%). Federal Reserve Board, Summary of Economic Projections, p. 2 (Dec.

13, 2023). Similarly, Fannie Mae expects "that core inflation will continue to move toward the Fed's 2-percent target over the next year." Fannie Mae, "Economic Developments - November 2023" (Nov. 17, 2023). This information suggests that costs will continue to increase for lenders in 2024 and 2025, although at a decelerated pace from the high inflation of the last several years.

The proposed adjustment to the maximum administrative fee and acquisition charge (from \$100 to \$125) approximates cost increases between September 2013 and November 2023. This adjustment would ensure that lenders can be compensated for the administrative costs of making a loan, which is the intent of §83.503 and §83.605. The proposed adjustment would achieve an appropriate balance by maintaining loan affordability for consumers while compensating lenders. In addition, the adjustment from 10% to 12.5% in §83.605 would help ensure that lenders can be compensated for cost changes since 2013 for loan amounts of \$1,000 or less. The amount is a maximum, so lenders are free to offer lower administrative fees and acquisition charges in a competitive marketplace.

Since 2020, the OCCC has received several informal and official comments from stakeholders dealing with the maximum administrative fee under §83.503. In 2020, the OCCC received an informal request from the Texas Consumer Credit Coalition (an organization of licensed lenders) to review the maximum administrative fee. The TCCC requested a rule amendment that would increase the maximum administrative fee, and provided aggregated cost information purporting to justify this increase. To determine whether a rule amendment would be appropriate, in July 2021, the OCCC requested information about costs from stakeholders, and conducted an initial stakeholder meeting on this issue. Since then, the OCCC has provided stakeholders with four opportunities to provide informal comments on this issue: once in July and August 2021 (in response to the OCCC's initial information request), once in November 2021 (in response to an advance notice of rule review), once in January 2022 (in response to a precomment draft of amendments), and once in January 2024 (in response to a precomment draft of the current amendments). In addition, during December 2021 and January 2022, stakeholders submitted official comments in response to a published notice of rule review.

In general, lenders have provided informal and official comments that describe increased costs since 2013 and support amending §83.503. In response to the 2021 rule review notice, the TCCC provided an official comment explaining that the costs of originating loans have increased since the \$100 maximum was adopted in 2013. The comment focuses on costs for labor, occupancy, technology, and compliance. The comment states that although improvements in technology have created economies of scale, lenders face increased financial privacy, identity theft, and cybersecurity requirements. In particular, the comment describes recent amendments to the Federal Trade Commission's Safeguards Rule that will require costs to ensure compliance. Other groups of lenders have made similar points in informal precomments. For example, an attorney commenting on behalf of an association of banks explained that costs for overhead, labor, rent, and utilities have increased since 2013, and provided estimated loan origination costs ranging from \$185.35 (with labor making up \$106.35 of this estimate) to \$268. Another group of licensed lenders supported a CPI-based adjustment method, explaining that "[c]hanges in CPI evidence changes in costs, which is why CPI is commonly used for such adjustments." In 2024, TCCC filed an informal precomment expressing general support

for a \$125 administrative fee with CPI-based adjustments, explaining that "as origination costs continue to rise, issues critical to consumer protection have increasingly required attention from our members. Efforts by lenders to safeguard financial privacy, to combat identity theft, and ensure cybersecurity have required continued investments. Additionally, large scale federal initiatives, like the Military Lending Act, the CFPB's third party vendor management requirements, and FTC's Safeguard Rule, have all increased up-front lending costs since the previous 2013 fee increase." Also in 2024, an association of Subchapter F lenders filed a written precomment that supported changing the acquisition charge to the lesser of 12.5% of the cash advance or \$150.

In general, consumer groups provided informal and official comments that express concerns about increased costs for consumers, and argue that the maximum administrative fee should be maintained at \$100 (or decreased due to increased efficiencies in electronic and online loans). In response to the 2021 published rule review notice, the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending (organizations of community and faith leaders supporting reforms to protect Texas consumers) filed an official comment expressing concerns about increasing the administrative fee, arguing that this is not supported by available data. The comment points out that licensed lenders have experienced profits and certain decreased expenses. The comment argues that if §83.503 is amended, the maximum should be decreased from \$100. Other consumer organizations (submitting information on behalf of retired Texans and Texans in poverty) have made similar points in informal precomments. In 2024, two consumer organizations filed informal precomments reiterating these concerns about whether an increase to the administrative fee and acquisition charge is appropriate at this time.

The OCCC and the commission believe that objective measures cited earlier in this preamble (including CPI, Employment Cost Index, and Producer Price Index) strongly indicate that overall costs have increased since 2013. For the same reasons, the OCCC and the commission disagree with the contention that costs have stayed the same or decreased. At the same time, the OCCC does not believe that information provided by lenders warrants an increase above the proposed \$125 amount subject to CPI-based adjustments.

An informal precomment from an association of Subchapter F lenders recommends amending §83.605 to specify a maximum acquisition charge of the lesser of 12.5% of the cash advance or \$150 (with the \$150 amount adjusted annually based on CPI). The precomment points out that if the maximum in §83.605(a)(1) remains at 10%, the amendments would not provide any adjustment for loans up to \$1,000. The precomment explains: "Costs have increased with respect to the full range of loan amounts under Subchapter F, not just loans above \$1,000." As discussed earlier in this preamble, objective measures including CPI have increased since 2013. Costs have increased in a similar manner for loans above and below \$1,000. Without a change to the current 10% maximum in §83.605(a)(1), the rule would not reflect changes in costs since 2013 for loans up to \$1,000. Adjusting the 10% maximum to 12.5% (not to exceed \$125) maintains the same proportionate result between a \$1,000 loan with the proposed increased maximum acquisition charge of \$125 and a loan less than \$1,000. In order to ensure that lenders can be compensated for cost changes since 2013 for loan amounts up to \$1,000, the proposal includes a change in §83.605(a)(1) to replace the 10% maximum with 12.5%.

The OCCC appreciates the feedback of stakeholders on the issue of the administrative fee and the acquisition charge, and invites further comments in response to this proposal.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit is that licensees will be able to charge administrative fees and acquisition charges that keep pace with changing costs.

The OCCC does not anticipate that the proposed rule changes will result in any economic costs to persons who are required to comply with the proposed rule changes.

The OCCC is not aware of any adverse economic effect on small businesses, 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 OCCC 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, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §83.503 and §83.605 to provide a revised method for determining the maximum administrative fee and acquisition charge. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. 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 Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

## **DIVISION 5. INTEREST CHARGES ON LOANS**

### **7 TAC §83.503**

The rule changes to §83.503 are proposed under Texas Finance Code, §342.201(g), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an administrative fee under Chapter 342, Subchapter E. In addition, Texas

Finance Code, §342.551, authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342, and Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

#### *§83.503. Administrative Fee.*

An authorized lender may collect an administrative fee pursuant to Texas Finance Code, §342.201(f), on interest-bearing and precomputed loans.

(1) As an alternative to the maximum administrative fee specified in Texas Finance Code, §342.201(f), an authorized lender may collect an administrative fee that does not exceed the maximum administrative fee amount computed under this paragraph [§100].

#### (A) Definitions. In this paragraph:

(i) "Consumer price index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, or, if that index is canceled or superseded, the index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the purchasing power of the dollar for consumers.

(ii) "Reference base index" means the consumer price index for December 2023.

(B) Base amount. Effective until June 30, 2025, the maximum administrative fee is \$125.

(C) Annual adjustment. Beginning in 2025, each year, the amount of the maximum administrative fee will be adjusted. The adjustment will be effective from July 1 of the year of adjustment to June 30 of the next year. The adjusted amount of the maximum administrative fee is the greater of \$125 or the amount computed by:

(i) dividing the reference base index into the consumer price index at the end of the preceding year;

(ii) computing the percentage of change under clause (i) of this subparagraph to the nearest whole percent;

(iii) multiplying \$125 by the result under clause (ii) of this subparagraph; and

(iv) rounding the result computed under clause (iii) of this subparagraph to the next lower multiple of \$5.00, unless the result computed under clause (iii) of this subparagraph is a multiple of \$5.00 in which event that result is used.

(D) Computation and publication. Beginning in 2025, each year, the OCCC will compute the adjusted maximum administrative fee. No later than May 1, the OCCC will publish the amount of the maximum administrative fee in effect for the year of adjustment.

(2) An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation that has an interest charge authorized by Texas Finance Code, §342.201(e) more than once in any 365-day period. An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation that has an interest charge authorized by Texas Finance Code, §342.201(a) or (d) more than once in any 180-day period. The administrative fee may be contracted for, charged, or received in a renewal or modification if the authorized lender did not contract for, charge, or receive the

administrative fee on any previous obligation within the appropriate period.

(3) An administrative fee may not be contracted for, charged, or received by an authorized lender on the refinancing of a loan that utilizes Texas Finance Code, §342.201(a), (d), or (e) rates for a period of 365 days after the lender has entered into a Texas Finance Code, §342.201(e) rate loan in which an administrative fee was contracted for, charged, or received.

(4) An administrative fee is a prepaid charge and may be contracted for, charged, or received in addition to the contractual interest charge authorized by Texas Finance Code, §342.201(a), (d), or (e).

(5) The administrative fee may be included in the cash advance on which interest is computed under Texas Finance Code, §342.201(a) or (e). The administrative fee may be included in the principal balance on which interest is computed under Texas Finance Code, §342.201(d).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



## DIVISION 6. ALTERNATE CHARGES FOR CONSUMER LOANS

### 7 TAC §83.605

The rule changes to §83.605 are proposed under Texas Finance Code, §342.252(b), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an acquisition charge under Chapter 342, Subchapter F. In addition, Texas Finance Code, §342.551, authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342, and Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

#### §83.605. Acquisition Charge.

(a) As an alternative to the maximum acquisition charge specified in Texas Finance Code, §342.252(a) and §342.259(a)(1), an authorized lender may collect an acquisition charge that does not exceed the lesser of:

(1) 12.5% [10%] of the cash advance of the loan; or

(2) the maximum acquisition charge computed under subsection (b) of this section [§100].

(b) Computation of maximum acquisition charge.

(1) Definitions. In this subsection:

(A) "Consumer price index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, or, if that index is canceled or superseded, the index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the purchasing power of the dollar for consumers.

(B) "Reference base index" means the consumer price index for December 2023.

(2) Base amount. Effective until June 30, 2025, the maximum acquisition charge is \$125.

(3) Annual adjustment. Beginning in 2025, each year, the amount of the maximum acquisition charge will be adjusted. The adjustment will be effective from July 1 of the year of adjustment to June 30 of the next year. The adjusted amount of the maximum acquisition charge is the greater of \$125 or the amount computed by:

(A) dividing the reference base index into the consumer price index at the end of the preceding year;

(B) computing the percentage of change under subparagraph (A) of this paragraph to the nearest whole percent;

(C) multiplying \$125 by the result under subparagraph (B) of this paragraph; and

(D) rounding the result computed under subparagraph (C) of this paragraph to the next lower multiple of \$5.00, unless the result computed under subparagraph (C) of this paragraph is a multiple of \$5.00 in which event that result is used.

(4) Computation and publication. Beginning in 2025, each year, the OCCC will compute the adjusted maximum acquisition charge. No later than May 1, the OCCC will publish the amount of the maximum acquisition charge in effect for the year of adjustment.

(c) [~~(b)~~] Cash advance less than \$30. Subsections [Subsection] (a) and (b) of this section do [~~does~~] not apply to a loan for which the cash advance is less than \$30.

(d) [~~(e)~~] Limitation of one acquisition charge per month. For a Texas Finance Code, Chapter 342, Subchapter F loan, an authorized lender may not contract for, charge, or collect an acquisition charge more than once during a month to the same borrower for that loan, any refinancing of that loan, or any new loan made to the borrower within the same month.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES