

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 1. Consumer Credit Regulation
§1.201. Official Interpretations and Advisory Letters

The Finance Commission of Texas (commission) adopts amendments to §1.201, concerning Interpretations and Advisory Letters.

The commission adopts the amendments without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3032).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 1, Chapter 1 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1980). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted changes provide clarification, improved grammar, better readability, and technical corrections. The purposes of amendments to individual subsections are provided in the following paragraphs.

In subsection (a), the adoption includes a new definition of the term "advisory letter." The definition identifies certain documents that are not advisory letters, such as official interpretations, advisory bulletins, and letters sent in connection with an examination or license application.

In subsection (a), the adoption also amends the definition of "interpretation" to use the term "official interpretation." This reflects the agency's convention of referring to interpretations issued under Texas Finance Code, §14.108 as "official interpretations," and helps avoid confusion with other types of statements that the agency issues. Subsections (a), (b), and (c) contain conforming changes to replace "interpretation" with "official interpretation," and to improve readability and clarity.

In subsection (d), the adoption includes new text for the notice that appears on advisory letters interpreting Texas Finance Code, Title 4, Subtitle A or B. The new text is intended to improve readability and clarity.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to propose rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. In addition, the adopted amendment to subsection (b)(4) is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§1.201. *Official Interpretations and Advisory Letters.*

(a) Definitions. The following words and terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) Advisory letter--A letter by the commissioner or an OCCC employee providing an informal advisory response to a question concerning a provision of law. The term does not include:

(A) an official interpretation;

(B) an advisory bulletin addressed to a body of stakeholders;

(C) instructions for submitting required information to the OCCC (e.g., annual report instructions);

(D) a report or study provided to the Texas Legislature or the Finance Commission of Texas; or

(E) a letter sent in connection with an examination, investigation, license or registration application, complaint, or enforcement action.

~~[(1) Advisory letter--A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of Texas Finance Code, Title 4, Subtitle A or B, and is not an interpretation as defined in paragraph (4) of this subsection.]~~

(2) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(3) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(4) Official interpretation ~~[Interpretation]~~--A letter issued by the commissioner and approved by the Finance Commission of Texas under ~~[pursuant to]~~ Texas Finance Code, §14.108 interpreting a provision of Texas Finance Code, Title 4, Subtitle A or B in light of ~~[certain]~~ relevant facts provided by a ~~[the]~~ requestor.

(b) Required information for official interpretation request. Any person may submit a request for an official interpretation. All requests must be directed to the commissioner and contain the following items:

(1) Statement requesting official interpretation. The requestor must state explicitly ~~[An explicit statement]~~ that an official interpretation approved by the Finance Commission of Texas is desired.

(2) Description of transaction, facts, and legal issues. The requestor must provide a ~~[A]~~ concise description of the contemplated transaction or activity ~~[contemplated]~~, the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) Pending litigation. The requestor must state ~~[A statement]~~ whether, to the best of the requestor's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will ordinarily not be answered.

(4) Fee. The agency will charge a \$500 fee ~~[A fee of \$500 will be charged]~~ for an official interpretation to compensate the agency for the expense involved in researching and answering the request. The

requestor should submit the payment of \$500 ~~[should be submitted]~~ with the request. The agency may ~~[determine and]~~ remit a partial or full refund if deemed appropriate ~~[applicable]~~. The agency may waive the fee.

(5) Additional information. The [A] requestor should ~~[also]~~ identify each provision of law involved, state ~~[and indicate]~~ the requestor's opinion of how the legal issues should be resolved, and state the basis for that opinion, including an analysis of any relevant court decisions or related official interpretations ~~[, as well as, all prior interpretations to which the request relates]~~.

(c) Processing an official interpretation ~~[of]~~ request. Within 10 business days of receiving [receipt of] a valid request under subsection (b), the agency will file [pursuant to this subsection,] the request ~~[will be filed]~~ with the Texas Register for publication. Within 31 calendar days of [Upon] publication in the *Texas Register*, any person [party] may ~~[within 31 calendar days]~~ submit briefs or proposals pertaining to the request.

(1) Official interpretation ~~[interpretation]~~ not issued. After publication of a valid request for an official interpretation, the agency may decline to issue an official interpretation. A summary of the agency's reasons for deciding not to issue an official interpretation will be published in the *Texas Register*.

(2) Approved official interpretation. If the agency drafts an official interpretation, then the agency will present the official interpretation ~~[The agency may draft an interpretation or a response and present it]~~ to the Finance Commission of Texas for approval ~~[consideration]~~. If the Finance Commission approves the official interpretation, then within ~~[Within]~~ 10 business days of the approval ~~[of an interpretation by the Finance Commission of~~

~~Texas], the agency will file a summary of the official interpretation [will be filed]~~ with the Texas Register for publication. Copies of official interpretations will ~~[shall]~~ contain a statement ~~[notation]~~ of approval and the date of action by the Finance Commission ~~[of Texas]~~.

(d) OCCC advisory letters. If the OCCC sends an advisory letter concerning a provision of Texas Finance Code, Title 4, Subtitle A or B, then the advisory letter will include the following statement: "This advisory letter is not an official interpretation approved by the Finance Commission of Texas. The requirements for requesting an official interpretation are in Title 7, Section 1.201(b) of the Texas Administrative Code." ~~[Each advisory letter issued by the OCCC must contain the following notation: "This advisory letter is not an interpretation approved by the Finance Commission of Texas pursuant to Texas Finance Code, §14.108. If an interpretation approved by the Finance Commission of Texas is desired, then an interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code, §1.201(b)."]~~

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 June 10, 2016.

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