

Credit Access Business Advisory Bulletin: COVID-19 Emergency Measures

This bulletin discusses emergency measures for credit access businesses to consider in response to the COVID-19 pandemic. On March 13, 2020, Governor Greg Abbott declared a state of disaster for all Texas counties due to COVID-19.

Working with Consumers:

The OCCC urges credit access businesses to work with consumers during this crisis, and to be practical, flexible, and empathetic. Efforts to work with consumers in communities under stress may contribute to the health and recovery of these communities. These types of efforts serve the long-term interests of both consumers and businesses, provided the efforts are performed in a reasonable manner with proper controls and management oversight. Credit access businesses should continue to communicate with consumers through methods that consumers have agreed to, in accordance with state and federal debt collection laws.

The OCCC encourages credit access businesses to work with third-party lenders to consider the following measures during this crisis:

- Increasing communication with consumers regarding COVID-19 and the recommended methods for consumers to contact the business, especially if the business has altered operations due to COVID-19.
- Working out modifications with consumers to help ensure successful repayment, including deferred or partial payments, which would avoid delinquencies and negative credit reporting.
- Reviewing policies for fees, late charges, delinquency practices, and repossessions, to help support successful repayment.

Electronic Signatures:

Some OCCC licensees are considering using electronic signatures in response to COVID-19. Electronic signatures are generally allowed under Texas and federal law.

The federal E-Sign Act, 15 U.S.C. §§ 7001–7006, includes requirements for electronic disclosures and signatures. The E-Sign Act allows a disclosure to be made electronically only if the consumer consents to an electronic disclosure using a specified procedure that demonstrates the consumer’s ability to receive the disclosure electronically. 15 U.S.C. § 7001(c)(1)(A).

Before consenting, the consumer must be given a clear and conspicuous statement of:

- Any right or option to get the disclosure in non-electronic form;
- The right to withdraw consent and the procedures for and consequences of doing so;
- What transactions the consumer's consent applies to;
- The procedures for updating the information needed to contact the consumer electronically; and
- How, after consenting to electronic disclosures, to obtain a paper copy of any disclosures, and whether any fee will be imposed.

15 U.S.C. § 7001(c)(1)(B).

The consumer must be given a statement of the hardware and software requirements for access to and retention of electronic records, and must either give consent electronically to receive electronic disclosures, or must confirm consent electronically. 15 U.S.C. § 7001(c)(1)(C).

When disclosures are provided electronically, the E-Sign Act requires that the record be retained in a manner that "accurately reflects" the information in the record, and "remains accessible" to all persons in a form that is capable of being accurately reproduced for later reference. 15 U.S.C. § 7001(d). This means that consumers must have a way to keep electronic disclosures for use at a later time.

Activity from Unlicensed Locations:

Generally, Chapter 393 of the Texas Finance Code provides that any credit access business activity must occur from a licensed location. This requirement is described in Sections 393.603 and 393.609 of the Finance Code.

Some OCCC licensees are preparing pandemic outbreak plans in response to the coronavirus. This might include plans to work from otherwise unlicensed locations (e.g., employees working from home to take loan applications or service loans).

On a temporary basis, the OCCC will not take an enforcement action under the above-listed provisions against licensees that conduct credit access business activity from unlicensed locations, if conducted in accordance with the following instructions:

- A licensee must prepare a written plan or documentation describing what steps it is taking, as well as the locations where credit access business activity is taking place. The licensee must maintain this documentation until the OCCC's next examination of the affected licensed location.
- A licensee's employees must access information in accordance with the licensee's written information security program under the federal Safeguards Rule, 16 C.F.R. pt. 314. A licensee must continue to maintain the security of each consumer's personal information.

- If an employee accesses secure electronic information from the company, the employee must use a virtual private network or a similar system that requires authentication to access. Any devices must have up-to-date security updates or patches.
- A licensee may not keep any physical business records at a location other than a licensed location. All records (physical or electronic) must be accessible from a licensed location.

This temporary guidance does not amend the Texas Finance Code, the Texas Administrative Code, or any other requirement of state or federal law. Rather, it describes certain situations where the OCCC will not take enforcement actions against licensees under the above-listed provisions relating to licensed locations. This guidance is in effect through May 31, 2021, but it is subject to earlier revision or withdrawal.

The OCCC encourages all Texas citizens to be safe. Additional guidance and updates about COVID-19 are available on the website of the Texas Department of State Health Services.