

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter B. Rules for Credit Access Businesses

The Finance Commission of Texas (commission) adopts amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, 83.4002; and adopts new §83.4003 (repeal and replace), §83.5003, and §83.5004, in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses. In addition, the commission adopts the repeal of §83.3012, §83.4003 (repeal and replace), and §83.4004.

The commission adopts the amendments to §§83.3001, 83.3002, 83.3006, 83.3010, and adopts new §83.4003 without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7525).

The commission adopts the amendments to §83.1002 and §83.4002, and adopts new §83.5003 and §83.5004 with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7525). These changes are being made in order to incorporate suggested comments, as discussed in the following paragraph.

The commission received four written comments on the proposal from the following organizations: the Consumer Service Alliance of Texas; Southwestern & Pacific Specialty Finance, Inc. d/b/a Check 'n Go; Texas Appleseed; and a comment jointly submitted by: Texas Catholic Conference, Texas Appleseed, Christian Life Commission, RAISE Texas, AARP Texas, Texas NAACP, Helping Hands of Belton, and the Center for Public Policy Priorities. The comments included

recommendations relating to definitions, recordkeeping (including a delayed implementation date for new records), and separation between credit access businesses and third-party lenders. One comment was generally supportive of the rules. The commission's response to the four official comments is included after the purpose discussions following each respective rule receiving comments.

In general, the purpose of the adoption regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The adopted amendments include clarifying changes regarding definitions, license applications, and fees. New sections outline examination authority and recordkeeping requirements, including a list of documents that credit access businesses are required to maintain.

Section 83.4003 is being proposed for repeal and replacement with a reorganized rule regarding the review of criminal history. The content of former §83.4004 has been incorporated into new §83.4003. Section 83.3012 concerning provisional licenses has been repealed, as this rule is no longer necessary.

This is the first of two anticipated rule actions for credit access businesses. The agency is concurrently presenting the second action for proposal in this issue of the *Texas Register*, which includes rule amendments

on the following issues: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6165). The commission received no comments in response to that notice.

The individual purposes of the adopted amendments, new rules, and repeals are outlined in the paragraphs to follow.

Section 83.1002 provides general definitions to be used throughout the chapter. The amendments to this section contain definitions for the terms "multiple payment auto title loan," "multiple payment payday loan," "single payment auto title loan," and "single payment payday loan." The agency intends to apply these definitions for purposes of the requirements for recordkeeping (new §83.5004), data reporting (current §83.5001), and disclosures (current §§83.6001 through 83.6008). Two commenters provided recommendations regarding these definitions. One commenter stated: "The definitions should describe the type of credit product, not the mechanism by which a CAB is compensated. . . . In subsections (7) and (8), we recommend inserting 'any' between 'including' and 'fees' in the following phrase: 'fees required under the terms of the transaction, including any fees required to be paid to a credit access business.'" In response to this comment, paragraphs (7) and (8) include the word "any" after "including." The commission believes that it is appropriate for the definitions to provide that a product is a multiple-payment product if the consumer pays the fee to the credit access business in

multiple payments. The consumer enters two separate agreements in connection with a Chapter 393 transaction: an agreement with the credit access business and an agreement with the third-party lender. The disclosure and reporting requirements encompass fees paid in connection with both of these transactions. It would be incorrect to describe a transaction where the consumer must make multiple payments to the credit access business as a "single payment" transaction. The other commenter recommended that the definitions use the word "installment" instead of "multiple payment," because the commenter believed that this would be more consistent with the definition of "deferred presentment transaction" in Texas Finance Code, §393.221(2), which provides that the definition "does not preclude repayment in more than one installment." However, the agency has consistently used the phrases "multiple payment" and "multi-payment" in the rule for consumer disclosures at §83.6007 and the accompanying figures. The commission believes that the phrase "multiple payment" is appropriate for the definitions.

An amendment to §83.3001(2)(A) revises the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §83.3002(1)(A)(iv)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these

concepts to applicants. These amendments will help streamline the licensing process. One commenter expressed concern about these two amendments, stating that they "could enable individuals to cloak shared ownership of a credit access business and a third-party lender." The commission believes that the existing requirement for applicants to disclose the names and addresses of third-party lenders under §83.3002(2)(E), together with the amended rule's requirement at §83.3002(1)(A)(iv)(I) to disclose information about spouses upon request, should be sufficient to address this issue. For this reason, the commission maintains the amendments for this adoption.

Adopted amendments to §83.3006 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. New §83.3006(b) provides that a licensee must notify the OCCC within 30 days of knowledge of the information if the information relates to the names of principal parties or third-party lenders, criminal history, regulatory actions, or court judgments. New §83.3006(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

An amendment to §83.3010(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method

by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

An amendment to §83.3010(g)(1)(B) contains a technical correction for the method of calculating the volume-based portion of the annual assessment fee. Previously, the rule provided that the volume-based fee will not exceed "\$0.03 per each \$1,000 advanced . . . in accordance with the most recent quarterly report filing required by Texas Finance Code, §393.627." However, the total dollar amount of extensions of consumer credit is not part of the information the OCCC currently requests on the quarterly report. Rather, this information is requested on the annual report. For this reason, the adopted amendment specifies that the fee will be based on the most recent annual report under §83.5001. This amendment is intended to provide technical clarification.

Section 83.3012 has been repealed because it is no longer necessary. The agency issued provisional licenses during 2012 (the first year in which credit access businesses were licensed), but no longer issues provisional licenses.

Adopted amendments to §83.4002 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address). The amendments replace former language stating that notice is given upon mailing in a

properly addressed envelope. In response to an official comment, paragraph (2) states that it applies to a "master file e-mail address."

Adopted new §83.4003 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a credit access business license. This section replaces former §83.4003 and §83.4004, which have been repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a credit access business. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a credit access business, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). One commenter suggested that the grounds for denial, suspension, or revocation in this subsection should be expanded, because a violation of Chapter 393 is a criminal violation under Texas Finance Code, §393.501. In particular, the commenter suggested that the subsection should include violations of Texas Finance Code, §393.201(c), which prohibits a credit access business from threatening or pursuing criminal charges against consumers in the absence of criminal conduct. The commission believes that a broader statement of directly related offenses is unnecessary, because the OCCC already has the authority to deny, suspend, or revoke a

license based on violations of Chapter 393 under Texas Finance Code, §393.607 and §393.614. *See also Peek v. Kelley*, 570 S.W.2d 118, 120 (Tex. Civ. App.--Austin 1978, writ ref'd n.r.e.) (holding that a license applicant's violations of the Texas Pawnshop Act demonstrated that the applicant did not "have such character as would warrant the belief that she would operate a pawn business lawfully and fairly within the purposes of the Act"). In addition, new §83.4003(f) allows the OCCC to deny, suspend, or revoke based on any grounds authorized by statute. For these reasons, the commission declines to adopt the suggested change.

Subsection (c)(2) of new §83.4003 contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for

denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Adopted new §83.5003 describes the OCCC's examination authority for credit access businesses. This section implements Texas Finance Code, §393.622(a)(3), which allows the commission to "adopt rules with respect to periodic examination" of credit access businesses by the agency, as well as Texas Finance Code, §393.622(b), which authorizes the commission to "adopt rules . . . to allow the commissioner to review, as part of a periodic examination, any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services." Subsection (a) provides that the OCCC may periodically examine each place of business of a licensee. Subsection (b) requires licensees to allow the OCCC to access their offices and make copies of records. Since the proposal, a technical correction has been made in subsections (a) and (b) to replace "investigate" with "inspect" and "investigated" with "inspected." Subsection (c) provides that the OCCC's examination authority includes the authority to examine third-party lender agreements. Subsections (d) and (e) allow the OCCC to take witness and records statements during an examination, and specifies the requirements of these statements. Unlike the other chapters of the Texas Finance Code that provide examination authority to the OCCC, Chapter 393 does not include express authority to take oaths. For this reason, under subsections (d) and (e), the OCCC may obtain unsworn statements, rather than sworn affidavits. The rule requires an acknowledgment that the statements could be used in an enforcement action in which the licensee is a party.

One commenter requested clarification regarding these amendments, stating: "We seek clarification in the commentary to the final rule that both of the proposed [sic] subsections are permissive, and refusal to give a statement to confer with management and/or counsel will not be deemed a violation of the proposed rule." Regarding records statements, licensees are required to provide the OCCC with access to their files and records, and licensees may not use the failure to provide a records statement as a way of impeding the OCCC's access to records. Regarding witness statements, the OCCC allows licensees to confer with management or counsel before providing a statement. Furthermore, the OCCC has always permitted a person signing a statement to review the statement with management or counsel before signing it. However, licensees should not use this process as a method of impeding an examination, and all witness statements should be provided by a person with personal knowledge of transactions.

Adopted new §83.5004 describes the recordkeeping requirements for credit access businesses. Paragraph (1) requires a transaction register showing the transaction number, the date of the transaction, the last name of the consumer, the total fees payable to the licensee, the total of payments, and the type of transaction. Paragraph (2) outlines the information that must be included in the record of an individual consumer's account. Paragraph (2)(A) identifies the records that must be kept for every transaction, including required disclosures and any agreements with the consumer. In particular, paragraph (2)(A)(viii) requires the transaction file to include complete documentation of any ancillary products (including insurance or an automobile club) offered to the consumer or

purchased by the consumer in connection with the transaction. Regarding this provision, one commenter suggested that the rule include two additional requirements: "1. In the event of an automobile club sale, files should include documentation that the automobile club was sold in compliance with the Texas Finance Code, which permits the product only when it is sold directly by the lender (Tx. Fin. Code §303.203). 2. In the event of any insurance sale, documentation that appropriate licenses were obtained in accordance with the Texas Finance Code and the Texas Insurance Code." Credit access businesses are responsible for ensuring that providers of ancillary products are authorized to do business in Texas and that the products are offered in compliance with applicable laws. However, the commission believes that it is unnecessary for the rule to require additional documentation regarding the provider's authorization to do business. In examinations, the OCCC generally verifies that the providers of any ancillary products are authorized to do business in Texas. This information is usually available on the website of the state agency that regulates the relevant product. For this reason, the commission declines to adopt the suggested change.

Paragraph (2)(B) of new §83.5004 identifies additional records for transactions that the licensee services or collects, including account histories, documentation of repossessed collateral, litigation records, and records of criminal charges. In particular, paragraph (2)(B)(i)(X) requires the licensee to maintain records of refunds of unearned charges for loans that are prepaid in full. Since the proposal, the phrase "or other amounts" has been added to this provision after "interest charges," in order to clarify that the provision applies to

refunds for unearned amounts other than interest charges (e.g., refunds for ancillary products such as credit life insurance). Paragraph (2)(B)(iv)(I) requires the licensee to maintain a vehicle condition report if a report was prepared by the licensee, the licensee's agent, or an independent contractor hired to perform the repossession. One commenter objected to this requirement, stating: "Vehicle condition reports are not a requirement under the Texas Business and Commerce Code. CABs should not be required to maintain copies of reports if they are prepared by third parties." The commenter is correct that vehicle condition reports are not required under Chapter 9 of the Texas Business and Commerce Code. However, the rule requires a licensee to maintain the report only if a report is prepared. The commission believes that this is an appropriate requirement to evidence the fact that any disposition was conducted in a commercially reasonable manner, as required by Texas Business and Commerce Code, §9.607(c) and §9.610. For this reason, the commission declines to adopt the suggested change.

Paragraph (2)(B)(iv)(III)(-f-) of new §83.5004 requires the licensee to maintain an explanation of the calculation of surplus or deficiency. Since the proposal, a technical change has been made to specify that this requirement applies if the explanation is required by Texas Business and Commerce Code, §9.616.

Paragraph (2)(C) of new §83.5004 specifies the time period for maintaining the information in the individual consumer's file, which generally must be kept for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. This provision is intended to ensure

that the licensee keeps transaction records at least until the time specified in applicable statutes of limitations, including the four-year limitations period in Texas Finance Code, §393.505.

Paragraph (3) of new §83.5004 requires a licensee to maintain agreements between the licensee and third-party lenders. Since the proposal, this provision has been amended to specify that the documentation must show the licensee's compliance with Texas Finance Code, §393.001(3). Paragraph (4) requires a licensee to maintain the required in-store fee schedule and notices. Paragraph (5) requires a licensee to maintain online disclosures and copies of web pages used to access online disclosures. Paragraph (6) requires a licensee to maintain advertisements. Paragraph (7) requires a licensee to maintain credit applications and adverse action records for the time period specified in Regulation B, 12 C.F.R. §1002.12(b). Paragraph (8) requires a licensee to maintain an index of transfers, assignments, and sales. Paragraph (9) requires a licensee to maintain an index of litigation, criminal charges, and repossessions. Paragraph (10) requires a licensee to maintain records of its registration and surety bond as a credit services organization. Paragraph (11) requires a licensee to maintain an official correspondence file for communications with the OCC. Paragraph (12) requires a licensee to maintain general business records showing its compliance with applicable laws.

As proposed, the rule action included new §83.5005, which described the requirements for separation between credit access businesses and third-party lenders. The proposed rule was based on Texas Finance Code, §393.001(3), which provides

that a credit services organization's services include obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit "by others." The proposed rule described the general separation requirement for credit access businesses and third-party lenders, explained that the relationship must be consistent with special agency, and prohibited a credit access business from sharing its fee with a third-party lender.

The agency received three official comments regarding the separation requirements in §83.5005. The first commenter recommended that the rule include the following statement: "A licensee may not require the use of specific underwriting criteria by a lender when determining whether to make a loan to a consumer, but a licensee may apply its own underwriting criteria or criteria selected by the third-party lender." The second commenter recommended that the rule further clarify the separation requirement. This commenter recommended that the rule include the following language: "There should be no common ownership, no common directors, no common officers or employees, nor any common ownership, officers, directors or employees with a first degree family relationship." This commenter also recommended that the rule include "in the definition of common ownership, a provision that extends to ownership by family members, such as parents, spouse, siblings, spouses of siblings, children, and other close family relationships."

The third commenter provided a study titled "Pulling Back the Curtain: Shining a Light on Payday and Auto Title Loan Businesses in Texas." The study describes data collected by a public interest law organization regarding relationships

between credit access businesses and third-party lenders. The study concludes that the data shows "limited competition" and "overlapping ownership among CABs and third-party lenders." Based on these conclusions, the study includes the following policy recommendation: "Establish clear and enforceable standards to ensure that CSOs do not evade the requirement that they arrange credit 'by others.' Standards should prohibit any overlap in ownership, officers, or employees between CABs and third-party lenders that service them, including family relationships among the different owners, as well as business partnerships where the same group of individuals own CABs and third-party lenders, evading the spirit of the law."

Proposed new §83.5005 has not been included in this rule adoption. The agency understands that stakeholders have concerns about separation between credit access businesses and third-party lenders, and would like to further study the issue before moving forward with a rule containing guidelines for separation. In the meantime, the agency intends to continue addressing violations of the statutory separation requirement through its authority to enforce Chapter 393.

Regarding adopted new §83.5004, the agency received three official written comments regarding the delayed implementation date. The first commenter requested that "any delayed implementation date for generating new records under this section be kept to an absolute minimum." The second commenter suggested that a delayed implementation of "at least 6 months" due to necessary software adjustments and employee training. The third commenter recommended "a nine month implementation period . . . to allow

CABs to reprogram IT systems and reorganize hard copy records."

As a result of the comments received, the agency believes it appropriate to divide the required records into two categories, one for immediate compliance, and the second with delayed implementation. First, certain records required by §83.5004 should already be maintained by licensees. The first category of records must be kept in accordance with the new rule as of the effective date, which is anticipated to be January 7, 2016. The records in the first category are: the consumer's transaction file described by paragraph (2); the agreements between the licensee and third-party lenders described by paragraph (3); the in-store fee schedule and notices described by paragraph (4); the website and online disclosures described by paragraph (5); the advertisements described by paragraph (6); the adverse action records described by paragraph (7); the registration and surety bond records described by paragraph (10); the official correspondence file described by paragraph (11); and the general business records described by paragraph (12).

Second, certain records required by §83.5004 may need to be created by licensees. This second category of records will have a delayed compliance date of October 1, 2016. The records in the second category are: the transaction register described by paragraph (1); the index of transfers, assignments, and sales described by paragraph (8); and the index of litigation, criminal charges, and repossessions described by paragraph (9).

Regarding the second category, the agency encourages early compliance, so that licensees begin keeping these records as soon as possible. Additionally, if a particular

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licensee currently creates any records in the second category, the licensee should maintain those records as of the effective date. For example, if a licensee presently has an index of litigation, the licensee should maintain that litigation index in accordance with the rule beginning on the anticipated effective date of January 7, 2016.

In sum, records in the first category must be maintained beginning on the anticipated effective date of January 7, 2016. Records in the second category must be maintained beginning October 1, 2016.

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, new §83.5003 and §83.5004 are adopted under Texas Finance Code, §393.622(a)(3), which authorizes the commission to adopt rules regarding periodic examinations of credit access businesses by the OCCC, and under Texas Finance Code, §393.622(b), which authorizes the commission to adopt rules regarding the review of third-party lender agreements.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.1002. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393 have the same meanings as defined in Chapter 393. The following words and terms, when used in this chapter,

will have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Multiple payment auto title loan--
An auto title loan that is not a single payment auto title loan.

(5) Multiple payment payday loan--
A payday loan that is not a single payment payday loan.

(6) [(4)] OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(7) Single payment auto title loan--
An auto title loan for which the entire principal balance, interest, and all fees required under the terms of the transaction, including any fees required to be paid to a credit access business, are due in a single payment.

(8) Single payment payday loan--A payday loan for which the entire principal balance, interest, and all fees required under the terms of the transaction, including any fees required to be paid to a credit access business, are due in a single payment.

§83.3001. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393, have the same meanings as defined in Chapter 393. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Principal party--An adult individual with a substantial relationship to the applicant by ownership of more than 10% of the applicant, or having control of the proposed credit access business of the applicant. The following individuals are principal parties:

(A) a proprietor holding a 100% ownership interest [~~proprietors, including spouses with community property interest~~];

(B) - (H) (No change.)

§83.3002. Filing of New Application.

An application for issuance of a new credit access business license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iii) (No change.)

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of the individual holding a 100% ownership interest in the business and the name of any individual [~~who owns and who is~~] responsible for operating the business. If

requested, the applicant must also disclose the names of the spouses of these individuals. [~~All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.~~]

(II) - (VI) (No change.)

(B) - (E) (No change.)

(2) - (3) (No change.)

§83.3006. Updating Application and Contact Information. [~~Reportable Actions After Application.~~]

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license [~~;~~ ~~must be reported~~] within 10 calendar days after the person has knowledge of the [~~action, fact, or~~] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the names of principal parties;

(2) the names of third-party lender organizations;

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(3) criminal history;

(4) actions by regulatory agencies; or

(5) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§83.3010. Fees.

(a) - (b) (No change.)

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record.]

(d) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each license consisting of:

(A) (No change.)

(B) a volume fee based upon the volume of business that consists of an amount not to exceed \$0.03 per each \$1,000 advanced for license holders whose

operations occur within Texas Finance Code, Chapter 393 in accordance with the most recent annual report required by §83.5001 of this title (relating to Data Reporting Requirements) [quarterly report filing required by Texas Finance Code, §393.627].

(2) - (4) (No change.)

§83.4002 Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §393.613, notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address [upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service].

§83.4003. Denial, Suspension, or Revocation Based on Criminal History.
{{This section has replaced former sections 83.4003 and 83.4004, both of which have been repealed.}}

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.3010 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain

criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates

to the duties and responsibilities of a credit access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing credit access business services involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of

mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the license application;

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §393.614(a)(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a) and §393.614(a).

§83.5003. Examinations.

(a) Examination authority. The OCCC may periodically examine each place of business of a licensee and inspect the licensee's transactions and records, including

books, accounts, papers, and correspondence, to the extent the transactions and records pertain to business regulated under Texas Finance Code, Chapter 393.

(b) Access to records. A licensee must allow the OCCC to examine the licensee's place of business and make a copy of an item that may be inspected under subsection (a) of this section.

(c) Third-party lender agreements. The OCCC's examination authority includes the authority to review all agreements between a licensee and any third-party lender with which the licensee contracts to provide services under Texas Finance Code, Chapter 393.

(d) Witness statements. In connection with an examination, the OCCC may obtain witness statements that pertain to business regulated under Texas Finance Code, Chapter 393. A witness statement must be signed and dated, and must include an acknowledgment that the statement may be introduced in an enforcement action in which the licensee is a party.

(e) Records statements. In connection with an examination, the OCCC may obtain statements regarding records maintained by the licensee that pertain to business regulated under Texas Finance Code, Chapter 393. A records statement must be signed and dated by a witness, and must include acknowledgments of the following:

(1) a statement of the witness's position and duties at the licensee;

(2) a statement that the witness is familiar with the manner in which records

are created and maintained by virtue of duties and responsibilities;

(3) the number of pages of attached records;

(4) a statement that the records are original records or exact duplicates of the original records;

(5) a statement that the records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth;

(6) a statement the records were made by, or from information transmitted by, persons with knowledge of the matters set forth;

(7) a statement that the records were kept in the course of regularly conducted business activity;

(8) a statement that it is the regular practice of the business activity to make the records; and

(9) an acknowledgment that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party.

§83.5004. Files and Records Required.

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and

maintained in accordance with generally accepted accounting principles. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Transaction register. A licensee must maintain a transaction register, or be able to produce this information within a reasonable amount of time. Each record in the register must contain the transaction number, the date of the transaction, the last name of the consumer, the total fees payable to the licensee, the total of payments, and the type of transaction (single payment payday loan, single payment auto title loan, multiple payment payday loan, or multiple payment auto title loan). Each record in the transaction register must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(2) Consumer's transaction file. A licensee must maintain a paper or electronic transaction file for each individual transaction under Texas Finance Code, Chapter 393, or be able to produce this information within a reasonable amount of time. The transaction file must contain documents that show the licensee's compliance with applicable state and federal law, including Texas Finance Code, Chapter 393. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the transaction file if the electronic record can be accessed upon request.

(A) The transaction file must include the following documentation for

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each transaction under Texas Finance Code, Chapter 393:

(i) any agreement between the consumer and the licensee, including the contract described by Texas Finance Code, §393.201, with all provisions required by that section, as well as the notice of cancellation described by Texas Finance Code, §393.202;

(ii) any agreement between the consumer and the lender, including the promissory note;

(iii) documentation referencing which agreements between the licensee and a third-party lender apply to the transaction, including any guarantee or letter of credit issued by the licensee;

(iv) all legally required disclosures provided in connection with the transaction, including:

(I) the consumer disclosure required by Texas Finance Code, §393.223, and §83.6007 of this title (relating to Consumer Disclosures);

(II) the credit services organization disclosure required by Texas Finance Code, §393.105;

(III) any disclosures provided under the Truth in Lending Act, 15 U.S.C. §§1601-1667f, and Regulation Z, 12 C.F.R. Part 1026;

(IV) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 12 C.F.R. Part 1016;

(V) any notice to cosigner provided under the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.3;

(v) the consumer's credit application and any other written or recorded information used in evaluating the application;

(vi) any document signed by a co-borrower, co-signor, or other guarantor in connection with the transaction;

(vii) any documentation of whether the consumer is a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. Part 232, including the identification of covered borrower described by 32 C.F.R. §232.5;

(viii) complete documentation of any ancillary products (including insurance or an automobile club) offered to the consumer or purchased by the consumer in connection with the transaction;

(ix) complete documentation of all payments made by or to the licensee during the transaction and all payments made by or to the third-party lender at the inception of the transaction (including the amount of each payment, the source of each payment, and the recipient of each payment);

(x) any other documentation created or obtained by the licensee in connection with the transaction.

(B) The transaction file must include the following documentation if the licensee services or collects a loan in connection with a transaction under Texas Finance Code, Chapter 393, or if the

licensee otherwise obtains this documentation in the course of business:

(i) Consumer's account record. The licensee must maintain an account record containing at least the following information:

(I) loan number or another unique number identifying the transaction;

(II) loan schedule and terms itemized to show the number of installments and the due date and amount of each installment, including installments payable to the licensee;

(III) name, address, and telephone number of consumer;

(IV) names and addresses of co-borrowers, if any;

(V) principal balance;

(VI) total interest charges;

(VII) all fees paid to the licensee;

(VIII) amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(IX) individual payment entries for all payments described by subparagraph (A)(ix) of this paragraph, and any other payments made by the consumer during the transaction, itemized to show the date payment was received (dual postings are acceptable if date of posting is other than date of receipt), actual amounts received for

application to due amounts, and actual amounts paid for default, deferment, or other authorized charges;

(X) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to consumers, with refund amounts itemized to show interest charges or other amounts refunded;

(XI) collection contact history, including a written or electronic record of each contact made by a licensee with the consumer or any other person and each contact made by the consumer with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(XII) corrective entries to the consumer's account record, if justified, including the reason and supporting documentation for each corrective entry.

(ii) Payday loan records. For a payday loan, the transaction file must include documentation relating to the personal check or authorization to debit a deposit account accepted in connection with the loan.

(iii) Auto title loan records. For an auto title loan, the transaction file must include all documentation relating to the attachment and perfection of a security interest in the motor vehicle, including any of the following documentation obtained by the licensee:

(I) the security agreement;

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(II) if obtained by the licensee or the third-party lender, the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(III) if executed by the licensee or the third-party lender, an application for certificate of title (Texas Department of Motor Vehicles Form 130-U for Texas vehicles);

(IV) if obtained by the licensee or the third-party lender, a title application receipt (Texas Department of Motor Vehicles Form VTR-500-RTS for Texas vehicles), or a similar document evidencing the filing of the application for certificate of title and payment of required fees and taxes.

(iv) Repossession records. The transaction file must include complete documentation of any repossession initiated by the licensee, including:

(I) any condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(II) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the consumer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(III) for a vehicle disposed of in a public or private sale as permitted by the Texas Business and

Commerce Code, §9.610, the following documents:

(-a-) one of the following notices:

(-1-) a copy of the notification of disposition as sent to the consumer and other obligors as required by Texas Business and Commerce Code, §9.614; or

(-2-) a copy of the waiver of the notice of intended disposition prescribed by subitem (-1-) of this item, as applicable, signed by the consumer and other obligors after default;

(-b-) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer-only auction, internet sale, or other type of private disposition;

(-c-) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(-d-) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(-e-) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the

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consumer or other person entitled to the surplus;

(-f-) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency, if required by Texas Business and Commerce Code, §9.616;

(-g-) a copy of the waiver of the deficiency letter if the licensee elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(IV) for a vehicle disposed of using the strict foreclosure method permitted by the Texas Business and Commerce Code, §9.620 and §9.621, the following documents:

(-a-) one of the two following notices:

(-1-) a copy of the proposal to accept collateral in full satisfaction of the obligation; or

(-2-) for a transaction where 60% or more of the principal balance has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the consumer and other obligors after default;

(-b-) for a transaction where the consumer rejects the offer under item (-a-)(-1-) or (-2-) of this subclause, a copy of the consumer's signed objection to retention of the collateral;

(-c-) copies of the records reflecting the total satisfaction of the obligation.

(v) Litigation records. The transaction file must include complete documentation of any litigation filed by a licensee against a consumer, or by a consumer against the licensee, including all pleadings, the terms of settlement (if a settlement was entered), documentation of any mediation or arbitration, the final judgment (if the court entered a final judgment), and records of all payments received after judgment, properly identified and applied. If the licensee maintains the complete documentation of litigation at a centralized location other than the licensed location or branch office, then the licensee's transaction file may include a written summary of the status of the litigation, rather than complete documentation of the litigation. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(vi) Criminal charge records. The transaction file must include complete documentation of any criminal charge or complaint filed by a licensee against a consumer, showing the licensee's compliance with Texas Finance Code, §393.201(c)(3). This must include any written evidence of criminal conduct, a written summary of any oral statement submitted to law enforcement, any police report, and any court records obtained by the licensee.

(vii) Claim records for insurance or ancillary products. The transaction file must include complete documentation of any claims or disbursement of money related to insurance or another ancillary product provided in connection with the transaction.

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(viii) Transfer records. The transaction file must include transfer, assignment, or sale records for any loan transferred, assigned, or sold to or from another person.

(C) The transaction file and its contents must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. However, this retention period does not apply to the credit services organization disclosure required by Texas Finance Code, §393.105, which must be kept for two years from the date on which it is provided to the consumer, as provided by Texas Finance Code, §393.106.

(3) Agreements between licensee and third-party lender. A licensee must maintain all documentation of its current agreements with third-party lenders, including copies of the agreement, any guarantees or letters of credit, and underwriting guidelines issued by the lender. The documentation must show the licensee's compliance with Texas Finance Code, §393.001(3). The licensee may maintain this documentation at a centralized location other than the licensed location or branch office if the agreements apply to multiple locations. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it. If an agreement terminates, documentation of the agreement must be maintained until the latest of:

(A) four years from the date of the last consumer transaction subject to the agreement;

(B) two years from the date of the final entry made on the consumer's account in the last consumer transaction subject to the agreement;

(C) one year from the date of termination of the agreement; or

(D) the OCCC's next examination of the licensee (if the documentation is maintained at a centralized location, this refers to the next examination of the centralized location).

(4) In-store fee schedule and notices. The in-store fee schedule and notices required by Texas Finance Code, §393.222(a), and §83.6003(a) of this title must be available for inspection by the OCCC in a conspicuous location visible to the general public. If a licensee amends the in-store fee schedule or notices, it must maintain documentation of the previous versions of the schedule or notices for one year from the date of amendment or until the next examination by OCCC staff, whichever is later. The licensee may maintain the documentation of previous in-store fee schedules and notices at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(5) Website and online disclosures. If a licensee maintains a website, it must make the website available to the OCCC for inspection. The website must include a fee schedule to show the licensee's compliance

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with §83.6003(b) of this title, and applicable consumer disclosures to show the licensee's compliance with §83.6007(f) of this title. If a licensee amends the website's fee schedule, consumer disclosures, or method of accessing the fee schedule or consumer disclosures, the licensee must maintain documentation of the previous version of the website to show compliance with §83.6003(b) of this title and §83.6007(f) of this title. This must include the home page, any pages used in accessing the fee schedule and disclosures, and copies of the previously used fee schedule and disclosures. The licensee must maintain this documentation for one year from the date of amendment or until the next examination by OCCC staff, whichever is later. This paragraph does not require a licensee to maintain previously used pages of the website that were not the home page or pages used in accessing the fee schedule and consumer disclosures. The licensee may maintain the documentation of previous versions of the website at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(6) Advertisements. A licensee must maintain advertising and solicitation records, including examples of all written and electronic communications soliciting transactions (including advertisements at the place of business, scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for one year from the date of use or until the next examination by OCCC

staff, whichever is later. If any language other than English is used in any advertising material, a true and correct translation must be maintained along with the advertising material. The licensee may maintain the documentation of advertising at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(7) Adverse action records. Each licensee must maintain adverse action records for all applications relating to Texas Finance Code, Chapter 393 transactions. Adverse action records must be maintained according to the record retention requirements in Regulation B, 12 C.F.R. §1002.12(b). The current retention period is 25 months for consumer credit. These records include the loan application, any written or recorded information used in evaluating the application, the adverse action notice (if required), the notice of incompleteness (if applicable), and counteroffer notice (if applicable).

(8) Index of transfers, assignments, and sales. The licensee must maintain (or be able to produce within a reasonable period of time) an index of all loans transferred, assigned, or sold to or from another person, including a third-party lender, or to a different location of the licensee. Each record in the index must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is

later. (For transfers from the licensee, the date of transfer is the date of the final entry.)

(9) Index of litigation, criminal charges, and repossessions. A licensee must maintain (or be able to produce within a reasonable period of time) an index of each litigation action and criminal charge filed by or against the licensee, as well as each repossession initiated by the licensee. The index must show the consumer's name, account number, and date of action. Each record in the index must be retained for a period of four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(10) Registration and surety bond records. A licensee must maintain documentation of its registration as a credit services organization with the Texas Secretary of State, including its registration statement and registration certificate, to show its compliance with Texas Finance Code, §393.101. A licensee must maintain complete documentation of any surety bond obtained by the licensee under Texas Finance Code, §393.401, and any surety bond required by the OCCC under Texas Finance Code, §393.605. If a registration or surety bond terminates, the licensee must maintain the documentation for one year after the date of termination or until the next examination by OCCC staff, whichever is later.

(11) Official correspondence file. A licensee must maintain an official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC (including quarterly and annual reports), examination reports issued by the OCCC, and notices of relocation described

by §83.3008 of this title (relating to Relocation of Licensed Office).

(12) General business records. A licensee must maintain any other business records showing its compliance with applicable law, including accounting records showing that the licensee maintains net assets required by Texas Finance Code, §393.611, records used to compile quarterly and annual reports, records of disbursement of funds between the licensee and third-party lenders, receipts, bank statements, and any master insurance policies.

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 18, 2015.

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