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MOTOR VEHICLE ADVISORY BULLETIN

HB 2459's Limitation on Debt Cancellation Agreement Fees

Earlier this year, the Texas Legislature passed HB 2459, which limits the fees charged for certain motor vehicle debt cancellation agreements (DCAs) to 5% of the retail installment contract's amount financed. The new law will go into effect on September 1, 2013.

The new limitation applies only to DCAs that: (1) are provided in connection with a motor vehicle retail installment contract, and (2) require the buyer to maintain insurance on the vehicle. Motor vehicle DCAs that don't require a buyer to maintain insurance are still subject to the fee limitations specified in the OCCC's rule in title 7, section 83.308(e) of the Texas Administrative Code.

Some dealers have asked about the bill's use of the phrase "amount financed," which is not defined in the Texas Finance Code. The term is, however, defined in the federal Truth in Lending Act (TILA), 15 U.S.C. § 1638(a)(2). Because the Texas Finance Code does not provide a definition of "amount financed," dealers should use the TILA definition in calculating the maximum amount of a DCA fee. This means that under HB 2459, a DCA fee is limited to 5% of the amount financed as it is required to be calculated and disclosed under TILA.

Regulation Z, which implements TILA, allows a DCA fee to be included in the amount financed. 12 C.F.R. §§ 226.4(d)(3), 1026.4(d)(3). This means that the DCA fee is limited to 5% of the amount financed *with* the DCA fee included.

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