

## 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 deferments 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.

In SB 1052 (2017), the Texas Legislature amended Section 348.114 effective September 1, 2017. Starting September 1, the deferment requirements for contracts using the true daily earnings method are different from requirements for contracts using the add-on method or scheduled installment earnings methods.

### A. REQUIREMENTS FOR TRUE DAILY EARNINGS CONTRACTS

#### ***1. What are the general requirements for deferments in true daily earnings contracts?***

SB 1052 adds Section 348.114(c) to the Finance Code, starting September 1. This new provision explains that if a true daily earnings contract is amended to defer one or more payments, the holder may charge and receive finance charge at the rate agreed to in the contract. The accrual of finance charge will not be considered a deferment charge.

New Section 348.114(c) also states that at the time of the deferment, the holder must provide the following notice to the buyer in a conspicuous manner: "FINANCE CHARGES WILL CONTINUE TO ACCRUE ON THE UNPAID BALANCE AT THE CONTRACT RATE. BY DEFERRING ONE OR MORE INSTALLMENTS, YOU WILL PAY MORE FINANCE CHARGES THAN ORIGINALLY DISCLOSED."

A separate provision of the Finance Code, Section 348.116, provides that an amendment to a retail installment contract must be confirmed in a writing signed by the buyer, and requires the holder to deliver a copy of the confirmation to the buyer. The OCCC understands that some creditors intend to comply with this requirement for deferments in true daily earnings contracts by obtaining the buyer's signature on a written statement that includes the Section 348.114(c) notice, as well as the date of the deferred installment and the date it is being deferred to.

#### ***2. How can a holder provide a deferment to a buyer affected by a natural disaster?***

The OCCC encourages holders to work with buyers in communities affected by natural disasters. In many cases, it will not be possible for the buyer to sign a written confirmation at the time of the deferment.

For a true daily earnings transaction, when a holder provides a deferment to a buyer affected by a natural disaster, the holder should:

- send the required written deferment notice to the buyer at the time of the deferment, as required by Section 348.114(c), and
- obtain a written confirmation of the deferment signed by the buyer and deliver a copy of the confirmation to the buyer, as required by Section 348.116, as soon as practicable under the circumstances.

## **B. REQUIREMENTS FOR ADD-ON AND SCHEDULED INSTALLMENT EARNINGS CONTRACTS**

### ***3. What are the general requirements for deferment agreements and charges, for add-on and scheduled installment earnings contracts?***

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 for add-on and scheduled installment earnings contracts:

- ***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.

### ***4. 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.

### **5. 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.

### **6. 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, this means that a written deferment agreement is required if the holder charges any finance charge in addition to what is specified in the contract.

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.

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.

### **7. 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, 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.

**8. 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

$$\$268.45 \times 21.0533 \div 100 \div 12 \times 1 = \$4.71$$

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

$$\$268.45 \times 21.0533 \div 100 \div 12 \times 43 = \$202.52$$

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.

$$\$300.00 \times 26.3472 \div 100 \div 365 \times 31 = \$6.71$$

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.

$$\$300.00 \times 26.3472 \div 100 \div 365 \times 792 = \$171.51$$