

may deny a license application based on other criminal history of the applicant or its key individuals [~~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) - (f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 936-7660



CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) proposes amendments to §89.206 (relating to Application for Exemption), §89.207 (relating to Files and Records Required), §89.301 (relating to Definitions), §89.302 (relating to Filing of New Application), §89.303 (relating to Transfer of License; New License Application on Transfer of Ownership), §89.306 (relating to Updating Application and Contact Information), §89.307 (relating to Processing of Application), §89.308 (relating to Relocation of Licensed Offices), §89.309 (relating to License Inactivation or Voluntary Surrender), §89.311 (relating to Applications and Notices as Public Records), §89.403 (relating to License Term, Renewal, and Expiration), and §89.405 (relating to Denial, Suspension, or Revocation Based on Criminal History); proposes the repeal of §89.304 (relating to Change in Form or Proportionate Ownership), §89.305 (relating to Amendments to Pending Application), and §89.402 (relating to License Display); and proposes new §89.806 (relating to Payoff Request from Borrower) in 7 TAC Chapter 89, concerning Property Tax Lenders.

The rules in 7 TAC Chapter 89 govern property tax loans. In general, the purpose of the proposed rule changes to 7 Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 89 was published in the *Texas Register* on May 31, 2024 (49 TexReg 3937). The commission received three informal comments and one official comment in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received four precomments from stakeholders, consisting of one precomment from an association of property tax lenders, two precomments from a law firm representing property tax lenders, and one precomment from a property tax lender. The OCCC appreciates the thoughtful input of stakeholders.

A proposed amendment to §89.206 would remove a requirement to provide an individual's Social Security number on the form for an individual's exemption from licensing. Under Texas Finance Code, §351.051(c), certain individuals are exempt from licensing as property tax lenders, including individuals making five or fewer property tax loans in any consecutive 12-month period from the individual's own funds. This proposed amendment would minimize sensitive personal information collected by the OCCC.

Proposed amendments to §89.207 would update recordkeeping requirements for property tax lenders. Currently, provisions throughout §89.207 refer to both paper and electronic recordkeeping systems. Proposed amendments throughout §89.207 would simplify and rearrange this language to refer to electronic recordkeeping systems before referring to paper systems, based on licensees' increasing use of electronic systems rather than paper systems. Currently, §89.207(3)(L) describes different sets of records to be maintained for judicial foreclosures and nonjudicial foreclosures. Property tax lenders' ability to perform nonjudicial foreclosures was previously codified in Texas Tax Code, §32.06(c)(2), and was repealed in 2013 (SB 247 (2013)). Because the authority to perform nonjudicial foreclosures was repealed, the commission and the OCCC believe that it is no longer necessary to describe two different sets of documents, and that the rule should be simplified to describe one set of documents for foreclosures.

In a precomment, a law firm representing property tax lenders recommended revising the current requirements on recordkeeping for the notice to cure the default and the notice of intent to accelerate, to remove the phrase "including verification of delivery of the notice," which is currently used in §89.207(L)(i)(II)-(III), because service is complete under Texas Property Code, §51.002(e) when the notice is placed in the mail. In response to this suggestion, the proposed version of this provision at §89.207(L)(ii)-(iii) states that the record includes "any mail tracking or other verification of delivery of the notice," with the word "any" indicating that property tax lenders would be required to maintain the information if they obtain it.

Additional proposed amendments to §89.207 relate to data security recordkeeping. A proposed amendment at §89.207(9)(A) specifies that licensees must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. Another proposed amendment at §89.207(9)(B) specifies that if a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4. A proposed amendment at §89.207(10) specifies that licensees must maintain data breach notifications to consumers and to the Office of the Attorney General under Texas Business & Commerce Code, §521.053. Data security is a crucial issue. The OCCC's 2025-2029 strategic plan includes action items to "[p]romote cybersecurity awareness and best practices among regulated entities" and "[m]onitor cybersecurity incidents and remediation efforts reported by regulated entities." Recent data breaches affecting financial institutions highlight the urgent need for vigilance in this industry. The proposed data security recordkeeping amendments will help ensure that the OCCC can monitor this crucial issue.

Proposed amendments and repeals in §89.301 through §89.405 would implement the OCCC's transition to the NMLS system.

The Nationwide Multistate Licensing System (NMLS) is an online platform used by state financial regulatory agencies to manage licenses, including license applications and renewals. NMLS was created in 2008. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 explains that the purposes of NMLS include increasing uniformity and reducing regulatory burden. SAFE Act, 12 USC §5101. Each state currently uses NMLS for licensing individual RMLOs, and states are increasingly using the system to license consumer finance companies. NMLS is managed by the Conference of State Bank Supervisors and is subject to ongoing modernization efforts and enhancements.

Under Texas Finance Code, §14.109, the OCCC is authorized to require use of NMLS for certain license and registration types, including property tax lender licenses under Texas Finance Code, Chapter 351. The OCCC has begun a phased process of migrating license groups from ALECS (the OCCC's previous licensing platform) to NMLS. In 2025, licensed property tax lenders completed their transition to NMLS. The OCCC believes that moving to NMLS will improve the user experience of the licensing system and promote efficiency. This is particularly true for entities that hold licenses with the OCCC and with another state agency, because these entities will be able to manage multiple licenses through NMLS.

Proposed amendments to §89.301 would replace the term "principal party" with "key individual" to be consistent with the terminology in NMLS.

Proposed amendments to §89.302 would streamline license application requirements and refer to instructions that the OCCC has published through NMLS. Currently, §89.302 contains a detailed list of license application items, with requirements that differ based on the applicant's entity type (e.g., partnership, corporation, limited liability company). In addition to ensuring consistency with NMLS, the proposed amendments would significantly simplify §89.302, and ensure that an applicant can easily read and understand the rule. A proposed amendment at §89.302(c) explains that the OCCC may require additional, clarifying, or supplemental information to determine that the applicant meets statutory licensing requirements. A proposed amendment at §89.302(d) explains that an applicant must immediately amend a pending application if any information changes requiring a materially different response, replacing language that would be removed from §89.306(a), as explained later in this preamble.

Proposed amendments to §89.303 would streamline and simplify requirements for transfer of ownership and license transfer to ensure consistency with NMLS. In §89.303(b)(3), proposed amendments to the definition of "transfer of ownership" would limit the definition to focus on transfers from one company to another. Going forward in NMLS, the OCCC anticipates that changes to the identifies of a single company's owners will be handled through the advance change notice process, as explained later in this preamble in the discussion of proposed amendments to §89.306. A proposed amendment to §89.303(c) would explain that to transfer a license, a transferor may request surrender of its license after the OCCC approves the transferee's new license application on transfer of ownership. Other proposed amendments throughout §89.303 would ensure consistency with this revised transfer process.

The proposal would repeal §89.304, which currently requires licensees to notify the OCCC of changes to organizational form, mergers resulting in creation of a new or different surviving entity, and certain changes in proportionate ownership. Going forward in NMLS, the OCCC anticipates that these changes will be han-

dled through the advance change notice process, as explained later in this preamble in the discussion of proposed amendments to §89.306. Therefore, §89.304 will no longer be necessary.

The proposal would repeal §89.305, which currently requires license applicants to provide supplemental information to the OCCC on request. Because of the proposed amendment at §89.302(c) explaining the OCCC may require additional information, §89.305 will no longer be necessary.

Proposed amendments to §89.306 would consolidate and simplify the types of required notifications that a licensee must provide to the OCCC when a change occurs. In §89.306(a), the proposed amendments would list advance change notices. NMLS uses the term "advance change notice" to refer to notifications that must be provided on or before the date of the change, in accordance with an agency's written instructions. As explained in the proposed amendments to §89.306(a), this includes changes to the legal name of the entity, the legal status of the entity, names of key individuals, branch location addresses, and other listed items. In §89.306(b), proposed amendments would list notifications that are required not later than 30 days after the licensee has knowledge of the information. These items include bankruptcies of the licensee or its direct owners, because a bankruptcy is a significant event that may impact the financial responsibilities of a licensee and its ability to address compliance issues. These items also include notifications of data breaches affecting at least 250 Texas residents, helping to ensure that the OCCC can effectively monitor the crucial issue of cybersecurity (as discussed earlier in the discussion of proposed amendments to §89.207).

Proposed amendments to §89.307 would revise license application processing requirements to be consistent with NMLS and with the statute at Texas Finance Code, §351.104. A proposed amendment at §89.307(d) would explain that a license application may be considered withdrawn if a complete application has not been filed within 30 days after a notice of deficiency has been sent to the applicant, consistent with how license applications are processed in NMLS. Under Texas Finance Code, §351.104(b), if the OCCC finds that a license applicant has not met the eligibility requirements for a license, then the OCCC will notify the applicant. Under Texas Finance Code, §351.104(c), an applicant has 30 days after the date of the notification to request a hearing on the denial. Proposed amendments at §89.307(d) would specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §351.104(b). Proposed amendments at §89.307(e) would revise current language to specify that an affected applicant has 30 days from the date of the notice of intent to deny to request a hearing, as provided by Texas Finance Code, §351.104(c). A proposed amendment would remove current §89.307(e), regarding disposition of fees, because this language unnecessarily duplicates language in §89.310 (regarding Fees). Proposed amendments to §89.307(f) would clarify the 60-day target period to process a license application and the 60-day target period to set a requested hearing on an application denial, in accordance with Texas Finance Code, §351.104(c)-(d).

Proposed amendments to §89.308 would revise requirements for notice of relocation of licensed offices. The proposal would remove current §89.308(a), because the requirement to notify the OCCC of a branch office relocation will be moved to §89.306(a) as an advance change notice, as discussed earlier in this preamble. A proposed amendment to current §89.308(b)

would explain that a licensee may send notice of a relocation to a debtor by email if the debtor has provided an email address and consented in writing to be contacted at the email address, in order to accommodate electronic communications.

Proposed amendments to §89.309 would revise requirements for license surrender. The proposed amendment would explain that a licensee may surrender a license by providing the information required by the OCCC's written instruction, in accordance with Texas Finance Code, §351.160, and that a surrender is effective when the OCCC approves the surrender.

Proposed amendments to §89.311 would remove a sentence about the return of original documents filed with a license application. This sentence is no longer necessary because the OCCC no longer accepts original paper documents with a license application.

The proposal would repeal §89.402, which describes the requirement to display a license. This section is unnecessary because it duplicates the statutory license display requirement at Texas Finance Code, §351.152. Going forward, licensees may comply with the statutory license display requirement by printing out company license information from NMLS.

Proposed amendments to §89.403 would revise requirements for license renewal. A proposed amendment at §89.403(b) would explain that a licensee must maintain an active account in NMLS (or a designated successor system) in order to maintain and renew a license, and that renewal may be unavailable to a licensee that fails to maintain an active account. A proposed amendment at §89.403(d) would specify that the OCCC may send notice of delinquency of an annual assessment fee electronically through NMLS or by email to the primary company contact, removing current language that refers to a "master file" address under the OCCC's current system.

Proposed amendments to §89.405 would revise criminal history review requirements to explain that the OCCC will obtain criminal history record information through NMLS and to use the term "key individual."

Proposed new §89.806 would describe requirements for property tax loan payoff requests authorized by a borrower. Currently, the rules in §89.801 through §89.805 describe requirements for payoff requests from another lienholder to a property tax lender, but these sections do not describe requirements for a payoff request that is authorized by a borrower. Property tax lenders have requested that the OCCC provide guidance and clear standards on this issue, in order to ensure that the payoff process functions properly, that borrowers are enabled to pay off their property tax loans in a reasonable amount of time, and that property tax lenders are able to safeguard borrowers' personal information. Consistent with the prohibition on prepayment penalties in Texas Tax Code, §32.065(d), and Texas Finance Code, §343.205 and §351.0021(a)(9), a borrower has a right to pay off a property tax loan early. Proposed new §89.806(a) would explain this right. Proposed new §89.806(b) would describe the payoff request process that should be used if a property tax lender obtains a borrower's authorization to pay off a property tax loan held by an existing property tax lender. This includes guidelines for the authorized property tax lender to obtain the borrower's written authorization and send the payoff request, as well as guidelines for the existing property tax lender to provide a payoff statement.

The OCCC received three precomments dealing with the proposed new payoff rule at §89.806. All three precomments ex-

pressed support for having clear guidelines on this issue, although stakeholders differed in suggestions for the timing of the payoff statement and technical requirements for the borrower's authorization. Regarding the timing of the payoff statement, two precommenters suggested a seven-business-day period, while one precommenter suggested a three-day period. The commission and the OCCC believe that a seven-business-day period is appropriate and consistent with industry standards. This period is also consistent with the current seven-business-day requirement for payoff statements that property tax lenders provide to other lienholders under 7 TAC §89.802(i) (relating to Payoff Statements). For this reason, proposed §89.806(b)(3) contains a seven-business-day period for providing the payoff statement. Regarding technical requirements for the borrower's authorization, one precommenter suggested that the proof of authorization include a certificate of authenticity containing the signer's name, IP address, email address, and date and time of signing. Another precommenter suggested that concerns about the inability to verify payoff authorizations are "not genuine," and that payoff authorizations from a licensed lender should be presumed valid under a "safe harbor." Regarding technical requirements, the commission and the OCCC believe that concerns about validation are genuine, but want to ensure that the rule remains flexible enough to accommodate changing technology. The proposed amendments to §89.806 contain language explaining that lenders must maintain proof of electronic signatures "in accordance with standards for electronic signatures." The commission and the OCCC invite additional comments on standards that can accommodate changing technology, while also supporting borrowers' payoff rights and the safeguarding of borrowers' information.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Christine Graham, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules. In particular, the rule changes governing the transition to the NMLS licensing system will better enable the OCCC use its existing authority under Texas Finance Code, §14.109, to use NMLS as a licensing system, resulting in an improved user experience, efficiency for multistate entities, and an improved ability for consumers to access data about business licenses. Transitioning to NMLS will help minimize the costs of updating the OCCC's legacy technological systems.

In general, the OCCC anticipates that any economic costs for persons required to comply with the proposed rule changes will be minimal. Following an NMLS transition period earlier in 2025, property tax lender licensees have transitioned to NMLS. During the NMLS transition period, the OCCC attempted to minimize costs by requiring existing licensees to provide only a core set of information and documents.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well

as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would create a new regulation at §89.806, regarding payoff statements by borrowers, in response to stakeholder requests. The proposal would both expand and limit current §89.207 and §89.306 by adding references to certain cybersecurity-related information and removing unnecessary rule text. The proposal would limit current §89.206, §89.302, §89.303, §89.308, and §89.311 by simplifying and streamlining current requirements. The proposal would repeal current §89.304, §89.305, and §89.402. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. The commission invites any comments with information related to the cost, benefit, or effect of the proposed rule changes, including any applicable data, research, or analysis, from any person required to comply with the proposed rule changes or any other interested person. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §89.206, §89.207

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also proposed under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.206. *Application for Exemption.*

(a) For an individual to apply for exemption from licensing under this chapter as a qualifying individual under Texas Finance Code, §351.051(c)(2), the individual must provide a signed, dated, and notarized affidavit containing the following:

- (1) the individual's name and address;
- (2) the individual's social security number;

(2) [(3)] the anticipated date of the property tax loan;

(3) [(4)] a description of the property by legal description, and if applicable, street address; and

(4) [(5)] a sworn statement that the individual is someone who:

(A) is related to the property owner within the second degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573; or

(B) makes five or fewer property tax loans in any consecutive 12-month period from the individual's own funds.

(b) - (c) (No change.)

§89.207. *Files and Records Required.*

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either an electronic recordkeeping system, a paper or manual recordkeeping system, ~~[electronic recordkeeping system; optically imaged recordkeeping system;]~~ or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. 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) - (2) (No change.)

(3) Property tax loan transaction file. A licensee must maintain an electronic or [a] paper [or imaged] copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. 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 property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (K) (No change.)

(L) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records ~~[required by Texas Tax Code, Chapters 32 and 33]:~~

(i) any records pertaining to the foreclosure, including records from the licensee's attorneys, the court, or the borrower or borrower's agent; ~~[For transactions involving judicial foreclosures under Texas Tax Code, §32.06(e):]~~

~~[(i)]~~ any records pertaining to a judicial foreclosure including records from the licensee's attorneys, the court, or the borrower or borrower's agent;

~~[(ii)]~~ if sent by an attorney who is not an employee of the licensee, any notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Property Code, §51.002(d) including verification of delivery of the notice;

~~[(iii)]~~ if sent by an attorney who is not an employee of the licensee, any notice of intent to accelerate sent to the

property owner and each holder of a recorded first lien on the property, including verification of delivery of the notice;]

~~[(IV)]~~ if sent by an attorney who is not an employee of the licensee, any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;]

~~[(V)]~~ any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06; such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;]

~~[(VI)]~~ records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.02 and §34.04;]

~~[(VII)]~~ the foreclosure deed upon sale of the property;]

~~[(VIII)]~~ if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);]

(ii) any notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Property Code, §51.002(d), including any mail tracking or other verification of delivery of the notice; [For transactions closed before May 29, 2013, involving nonjudicial foreclosures under Act of May 7, 1995, 74th Leg., R.S., ch. 131, §1, see: 32.06(e)(2); 1995 Tex. Gen. Laws 957, as amended by Act of May 25, 2007, 80th Leg., R.S., ch. 1329, §1, see: 32.06(e)(2); 2007 Tex. Gen. Laws 4484, 4485 (repealed 2013) (previously codified at Texas Tax Code, §32.06(e)(2));]

~~[(I)]~~ the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Property Code, §51.002(d) including verification of delivery of the notice;]

~~[(II)]~~ the notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, including verification of delivery of the notice;]

~~[(III)]~~ the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;]

~~[(IV)]~~ any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06; such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;]

~~[(V)]~~ the application for Order for Foreclosure under Texas Rules of Civil Procedure, Rule 736.1;]

~~[(VI)]~~ copies of any returns of citations issued under Texas Rules of Civil Procedure, Rule 736.3, showing the date and time the citation was placed in the custody of the U.S. Postal Service;]

~~[(VII)]~~ copies of any responses filed contesting the Application for Order for Foreclosure as described in Texas Rules of Civil Procedure, Rule 736.5;]

~~[(VIII)]~~ the motion and proposed order to obtain a default order, if any, under Texas Rules of Civil Procedure, Rule 736.7;]

~~[(IX)]~~ the order granting or denying the application for foreclosure as specified under Texas Rules of Civil Procedure, Rule 736.8;]

~~[(X)]~~ the notice provided to the recorded preexisting lienholder, at least, 60 days before the date of the proposed foreclosure;]

~~[(XI)]~~ the notice of sale as required by Texas Property Code, §51.002(b) including verification of delivery of the notice;]

~~[(XII)]~~ records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021 and §34.04;]

~~[(XIII)]~~ the foreclosure deed upon sale of the property;]

~~[(XIV)]~~ if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);]

(iii) any notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, including any mail tracking or other verification of delivery of the notice;

(iv) any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;

(v) any written documentation that confirms that the borrower has deferred property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(vi) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.02 and §34.04;

(vii) the foreclosure deed upon sale of the property;

(viii) if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(M) For property tax loans involving one or more electronic signatures, copies of any notices or disclosures provided in connection with the electronic signatures and proof of the signature in accordance with standards for electronic signatures.

(4) - (8) (No change.)

(9) Information security program. A licensee must maintain the following for an information security program:

(A) written policies and procedures for an information security program to protect borrowers' customer information under the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314; and

(B) if a licensee maintains customer information concerning 5,000 or more consumers, a written incident response plan and written risk assessments under 16 C.F.R. §314.4.

(10) Data breach notifications. A licensee must maintain the following for data breach notifications:

(A) the text of any data breach notification provided to borrowers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification; and

(B) any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

(11) [(9)] Retention and availability of records. All books and records required by this section must be available for inspection at any time by OCCC staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this section must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the OCCC access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Nance

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Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§89.301 - 89.303, 89.306 - 89.309, 89.311

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also proposed under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Key individual--An individual owner, officer, director, or employee with a substantial relationship to the lending business of an applicant or licensee. The following are key individuals:

(A) any individual who is a direct owner of 10% or more of an applicant or licensee;

(B) any individual who is a control person or executive officer of an applicant or licensee, including individual who has the power to direct management or policies of a company (e.g., president, chief executive officer, general partner, managing member, vice pres-

ident, treasurer, secretary, chief operating officer, chief financial officer); and

(C) an individual designated as a key individual where necessary to fairly assess the applicant or licensee's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly.

(2) [(4)] Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days.

[(2) Parent entity--A direct owner of a licensee or applicant.]

(3) NMLS--The Nationwide Multistate Licensing System.

[(3) 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;]

[(B) general partners;]

[(C) officers of privately held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 351;]

[(D) directors of privately held corporations;]

[(E) individuals associated with publicly held corporations designated by the applicant as follows:]

[(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held); or]

[(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 351. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;]

[(F) voting members of a limited liability company;]

[(G) trustees and executors; and]

[(H) individuals designated as principal parties where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.]

§89.302. Filing of New Application.

(a) NMLS. In order to submit a property tax lender license application, an applicant must submit a complete, accurate, and truthful license application through NMLS (or a successor system designated by the OCCC), using the current form prescribed by the OCCC. An application is complete when it conforms to the OCCC's written instructions and necessary fees have been paid. The OCCC has made application checklists available through NMLS, outlining the necessary information for a license application. [An application for issuance of a new license must be submitted in a format prescribed by the OCCC at

the date of filing and in accordance with the OCCC's instructions. The OCCC may accept the use of prescribed alternative formats 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) Location information. A physical street address must be listed for the applicant's proposed lending address; or if the applicant will have no such location, a statement to that effect must be provided. For applicants with a proposed location in Texas, a post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.]

[(ii) Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named.]

[(iii) Registered agent. The registered agent must be provided by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent.]

[(iv) 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 responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals.]

[(ii) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.]

[(iii) Limited partnerships. Each partner, general and limited, fulfilling the requirements of items (a-) - (c-) of this subclause must be listed and the percentage of ownership stated.]

[(a-) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.]

[(b-) Limited partners. The applicant should provide a complete list of all limited partners owning 10% or more of the partnership.]

[(c-) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.]

[(iv) Corporations. Each officer and director must be named. Each shareholder holding 10% or more of the voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% or greater.]

[(v) Limited liability companies. Each "manager," "officer," and "member" owning 10% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% or greater.]

[(vi) Trusts or estates. Each trustee or executor, as appropriate, must be listed.]

[(vii) All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.]

[(B) Disclosure questions. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.]

[(C) Personal information.]

[(i) Personal affidavit. Each individual meeting the definition of "principal party" as defined in §89.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.]

[(ii) Personal questionnaire. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.]

[(iii) Employment history. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.]

[(D) Additional requirements.]

[(i) Statement of experience. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.]

{(ii)} Business operating plan. Each applicant must provide a brief narrative explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:}]

{(I)} the source of customers;}]

{(II)} the purpose(s) of loans;}]

{(III)} the size of loans;}]

{(IV)} the source of working capital for planned operations;}]

{(V)} whether the applicant will only be arranging or negotiating loans for another lender or financing entity;}]

{(VI)} if the applicant will only be arranging or negotiating loans for another lender or financing entity, the licensee must also provide:}]

{(a)} a list of the lenders for whom the applicant will be arranging or negotiating loans;}]

{(b)} whether the loans will be collected at the location where the loans are made; and}]

{(c)} if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.}]

{(iii)} Statement of records. Each applicant must provide a statement of where records of Texas transactions will be maintained. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel cost associated with examinations in addition to the assessment fees or agree to make all records available for examination in Texas.}]

{(E)} Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:}]

{(i)} If the applicant is a proprietor, each owner must sign.}]

{(ii)} If the applicant is a partnership, each general partner must sign.}]

{(iii)} If the applicant is a corporation, an authorized officer must sign.}]

{(iv)} If the applicant is a limited liability company, an authorized member or manager must sign.}]

{(v)} If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.}]

{(2)} Other required filings.}]

{(A)} Fingerprints.}]

{(i)} For all persons meeting the definition of "principal party" as defined in §89.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.}]

{(ii)} For limited partnerships, if the owners and principal parties under paragraph (1)(A)(iv)(III)(a-) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.}]

{(iii)} For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.}]

{(iv)} For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints in order to complete the OCCC's records.}]

{(v)} For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.}]

{(B)} Loan forms. The applicant must provide information regarding all loan forms it intends to use.}]

{(i)} Custom forms. If a custom loan form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.}]

{(ii)} Stock forms. If an applicant purchases or plans to purchase stock forms from a supplier, the applicant must include a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.}]

{(C)} Entity documents.}]

{(i)} Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Office of the Texas Secretary of State.}]

{(ii)} Corporations. A corporate applicant, domestic or foreign, must provide the following documents:}]

{(I)} a complete copy of the certificate of formation or articles of incorporation, with any amendments;}]

{(II)} a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;}]

{(III)} if the registered agent is not the same as the one on file with the Office of the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent;}]

{(IV)} if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation.}]

{(V)} if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;}]

~~[(IV)]~~ if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.}]

~~[(iii)]~~ Publicly held corporations. In addition to the items required for corporations, a publicly held must file the most recent 10K or 10Q for the applicant or for the parent company.}]

~~[(iv)]~~ Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:}]

~~[(I)]~~ a complete copy of the articles of organization;}]

~~[(II)]~~ a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;}]

~~[(III)]~~ if the registered agent is not the same as the one on file with the Office of the Texas Secretary of State, a certification from the secretary of the company identifying the registered agent;}]

~~[(IV)]~~ if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;}]

~~[(V)]~~ if requested, a copy of the minutes of company meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;}]

~~[(VI)]~~ if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.}]

~~[(v)]~~ Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.}]

~~[(vi)]~~ Estates. A copy of the instrument establishing the estate must be filed with the application.}]

~~[(vii)]~~ Foreign entities. In addition to the items required by this section, a foreign entity must provide a certificate of authority to do business in Texas, if applicable.}]

~~[(viii)]~~ (viii) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation provides the entity formation information required by this section for that entity type.}]

~~[(D)]~~ Financial statement and supporting financial information.}]

~~[(i)]~~ All entity types. The financial statement must be dated no earlier than 90 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information. All financial statements must be certified as true, correct, and complete, and must comply with generally accepted accounting principles (GAAP).}]

~~[(ii)]~~ Sole proprietorships. Sole proprietors must complete all sections of the personal financial statement and the supporting financial information, or provide a personal financial statement that contains all of the same information requested by the personal financial statement and the supporting financial information. The personal financial statement and supporting financial information must be as of the same date.}]

~~[(iii)]~~ Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the supporting financial information must be submitted for the partnership itself and each general partner. All of the balance sheets and supporting financial information documents for the partnership and all general partners must be as of the same date.}]

~~[(iv)]~~ Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.}]

~~[(v)]~~ Trusts and estates. Trusts and estates must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.}]

~~[(E)]~~ Assumed name certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, §71.002, an assumed name certificate must be filed as provided in this subparagraph.}]

~~[(i)]~~ Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code, Chapter 71, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.}]

~~[(ii)]~~ Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, Chapter 71, as amended. Evidence of the filing bearing the filing stamp of the Office of the Texas Secretary of State must be submitted or, alternatively, a certified copy.}]

~~[(F)]~~ Bond. The commissioner may require a bond under Texas Finance Code, §351.102 when the commissioner finds that it would serve the public interest. When a bond is required, the commissioner will give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.}]

~~[(3)]~~ Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location, including the application for license, disclosure questions, owners and principal parties, and a new financial statement as provided in paragraph (2)(D) of this section. The person responsible for the day-to-day operations of the applicant's proposed new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.}]

(b) Company license application. A company license application will include the following information and any other information listed in the OCCC's written instructions:

(1) A company form including the name of the applicant entity, any assumed names or other trade names, contact information, registered agent, location of books and records, bank account information, legal status, and responses to disclosure questions.

(2) An individual form for each key individual, including name, contact information, and responses to disclosure questions.

(3) A business operating plan describing the source of consumers, purpose of loans, size of loans, and source of working capital.

(4) A management chart showing the applicant's divisions, officers, and managers.

(5) An organizational chart if the applicant is owned by another entity or entities, or has subsidiaries or affiliated entities.

(6) A statement of experience detailing prior experience relevant to the license sought.

(7) A certificate of formation or other formation document.

(8) An assumed name certificate for each assumed name that the applicant will use.

(9) Franchise tax account information showing that the applicant entity is authorized to do business in Texas.

(10) Financial statement and supporting financial information complying with generally accepted accounting principles (GAAP). The OCCC may require a bank confirmation to confirm account balance information with financial institutions.

(A) If a financial statement is unaudited, then it should be dated no earlier than 60 days before the application date.

(B) If a financial statement is audited, then it should be dated no earlier than one year before the application date.

(11) Loan forms that the applicant intends to use, including disclosures and loan contracts.

(c) Supplemental information. The OCCC may require additional, clarifying, or supplemental information or documentation as necessary or appropriate to determine that an applicant meets the licensing requirements of Texas Finance Code, Chapter 351.

(d) Amendments to pending application. An applicant must immediately amend a pending application if any information changes requiring a materially different response from information provided in the original application.

§89.303. Transfer of License; New License Application on Transfer of Ownership.

(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.

(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 property tax lender 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 substantial portion of the assets of a licensed entity (including acquisition by gift, devise, or descent) from the licensed entity

to another entity, [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 the identities of the direct or indirect owners of a single licensed entity, as addressed in §89.306 of this title (relating to Required Notifications) [proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership)]. 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; and

[(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 property tax lender license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §351.163. To transfer a license, a transferor may request surrender of its license after the OCCC approves the transferee's new license application on transfer of ownership. A license transfer is complete [approved] when the OCCC has approved the transferee's new license application and the transferor's license surrender [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 property tax lender license at the time of the application, then the application must include the information required for new license applications under §89.302 of this title (relating to Filing of New Application). The instructions in §89.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a property tax lender 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, key individuals [owners and principal parties], and a new financial statement, as provided in §89.302 of this title. The instructions in §89.302 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 §89.302 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 property tax 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 §89.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

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

(2) Responsibility of transferor and transferee. If a transferee begins performing property tax lending 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) of this section, the transferee is responsible to any consumer and to the OCCC for all property tax lending 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.

§89.306. Required Notifications [Updating Application and Contact Information].

(a) Advance change notice. No later than the date of the change (or an earlier date specified in the OCCC's written instructions), a licensee must notify the OCCC of a change to any of the following information provided in the original license application: [Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any information that would require a materially different answer than

that given in the original license application and that relates to the qualifications for license within 14 calendar days after the person has knowledge of the information:]

- (1) legal name of entity;
- (2) any assumed names of entity;
- (3) legal status of entity (e.g., change in organizational form from partnership to corporation); or
- (4) names of direct owners or indirect owners;
- (5) names of affiliates or subsidiaries;
- (6) names of any key individuals;
- (7) main address; or
- (8) address of any branch location.

(b) Other required notifications. No later than 30 days after the licensee has knowledge of the information, a licensee must report the following information to the OCCC: [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) any civil or regulatory actions against the licensee or key individuals that were not disclosed in the original application and would require a different answer than that given in the original license application [the names of principal parties];
- (2) criminal history of the licensee or key individuals that was not disclosed in the original application;
- (3) any bankruptcy of the licensee or a direct owner [actions by regulatory agencies]; or
- (4) any breach of system security under Texas Business & Commerce Code, §521.053, affecting at least 250 residents of this state [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 email [e-mail] addresses. The OCCC may send notices to the mailing address or email address on file. 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.

§89.307. *Processing of Application.*

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

- (1) it conforms to the rules and published instructions;
- (2) all fees have been paid; and
- (3) all requests for additional information have been satisfied.

(c) Failure to complete application and deemed withdrawal. If a complete application has not been filed within 30 calendar days after notice of deficiency has been sent to the applicant, the application may be considered withdrawn [denied].

(d) Notice of intent to deny application. If an applicant files a complete license application but the OCCC does not find that the eli-

gibility requirements for a license have been met, then the OCCC will send a notice of intent to deny the license application to the applicant.

(e) [(d)] Hearing. An [Whenever an application is denied, the] affected applicant has 30 calendar days from the date of the notice of intent to deny the license application [the application was denied] to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

[(e) Denial. If an application has been denied, the assessment fee will be refunded to the applicant. The investigation fee and the fingerprint processing fee in §89.310 of this title (relating to Fees) will be forfeited.]

(f) Processing time.

(1) A license application will ordinarily be approved or denied within [a maximum of] 60 calendar days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing will ordinarily be scheduled for a date [held] within 60 calendar days after a request for a hearing is made, unless the parties agree to an extension of time. A final decision approving or denying the license application will be made after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. More time may be taken where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

§89.308. *Notice to Debtors of Relocation of Licensed Offices.*

[(a) Notice to commissioner. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §89.310 of this title (relating to Fees).]

[(b)] [Notice to debtors.] Written notice of a relocation of an office must be mailed to all debtors of record at least five calendar days prior to the date of relocation. A licensee may send notice to a debtor by email in lieu of mail if the debtor has provided an email address to the licensee and has consented in writing to be contacted at the email address. Any licensee failing to give the required notice must waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices must identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

§89.309. *License Inactivation or Voluntary Surrender.*

(a) Inactivation of active license. A licensee may cease operating under a license and choose to inactivate the license. A license

may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire as described by §89.403 of this title (relating to License Term, Renewal, and Expiration).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) Voluntary surrender of license. Subject to §89.407(b) of this title (relating to Effect of Revocation, Suspension, or Surrender of License), a licensee may request voluntary [voluntarily] surrender of a license by providing the information required by the OCCC's written instructions [written notice of the cessation of operations; a request to surrender the license; and by submitting the license certificate]. A surrender is effective when the OCCC approves the surrender. A voluntary surrender will result in cancellation of the license.

§89.311. Applications and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. ~~[Under Government Code, §441.191, the OCCC may not return any original documents associated with a property tax lender license application or notice to the applicant or licensee.]~~ An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

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7 TAC §89.304, §89.305

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also proposed under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information

through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.304. Change in Form or Proportionate Ownership.

§89.305. Amendments to Pending Application.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. LICENSE

7 TAC §89.402

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also proposed under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.402. License Display.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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7 TAC §89.403, §89.405

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to

ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also proposed under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.403. License Term, Renewal, and Expiration.

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) NMLS. To maintain and renew a license, a licensee must maintain an active account in NMLS (or a successor system designated by the OCCC). The OCCC may make renewal unavailable to a licensee that fails to maintain an active account.

(c) [(b)] Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(d) [(e)] Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice of delinquency is given when the OCCC sends the notice electronically through NMLS or by email to the primary company contact.[²]

[(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.]

(e) [(d)] Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(f) [(e)] Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

§89.405. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its key individuals [principal parties]. The OCCC will obtain criminal history record information through NMLS [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 license application has [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 key individuals [principal parties];

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, 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 or are current.

(c) (No change.)

(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, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its key individuals [principal parties]. If the applicant or a key individual [principal party] has been convicted of an offense described by subsections (c)(1) or (f)(1) 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 key individuals [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) and (3) of this section in its review of character and fitness.

(e) - (f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER H. PAYOFF STATEMENTS

7 TAC §89.806

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes

are also proposed under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.806. Payoff Request from Borrower

(a) Generally. A borrower has a right to pay off a property tax loan early, consistent with the prohibition on prepayment penalties in Texas Tax Code, § 32.065(d), and Texas Finance Code, §343.205 and §351.0021(a)(9). A property tax lender may not "lock out" a borrower or prevent a borrower from paying off the loan early. The borrower's right to pay off the loan early includes the right to authorize another person to pay off the property tax loan.

(b) Payoff request process. If a property tax lender obtains a borrower's authorization to pay off a property tax loan held by an existing property tax lender, then the parties should take these steps.

(1) The authorized property tax lender should obtain a signed written statement from the borrower authorizing the lender to pay off the property tax loan. If the signature is electronic, then the lender must maintain proof of the signature in accordance with standards for electronic signatures.

(2) The authorized property tax lender should send a request for a payoff statement to the existing property tax lender. The request should include the borrower's statement and proof of any electronic signature. The request should include the borrower's name, the authorized person's name, a description of the property, and reasonable instructions for where to send the payoff statement.

(3) If the request includes the information necessary to complete a payoff statement, then the existing property tax lender should respond with a payoff statement to the authorized property tax lender within seven business days after the existing property tax lender receives the complete request. The payoff statement should include accurate payoff information, and the borrower and the authorized lender should be able to rely on it for a reasonable period of time. The payoff statement should include reasonable instructions for paying off the property tax loan. If the authorized property tax lender's request does not include the information described by paragraph (2) of this subsection, then the existing property tax lender should notify the authorized property tax lender of the deficiency within a reasonable period of time.

(4) The authorized property tax lender may pay off the existing property tax loan as described in the payoff statement.

(5) Once the property tax lender has received the payoff amount, the property tax lender must promptly assign the property tax loan to the authorized person or release the property tax lender's lien on the property.

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TITLE 16. ECONOMIC REGULATION

**PART 2. PUBLIC UTILITY
COMMISSION OF TEXAS**

**CHAPTER 25. SUBSTANTIVE RULES
APPLICABLE TO ELECTRIC SERVICE
PROVIDERS**

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.520

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.520 relating to Firm Fuel Supply Service (FFSS). This proposed rule will implement Public Utility Regulatory Act (PURA) §39.159, as enacted by Senate Bill (SB) 3 during the Texas 87th Regular Legislative Session. The new rule will establish the criteria for a resource to participate in the Firm Fuel Supply Service (FFSS) program and the requirements for ERCOT to implement the FFSS program.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will create a new regulation to implement requirements under amended PURA §39.159;

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of