

*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter A. Rules for Regulated Lenders*

The Finance Commission of Texas (commission) adopts amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; adopts new §83.303 and §83.404; and adopts the repeal of §§83.303, 83.404, and 83.405 in 7 TAC, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The commission adopts the amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; and the repeals of §§83.303, 83.404, and 83.405 without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4543).

The commission adopts new §83.303 and §83.404 with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4543). The changes are a result of technical corrections to citations.

The commission received no written comments on the proposal.

In general, the purpose of the rule changes in 7 TAC, Chapter 83, Subchapter A is to update rules regarding the licensing of regulated lenders, and to make technical corrections. The adopted rule changes relate to the following issues: contact information, transfers, criminal history review, definitions, and recordkeeping. Additionally, certain sections are being repealed in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders.

The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received one informal written precomment. Certain concepts recommended by the precommenter were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the adopted changes to each section are provided in the following paragraphs.

In Section 83.102(3), the definition of "amount financed" has been replaced with a reference to Regulation Z, 12 C.F.R. §1026.18(b). The rule previously contained a specific definition of "amount financed" that applies only to rule provisions on computing earnings, deferments, maximum charges, and refunds of unearned interest. The current rules on these issues do not use the term "amount financed," so the specific definition is unnecessary. However, other rules throughout Chapter 83 use the term "amount financed" to refer to the amount calculated under Regulation Z. For this reason, the amendment replaces the former definition with a reference to Regulation Z.

An adopted change to §83.301(2)(A) amends 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 §83.302(1)(B)(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 help streamline the licensing process and reduce regulatory burden. The amendments also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §83.302(1)(E)-(F).

Section 83.303 is being repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Section 83.303 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the current rule, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the current rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity. The precommenter recommended that this definition specify that a transfer of ownership does not include a relocation of

regulated transactions from one licensed location to another. Relocations of regulated transactions are governed by current §83.308(c), which requires licensees to notify debtors that the transactions have been relocated. In response to this recommendation, §83.303(b)(3) as adopted states that a transfer of ownership does not include a relocation of regulated transactions from one licensed location to another licensed location.

Section 83.303(c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163.

Since the proposal, a change has been made to §83.303(c) in order to provide the correct citation to the Texas Finance Code relating to the transfer or assignment of a license.

Section 83.303(d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing regulated lender license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final

approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible. In this subsection, the precommenter made the following recommendations. First, the precommenter recommended against using the phrase "joint and several responsibility," because the precommenter believes that this phrase could lead to confusion. Second, the precommenter recommended against drafting the subsection's paragraphs so that they overlap with each other. Third, the precommenter recommended that this subsection consist of two paragraphs (one for the transferor's responsibility and one for the transferee's responsibility), for the sake of clarity. In response to these recommendations, the three paragraphs in subsection (h) apply to three distinct periods of time: (1) the period before the transferee begins conducting business (when the transferor is responsible), (2) the period after the transferee begins conducting business and before final approval of the application (when the transferor and transferee are each responsible), and (3) the period after final approval (when the transferee is responsible). For the second period, subsection (h)(2) specifies that the transferor and transferee are each responsible. The agency believes that it is appropriate for the rule to specify that the transferor and

transferee are each responsible during this period, which includes any activity performed by the transferee under a permission to operate. In this way, the rule helps ensure that licensees are aware of their responsibilities. The new rule's statement that the transferor is responsible for acts performed during a permission to operate is consistent with the former rule at §83.303(d), which stated: "The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the lending business." The permission to operate is a temporary authorization allowing a transferee to operate under a transferor's license while the transferee's application is pending. The OCCC allows the permission-to-operate procedure in order to accommodate transferees that wish to begin doing business after a routine transfer of ownership but before approval of a license application. The alternative would be to prohibit the transferee from engaging in business until after the license application is approved. If a transferor wishes to protect itself from responsibility for the transferee's acts, then the transferor can delay the transfer of ownership until the transferee's application is approved. Alternatively, the transferor can enter an indemnification agreement with the transferee, under which the transferee must reimburse the transferor for losses resulting from the transferee's acts.

In §83.304, concerning Change in Form or Proportionate Ownership, conforming changes have been made corresponding to adopted new §83.303. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership.

Adopted amendments to §83.306 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 §83.306(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. New §83.306(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 adopted amendment to §83.310(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. Additional amendments to §83.310(d) conform the rule to new §83.303 and add numbered paragraphs for clarity.

Adopted amendments to §83.403 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).

Adopted new §83.404 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 regulated lender license. This section replaces former §83.404 and §83.405, which are being 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 regulated lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a regulated lender, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) 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, §342.104(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment

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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).

§83.404(f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Since the proposal, a change has been made to §83.404(f)(2) in order to provide a more complete citation to the Texas Code of Criminal Procedure. As the cited provision is being relocated, the revision includes citations for both the current location and the location effective on January 1, 2017.

An adopted amendment to the recordkeeping rule in §83.828(10)(A) lists documentation and disclosures required under the Department of Defense's Military Lending Act Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the rule have a required compliance date of October 3, 2016. Under the amended Military Lending Act Rule, lenders will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended rule also specifies documentation that lenders can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. The adopted amendments to §83.828(10)(A) specify that licensees are required to maintain these documents and disclosures in the individual borrower's loan file. This file must be maintained for four years from the date of the loan, or two years from the date of the final account entry, whichever is later, under current §83.828(14). However, licensees may keep the documents for a longer period of time if they choose. Additionally, an

amendments to the recordkeeping rule in §83.828(10)(C) update a reference to the Texas Department of Public Safety "Driver's Crash Report" form and correct a typographical error.

The rule changes are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

*§83.102. Definitions.*

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342 have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) Amount financed--The amount calculated in accordance with Regulation Z, 12 C.F.R. §1026.18(b). ~~[of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. This definition is only applicable for the purposes of this subchapter for~~

~~computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be synonymous with the similar term that is used in the Truth in Lending Act (15 U.S.C. §§1601—1667f).]~~

(4) - (30) (No change.)

*§83.301. Definitions.*

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, 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 proposed lending business of the applicant. The following individuals are principal parties:

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

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

*§83.302. Filing of New Application.*

An application for issuance of a new regulated loan 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) (No change.)

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose the name of any individual holding an 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.)

(C) - (K) (No change.)

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

*§83.303. Transfer of License; New License Application on Transfer of Ownership. **{{This section replaces former section 83.303, which is being repealed.}}***

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

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(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a regulated loan license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of regulated transactions from one licensed location to another licensed location, as described by §83.308(c) of this title (relating to Relocation). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No regulated loan license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163. A license transfer is approved when the OCCC issues

its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a regulated loan license at the time of the application, then the application must include the information required for new license applications under §83.302 of this title (relating to Filing of New Application). The instructions in §83.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a regulated loan license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.302 of this title. The instructions in §83.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.302 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a regulated lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the

application, then the transferee has a right to a hearing on the denial, as provided by §83.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing regulated lender activity under a license, the transferor is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing regulated lender activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e), the transferee is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

*§83.304. Change in Form or Proportionate Ownership.*

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the

filing of a license transfer application or a new license application on transfer of ownership pursuant to §83.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §83.310 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the OCCC in writing of the change in proportionate ownership. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §83.303 of this title.

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(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §83.303 of this title.

§83.306. 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) criminal history;
- (3) actions by regulatory agencies; or
- (4) 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.

§83.310. 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.

(d) [~~e~~] License amendments. A fee of \$25 must be paid each time a licensee amends a license by:

(1) inactivating a license; [;]

(2) activating an inactive license; [;]

(3) changing the assumed name of the licensee; [;]

(4) changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not result in a transfer of ownership described by §83.303(b)(3) of this title (relating to Transfer of License; New Application on Transfer of Ownership; [does not require a transfer under §83.303(a)(4) or (5) of this title (relating to Transfer of License) or §83.304(c)(2) of this title (relating to Change in Form or Proportionate Ownership);]

(5) providing notification of a new parent entity; [;] or

(6) relocating an office.

(e) [~~(f)~~] License duplicates sent by mail. The fee for a license duplicate to be sent by mail is \$10.

(f) [~~(g)~~] Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §83.307(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

(g) [~~(h)~~] Annual renewal and assessment fees.

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

*§83.403. Notice of Delinquency in Payment of Annual Assessment Fee.*

For purposes of Texas Finance Code, §342.155, and §83.309(d) of this title (relating to License Status), 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. [~~delinquency notice is sent to the licensee at the email or mailing address on file with the OCCC.]~~

*§83.404. Denial, Suspension, or Revocation Based on Criminal History.* **{{This section replaces sections 83.404 and 83.405, both of which are being repealed.}}**

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.310 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,

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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 or are current.

(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 licensee under Texas Finance Code, Chapter 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 involves or may involve making representations to consumers regarding the terms of the loan, 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, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(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, §342.104(a)(1). 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

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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 (effective through December 31, 2016), art. 42A.054 (effective January 1, 2017), 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, §342.156(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, §342.104(a)(1) and §342.156.

§83.828. *Files and Records Required (Subchapter E and F Lenders).*

(1) - (9) (No change.)

(10) Loan records and documents file.

(A) Generally. A licensee must maintain a loan records and documents file for each individual borrower. The loan

records and documents file must contain all necessary records and documents to evidence compliance with applicable state and federal laws and regulations, including the Equal Credit Opportunity Act and the Truth in Lending Act. The loan records and documents file must include copies of the following records or documents:

(i) - (ix) (No change.)

(x) any written or recorded records relating to repossessions, legal actions, or foreclosure actions regarding the borrower or the borrower's collateral securing the loan; ~~and~~

(xi) any record maintained under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.5, regarding whether the borrower is a covered borrower; and

(xii) [~~(xi)~~] any separate disclosures that are required by federal or state law, such as the notice to cosigner required by the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.3, or any mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6.

(B) (No change.)

(C) Supplemental gap waiver agreement records. Each licensee must maintain in the borrower's individual file records supporting the settlements or denials of gap waiver agreement claims reported in the gap w ~~waiver~~ agreement register. The records must include, if applicable:

(i) - (iv) (No change.)

(v) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety "Driver's Crash Report" (Form CR-2) [~~"Driver's Accident Report" (Form ST-2)~~] filed in connection with the total loss of the motor vehicle; and

(vi) (No change.)

(11) - (14) (No change.)

### **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