

REGISTERED CREDITOR FAQs

The answers to the following questions are designed to serve merely as a resource and an overview of the question. They are not meant to serve as a substitute for reading the various laws discussed, seeking private legal counsel for application to your individual facts, or otherwise requesting Department guidance and/or interpretation on the laws it administers and enforces. Furthermore, there may be other sections of South Carolina law that must be complied with. As those sections of law are outside of the jurisdiction of the Department, they are not discussed herein.

Q1: What is the difference between a loan and a credit sale?

A: Generally, when a consumer finances a good or service and leaves the business with that good or the expectation of receiving a service, the transaction is a credit sale and governed by [Chapter 2 of the South Carolina Consumer Protection Code](#). When the consumer leaves the business with a check or monetary proceeds, even if the consumer will use the proceeds to make a purchase, the transaction is a consumer loan and governed by [Chapter 3 of the South Carolina Consumer Protection Code](#).

A creditor engaging in credit sales should fill out the [Maximum Rate Schedule for Credit Sales](#) form. A creditor engaging in consumer loans should fill out the [Maximum Rate Schedule for Consumer Loans](#) form. A creditor engaging in both types of transactions must file one of each.

Q2: When does a licensed supervised lender have to file a Maximum Rate Schedule?

A: A [Maximum Rate Schedule for Consumer Loans](#) must be filed and posted *before* charging a South Carolina consumer an APR over 18%.

Q3: If my business only purchases (or is assigned) a credit sale contract, is the Maximum Rate Schedule required?

A: A business that is not involved in the original transaction to extend credit does not need to file a Maximum Rate Schedule but may need to file a Credit Grantor Notification.

For example, an auto dealer sells (or assigns) the written credit contract to a separate business (finance company, bank, etc.) after they sell a consumer a car at an APR over 18%. In this scenario, the dealer would need to file a [Maximum Rate Schedule for Credit Sales](#) at the highest rate that any lender they would work with intends to charge. The buyer (or assignee) of the credit contract does not need to file a Maximum Rate Schedule but should make sure the auto dealer had properly filed a Maximum Rate Schedule.

If either business has gross revenue (as reported to the IRS) per year of over \$150,000.00, then the business would need to file the [Credit Grantor Notification](#).

Q4: If we engage in indirect auto lending only, are we required to file a credit sales Maximum Rate Schedule?

A: No. However, if your business intends to collect over 18% APR, the auto dealer must have filed a [Maximum Rate Schedule for Credit Sales](#) at a rate that is at least (or higher) than the APR your business wants to charge. However, both parties may need to file a [Credit Grantor Notification](#).

Q5: What do I do with my Registered Creditor Filings (Maximum Rate, Credit Grantor Notification, and/or Motor Vehicle Closing Fee) if I move my business to another location?

A: If you are simply moving a location, then you will fill out a [Change of Address Form](#) prior to your move. For a new location or a change of ownership (or FEIN number), new filings must be made.

Q6: During the application process, I was asked what my highest and my most frequent APR was. Does this apply only to South Carolina transactions?

A: Yes, you are to provide both the highest and the most frequent APR charged to a *South Carolina* consumer. You do not need to provide this information as it pertains to transactions outside of South Carolina.

Q7: What is the difference between a “fixed” APR and a “variable” APR?

A: A fixed APR does not fluctuate during the life of the credit transaction. A variable APR changes during the life of the credit transaction based on an index such as the prime rate published in the Wall Street Journal. Although any creditor can charge a variable APR, credit cards are the most common examples of variable APR. If you intend on charging a variable APR, you must be able to explain the index for calculating the changes in the rate and the cap on any increases or decreases in the rate when filing your Maximum Rate Schedule.

As an example, if Susie purchases a car from you and her interest rate is 19% for the life of the loan, then you have a fixed APR. If Susie purchases a car from you and you have properly disclosed that her interest rate will change during the life of the loan based on the prime rate, then you are charging a variable APR.

Q8: If my business operates a website, is the website considered a separate location for Maximum Rate Schedule purposes?

A: If a consumer can apply for credit on your website and will have an APR of over 18% imposed upon them, then a Maximum Rate Schedule will need to be filed for the website in addition to any other physical locations extending credit to South Carolina consumers. If you are

engaged in consumer loans, then you must file the [Maximum Rate Schedule for Consumer Loans](#). If engaged in credit sales, then you must file the [Maximum Rate Schedule for Credit Sales](#).

Q9: If my business operates a website, is the website considered a separate location for Credit Grantor Notification purposes?

A: If a consumer can apply for credit on your website and your business has over \$150,000.00 in revenue (as reported to the IRS) per year, then the website will be considered a separate location for Credit Grantor Notification purposes.

Q10: Does the \$150,000.00 threshold requirement for Credit Grantor Notification only apply to revenue from South Carolina transactions?

A: No. If your business extends credit in multiple states, then you are to include all annual gross business volume and/or sales regardless of what state the revenue came from. As an easy guide, you should refer to your Federal Income Tax Return. If the “total income” reported to the federal government is over \$150,000.00 and you use written agreements to extend credit in South Carolina, then you are required to file the [Credit Grantor Notification](#).

Q11: Can I charge the new electronic titling and registration fees to a consumer in addition to the closing fee I have filed with the Department of Consumer Affairs?

A: No, the electronic titling and registration fees must be included in the closing fee if you intend to pass the cost to the consumer. The Department will presume that the titling and registration costs are already included in closing fees of \$225 or less. However, if the fee is over \$225, then all administrative costs and expenses including the new titling and registration fees must be itemized so that the Department can make its determination for “reasonableness.”

Q12: When I file for my renewal for my closing fee, can I use the estimated expense for the CVR fees, since I didn't have the fees this year but will have them the full year next year?

A: The Department cautions against using estimated fees to justify charging a closing fee over \$225.00 but does not necessarily prohibit dealers from doing so. Every application to charge over \$225.00 is reviewed on a case-by-case basis. Even if the Department permits a fee over \$225.00, it may audit the dealer's books, accounts, and records to verify the information relied upon for the calculation of the closing fee. If the dealer has overestimated the fees, the Department could require refunds to consumers if it is found that the dealer did not actually incur the estimated expenses.

Q13: Can a dealer request an increase in their closing fee during renewal?

A: A motor vehicle dealer can file for an increase in closing fee at any time during the year. However, a dealer is only authorized to charge up to the amount that was most recently permitted by the Department while any renewal or request for increase is in process.

Q14: Where can I find information on repossessions?

A: The Department publishes its [SCDCA's Guide for Auto Dealers](#). It provides an overview of the various consumer protection laws and assistance to auto dealers in complying with those laws. Also, [Chapter 5 of the South Carolina Consumer Protection Code](#) provides the remedies available to creditors and sets out the penalties if a creditor does not follow the rules before, during, and after a repossession. As always, specific questions about an individual situation should be addressed to your attorney.