

*Title 7. Banking and Securities*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 83. Regulated Lenders and Credit Access Businesses*  
*Subchapter B. Rules for Credit Access Businesses*

The Finance Commission of Texas (commission) adopts amendments to §§83.1002, 83.3001 - 83.3004, 83.4003, and 83.5004 in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

In general, the purpose of the rule changes in 7 TAC, Chapter 83, Subchapter B is to update rules regarding the licensing of credit access businesses and to make technical corrections. The proposed amendments primarily relate to conforming these licensing rules to clarifying changes recently adopted in other areas regulated by the agency. Additional changes provide clarification regarding criminal history and recordkeeping.

The commission adopts the amendments without changes to the proposed text as published in the November 4, 2016, issue of the *Texas Register* (41 TexReg 8701).

The commission received no written comments on the proposal. Additionally, the agency circulated an early draft of proposed changes to interested stakeholders. The agency also received no written precomments on the early draft.

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

In §83.1001, an adopted amendment will replace "chapter" with "subchapter" to provide the appropriate applicability of the listed definitions. Chapter 83 is divided into Subchapter A, Rules for Regulated Lenders,

and Subchapter B, Rules for Credit Access Businesses. These definitions only apply to credit access businesses, and hence, should reference "subchapter" as opposed to "chapter." A similar correction has also been made in the licensing definitions section found in §83.3001.

Also in §83.3001, the adoption adds a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §83.3003 and §83.3004, discussed later in this adoption, and is consistent with other OCCC licensing rules. An amendment to former §83.3001(2) (adopted §83.3001(3)) amends the definition of "principal party" for sole proprietorships. The amendment deletes the phrase "holding a 100% ownership interest." The Internal Revenue Service allows a married couple that jointly owns and operates a business to classify the business as a proprietorship, by electing to file as a qualified joint venture. The amendment is intended to remove any language suggesting that this option is not available under federal income tax law. The adopted amendment conforms to an amendment that the commission recently adopted for regulated lenders at §83.301(2)(A), effective September 8, 2016. A corresponding amendment has also been made in §83.3002(1)(A)(iv).

In §83.3002(1)(E)(i) and (ii) regarding the signature on a new license application, the rule's former language required each owner of a proprietorship and each general partner of a partnership to sign the

application. As part of an online process, the agency will only require one owner or one partner, respectively, to sign for these applicants. The adopted amendments reflect that "the owner" of a proprietorship and "one general partner" of a partnership must sign the application. Additionally, in §83.3002(2)(E), a technical correction has been made to provide a more accurate citation to Texas Finance Code, §393.604(a)(4), which requires an applicant to provide information concerning third-party lender organizations.

Adopted amendments to §83.3003(e)(5)(B) and §83.3003(h) clarify the responsibility of the transferor and transferee during the course of a license transfer or new license application on transfer of ownership. The amendments remove the phrase "joint and several" in order to avoid confusion between the responsibility described in the rule and joint and several liability in a tort context. The amendments to subsection (h) also describe the parties' responsibility at different points during the license transfer process. The amendments are intended to provide clarity and remove confusion that might result from overlapping provisions in the rule. An amendment to subsection (h)(3) explains that if a transferee receives a license transfer, then the transferee's responsibility includes activity performed by the transferor before the license transfer. The adopted amendments to §83.3003 conform to a rule that the commission recently adopted for regulated lenders at §83.303, effective September 8, 2016.

In §83.3004, adopted amendments in subsection (b) to clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or

different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the rule text and are consistent with the OCCC's current policy. Additionally, in subsection (c), a reference to "a new license application on transfer of ownership" has been added to provide consistent terminology with a prior amendment.

An adopted amendment to §83.4003(b)(4) clarifies the requirements for an applicant's disclosure of criminal history. Previously, §83.4003(b)(4) stated that the OCCC may request "proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid." The adopted amendment adds the phrase "or are current" at the end of this provision, to account for cases where a court orders the applicant to pay an amount over time. The adopted amendment conforms to a rule that the commission recently adopted for motor vehicle sales finance licensees at §84.613(b)(4), effective May 5, 2016, and a rule that the commission recently adopted for regulated lenders at §83.404(b)(4), effective September 8, 2016.

Adopted amendments to §83.4003(c)(1) clarify the crimes that are directly related to the duties and responsibilities of a licensee that may be grounds for denial, suspension, or revocation. Under Texas Occupations Code, §53.025, state licensing authorities are required to issue guidelines relating to their use of criminal history in licensing decisions. These guidelines "must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the

licensing authority." Texas Occupations Code, §53.025(a). Previously, the second sentence of §83.4003(c)(1) explained that crimes involving certain elements (e.g., the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person) are grounds for denial, suspension, or revocation of a license. An amendment to §83.4003(c)(1) replaces this sentence with a more specific list of criminal offenses, in order to provide clearer guidelines to applicants. Another adopted amendment to §83.4003(c)(1) adds a statement that providing credit access business services involves compliance with reporting requirements to government agencies. This amendment is intended to describe the reason for including a criminal offense of "failure to file a government report, filing a false government report, or tampering with a government record" in the list of criminal offenses. The adopted list of criminal offenses conforms to a rule that the commission recently adopted for motor vehicle sales finance licensees at §84.613(c)(1), effective May 5, 2016, and a rule that the commission recently adopted for regulated lenders at §83.404(c)(1), effective September 8, 2016.

An adopted amendment to §83.4003(f)(2) updates a citation to the Texas Code of Criminal Procedure. Effective January 1, 2017, Texas Code of Criminal Procedure, article 42.12, §3g will be recodified to article 42A.054.

Adopted amendments to §83.5004(2)(A) update recordkeeping requirements relating to the Department of Defense's Military Lending Act (MLA) Rule, 32 C.F.R. pt. 232. The recently adopted amendments to the MLA Rule have a required compliance date of October 3, 2016. Under the amended

MLA Rule, creditors are required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. Adopted new §83.5004(2)(A)(iv)(VI) explains that a licensee must maintain any mandatory disclosure to a covered borrower under the MLA Rule. The amended MLA Rule also specifies documentation that creditors can obtain in order to determine whether a consumer is a covered military borrower. The previous version of the MLA Rule (before the recent amendments) prescribed a "covered borrower identification statement" to be signed by applicants, and creditors could use this statement to determine an applicant's covered borrower status. 32 C.F.R. §232.5 (2014 version). Under the amended MLA Rule, creditors can choose their method of determining covered borrower status, but the only ways to conclusively determine a borrower's status (and benefit from a safe harbor) are to check the borrower's status through the DOD's MLA website, or to obtain a consumer report that includes information from the DOD's MLA database. 32 C.F.R. §232.5. An adopted amendment to §83.5004(2)(A)(vii) replaces a statement that a licensee must maintain the identification of covered borrower (i.e., the statement required under the previous version of the MLA Rule) with a statement that the licensee must maintain any records obtained under 32 C.F.R. §232.5. The amendment is intended to clarify that licensees must maintain any documentation that they obtain regarding whether a consumer is a covered borrower under the MLA Rule.

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring

compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5004 are adopted under Texas Finance Code, §393.622(a)(3), which authorizes the commission to adopt rules regarding periodic examinations of credit access businesses by the OCCC. The amendments to §83.4003(c)(1) are adopted under Texas Occupations Code, §53.025, which requires state licensing authorities to issue guidelines relating to their use of criminal history in licensing decisions.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

*§83.1002. Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393 have the same meanings as defined in Chapter 393. The following words and terms, when used in this subchapter [~~chapter~~], will have the following meanings, unless the context clearly indicates otherwise.

(1) - (8) (No change.)

*§83.3001. Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393, have the same meanings as defined in Chapter 393. The following words and terms, when used in this subchapter [~~chapter~~], will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

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

(3) [(2)] Principal party--An adult individual with a substantial relationship to the applicant by ownership of more than 10% of the applicant, or having control of the proposed credit access business of the applicant. The following individuals are principal parties:

(A) a proprietor [~~holding a 100% ownership interest~~];

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

*§83.3002. Filing of New Application.*

An application for issuance of a new credit access business license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iii) (No change.)

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of any [~~the~~] individual holding an [~~a—100%~~] 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) - (VI) (No change.)

(B) - (D) (No change.)

(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, the ~~[each]~~ owner must sign.

(ii) If the applicant is a partnership, one ~~[each]~~ general partner must sign.

(iii) - (v) (No change.)

(2) Other required filings.

(A) - (D) (No change.)

(E) Third-party lender organizations. As required by Texas Finance Code, §393.604(a)(4) ~~[§393.604(4)]~~, each applicant must provide the names, physical addresses, and telephone numbers of the third-party lender organizations with which the business contracts to provide services or from which the business arranges extensions of consumer credit.

(F) (No change.)

(3) (No change.)

*§83.3003. Transfer of License; New License Application on Transfer of Ownership*

(a) - (d) (No change.)

(e) Application requirements.

(1) - (4) (No change.)

(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) (No change.)

(B) an acknowledgement that the transferor and transferee each accept ~~[joint and several]~~ 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) (No change.)

(f) - (g) (No change.)

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing credit access business activity under a license ~~[OCCC's final approval of an application described by subsection (e)]~~, the transferor is responsible to any consumer and to the OCCC for all credit access business activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing credit access business 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) ~~[(2)]~~ Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business activity performed under the license. The [In addition, a] 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.

~~[(3) Joint and several responsibility. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing credit access business activity and before the OCCC's final approval of the license transfer.]~~

*§83.3004. Change in Form or Proportionate Ownership.*

(a) (No change.)

(b) Merger.

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the

merger is a transfer of ownership, and the licensee must file a license transfer application or a new license application on transfer of ownership [A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a license transfer application or a new license application on transfer of ownership] pursuant to §83.3003 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee's parent entity is a party to a merger [If the merger of the parent entity of a licensee] that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 10 calendar days after the change, by filing a license amendment and paying the required fees as provided in §83.3010 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in

writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §83.3010 of this title. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §83.3003 of this title.

(2) (No change.)

*§83.4003. Denial, Suspension, or Revocation Based on Criminal History.*

(a) (No change.)

(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) - (3) (No change.)

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a credit

access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing credit access business services involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, ~~[and]~~ collecting due amounts in a legal manner, and compliance with reporting requirements to government agencies. ~~[Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.]~~ Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

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

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

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

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

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

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

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

(d) - (e) (No change.)

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) (No change.)

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, [~~42.12, §3g,~~] or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) - (5) (No change.)

*§83.5004. Files and Records Required.*

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged

recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and maintained in accordance with generally accepted accounting principles. 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) (No change.)

(2) Consumer's transaction file. A licensee must maintain a paper or electronic transaction file for each individual transaction under Texas Finance Code, Chapter 393, or be able to produce this information within a reasonable amount of time. The transaction file must contain documents that show the licensee's compliance with applicable state and federal law, including Texas Finance Code, Chapter 393. 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 transaction file if the electronic record can be accessed upon request.

(A) The transaction file must include the following documentation for each transaction under Texas Finance Code, Chapter 393:

(i) - (iii) (No change.)

(iv) all legally required disclosures provided in connection with the transaction, including:

(I) - (V) (No change.)

(VI) any mandatory disclosure to a covered borrower under the



Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6;

(v) - (vi) (No change.)

(vii) any documentation of whether the consumer is a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. Part 232, including any records obtained under [~~the identification of covered borrower described by]~~ 32 C.F.R. §232.5;

(viii) - (x) (No change.)

(B) - (C) (No change.)

(3) - (12) (No change.)

### **Certification**

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 16, 2016.

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