TEXAS OFFICE OF CONSUMER CREDIT COMMISSIONER

Motor Vehicle Advisory Bulletin: Deferment Charges

This bulletin answers frequently asked questions about deferment charges for motor vehicle retail installment contracts under Chapter 348 of the Texas Finance Code.

The legal requirements for deferment charges are located in Texas Finance Code, Section 348.114, and the OCCC's rule on deferment charges at Texas Administrative Code, Title 7, Section 84.203 (which was recently amended, effective May 5, 2016).

1. What are the general requirements for deferment agreements and charges?

When a holder defers a payment on a retail installment contract, this means that the holder is postponing, skipping, or waiving one or more payments. The Finance Code and the OCCC's rule contain the following general requirements for deferments:

- ***Written deferment agreement:*** To make a deferment, a holder must enter a written agreement with the buyer.
- ***Maximum number of deferred payments:*** A holder may only defer the equivalent of three monthly installments for each written agreement.
- ***Maximum deferment charge:*** The deferment charge may not exceed the legal maximum rate on the deferred installments for the deferment period.

2. Are there situations where the deferment requirements don't apply?

The OCCC's deferment charge rule doesn't apply to amendments that renew, restate, or reschedule the unpaid principal balance of a contract. However, these amendments must be documented in writing and signed by the buyer, as provided by Section 348.116 of the Finance Code.

In particular, an amendment that changes the due date for all subsequent payments (e.g., changing the due date from the 1st of the month to the 15th of the month) is a rescheduling and is not subject to the OCCC's deferment charge rule. However, the due-date change must be documented in writing and signed by the buyer. Also, if this amendment results in a different payment amount (e.g., where one of the payment is increased to include accrued finance charge), then the additional amount must be disclosed in the written amendment.

3. What does the written deferment agreement have to include?

The agreement must be signed by the buyer. It must state the holder's name, the buyer's name, the buyer's account number, the date, the payments being deferred, the deferment period, the deferment charge (and any additional deferment cost), the date of the next payment, and any other deferment conditions.

If the last four digits of the buyer's account number are sufficient to identify the buyer's account, then the agreement may state either the last four digits or the full account number.

4. Are there situations where a written deferment agreement isn't required?

A written deferment agreement is required if the holder charges any additional finance charge on the deferred installments.

- For contracts using the add-on method or scheduled installment earnings method, a written deferment agreement is required if the holder charges any finance charge in addition to what is specified in the contract.
- For contracts using the true daily earnings method, a written deferment agreement is required if the holder charges any finance charge on the deferred installments during the deferment period.

A written deferment agreement is not required if the holder waives all additional finance charge on the deferred installments during the deferment period.

- For contracts using the add-on method or scheduled installment earnings method, this means that a written deferment agreement is not required if the holder charges only the finance charge specified in the contract.
- For contracts using the true daily earnings method, this means that a written deferment agreement is not required if the holder waives the portion of the finance charge that will accrue on the deferred installments during the deferment period.

Even in situations that require a deferment agreement, 7 TAC Section 84.203(b)(3) provides an exception to obtaining the buyer's signature when the governor declares a state of disaster where the buyer resides.

5. What is the maximum deferment charge?

The maximum deferment charge depends on the earnings method.

- For contracts using the add-on method (i.e., regular contracts using the sum of the periodic balances method), the maximum deferment charge is the amount of the installments being deferred, multiplied by the maximum rate for the monthly term (see

Section 348.104), plus premiums for continuing any insurance premiums, plus any necessary official fees.

- For contracts using the scheduled installment earnings method or true daily earnings method, the maximum deferment charge is the amount of the installments being deferred, multiplied by the maximum annualized daily rate (see Figure 84.201(d)(2)(B)(iii)), multiplied by the number of days in the deferment period, plus premiums for continuing any insurance premiums, plus any necessary official fees. You may calculate the deferment charge at a rate that is lower than the maximum. In calculating the deferment charge, you can assume that the buyer will make the remaining payments on the scheduled due dates.

6. What are some examples showing how to calculate the disclosed deferment charge?

Add-on Method Example with Sum of the Periodic Balances Refunding Method

Date of the Contract:	12/19/2013
First Payment Due Date:	01/19/2014
Original Maturity Date:	12/19/2018
Amount Financed:	$ 9,912.00
Finance Charge (TPD):	$ 6,195.00
Total of Payments:	$16,107.00
Installment Amount:	$ 268.45
Number of Payments:	60 monthly payments
Sales Tax Method:	Sales Tax Advanced
Add-on Rate per $100:	12.50
Effective Rate:	21.0533%

Remaining Precomputed Balance:	$11,274.90
Remaining Number of Payments:	42
Deferment Date:	07/19/2015
Number of Payments Being Deferred:	1 monthly payment – July 19, 2015 installment

Example A: 1-month deferment (two monthly payments will be due on 08/19/2015)

Calculation of Maximum Deferment Charge for 1-month deferment

Installment Amount x Effective Rate ÷ 100 ÷ 12 x Number of Months the Installment is being deferred = Deferment Charge

$268.45 x 21.0533 ÷ 100 ÷ 12 x 1 = $4.71

Example B: Deferment is Extending the Term of the Contract by one month – Deferred Payment will be due on the New Maturity Date of 01/19/2019

Calculation of Maximum Deferment Charge for 1-month deferment

Installment Amount x Effective Rate ÷ 100 ÷ 12 x Number of Months the Installment is being deferred = Deferment Charge

$268.45 x 21.0533 ÷ 100 ÷ 12 x 43 = $202.52

Scheduled Installment Earnings Method Example

Date of the Contract:	03/23/2016
First Payment Due Date:	04/23/2016
Original Maturity Date:	08/23/2018
Amount Financed:	$ 6,257.65
Finance Charge (TPD):	$ 2,210.58
Total of Payments:	$ 8,468.23
Installment Amount:	$ 300.00
Number of Payments:	28 monthly payments @ $300.00 1 final payment @ $68.23
Add-on Rate per $100:	15.00
Maximum Annualized Daily Rate:	26.3472%

Remaining Precomputed Balance:	$ 7,568.23
Remaining Number of Payments:	26
Deferment Date:	07/23/2016
Number of Payments Being Deferred:	1 monthly payment – July 23, 2016 installment

Example A: 1-month deferment (two monthly payments will be due on 08/23/2016)

Calculation of Maximum Deferment Charge for 1-month deferment

Installment Amount x Maximum Annualized Daily Rate ÷ 100 ÷ 12 x Actual Number of days the installment is being deferred = Deferment Charge

The payment due on July 23, 2016 is being deferred until August 23, 2016. The number of days between July 23, 2016 and August 23, 2016 is 31 days.

$300.00 x 26.3472 ÷ 100 ÷ 365 x 31 = $6.71

Example B: Deferment is Extending the Term of the Contract by one month – Deferred Payment will be due on the New Maturity Date of 09/23/2018

Calculation of Maximum Deferment Charge for 1-month deferment

Installment Amount x Maximum Annualized Daily Rate ÷ 100 ÷ 365 x Number of days the installment is being deferred = Deferment Charge

The payment due on July 23, 2016 is being deferred until September 23, 2018. The number of days between July 23, 2016 and September 23, 2018 is 792 days.

$300.00 x 26.3472 ÷ 100 ÷ 365 x 792 = $171.51

True Daily Earnings Method Example (Calculated at a Lower Contract Rate)

Date of the Contract:	12/19/2013
First Payment Due Date:	01/19/2014
Original Maturity Date:	12/19/2018
Amount Financed:	$ 9,172.93
Finance Charge (TPD):	$ 5,827.07
Total of Payments:	$ 15,000.00
Installment Amount:	$ 250.00
Number of Payments:	60 monthly payments @ $250.00
Add-on Rate per $100:	15.00
Maximum Annualized Daily Rate:	24.6845%
Actual Contract Rate (Lower Rate):	21.35%
Unpaid Principal Balance:	$ 7,347.46
Remaining Number of Payments:	42
Deferment Date:	07/19/2015
Number of Payments Being Deferred:	1 monthly payment – July 19, 2015 installment

Example A: 1-month deferment (two monthly payments will be due on 08/19/2015)

Calculation of Deferment Charge for 1-month deferment

Installment Amount x Contract Rate ÷ 100 ÷ 12 x Actual Number of days the installment is being deferred = Deferment Charge

The payment due on July 19, 2015 is being deferred until August 19, 2015. The number of days between July 19, 2015 and August 19, 2015 is 31 days.

$250.00 x 21.35 ÷ 100 ÷ 365 x 31 = $4.53

Example B: Deferment is Extending the Term of the Contract by one month – Deferred Payment will be due on the New Maturity Date of 01/19/2019

Calculation of Maximum Deferment Charge for 1-month deferment

Installment Amount x Contract Rate ÷ 100 ÷ 365 x Number of days the installment is being deferred = Deferment Charge

The payment due on July 19, 2015 is being deferred until January 19, 2019. The number of days between July 19, 2015 and January 19, 2019 is 1,280 days.

$250.00 x 21.35 ÷ 100 ÷ 365 x 1,280 = $187.18