

*Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 87. Tax Refund Anticipation Loans
§§87.102 - 87.105, 87.107, & 87.201*

The Finance Commission of Texas (commission) adopts amendments and a new rule in 7 TAC, Chapter 87, concerning Tax Refund Anticipation Loans. The commission adopts amendments to §§87.102 - 87.105, and 87.107; and adopts new §87.201.

The commission adopts the amendments and new rule without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4551).

The commission received no written comments on the proposal.

In general, the purpose of the revisions to these rules for tax refund anticipation loan facilitators is to implement changes resulting from the commission's review of Chapter 87 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 87 was published in the *Texas Register* on May 6, 2016 (41 TexReg 3317). The agency did not receive any comments on the notice of intention to review.

The agency circulated an early draft of proposed changes to interested stakeholders and then held a stakeholders meeting, including online participation. The agency believes that early participation by stakeholders in the rulemaking process results in more informed and balanced proposals.

The rule changes clarify the term of registration, require that registrants maintain current contact information, implement a statutory late filing fee, and add a required notice that registrants must provide to

consumers explaining how they can file a complaint with the agency.

The individual purposes of the amendments to each rule and of the new rule are provided in the following paragraphs.

Adopted amendments to §87.102(a) remove unnecessary language and add a reference to the agency's name and acronym, Office of Consumer Credit Commissioner (OCCC). The agency believes that the use of "OCCC" provides better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Corresponding changes to further the use of this terminology are included throughout Chapter 87. The following provisions contain adopted amendments to replace the use of "commissioner" or "commissioner's" with a reference to the OCCC: §87.103(a)(1) and §87.104.

Adopted new §87.103(b) explains that an applicant may apply for a registration for the current year or a registration for the following year. Subsection (b) also specifies the effective period of a registration. Although the existing rules in Chapter 87 specify requirements for renewing a registration, they did not specify when the registration is effective or when it expires. Subsection (b) conforms to the agency's current practices and is intended to provide clarity on the effective period of registration.

Adopted new §87.103(c) explains that applicants and registrants must keep their

contact information up-to-date. This provision is intended to ensure that the agency can contact registrants, so that the agency can carry out its responsibility to monitor facilitators and ensure compliance, as provided by Texas Finance Code, §352.005.

Adopted amendments to §87.105(a)-(c) amend the text to provide clarity and consistency. In particular, an amendment to subsection (c) replaces the term "Annual Assessments" with "Renewals," to ensure consistency with other rules in Chapter 87.

Adopted new §87.105(d) specifies that a facilitator must pay a \$250 late filing fee if the facilitator: 1) obtains a new registration after engaging in business as a facilitator (i.e., engages in unregistered activity), or 2) renews a registration for the current year after January 30. This requirement is based on Texas Finance Code, §349.302, which provides a late filing fee of \$250 for obtaining a late registration with the OCCC. Subsection (d) is intended to provide clarity regarding the amount of the late filing fee and the situations where it is required.

Adopted amendments to §87.107(a) conform to other amendments in the adoption. The former December 1 renewal deadline is replaced with a requirement to pay any late filing fee required by §87.105(d). This means that if a facilitator renews a registration for the current year after January 30, the facilitator must pay a \$250 late filing fee in order to renew. The amendments to subsection (a) are intended to clarify renewal requirements and ensure consistency with Texas Finance Code, §349.302.

Adopted new §87.107(b) specifies that a facilitator may not renew a registration that has been expired for more than one year, and that if a registration has been expired for more

than one year, the facilitator must apply for a new registration. This provision is intended to clarify renewal requirements and ensure consistency with other amendments to the rules.

Adopted new §87.201 requires facilitators to provide a notice explaining how consumers can file a complaint with the OCCC. Subsection (a) describes the content of the OCCC notice, which includes the facilitator's contact information and the OCCC's contact information. Subsection (b) explains that the OCCC notice must be provided on either the privacy notice or the written disclosure of fees required under Texas Finance Code, §352.004. This requirement is based on Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices. Because refund anticipation loan facilitators perform tax preparation services, they are required to provide privacy notices to consumers under federal law, as provided by Regulation P, 12 C.F.R. §§1016.3(l)(3)(ii)(H), 1016.3(s)(1), 1016.4(a).

The OCCC believes that new §87.201 is necessary so that consumers and creditors will have the most current contact information for the OCCC, as well as readily available information for consumers explaining how they can file a complaint with the OCCC. Registrants are afforded multiple ways to comply with the new rule: 1) add the OCCC notice to the current federal privacy notice in the box for "Other important information"; 2) add the OCCC notice to the registrant's existing disclosure form under Texas Finance Code, §352.004; or 3) provide the OCCC notice on a new page that is part of one of these two forms.

As stated in the proposal, the OCCC wishes to help registrants minimize potential costs with a delayed implementation date of January 1, 2017, for new §87.201. Accordingly, the agency will allow registrants to continue the use of current forms through December 31, 2016. Starting January 1, 2017, registrants must comply with new §87.201 by adding the OCCC notice to either their existing privacy notice or existing written disclosure provided to consumers.

The delayed implementation date applies only to new §87.201. Thus, the amendments to §§87.102-87.105 and 87.107 will be implemented immediately upon the effective date of these rules, which is anticipated to be on or around September 8, 2016.

The rule changes are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. The rule changes are also adopted under Texas Finance Code, §352.003, which authorizes the commission to prescribe procedures for the registration of tax refund anticipation loan facilitators. New §87.201 is adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 352.

Subchapter A. Registration Procedures

§87.102. Filing of New Application.

(a) New application. An application for issuance of a new tax refund anticipation loan facilitator registration must be submitted [as

~~prescribed by the commissioner at the date of filing—and] in accordance with the [commissioner's] instructions of the Office of Consumer Credit Commissioner (OCCC).~~

(b) Required information. The application must include the following required information. All questions must be answered.

(1) Application for Registration of Tax Refund Anticipation Loan Facilitator.

(A) Each location in this state at which e-file providers authorized by the Internal Revenue Service file tax returns on behalf of borrowers for whom the facilitator acts to allow the making of a tax refund anticipation loan must be separately registered.

(B) The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(2) Assumed names. For any applicant that does business under an assumed name as that term is defined in Texas Business and Commerce Code, §71.002, the applicant must provide all assumed names used.

§87.103. Completion [Processing] of Application and Effective Period of Registration.

(a) Complete application. An application is complete when it:

(1) conforms to the rules and the [commissioner's] published instructions of the Office of Consumer Credit Commissioner (OCCC);

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(b) Effective period. An applicant may apply for a registration for the current year or a registration for the following year.

(1) A registration for the current year is effective beginning on the date the application is complete, and expires on December 31 of the current year.

(2) A registration for the following year is effective beginning on January 1 of the following year, and expires on December 31 of the following year.

(c) Contact information. Each applicant or registrant 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 registrants to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§87.104. Relocation of Registered Location.

A registered tax refund anticipation loan facilitator may move the business office from the registered location to any other location by giving notice of intended relocation to the Office of Consumer Credit Commissioner (OCCC) [~~commissioner~~]. The notice must include the present address of the registered location, the contemplated new address of the registered location, and the approximate date of relocation.

§87.105. Fees.

(a) New registrations. For a new registration, the applicant must pay a [A] \$50 nonrefundable [non-refundable] fee for each

registered location [is assessed each time an application for a new registration under this chapter is filed].

(b) Registration amendments. A registered facilitator must pay a fee of \$25 to amend [must be paid each time a registered facilitator amends] a registration by changing the assumed name of the registrant or relocating an office.

(c) Renewals. For a renewal, the registered facilitator must pay an [Annual assessments. An] annual fixed fee of \$50 [is required] for each registered [tax refund anticipation loan] location.

(d) Late filing fee. As provided by Texas Finance Code, §349.302(b), a facilitator must pay a \$250 late filing fee for each registered location if the facilitator:

(1) obtains a new registration after the facilitator has begun engaging in business as a facilitator; or

(2) obtains a renewal for the current year after January 30.

§87.107. Annual Renewal.

(a) Renewal requirements. A [Not later than December 1, a] registered tax refund anticipation loan facilitator may renew its registration by providing the following:

(1) the renewal fees required by §87.105(c) of this title (relating to Fees); [and]

(2) any late filing fees required by §87.105(d) of this title; and

(3) any other information required by the commissioner.

(b) Expiration. A facilitator may not renew a registration that has been expired for more than one year. If a facilitator's registration has been expired for more than one year, then the facilitator must apply for a new registration under §87.102 of this title (relating to Filing of New Application) in order to obtain a registration.

Subchapter B. Disclosures

§87.201. OCCC Notice.

(a) Required notice. A refund anticipation loan facilitator must provide the following notice to each consumer: "For questions or complaints about this transaction, contact the loan facilitator, (insert name of facilitator), at (insert facilitator's phone number and, at facilitator's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to the facilitator. If a complaint or question cannot be resolved by contacting the facilitator, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov."

(b) Location of notice. A facilitator must provide the notice described by subsection (a) by one or both of the following methods:

(1) including the notice on each privacy notice that the facilitator is required to provide to a consumer under state or federal law; or

(2) including the notice on each written disclosure that the facilitator is

required to provide to a borrower under Texas Finance Code, §352.004.

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 August 19, 2016.

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