



GOVERNOR GREG ABBOTT

To: Philip Holt, Chair
Charles Cooper, Executive Director
Leslie Pettijohn, Commissioner
Matthew Nance, General Counsel
Finance Commission of Texas

From: Caleb Gunnels, Counsel
Regulatory Compliance Division, Office of the Governor

Date: June 12, 2024

Subject: Proposed Title 7 Texas Administrative Code Sections 83.503, 83.605, and 84.205
(RCD Rule Review #2024-003)

I. Syllabus

The Finance Commission of Texas (“commission”) proposed amended 7 TAC §§83.503, 83.605, and 84.205 to increase the maximum administrative fee and acquisition charge for regulated consumer loans under Texas Finance Code, Chapter 342, Subchapters E and F, and to increase the documentary fee for motor vehicle retail installment transactions under Texas Finance Code, Chapter 348.¹ The board submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on March 18, 2024.² The division invited public comments on the proposed rules for a 30-day period ending on April 25, 2024, and the division received several comments, both, in support and in opposition of the proposed amended rules.³

Based on the following analysis, the division has determined that the proposed amended rules are consistent with state policy, and, thus, the proposed amended rules are approved by the division and may be finally adopted and implemented.

¹ 49 Tex. Reg. 1169 (2024) (to be codified at 7 TAC §§83.503 and 83.605) (proposed Mar. 1, 2024) (Fin. Comm’n Tex.); 49 Tex. Reg. 1172 (2024) (to be codified at 7 TAC §84.205) (proposed Mar. 1, 2024) (Fin. Comm’n Tex.).

² Rule Submission Memorandum from the Finance Commission of Texas (Mar. 18, 2024), at 1 and 8 (on file with the Regulatory Compliance Division of the Office of the Governor).

³ Public Comment from United Way of Central Texas (Apr. 25, 2024) (on file with the Regulatory Compliance Division of the Office of the Governor); Public Comment from Texas Consumer Credit Coalition (Apr. 25, 2024) (on file with the Regulatory Compliance Division of the Office of the Governor); Public Comment from United Way of Metropolitan Dallas (Apr. 4, 2024) (on file with the Regulatory Compliance Division of the Office of the Governor); Public Comment from Conn’s HomePlus (Apr. 5, 2024) (on file with the Regulatory Compliance Division of the Office of the Governor).

II. Analysis

Since 2020, the Office of Consumer Credit Commissioner (“OCCC”) and the commission have received multiple inquiries and comments from industry stakeholders relating to adjusting lenders’ maximum administrative fees and acquisition charges for regulated consumer loans under Texas Finance Code, Chapter 342, Subchapters E and F.⁴ Under Section 342.005, Finance Code, a loan is generally subject to Chapter 342, Subchapter E or F if it has an interest rate greater than 10 percent, is extended primarily for personal, family, or household use for a person located in Texas, and is not secured by a lien on real property. The interest rate structure and loan amounts differ for loans under each Subchapter, with Subchapter F loans currently capped at \$1,700, and Subchapter E loans tending to have larger loan amounts, averaging around \$5,000.⁵

Administrative fees and acquisition charges are up-front, non-interest charges intended to compensate a lender for administrative activities connected with a loan, and are currently set at a maximum of \$100 pursuant to current 7 TAC §§83.503 and 83.605.⁶ The maximum amounts allowed for such fees have not been adjusted since 2013.⁷ After providing stakeholders with at least four opportunities to provide input on a potential adjustment to the maximum administrative fee and acquisition charge for such loans, the OCCC and the commission have found that administrative, overhead, and compliance costs have significantly increased for lenders since 2013.⁸ In response, the commission has proposed to increase and annually adjust the maximum administrative fee and acquisition charge for consumer loans to ensure that lenders are compensated for the administrative costs of making such loans.

Likewise, pursuant to Chapter 348, Texas Finance Code, the commission periodically adjusts documentary fees charged by motor vehicle dealers, for example, for motor vehicle retail installment transactions, which is an agreement to purchase a motor vehicle and pay the price of the vehicle over time. Section 348.006, Texas Finance Code, generally authorizes retail sellers to charge a reasonable documentary fee, which must be agreed to by the seller and the buyer, for services rendered for or on behalf of a retail buyer in handling and processing documents relating to the motor vehicle sale, and requires sellers, before increasing the maximum amount of a documentary fee, to provide written notice to the OCCC to review the reasonableness of the amount to be charged. In 2016, pursuant to its authority under Section 348.006(f), Texas Finance Code, the commission established that \$150 or less is presumed to be a reasonable documentary fee under current 7 TAC §84.205.⁹ According to the commission, the OCCC has found, in its ongoing review of documentary fee costs analyses, that of the 211 documentary fee filings submitted to the OCCC since 2020, the average filing amount was \$246.30.¹⁰ Subsequently, the

⁴ Rule Submission Memorandum from the Finance Commission of Texas (Mar. 18, 2024), at 4.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2-3.

⁹ *Id.* at 9.

¹⁰ *Id.*

OCCC gave interested stakeholders two separate opportunities to provide input on a proposal to increase the documentary fee amount that is presumed reasonable under commission rules from \$150 to \$225.¹¹

The OCCC has the authority to enforce Chapters 342 and 348, Texas Finance Code, with respect to regulated persons pursuant to Section 14.201, Texas Finance Code. Sections 342.551 and 348.513, Texas Finance Code, generally require the commissioner of the OCCC to recommend proposed rules to the commission, and tasks the commission with adopting rules to enforce Chapters 342 and 348. Likewise, Section 11.304, Texas Finance Code, generally tasks the commission with adopting rules necessary to supervise the OCCC and ensure compliance with applicable laws under the Texas Finance Code pertaining to the regulation of interest, loans, and financed transactions, including Chapter 342 and 348. Pursuant to its rulemaking authority, the commission proposed amended 7 TAC §§83.503, 83.605, and 84.205 to increase the maximum administrative fee and acquisition charge for regulated consumer loans under Texas Finance Code, Chapter 342, Subchapters E and F, and to increase the documentary fee for motor vehicle retail installment transactions under Texas Finance Code, Chapter 348. Because the proposed amended rules may result in higher prices for a service provided by license holders in this state, the commission submitted the proposed amended rules to the division for review.¹²

A. The adjustment to maximum administrative fees and acquisition charges in proposed amended §§83.503 and 83.605 are consistent with state policy.

Current §83.503 generally governs the administrative fee lenders can charge for consumer loans under Chapter 342, Subchapter E, Texas Finance Code. As noted above, Subchapter E consumer loans typically involve larger loan amounts, averaging around \$5,000.¹³ The current rule allows regulated lenders to collect an administrative fee that does not exceed \$100. When adopted in 2013, the commission noted that the administrative fee “compensates the lender for the administrative costs of closing a loan and providing money to the borrower.”¹⁴ Similarly, current §83.605 generally governs the maximum acquisition charge for a consumer loan under Chapter 342, Subchapter F, Texas Finance Code, which are typically smaller loan amounts, currently capped at \$1,700.¹⁵ The current rule generally sets the maximum acquisition charge at the lesser of 10 percent of the cash advance or \$100. When adopted in 2013, the commission noted that the “acquisition charge compensates the lender for performing the administrative activities related to

¹¹ *Id.* at 10.

¹² *Id.* at 6 and 11.

¹³ Office of Consumer Credit Commissioner, *2023 Report on Availability, Quality, and Pricing of Certain Financial Services and Consumer Loan Products* (Dec. 1, 2023), at 13, https://occc.texas.gov/sites/default/files/2023-12/study_consumer_loan_products_12-01-2023__0.pdf.

¹⁴ 38 Tex. Reg. 5705 (2013) (preamble to adopted §83.503) (Aug. 30, 2013) (Fin. Comm’n Tex.).

¹⁵ Office of Consumer Credit Commissioner, *2023 Report on Availability, Quality, and Pricing of Certain Financial Services and Consumer Loan Products* (Dec. 1, 2023), at 14, https://occc.texas.gov/sites/default/files/2023-12/study_consumer_loan_products_12-01-2023__0.pdf.

making the loan and the risk involved in engaging the transaction... includ[ing] labor, software, hardware, and office space.”¹⁶

Proposed amended §83.503 generally raises the maximum administrative fee to \$125 through June 2025, and proposed amended §83.605 would raise the acquisition charge to the lesser of 12.5 percent of the cash advance or \$125 through June 2025. In support of the proposed increase of the maximum fees to \$125, the commission provided ample data that lender costs have significantly increased since the adoption of the \$100 threshold in 2013, including wages, office space, technology, and compliance costs.¹⁷ Under both proposed amended rules, the maximum fee to be charged would be adjusted annually based on the consumer price index (“CPI”), which is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services.¹⁸ The commission notes that utilizing CPI to annually adjust the maximum fee amounts is similar to the method for adjusting rate bracket amounts under Sections 341.201-341.204, Texas Finance Code, and for adjusting debt management fee amounts under Section 394.2101, Texas Finance Code.¹⁹ As such, the commission argues that CPI is an appropriate methodology to provide an effective method for adjusting the administrative fee and acquisition charge amounts to accurately account for the increased costs to lenders over time.²⁰

Section 342.201(g), Texas Finance Code, grants the commission broad authority to prescribe the reasonable maximum amount of an administrative fee for Subchapter E loans, above any maximum amount prescribed elsewhere within the Section. And, Section 342.251(b), Texas Finance Code, also grants the commission broad authority to prescribe a reasonable maximum amount for an acquisition charge for Subchapter F loans, above any maximum amount prescribed elsewhere within the Section. The overall administrative costs to lenders have increased since 2013, while the fees intended to compensate the lenders for such costs have remained the same. As the commission notes, lenders are free to offer lower administrative fees and acquisition charges to maintain a competitive marketplace.²¹ Ultimately, given the economic data presented by the commission, and the broad authority afforded to the commission to prescribe reasonable administrative fees and acquisition charges by rule, the proposed amendments to adjust such fees are a reasonable exercise of the commission’s statutory authority and are consistent with state policy.

¹⁶ 38 Tex. Reg. 5705 (2013) (preamble to adopted §83.605) (Aug. 30, 2013) (Fin. Comm’n Tex.).

¹⁷ Rule Submission Memorandum from the Finance Commission of Texas (Mar. 18, 2024), at 2-3. The commission cites that between 2013 and 2023, the Consumer Price Index for Urban Wage Earners and Clerical Workers increased approximately 31%, the seasonally adjusted Employment Cost Index for private industry workers increased approximately 35%, the Commercial Real Estate Price Index increased approximately 64%, and the Producer Price Index for Information Technology Technical Support and Consulting Services increased approximately 24%.

¹⁸ U.S. Bureau of Labor Statistics, *Consumer Price Index*, <https://www.bls.gov/cpi/home.htm> (last visited May 23, 2024).

¹⁹ Rule Submission Memorandum from the Finance Commission of Texas (Mar. 18, 2024), at 2.

²⁰ *Id.*

²¹ *Id.* at 6.

The remaining proposed amendments in §§83.503 and 83.605 generally enhance clarity by including definitions and detailing the procedures for calculating, and timelines for publishing, the annual adjustment to maximum administrative fees and acquisition charges. Such amendments are a reasonable exercise of the commission's statutory authority and are consistent with state policy.

B. The adjustment to the maximum documentary fee for motor vehicle retail installment transactions in proposed amended §84.205 is consistent with state policy.

Current §84.205 generally governs the documentary fees for motor vehicle retail installment transactions under Chapter 348, Texas Finance Code. As noted above, a motor vehicle retail installment transaction is an agreement to purchase a vehicle and pay the price of the vehicle over time. Retail sellers are authorized to charge a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the motor vehicle sale pursuant to Section 348.006(a)(1)(C), Texas Finance Code. For a documentary fee to be included in the principal balance of a retail installment contract, Section 348.006(c)(2), Texas Finance Code, requires that the documentary fee not exceed a reasonable amount agreed to by the retail seller and the retail buyer for the documentary services. Section 348.006(e), Texas Finance Code, generally requires, prior to increasing the maximum amount of the documentary fee the retail seller intends to charge, that the retail seller provide written notice of the fee increase to the OCCC commissioner for review of its reasonableness, unless the amount is considered reasonable pursuant to commission rules. Adopted in 2016, current §84.205(b)(1) prescribes that a documentary fee of \$150 or less is presumed reasonable.

After conducting a cost analysis, the OCCC indicates that most sellers can demonstrate costs related to documentary services of at least \$225.²² Specifically, since 2020, the commission notes that of the 211 documentary fee filings submitted to the OCCC, the average filing amount was \$246.30.²³ The commission also reviewed a recent contested case before the State Office of Administrative Hearings, where an administrative law judge found that a dealership group met its burden of proving that a range of documentary fee amounts was reasonable, after an analysis of the dealership group's costs relating to payroll, facilities, software, forms, printing, and postage, which resulted in a final order that approved a range of fees from \$202.58 to \$267.83.²⁴ Based on an analysis of the aforementioned contested case, and the OCCC's continued review of documentary fee cost analyses, the OCCC and the commission have proposed to adjust the documentary fee that is presumed reasonable under proposed amended §84.205 from \$150 to \$225.²⁵ Section 348.006(f), Texas Finance Code, grants the commission broad authority to

²² *Id.* at 9.

²³ *Id.*

²⁴ Proposal for Decision, *Office of Consumer Credit Commissioner v. Clay Cooley Entities*, SOAH Docket No. 466-22-0322 (Oct. 11, 2022); Final Order to Reduce Documentary Fees and Pay Restitution, *Office of Consumer Credit Commissioner v. Clay Cooley Entities*, SOAH Docket No. 466-22-0322 (Jan. 18, 2023).

²⁵ Rule Submission Memorandum from the Finance Commission of Texas (Mar. 18, 2024), at 9.

determine the amount of a documentary fee that is presumed reasonable. Likewise, Section 348.006(h), in part, grants the commission broad authority to adopt rules, including rules relating to the standards for a reasonableness determination. The commission notes that the proposed amended adjustment grants more flexibility to retail sellers, because it would adjust the range of documentary fee amounts that a seller may charge without submitting a cost analysis to the OCCC for review.²⁶ Likewise, in maintaining a competitive marketplace, retail sellers retain the ability to charge lower documentary fees. Ultimately, given the documentary fee cost analyses data provided by the OCCC and the commission, and the broad statutory authority afforded to the commission to establish reasonable documentary fee amounts, proposed amended §84.205 is a reasonable exercise of the commission's authority, and is consistent with state policy.

The remaining proposed amendments make technical corrections and updates that are intended to ensure that a seller's cost analysis for a documentary fee of \$225 is limited to amounts related to the processing of documents.²⁷ Section 348.006(a)(1)(C), Texas Finance Code, allows documentary fees to be charged, in part, "for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the motor vehicle sale." And, Section 348.006(h), Texas Finance Code, in part, grants the commission broad authority to establish rules relating to the standards for a reasonableness determination or disclosure. Thus, the remaining proposed amendments to §84.205 are a reasonable exercise of the commission's statutory authority and are consistent with state policy.

III. Determination

Based on the above analysis, the proposed amended rules are approved by the division and may proceed to final adoption and implementation.

²⁶ *Id.* at 11.

²⁷ *Id.* at 10.