

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

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 84, §§84.707, 84.708, and 84.709, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments to §§84.707, 84.708, and 84.709 with changes to the proposed text as published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1199).

The commission received one official written comment on the proposal from the Texas Automobile Dealers Association (TADA). The comment opposes adoption of the requirement in proposed §84.707(d)(2)(Q) to maintain a copy of the privacy notice. The commission's response to this comment is discussed later in this adoption, following the explanation of this proposed provision.

In addition to the official comment from TADA, the commission received a comment from the Texas Independent Automobile Dealers Association (TIADA) after the deadline for submitting official comments at 5:00 p.m. on April 2, 2018. This comment opposes adoption of the requirements in proposed §84.707(d)(2)(Q) and §84.708(e)(2)(V) to maintain a copy of the privacy notice. Because the TIADA comment was submitted after the official comment deadline, the commission considers it to be an informal comment. The commission's response to this informal comment is discussed later in this adoption, following the explanation of this proposed provision.

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 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 adoption, and the agency appreciates the thoughtful input provided by stakeholders.

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, an 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 Office of Consumer Credit Commissioner (OCCC). It is important for a licensee to have a complete master copy of each debt cancellation agreement form it uses, in order to ensure that the licensee can comply with its responsibilities under the agreement. This is also a prudent business practice. 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 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.

In the proposed rule amendments published in the *Texas Register*, proposed new §§84.707(d)(2)(Q), 84.708(e)(2)(V), and 84.709(e)(2)(K) would have specified 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 explained 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.

The official commenter opposes the requirement in §84.707(d)(2)(Q) to maintain a copy of the privacy notice. The commenter states: "The Federal Trade Commission (FTC) has jurisdiction and enforcement authority regarding the GLB privacy notice and the OCCC's jurisdiction does not extend to a requirement regarding this federal statute or its implementing regulations. . . . The GLB privacy notice is not part of a retail installment transaction and should not be included in the agency's audit and examination. . . . The privacy notice is not a form that enables the agency to determine if the license holder is complying with [Chapter 348 of the Texas Finance Code] as [Chapter 348's] purpose is motor vehicle retail installment transactions

and the privacy notice is a discussion of the dealership's privacy practices--not financing terms or itemized charges. . . . The FTC is the agency with jurisdiction over the use, language, interpretation, enforcement, and retention of the privacy notice. . . . The FTC does not require a financial institution to retain a copy of the privacy notice in its files. . . . Finally, a federal privacy notice does not pertain to a Chapter 348 retail installment transaction merely because it describes how a licensee uses personal financial information."

Similarly, the informal commenter argues that the federal privacy notice is outside of the OCCC's jurisdiction, and that the proposed amendments impose additional requirements not present in federal law. For this reason, the informal commenter opposes the requirements to maintain the privacy notice in both proposed §84.707(d)(2)(Q) and proposed §84.708(e)(2)(V).

The adoption does not include the requirements to maintain the privacy notice that appeared in proposed §§84.707(d)(2)(Q), 84.708(e)(2)(V), and 84.709(e)(2)(K). The commenters correctly state that the Gramm-Leach-Bliley Act and its implementing regulations do not require motor vehicle licensees to maintain a copy of the privacy notice. The commission has determined that the amendments requiring a motor vehicle licensee to maintain the privacy notice are unnecessary at this time.

The commission disagrees with the commenters' statements that the privacy notice is entirely outside the OCCC's authority, and also disagrees with the commenters' statements that the privacy notice does not pertain to Chapter 348 transactions. First, privacy notices pertain to retail installment transactions because the practice of entering retail installment transactions causes a person

to be subject to the requirements for privacy notices. *See* Federal Trade Commission, FTC's Privacy Rule and Auto Dealers: FAQs (Jan. 2005) (explaining that the "Privacy Rule applies to car dealers who: Extend credit to someone (for example, through a retail installment contract)"). Second, the privacy notice describes how the licensee will use the buyer's personal financial information obtained in connection with the retail installment transaction. Third, under Texas Finance Code, §11.307(b), the commission has the authority to require any entity regulated by the OCCC to include information on filing complaints with the OCCC in a privacy notice required under the Gramm-Leach-Bliley Act. For motor vehicle licensees, this complaint notice is currently required to be included in the retail installment contract under 7 TAC §86.101. Section 11.307(b) acknowledges that the commission has authority to require licensees to add text to the federal privacy notice. This authority necessarily relates to the OCCC's authority under Chapter 348 and shows that the privacy notice pertains to Chapter 348 retail installment transactions. The OCCC will consider whether future rulemaking is appropriate to implement Section 11.307(b) and require a complaint notice in motor vehicle licensees' privacy notices.

As part of its current examination procedures for motor vehicle licensees, the OCCC reviews the licensee's compliance with the privacy notice requirements of the Gramm-Leach-Bliley Act and its implementing regulations. If the OCCC finds that a licensee is violating these requirements, the agency instructs the licensee about the violation in the exam report. Violations of privacy notice requirements were one of the five most common types of violations cited in OCCC exam reports for motor vehicle licensees during fiscal year 2017. These

violations include licensees that do not provide the privacy notice at all, licensees that provide a noncompliant notice, and licensees that provide a notice that does not accurately describe the licensee's practices. The commission and OCCC believe that these examination instructions are appropriate and consistent with the OCCC's general responsibility to determine that a licensee has the financial responsibility and general fitness to operate lawfully and fairly, as provided by Texas Finance Code, §348.504. The OCCC intends to continue instructing licensees if it discovers violations of the privacy notice requirements during an examination. It is a best practice for licensees to be able to reproduce the privacy notice that they provide to consumers, in order to show that they are complying with federal law.

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 the licensee can demonstrate compliance with the provisions of the Texas Finance Code that limit authorized charges.

These amendments are adopted 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 adopted 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.)

(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.)

(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.)

(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 adoption has been reviewed by legal counsel and found to be within the commission's legal authority to adopt.

Issued in Austin, Texas on April 20, 2018.

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