



Indiana Department of Financial Institutions Publishes Advisory Letter on Characterization and Disclosure of E-Lien Fees

August 31st, 2023 | and [Erica A.N. Kramer](#)

On June 30, 2023, the Indiana Department of Financial Institutions published Advisory Letter 2023-01, addressing the permissibility of e-lien fees not payable to the Indiana Bureau of Motor Vehicles. The publication was prompted by the implementation of a mandatory statewide electronic lien and title system. As of July 1, 2023, all lienholders that conduct at least 12 lien transactions a year must use the ELT system, which requires lienholders to use a BMV-approved service provider to process e-liens. These service providers are permitted to pass along the BMV charge for the lien and also to charge for the e-lien service and impose a \$3.00 fee. Indiana law authorizes creditors to pass along all of these charges to consumers.

The DFI takes the position that any e-lien fees charged by the service provider and passed along to the consumer constitute finance charges because the fees are imposed as a condition of the extension of credit. Further, the fees do not meet the definition of an “official fee or tax” under the Indiana Uniform Consumer Credit Code because they are not paid to public officials. Therefore, the fees are not qualifying additional charges, excludable from the credit service charge or the loan finance charge under the IUCCC, and are not excludable from the finance charge under federal Regulation Z.

Accordingly, the DFI concludes that any fees not paid to the BMV as part of the e-lien program are prepaid finance charges, subject to the cap on prepaid finance charges imposed by the IUCCC on non-depository creditors. Prepaid finance charges for consumer credit sales and consumer loans under the IUCCC cannot exceed: (a) \$75 for an amount financed of \$2,000 or less; (b) \$150 for an amount financed greater than \$2,000 but not greater than \$4,000; and (c) \$200 for an amount financed greater than \$4,000. In addition, the fees must be disclosed as finance charges as required by Reg. Z and are part of the disclosed Annual Percentage Rate.

Creditors in Indiana should carefully review their financing documents to ensure that they allow for the proper disclosure of any e-lien fees going forward. Further, if your dealership or financing company already imposes prepaid finance charges at or near the cap, make sure that the e-lien fees are now figuring into those amounts. Finance charges in excess of the cap violate the IUCCC, which can lead to fines and penalties, and are subject to refund.