

**NOTICE OF PRECOMMENT DRAFT & ONLINE WEBINAR**  
**Motor Vehicle Documentary Fee Rule Amendments**  
**January 30, 2024 at 2:00 p.m.**

The Office of Consumer Credit Commissioner (OCCC) will hold an online webinar on January 30, 2024, at 2:00 p.m. During the webinar, the OCCC will discuss the January 17 precomment draft of rule amendments regarding documentary fees for motor vehicle retail installment transactions. The OCCC will also accept informal written precomments until 5:00 p.m. on January 31. The OCCC plans to present this rule action for proposal at the Texas Finance Commission's February 16 meeting.

**Summary of Rule Amendments**

The precomment draft includes the following rule amendments to 7 Tex. Admin. Code § 84.205, which governs documentary fees for motor vehicle retail installment transactions under Chapter 348 of the Texas Finance Code:

- Amendments throughout Section 84.205 would adjust the reasonable amount of the documentary fee to \$225. The Finance Commission is authorized to establish a reasonable documentary fee amount under Section 348.006(f) of the Texas Finance Code. The Finance Commission previously set the reasonable amount to \$150 in 2016, and the amount has not been changed since 2016. Costs for dealerships have increased since 2016. The \$225 amount is within a range of documentary fees approved for a group of dealerships following a contested case before the State Office of Administrative Hearings (SOAH).
- An amendment would clarify that documentary fee costs must be determined both in accordance with generally accepted accounting principles and in accordance with Section 84.205.
- An amendment would clarify that the documentary fee may include costs of obtaining a credit report if the cost is incurred uniformly in cash and credit transactions, but may not include the cost of obtaining a credit report in unconsummated transactions.
- Amendments would replace references to the USA PATRIOT Act with references to regulations of the Office of Foreign Assets Control, in order to provide a clearer reference to federal laws that prohibit transactions with certain consumers.
- Amendments would specify that the documentary fee may include the cost of only one written contract for the sale of the motor vehicle (because only one contract is legally required).
- An amendment would remove a reference to the statement of the county of title issuance (form VTR-136). The OCCC understands that the Texas Department of Motor Vehicles (TxDMV) has stopped using this form following the passage of SB 876 (2021).
- Amendments would specify that the documentary fee may not include costs incurred while the seller's facilities are closed, and may not include costs of maintaining areas that are not involved in the processing of documents.
- Other amendments would make technical corrections and update citations.

### Participating in Webinar

Stakeholders are invited to listen and participate in the online webinar. Please follow the instructions available at: <https://attendee.gotowebinar.com/register/1705477111692728662>

### Submission of Informal Precomments

Informal precomments on the draft rules may be submitted by email to [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov), or by mail to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Blvd., Austin, Texas 78705.

Precomments submitted to the OCCC are generally public. Please redact all confidential information before submitting precomments to the OCCC.

***Informal precomments on the OCCC's January 17 precomment draft must be received by 5:00 p.m. on January 31, 2024.***

**OCCC Motor Vehicle Documentary Fee Rule Amendments**  
**1/17/2024 Precomment Draft**

*Title 7, Texas Administrative Code*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 84. Motor Vehicle Installment Sales*

*Subchapter B. Retail Installment Contract*

*§84.205. Documentary Fee*

(a) Purpose. Under Texas Finance Code, §348.006(e), before a retail seller charges a documentary fee greater than \$225 [~~\$150~~], the seller must provide the OCCC with a written notification of the maximum amount of the documentary fee the seller intends to charge. The OCCC may review the amount of the documentary fee for reasonableness. This section describes the requirements for the notification and cost analysis.

(b) General requirements.

(1) \$225 [~~\$150~~] or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of \$225 [~~\$150~~] or less. A documentary fee of \$225 [~~\$150~~] or less is presumed reasonable under Texas Finance Code, §348.006(f).

(2) Over \$225 [~~\$150~~]. Before charging a documentary fee greater than \$225 [~~\$150~~], a seller must provide a notification and a cost analysis to the OCCC.

(c) Notification.

(1) Generally. Before charging a documentary fee greater than \$225 [~~\$150~~], a seller must provide a written notification to the OCCC, stating the amount of the maximum documentary fee that the seller intends to charge.

(2) Notification for each location. A seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. If a seller has more than one license or registered office in the same physical space, then it must provide a notification for each license or registered office under which it sells vehicles. For example, if a seller has two registered offices at the same location and does business under the names of both registered offices, then it must provide a notification for each of the two registered offices.

(3) Form. The notification must be provided on a form prescribed by the OCCC for receiving notifications of documentary fee amounts. A notification is not effective until the OCCC receives a complete form.

(4) Transfer of ownership. In the event of a transfer of ownership described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), if the transferee intends to charge a documentary fee greater than \$225 [~~\$150~~], then the transferee

must provide a documentary fee notification for each licensed location or registered office that the transferee will operate. The transferee must provide the notification no later than the 30th calendar day following the transfer of ownership. If the transferee has not filed a notification on or before the 30th calendar day following the transfer of ownership, then it must cease charging a documentary fee greater than \$225 [~~\$150~~]. The transferee may not charge a greater amount than the amount described in the transferor's previous notification until the transferee has provided a complete notification listing the amount that the transferee intends to charge. If the transferor did not previously provide a documentary fee notification, then the transferee may not charge a documentary fee greater than \$225 [~~\$150~~] until it has provided a complete notification listing the amount it intends to charge.

(5) Failure to provide notification. A seller violates this subsection if the seller:

(A) charges a documentary fee greater than \$225 [~~\$150~~] without first providing a complete notification to the OCCC; or

(B) provides a notification to the OCCC and charges a documentary fee greater than the amount described in the notification.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection, then the OCCC may take an action, including ordering the seller to do one or more of the following:

(A) provide restitution to affected buyers;

(B) lower its documentary fee prospectively;

(C) provide a complete, accurate notification to the OCCC;

(D) cease charging a documentary fee greater than \$225 [~~\$150~~] for a specified period of time.

(7) Restitution amount. If a seller does not provide a complete notification to the OCCC, then the amount of restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus \$225 [~~\$150~~] (for each buyer). If the seller provides a notification but charges a documentary fee greater than the amount described in the notification, then the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus the amount of its filing (for each buyer).

(d) Cost analysis.

(1) Generally. Before charging a documentary fee greater than \$225 [~~\$150~~], a seller must submit a cost analysis showing that the documentary fee is reasonable. The seller has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by adequate documentation. This subsection does not require the OCCC's approval of a documentary fee before a seller charges it. However, the OCCC may order restitution under subsection (d)(6) if a seller charges a documentary fee over \$225 [~~\$150~~] that is not supported by a complete cost analysis, or if the documentary fee includes costs that are not reasonable.

(2) Reasonableness requirements. In order to be reasonable, a documentary fee must reflect costs actually incurred by the seller in preparing and processing documents for a motor vehicle sale. All included costs must comply with the following reasonableness requirements.

(A) Directly related and allocable. Costs must directly relate to the seller's preparation and processing of documents for a motor vehicle sale. Costs must be allocable (i.e., chargeable or assignable) to the objective of preparing and processing documents. Costs must be incurred by the seller. A seller may not increase any authorized charge imposed by a third party.

(B) Allowable. Costs must relate to activities required to comply with local, state, or federal law concerning motor vehicle sales. Costs related to ancillary or optional products may not be included. Costs must be determined in accordance with generally accepted accounting principles and in accordance with this section.

(C) Prudent business person. Costs must comply with the prudent-business-person standard. This means that costs are limited to what a prudent business person would pay in a competitive marketplace. For example, hiring a limousine to deliver documents does not comply with the prudent-business-person standard. In determining whether a given cost is prudent, consideration will be given to the following:

(i) whether the cost is of a type generally recognized as ordinary, customary, and necessary for preparing and processing documents for a motor vehicle sale;

(ii) the restraints or requirements imposed by sound business practices, arm's-length bargaining, and applicable laws and regulations;

(iii) market prices for comparable goods or services; and

(iv) the necessity of the cost.

(D) Timing.

(i) Costs must be incurred either concurrently with or after the seller's preparation of at least one of the following: a buyer's order, bill of sale, purchase agreement, or retail installment sales contract. Any costs incurred before the preparation of the earliest of these documents may not be included. This clause does not apply to the costs of purchasing or printing forms specifically listed in subsection (d)(3)(B)(ii).

(ii) Costs must be incurred before the title of the purchased motor vehicle is actually transferred, or when title is legally required to have been transferred, whichever is earlier.

(iii) Costs relating to a trade-in motor vehicle must be incurred before the title of the trade-in motor vehicle is actually transferred, or when the title is legally required to have been transferred, whichever is earlier.

(E) No finance charge. The documentary fee may not include any amount that would be considered a finance charge under the Truth in Lending Act, 15 U.S.C. §§1601-1667f. All included costs must be incurred uniformly in cash and credit transactions.

(i) The documentary fee may not include any cost associated with the negotiation or assignment of the retail installment sales contract to another financial institution or a related finance company.

(ii) The documentary fee may not include any cost associated with the evaluation of the buyer's creditworthiness. A seller may include the cost of obtaining a credit report for a buyer who ultimately purchases a motor vehicle, if the seller incurs this cost uniformly in cash and credit transactions [~~in a substantial number of transactions where credit is not extended~~], and the cost complies with the other requirements described in this subsection (e.g., the cost of obtaining a credit report to ensure compliance with regulations of the Office of Foreign Assets Control, 31 C.F.R. Parts 501-599 [~~the USA PATRIOT Act, 31 U.S.C. §5318(1)(2)(C)~~]). The documentary fee may not include the cost of obtaining a credit report in unconsummated transactions.

(iii) The documentary fee may not include the cost of preparing any disclosure or contractual provision that is used only in credit transactions. In particular, the documentary fee may not include the cost of preparing a Truth in Lending disclosure statement.

(F) Other prohibitions. The documentary fee may not include costs associated with any of the following:

(i) advertising;

(ii) floor planning (i.e., the seller's credit arrangements for the purchase of its inventory);

(iii) manufacturer or distributor's rebates;

(iv) the price of any report on the condition or history of the motor vehicle to be purchased or traded in;

(v) the disbursement of money to a financial institution (e.g., the cost of issuing a certified check);

(vi) a salesperson's commission for the sale of the motor vehicle (but commissions for an employee other than a salesperson may be included if they comply with subsection (d)(3)(B)(i)).

(3) Form of cost analysis. The cost analysis must include a summary of documentary fee costs and supporting exhibits.

(A) Summary of documentary fee costs. The summary of documentary fee costs must be provided on a form prescribed by the OCCC.

(i) The summary must include an itemization of the amount of costs for each of the following categories:

(I) personnel;

(II) forms and printing;

(III) postage;

(IV) software;

(V) facilities costs;

(VI) other costs.

(ii) The summary must include the number of sales completed during the period used to determine the costs described in clause (i).

(B) Supporting exhibits. A seller must provide a supporting exhibit for each category of costs included in the documentary fee. A seller must prorate costs to ensure that costs that are impermissible under this subsection are excluded. If a category is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included. The OCCC may prescribe a form for the supporting exhibits. A seller is not required to provide an exhibit for any category that does not include any costs.

(i) Personnel. The supporting exhibit for personnel must describe how all employee salaries included in the documentary fee comply with the reasonableness requirements described in this subsection.

(I) The supporting exhibit for personnel must include a job description for each position. Job descriptions must be specific enough to illustrate which functions are unique to each listed position, on a task level. The job description must identify which specific tasks are included as a cost component of the documentary fee, and which are excluded.

(II) The supporting exhibit for personnel must include each salary and a complete description of how compensation is calculated for each position (e.g., a pay plan).

(-a-) Commission paid to a salesperson for the sale of a motor vehicle must be excluded. If the seller includes a portion of the base salary paid to a salesperson, then the seller must explain how the salary has been prorated to exclude impermissible costs. If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(-b-) If the seller includes any commission paid to a person other than a salesperson, then the seller must explain how the commission has been prorated to exclude any impermissible costs (e.g., commission for ancillary products, or commission that arises only in credit transactions). If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(III) If costs of training employees are included, then the supporting exhibit must include an agenda for the training and an explanation of the subject matter of the training.

The seller must explain how training costs have been prorated to exclude impermissible costs (e.g., costs of training employees on responsibilities that arise only in credit transactions, or that arise before preparation of a purchase agreement).

(ii) Forms and printing. The supporting exhibit for forms and printing must describe all included costs and explain which forms are purchased or printed. All included forms must be used uniformly in cash and credit motor vehicle sales. If a seller uses a form only in certain transactions, then the seller must prorate costs by the fraction of the seller's sales in which the form is used. For example, if a form is used only for used motor vehicle sales, then a seller must prorate the cost of the form by the fraction of the seller's sales that are used motor vehicles. If a seller includes forms not listed in this clause, then the supporting exhibit must include an explanation of how the forms comply with the reasonableness requirements described in this subsection, with a citation to the law that requires the form. A seller may include the costs of the following forms:

(I) a written contract for the sale of the motor vehicle, as required by Texas Business and Commerce Code §2.201, which must ~~[may]~~ be in the form of only one of the following: [a purchase agreement, buyer's order, bill of sale, or retail installment sales contract (if a seller includes the cost of a retail installment sales contract, then the cost must be prorated to exclude the Truth in Lending disclosure statement and any provisions that are used only in credit transactions);]

(-a-) a purchase agreement;

(-b-) a buyer's order;

(-c-) a bill of sale; or

(-d-) a retail installment sales contract (if a seller includes the cost of a retail installment sales contract, then the cost must be prorated to exclude the Truth in Lending disclosure statement and any provisions that are used only in credit transactions);

(II) an application for certificate of title, form 130-U, as required by Texas Transportation Code, §501.023;

~~[(III) a statement of the county of title issuance, form VTR-136, as required by Texas Transportation Code, §501.023;]~~

(III) [(IV)] a privacy notice, as required by the Gramm-Leach-Bliley Act, 15 U.S.C. §6803;

(IV) [(V)] a copy of the buyer's driver's license, in order to verify the buyer's identity and ensure compliance with regulations of the Office of Foreign Assets Control, 31 C.F.R. Parts 501-599 [the USA PATRIOT Act, 31 U.S.C. §5318(l)(2)(C)];

(V) [(VI)] a report of a cash payment over \$10,000, form 8300, as required by the USA PATRIOT Act, 31 U.S.C. §5331;



(VI) [~~(VII)~~] a Texas Lemon Law disclosure, as required by Texas Occupations Code, §2301.610;

(VII) [~~(VIII)~~] the buyer's temporary tag, as required by Texas Transportation Code, §503.063, and 43 Texas Administrative Code §215.155 [~~§245.155~~];

(VIII) [~~(IX)~~] the buyer's temporary tag receipt, as required by 43 Texas Administrative Code §215.156 [~~§245.156~~];

(IX) [~~(X)~~] a window sticker for new vehicles, as required by 15 U.S.C. §1232; and

(X) [~~(XI)~~] a used car buyers guide, as required by the Federal Trade Commission's Used Motor Vehicle Rule, 16 C.F.R. §455.2.

(iii) Postage. The supporting exhibit for postage must identify the postage carrier, the types of documents that are sent by postage, and each specific postage cost. All postage costs must comply with the reasonableness requirements described in this subsection, including the prudent-business-person standard. The OCCC will presume that a prudent business person would use certified mail from the United States Postal Service or a similarly priced service. The exhibit must explain how costs that do not comply with this subsection (e.g., costs of sending documents to other financial institutions) have been excluded.

(iv) Software. The supporting exhibit for software must identify the cost of each included piece of software. The exhibit must state the type of software used and the specific functions of the software. The exhibit must identify which specific software functions are included as a cost component of the documentary fee, and which are excluded. If the software is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(v) Facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance). Any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements described in this subsection. The documentary fee may not include costs incurred while the seller's facilities are closed, because these are indirect costs that do not directly relate to the processing of documents. The documentary fee may not include costs of maintaining areas that are not involved in the processing of documents (e.g., common areas, break rooms, bathrooms). The documentary fee may not include any depreciation of facilities costs. The exhibit must describe an appropriate methodology ensuring that the documentary fee includes only the portion of the facilities costs that corresponds to the percentage of time and space used for activities that may be included in the documentary fee.

(vi) Other costs. The supporting exhibit for other costs must identify all other costs included in the documentary fee. The exhibit must state the amount of each cost and the nature of the associated activities. If the activities are associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(4) Cost analysis covering multiple locations. A seller may submit a cost analysis that covers more than one licensed location or registered office if:

(A) the cost structures of all covered locations are substantially similar (e.g., due to centralized processing among a group of locations); and

(B) in the supporting exhibits, the seller explains which costs are similar among the locations and explains the differences in costs among the locations.

(5) OCCC review. The OCCC will review each cost analysis in order to determine whether the documentary fee is reasonable for the seller that provided the analysis. If the cost analysis does not support the seller's documentary fee, or if the OCCC determines that any included costs are not reasonable, then the OCCC may require the seller to provide additional information, or the OCCC may determine that the amount is unreasonable. The review may result in a determination of the maximum amount of the documentary fee that a specific seller may charge.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection by charging a documentary fee over \$225 [~~\$150~~] that is not supported by a complete cost analysis or that includes costs that are not reasonable, then the OCCC may order the seller to provide restitution to affected buyers and lower its documentary fee prospectively. For each buyer, the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received, minus \$225 [~~\$150~~], minus other restitution paid under subsection (c)(6) - (7) of this section. In addition, the OCCC may order a seller to cease charging a documentary fee greater than \$225 [~~\$150~~] for a specified period of time if the seller violates this subsection.