

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 §83.2003 (relating to Attempted Evasion of Applicability of Chapter), §83.4003 (relating to Denial, Suspension, or Revocation Based on Criminal History), §83.5001 (relating to Data Reporting Requirements), §83.5003 (relating to Examinations), §83.5004 (relating to Files and Records Required), and §83.6007 (relating to Consumer Disclosures); adopts new §83.5005 (relating to Separation Between Credit Access Business and Third-Party Lender); and adopts the repeal of §83.4007 (relating to License Reissuance) in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The commission adopts the amendments to §83.5001, §83.5003, and §83.5004, and adopts the repeal of §83.4007, without changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4441).

The commission adopts the amendments to §83.2003, §83.4003, and §83.6007, and adopts new §83.5005, with changes to the proposed text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4441).

The commission received two written comments on the proposal. The first comment was from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending. This comment generally supports the amendments contained in the proposal, but recommends that the commission address further issues in the rules. The second

comment was from the Online Lenders Alliance. This comment recommends changes to new §83.5005 as proposed. The commission's responses to these comments are included following the discussion of each applicable section.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the rule changes to 7 TAC Chapter 83, Subchapter B is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 83, Subchapter B was published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2211). The commission received no comments 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 five informal precomments on the rule text draft. The OCCC appreciates the thoughtful input provided by stakeholders, and has incorporated changes suggested by stakeholders into the amendments and new rule.

Amendments to §83.2003 implement Texas Finance Code, §393.602(c), which prohibits a device, subterfuge, or pretense to evade the application of Texas Finance Code, Chapter 393, Subchapter G. In opinion no. KP-0277 (2019), the Texas attorney general addressed attempts to evade Chapter 393. The attorney general declined to determine

whether a particular business practice was a device or subterfuge, stating: "Whether any specific extension of credit is substantially the same as that available to the public, or uses a device, subterfuge, or pretense to evade regulation as a credit access business, are fact questions that this office cannot decide through an attorney general opinion." In examinations, the OCCC has identified credit services organizations (CSOs) asserting that they provide non-CAB loans, and that their loans are not subject to the regulatory requirements for CABs. In some cases, the loans were not deferred presentment transactions or motor vehicle title loans, but the CSO notified consumers that it was a CAB licensed and examined by the OCCC, and that consumers could file complaints with the OCCC. To address these false and misleading representations, the OCCC published an advisory bulletin explaining that it intends to work with the Texas attorney general to address complaints that the OCCC receives about non-CAB loans. OCCC Advisory Bulletin B20-1, CSOs and Non-CAB Loans (Feb. 13, 2020).

The purpose of the amendments to §83.2003 is to make the rule's language more clear, and to specify practices that the OCCC has identified as a device, subterfuge, or pretense to evade Chapter 393. The list is not exclusive, because new attempts to evade Chapter 393 could arise from new facts. Based on a suggestion from stakeholder precomments, paragraphs (1) and (2) state that a device, subterfuge, or pretense includes a transaction that is not identified as a deferred presentment transaction or motor vehicle title loan, if the transaction is a deferred presentment transaction or motor vehicle title loan.

Since the proposal, a change has been made in the amendments to §83.2003. As

originally proposed, §83.2003(3)-(6) included false or misleading representations made in connection with non-CAB loans, such as statements that a transaction is regulated by the OCCC if the transaction is not actually regulated by the OCCC. After further review, the OCCC believes that if it encounters these false and misleading statements, it would be more appropriate to address these statements by working with the Texas attorney general, rather than including these statements in a rule on a device, subterfuge, or pretense to evade Chapter 393. For this reason, the adoption does not include §83.2003(3)-(6) as originally proposed. As explained in advisory bulletin B20-1, all CSOs are subject to the general provisions of Chapter 393, including the enforcement authority of the Texas attorney general and the prohibition on false and misleading representations. The OCCC intends to work with the Texas attorney general to address that the OCCC receives about non-CAB loans. If a CSO makes false or misleading representations, or otherwise violates Chapter 393, this could result in civil liability and enforcement actions by the Texas attorney general.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending recommends including additional language in §83.2003 stating that a device, subterfuge, or pretense includes "any transaction that in form may appear on its face to be something other than a deferred presentment transaction or motor vehicle title loan, but in substance meets the definition of a deferred presentment transaction or motor vehicle title loan as defined in Texas Finance Code, §393.602." The commission declines to include this additional provision, because the commission believes that the adopted text in §83.2003(1)-(2) already describes these transactions in a clearer manner.

Amendments to §83.4003 relate to the OCCC's review of the criminal history of a CAB applicant or licensee. The OCCC is authorized to review criminal history of CAB applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The amendments to §83.4003 ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §83.4003 implement these statutory changes from HB 1342. Other amendments to §83.4003 include technical corrections, clarifying changes, and updates to citations.

Since the proposal, a change has been made in §83.4003(d), to correct an internal reference that should refer to §83.4003(f)(1).

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending recommends "adding a pattern of wrongfully using the criminal justice system to collect on civil debt as a ground for revoking a CAB license under 7 TAC §83.4003(f)." The commission believes that this additional language is unnecessary and

goes beyond the intended scope of §83.4003. This section is intended to describe guidelines for how the OCCC reviews the criminal history of the principal parties of a CAB applicant or licensee, in accordance with Texas Occupations Code, Chapter 53. It is not intended to address every situation where a CAB interacts with criminal law enforcement. The issue of how CABs refer matters for criminal prosecution is addressed elsewhere in this adoption and in Texas Finance Code, §393.201(c)(3), which prohibits a CAB from threatening or pursuing criminal charges in the absence of criminal conduct. If a CAB violates Texas Finance Code, §393.201(c)(3), the OCCC could initiate an appropriate enforcement action under its authority in Texas Finance Code, Chapters 14 and 393, and would not have to rely on §83.4003. If a CAB or its principal party commits a criminal violation of a statute governing credit transactions, and is convicted of the offense, then the OCCC could consider this criminal history under the existing language at §83.4003(c)(1)(E). For these reasons, the commission believes that the additional text is unnecessary.

The adoption would repeal §83.4007. Currently, §83.4007 requires a licensee to return its license certificate in the event of reissuance of a license. When this section was adopted, it was based on the assumption that the OCCC would issue a paper license certificate. Because the OCCC now issues licenses through an online system, ALECS, this section is no longer necessary.

Amendments to §83.5001 relate to reporting violations. This section describes the requirement for CABs to provide quarterly and annual reports, implementing Texas Finance Code, §393.627. Currently, §83.5001(e)(2)(A) describes a \$100 administrative penalty for a CAB's first

violation. Based on a review of its enforcement guidelines, the OCCC believes that a better practice is to issue an injunction for the first reporting violation, not to impose an administrative penalty. For this reason, amendments to §83.5001(e) explain that the OCCC will issue an injunction for the first reporting violation. Amendments also specify that the OCCC may revoke the license of a CAB that fails to pay an administrative penalty resulting from a final order, as provided by Texas Finance Code, §393.614. This situation is rare, and typically occurs when a CAB has ceased doing business without telling the OCCC.

Amendments to §83.5003 specify the content of witness declarations and records declarations that OCCC examiners obtain from CABs during examinations. The amendments explain that these declarations must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132, which governs unsworn declarations that may be used in lieu of a sworn declaration or affidavit. The amendments also replace the term "statement" with "declaration," and remove provisions that are not necessary to include in a declaration under Chapter 132.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending recommends including a statement in §83.5003 that the declarations must include an "acknowledgement that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party," as well as a statement of truthfulness "under penalty of perjury." The commission believes that this text is unnecessary. The amendments are intended to simplify §83.5003, and to ensure that it is not necessary to amend the rule again if the Texas Legislature amends Texas Civil Practice and Remedies Code, Chapter 132.

To the extent that Chapter 132 requires language to be included in the declaration in order for the declaration to be valid and admissible in a hearing, the adopted rule addresses these requirements by requiring the declarations to comply with Chapter 132.

Amendments to §83.5004(2)(B)(vi), provide recordkeeping requirements for threats or referrals for criminal prosecution. Currently, this provision requires a CAB to maintain a "criminal charge or complaint filed by" the CAB. In *Henry v. Cash Biz, LP*, 551 S.W.3d 111, 117-18 (Tex. 2018), the Texas Supreme Court found that a CSO did not file a criminal complaint when it forwarded information to a district attorney about checks returned for insufficient funds. The amendments to §83.5004 add text to specify that a CAB must maintain referrals, written statements threatening criminal prosecution, a written summary of any oral statement threatening criminal prosecution, and any information submitted to law enforcement relating to alleged criminal conduct by a consumer. This information will document the CAB's compliance with Texas Finance Code, §393.201(c)(3), which provides that a CAB may not threaten or pursue criminal charges against a consumer in the absence of criminal conduct.

An amendment to §83.5004(3) states that a CAB must maintain documentation and records of transfers of money between itself and any third-party lender, for the same time period that the CAB must maintain other documentation of its agreements with third-party lenders. This amendment is intended document a CAB's compliance with new §83.5005, described later in this adoption.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending recommends adding requirements to

§83.5004 "regarding the number of declined ACH or debit transactions for accounts where such transactions are authorized by the customer." The comment states: "This information is important to ensure compliance with the recently ratified payment provisions of the Consumer Financial Protection Bureau payday and auto title loan rule, which applies to CAB transaction." The OCCC will monitor this issue to determine whether a future rule amendment is appropriate. The federal rule described by the comment is currently in litigation in a federal district court. *Community Financial Services Association of America and Consumer Services Alliance of Texas v. Consumer Financial Protection Bureau*, case no. 1:19-cv-00295-LY (W.D. Tex.) Existing text in §83.5004 already requires a CAB to maintain "all legally required disclosures provided in connection with the transaction," "complete documentation of all payments made by or to the licensee during the transaction," "any other documentation created or obtained by the licensee in connection with the transaction," and for payday loans, "documentation relating to the personal check or authorization to debit a deposit account accepted in connection with the loan."

New §83.5005 describes requirements for separation between a CAB and a third-party lender. Under Chapter 393, CABs are a type of CSO, and a CSO is defined as a person who obtains for consumers, or assists consumers in obtaining, extensions of credit "by others." Tex. Fin. Code, §393.001(3). In this provision, the phrase "by others" means that a CAB must operate independently from any third-party lender. The OCCC is aware of two published decisions analyzing this separation requirement. First, the Fifth Circuit found that a CSO was sufficiently

separate from a third-party lender where the CSO and lender were not the same entity, the CSO applied underwriting criteria selected by the lender (the CSO did not select the underwriting criteria), the CSO fee was not passed on to the lender, and the CSO fee did not directly benefit the lender. *Lovick v. Ritemoney Ltd.*, 378 F.3d 433, 438-42 (5th Cir. 2004). Second, a Texas bankruptcy court found that even though a CSO was a separate entity from a lender, the CSO violated Chapter 393 by falsely stating that it would issue a letter of credit if required by the lender. *In re Grayson*, 488 B.R. 579, 589-92 (Bankr. S.D. Tex. 2012).

New §83.5005 would implement the CAB-lender separation requirement. The rule is intended to provide clear standards to ensure that CABs operate independently from third-party lenders as required by Chapter 393, and to document a CAB's compliance with this requirement. Subsection (b) would specify requirements that must be satisfied, including a requirement that the CAB and lender be separate legal entities. In response to precomments that the OCCC received, paragraph (3) specifies that a CAB may not perform the functions of a third-party lender except by written agreement, paragraph (7) specifies that a CAB may not act as a general agent of a third-party lender but may act as a special limited agent, and paragraph (8) specifies that a licensee may not directly or indirectly share fees for CAB services with the lender. Subsection (c) describes additional factors that the OCCC may consider in determining whether a CAB operates independently, and subsection (d) explains that a CAB may not make a false or misleading representation regarding its relationship with a third-party lender.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending expresses concern about the following language in §83.5005(b)(3): "A licensee may not perform the functions of a third party lender, except by written agreement." The comment explains: "If a written agreement could legitimate cooperation that otherwise would be not allowable under statute, that would defeat the purpose of the TFC §393.001(3) that requires independent operation. Additionally, while recognizing that special limited agents are confined in their authority to act in ways that general agent agents are not, that still defeats the purpose of the separation and independent operation requirement if a CAB and a third-party lender could simply invest or designate certain persons to perform particular, limited tasks -- tasks that would otherwise violate the separation requirement but for the agency's allowance in this rule."

In response to this comment, the commission has made a change since the proposal to include the phrase "in accordance with this section" at the end of §83.5005(b)(3) and (4). With this change, adopted §83.5005(b)(3), (4), and (7) describe certain actions that are prohibited unless the CAB has entered a "written agreement" that is "in accordance with this section." In these provisions, the phrase "in accordance with this section" is intended to clarify that a CAB and lender may not use a written agreement to evade requirements described elsewhere in the section.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending includes three additional suggestions regarding §83.5005. First, the comment recommends revising the rule to include "any estate planning or other documentation necessary to determine

independent operation and that there is no direct or indirect fee sharing." The commission believes that this change is unnecessary, and that the provisions in amended §83.5004 and new §83.5005 should be sufficient to specify that CABs must maintain documentation of their agreements with third-party lenders and any transfers of money. Second, the comment explains that "we are concerned about the second provision under §83.5005 (8) that requires a third-party lender who receives any portion of a fee for CAB services charged by a licensee to promptly remit that to the licensee. This language appears to offer a 'get out of jail free card', allowing parties to share funds until caught and then remedy the situation with no penalty by returning ill-gotten funds." The commission disagrees with the suggestion that the rule creates a "get out of jail free card" in this situation. A CAB that fails to promptly remit money or fails to maintain documentation would be in violation of the rule. Third, the comment states: "We recommend that the regulator include as part of its periodic review and examination processes such contracts and performance under them to ensure that they do not, in substance, violate the proposed rules requiring separation and statutory requirement on extension of credit 'by others.'" The OCCC agrees that compliance with §83.5005 and the CAB-lender separation requirement is appropriately a part of the examination review process.

The comment from the Online Lenders Alliance expresses three concerns regarding §83.5005. First, the comment states that the rule goes beyond the statutory phrase "by others" by including requirements relating to separation and independence. "At a minimum it appears that Proposed § 83.5005 imposes additional burdens, conditions or restrictions that are in excess of the relevant statutory

provisions. For example, the words 'separation' and 'independent' are not found anywhere within the relevant portions of the underlying statute. These concepts are only found in the relevant case law." Second, the comment suggests that the proposal's citations to case law are inappropriate, stating that "the cited cases in support of portions of Proposed § 83.5005 is common law and not statutory law. If the legislature wanted to codify this case law it could have done so through the legislative process, but the legislature has chosen not to codify the issues discussed in the cited case law. Instead, it appears that by adding § 83.5005 to the proposed rules, the Commission is attempting to codify the cited case law, which the Commission may lack the legal authority to do through its rulemaking authority." Third, the comment suggests that if §83.5005 is adopted at all, it should include the following sentence: "A licensee may select the underwriting criteria used in determining whether the licensee will provide a credit enhancement to the third-party lender, and the licensee's underwriting criteria may include the underwriting criteria selected by the third-party lender."

The commission and the OCCC disagree with this comment. The requirement of separation and independence results from a plain-language reading of the phrase "by others" in Texas Finance Code, §393.001(3), and is within the commission's rulemaking authority under Texas Finance Code, §393.622. Courts have analyzed §393.001 and the separation requirement, and it is entirely appropriate for the commission to consider this analysis in adopting a rule that interprets the same section and requirement. In addition, allowing a CAB to decide underwriting criteria would erode an important part of the separation requirement,

and would enable a CAB to evade this requirement and act as a lender.

The adoption includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure used by CABs. The amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. The amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2019 quarterly and annual reports provided by CABs to the OCCC. Since the proposal, minor formatting changes have been made to the disclosures contained in the figures accompanying §83.6007, to improve how the information is displayed.

The comment from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending expresses concerns about the accuracy of the reporting data used in the amended disclosures, stating: "Given the limitations on currently aggregated data, we continue to urge the regulator to work on improving the accuracy and consistency of data to ensure accurate consumer disclosures. Some of these practices include requiring the regulator to update these model disclosures as they receive amended or corrected data and requesting verification from the licensee of any data that is found to be questionable or unreasonable to ensure that the data in aggregate is as complete, accurate, and thorough as possible." The commission believes that the OCCC has made appropriate efforts in periodically updating the disclosures, using information that is as accurate as possible. At the same time, the OCCC has accounted for the costs for CABs to update forms, as well as the confidentiality of reporting information under §83.5001(c).

The commission and the OCCC will allow a delayed implementation date of March 1, 2021, for all licensees to provide the amended versions of the disclosures under §83.6007. From the rule's effective date through February 28, 2021, licensees may provide consumers with either the previous versions of the disclosures or the amended versions. Starting on March 1, 2021, licensees must provide the amended versions. Regardless of which version of the forms they use, licensees must ensure that their disclosures comply with all requirements in Texas Finance Code, §393.223 and the rule text of §83.6007 and §83.6008 (relating to Permissible Changes). In particular, licensees must ensure that they: (1) use the disclosure corresponding to the correct product (e.g., multiple payment payday loan), (2) provide the disclosure at a time that is both before a credit application is provided and before a financial evaluation occurs, and (3) ensure that the disclosure is completed with all required information.

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to: (1) adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs), (2) adopt rules with respect to quarterly reporting by CABs, and (3) adopt rules with respect to the OCCC's examinations of CABs (including review of contracts between CABs and third-party lenders). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

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

Division 2. Authorized Activities

§83.2003. Attempted Evasion of Applicability of Subchapter [~~Chapter~~]

A "device, subterfuge, or pretense to evade the application of this subchapter," [~~of this chapter,~~] as used in Texas Finance Code, §393.602(c), includes:

(1) a transaction that is not identified as a deferred presentment transaction or payday loan, if the transaction is a deferred presentment transaction; and

(2) a transaction that is not identified as a motor vehicle title loan, if the transaction is a motor vehicle title loan.

~~[refers to any transaction that in form may appear on its face to be something other than a deferred presentment transaction or a motor vehicle title loan, but in substance meets the definition of a deferred presentment transaction or a motor vehicle title loan as defined in Texas Finance Code, §393.602.]~~

Division 4. License

§83.4003. 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 §83.3010 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information

on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) 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) 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, collecting due amounts in a legal manner, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

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

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

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

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

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

(H) any offense that involves intent, attempt, aiding, solicitation, or

conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; ~~and~~

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) ~~(F)~~ evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation ~~[from one or more of the following:]~~

~~[(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(ii) the sheriff or chief of police in the community where the person resides; and]~~

~~[(iii) other persons in contact with the convicted person].~~

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a

principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

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

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

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

(2) [(3)] errors or incomplete information in the license application;

(3) [(4)] a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §393.614(a)(3); and

(4) [(5)] any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a) and §393.614(a).

{{Section 83.4007 will be repealed.}}

~~[§83.4007. License Reissuance]~~

~~[In the event of reissuance of a license for any reason, the licensee must return to the OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g., lost, destroyed).]~~

Division 5. Operational Requirements

83.5001. Data Reporting Requirements

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly data will be

collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions.

(b) Due dates.

(1) Quarterly reports. The quarterly reports are due on:

(A) April 30, for transactions conducted during January through March;

(B) July 31, for transactions conducted during April through June;

(C) October 31, for transactions conducted during July through September; and

(D) January 31, for transactions conducted during October through December.

(2) Annual report. The annual report is due on January 31 for transactions conducted during the preceding January through December.

(c) Confidentiality. All individual licensee submissions of data, whether submitted on a quarterly or annual basis, are confidential in their entirety under the provisions of Texas Finance Code, §393.622(b).

(d) Aggregated public information. The OCCC will publish aggregated data on its

website within a reasonable time after each quarterly report and annual report is due.

(e) Enforcement actions. The OCCC may take enforcement actions described by this subsection if a licensee violates this section by failing to file a complete and accurate quarterly or annual report by the applicable deadline.

(1) Injunction. As provided by Texas Finance Code, §14.208(a), if the OCCC has reasonable cause to believe that a licensee has violated this section, it may issue an injunction ordering the licensee to file one or more complete, accurate, and timely quarterly or annual reports.

(2) Administrative penalty. As provided by Texas Finance Code, §14.251, the OCCC may assess an administrative penalty against a licensee that knowingly and wilfully violates Texas Finance Code, §393.627 or this section. In addition, as provided by Texas Finance Code, §14.208(c), the OCCC may impose [assess] an administrative penalty against a licensee that violates an injunction described by paragraph (1).

(3) Cumulative sanctions. The OCCC may impose the following sanctions for violations of this section.

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the OCCC may issue an injunction [administrative penalty is \$100 for each licensed location].

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A) of this

paragraph, then the administrative penalty is \$500 for each licensed location.

(C) Third and subsequent violations. If the licensee violates this section during any of the four quarters following a second violation described by subparagraph (B) of this paragraph, then the administrative penalty is \$1,000 for each licensed location. The \$1,000 administrative penalty applies to subsequent violations that occur during any of the four quarters following a third or subsequent violation described by this subparagraph.

(4) ~~[(3)]~~ Suspension or revocation ~~[for fourth or subsequent violation]~~. If the licensee violates this section during any of the four quarters following a third or subsequent violation described by subsection (e)(3)(C) of this section ~~[(e)(2)(C)]~~, or if a licensee fails to pay an administrative penalty required by a final administrative penalty order, then the OCCC may suspend or revoke the licensee's license, as provided by Texas Finance Code, §393.614.

83.5003. Examinations

(a) Examination authority. The OCCC may periodically examine each place of business of a licensee and inspect the licensee's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to business regulated under Texas Finance Code, Chapter 393.

(b) Access to records. A licensee must allow the OCCC to examine the licensee's place of business and make a copy of an item that may be inspected under subsection (a) of this section.

(c) Third-party lender agreements. The OCCC's examination authority includes the authority to review all agreements between a licensee and any third-party lender with which the licensee contracts to provide services under Texas Finance Code, Chapter 393.

(d) Witness declarations ~~[statements]~~. In connection with an examination, the OCCC may obtain witness declarations ~~[statements]~~ that pertain to business regulated under Texas Finance Code, Chapter 393. A witness declaration must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132. ~~[A witness statement must be signed and dated, and must include an acknowledgment that the statement may be introduced in an enforcement action in which the licensee is a party.]~~

(e) Records declarations ~~[statements]~~. In connection with an examination, the OCCC may obtain declarations ~~[statements]~~ regarding records maintained by the licensee that pertain to business regulated under Texas Finance Code, Chapter 393. A records declaration must substantially comply with Texas Civil Practice and Remedies Code, Chapter 132 ~~[statement must be signed and dated by a witness]~~, and must include acknowledgments of the following:

(1) a statement that the witness is the custodian of records ~~[of the witness's position and duties]~~ at the licensee;

(2) a statement that the witness is familiar with the manner in which records are created and maintained by virtue of duties and responsibilities;

(3) the number of pages of attached records;

(4) a statement that the records are original records or exact duplicates of the original records;

(5) a statement that the records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth;

(6) a statement the records were made by, or from information transmitted by, persons with knowledge of the matters set forth;

(7) a statement that the records were kept in the course of regularly conducted business activity; and

(8) a statement that it is the regular practice of the business activity to make the records [~~;~~~~and~~]

~~[(9) an acknowledgment that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party].~~

§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) (No change.)

(B) The transaction file must include the following documentation if the licensee services or collects a loan in connection with a transaction under Texas Finance Code, Chapter 393, or if the licensee otherwise obtains this documentation in the course of business:

(i) - (v) (No change.)

(vi) Criminal charge records. The transaction file must include complete documentation of any threat of criminal prosecution against a consumer, and must include complete documentation of any criminal referral, charge, or complaint filed by a licensee against a consumer, showing the licensee's compliance with Texas Finance Code, §393.201(c)(3). This must include any written statement threatening criminal prosecution, a written summary of any oral

statement threatening criminal prosecution, any written evidence of criminal conduct, any information submitted to law enforcement relating to alleged criminal conduct by a consumer, a written summary of any oral statement submitted to law enforcement, any police report, and any court records obtained by the licensee.

(vii) - (viii) (No change.)

(C) (No change.)

(3) Agreements between licensee and third-party lender. A licensee must maintain all documentation of its current agreements with third-party lenders, including copies of the agreement, any guarantees or letters of credit, and underwriting guidelines issued by the lender. A licensee must maintain documentation and records of transfers of money between itself and any third-party lender, as described by §83.5005 of this title (relating to Separation Between Credit Access Business and Third-Party Lender). The documentation must show the licensee's compliance with Texas Finance Code, §393.001(3). The licensee may maintain this documentation at a centralized location other than the licensed location or branch office if the agreements apply to multiple locations. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it. If an agreement terminates, documentation of the agreement must be maintained until the latest of:

(A) four years from the date of the last consumer transaction subject to the agreement;

(B) two years from the date of the final entry made on the consumer's account in

the last consumer transaction subject to the agreement;

(C) one year from the date of termination of the agreement; or

(D) the OCCC's next examination of the licensee (if the documentation is maintained at a centralized location, this refers to the next examination of the centralized location).

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

(9) Index of litigation, criminal charges, and repossessions. A licensee must maintain (or be able to produce within a reasonable period of time) an index of each litigation action and criminal charge or referral filed by or against the licensee, as well as each repossession initiated by the licensee. The index must show the consumer's name, account number, and date of action. Each record in the index must be retained for a period of four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(10) - (12) (No change.)

§83.5005. Separation Between Credit Access Business and Third-Party Lender

(a) Generally. A licensee assists consumers in obtaining extensions of credit by others, as provided by Texas Finance Code, §393.001(3).

(b) Independent operation. A licensee must operate independently from any third-party lender that makes a loan in connection with a transaction under Texas Finance Code, Chapter 393. Independent operation includes the following requirements:

(1) A licensee must be a separate legal entity from any third-party lender that makes a loan in connection with a transaction under Texas Finance Code, Chapter 393.

(2) The individuals who make major operational decisions for a licensee must be different from the individuals who make major operational decisions for any third-party lender.

(3) A licensee may not perform the functions of a third-party lender, except by written agreement in accordance with this section.

(4) A licensee may not delegate functions to a third-party lender, except by written agreement in accordance with this section.

(5) A licensee may not select the underwriting criteria used in determining whether the lender will make a loan to the consumer, but a licensee may apply underwriting criteria selected by the third-party lender.

(6) A licensee may not lend money to a consumer in connection with a transaction under Texas Finance Code, Chapter 393. In particular, a licensee may not borrow money from another person and then lend that money to a consumer.

(7) A licensee may not act as a general agent of a third-party lender, but may act as a special limited agent under a written agreement with a third-party lender in accordance with this section.

(8) A licensee may not directly or indirectly share fees for credit access business services with a third-party lender. If

a third-party lender receives any portion of a fee for credit access business services charged by a licensee, it must be promptly remitted to the licensee.

(9) A licensee must document each transfer of money between itself and a third-party lender, in a manner sufficient to show each amount that was remitted in connection with each transfer. A licensee must maintain sufficient and complete records to show the exact amounts that were earned by the licensee and the third-party lender in connection with a deferred presentment transaction or motor vehicle title loan.

(c) The OCCC may consider the following factors in determining whether a licensee operates independently from a third-party lender in compliance with this section:

(1) the extent of common ownership or control between the licensee and any third-party lender, including common ownership or control resulting from familial relationships between owners and directors of the licensee and any third-party lender;

(2) whether a licensee shares common officers, directors, or employees with a third-party lender;

(3) the sufficiency of documentation of transfers of money between the licensee and a third-party lender; and

(4) whether the licensee's course of performance is consistent with its written agreements with third-party lenders and its agreements with consumers, including agreements that specify a time within which the licensee will act on a guarantee.

(d) Representations regarding relationship with third-party lender. Under

Texas Finance Code, §393.304, a licensee may not make a false or misleading representation in the offer or sale of services. In particular, a licensee may not make a false or misleading representation regarding its relationship with a third-party lender or any guarantee that the licensee provides to a third-party lender on the consumer's behalf. For example, a licensee may not represent that it will enter a letter of credit with the third-party lender if, in its course of performance, it does not actually enter a letter of credit as that term is defined in Texas Business & Commerce Code, §5.102(a)(10). A licensee may not represent that it guarantees repayment to a third-party lender on the consumer's behalf if it does not act on that guarantee as described in its representations.

Division 6. Consumer Disclosures and Notices

§83.6007. Consumer Disclosures

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(a) {See attached amendments.}

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(b) {See attached amendments.}

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(c) {See attached amendments.}

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(d) {See attached amendments.}

(e) Consumer disclosures required for three to five common examples. For the three to five examples of the most common loans transacted by a credit access business as utilized under §83.6004 of this title (relating to Fee Schedule Content), the business must develop a consumer disclosure for those loan amounts, including appropriate fee information. Three to five examples must be developed for each payday or auto title product sold by the business (e.g., three single payment payday examples of \$300, \$500, and \$700; three multiple payment auto title examples of \$1,000, \$1,500, and \$2,500). The credit access business should provide the consumer with the example form

for the product and amount that most closely relates to the consumer's loan request.

(f) Internet sales. A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. Access to the required disclosure must be clearly visible upon the consumer's arrival at the website. If a consumer is directed to a credit access business's website by another commercial entity that is not required to be licensed as a credit access business, then the credit access business's website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure as outlined in subsections (a) - (d) of this section. The direct link to the consumer disclosure must be provided before the consumer is required to verify previously provided information, and before the consumer is required to provide additional information.

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 October 16, 2020.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner

CAB NAME HERE

Payday Loan

\$_____, One Payment

Cost Disclosure

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to <u>CAB name here</u>	\$ _____
Total of payments (if I pay on time)	\$ _____

APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____

Cost of other types of loans:



Repayment:

Of 10 people who get a new single-payment payday loan:	
	4 ¾ will pay the loan on time as scheduled (typically before 30 days)
	1 ¼ will renew 1 time before paying off the loan
	1 ½ will renew 2 to 4 times before paying off the loan
	2 ½ will renew 5 or more times or will never pay off the loan

This data is from 2019 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Payday Loan

\$ _____, _____ Payments

Cost Disclosure

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to <u>CAB name here</u>	\$ _____
Payment amounts (payments due every _____)	Payments #1-# _____ \$ _____ (Final) Payment # _____ \$ _____
Total of payments (if I pay on time)	\$ _____

APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____
_____	\$ _____	\$ _____

Cost of other types of loans:



Repayment:

Of 10 people who get a new multi-payment payday loan:	
	5 will pay the loan on time as scheduled (typically 5 months)
	1 will renew 1 to 4 times before paying off the loan
	4 will renew 5 or more times or will never pay off the loan.

This data is from 2019 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Auto Title Loan

\$_____, One Payment

Cost Disclosure



You can lose your car.

If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to <u>CAB name here</u> (includes a one-time \$__ title fee)	\$ _____
Total of payments (if I pay on time)	\$ _____

APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	25%	30%	89%	180%	238%	370%	Average APR
	\$2.05	\$3.55	\$13.38	\$15.00	\$20.66	\$30.42	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment auto title loan:	
	2 will pay the loan on time as scheduled (typically 30 days)
	½ will renew 1 time before paying off the loan
	1½ will renew 2 to 4 times before paying off the loan
	6 will renew 5 or more times or will never pay off the loan

This data is from 2019 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Auto Title Loan

\$_____, ____ Payments

Cost Disclosure



You can lose your car.

If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to <u>CAB name here</u> (includes a one-time \$__ title fee)	\$ _____
Payment amounts (payments due every _____)	Payments #1-# _____ \$ _____ (Final) Payment # _____ \$ _____
Total of payments (if I pay on time)	\$ _____

APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____
_____	\$ _____	\$ _____

Cost of other types of loans:



Repayment:

Of 10 people who get a new multi-payment auto title loan:	
	4 ¾ will pay the loan on time as scheduled (typically 5 - 6 months)
	½ will renew 1 time before paying off the loan
	1 ¼ will renew 2 to 4 times before paying off the loan
	3 ½ will renew 5 or more times or will never pay off the loan

This data is from 2019 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.