

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 88. Consumer Debt Management Services

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 88, §§88.101 - 88.105, 88.107, 88.108, 88.110, 88.201, 88.202, and 88.302, concerning Consumer Debt Management Services. The commission also adopts the repeal of 7 TAC §88.106. The adopted changes affect rules contained in Subchapter A, concerning Registration Procedures; Subchapter B, concerning Annual Requirements; and Subchapter C, concerning Operational Requirements.

The commission adopts the amendments to §§88.101 - 88.105, 88.107, 88.108, 88.110, 88.201, 88.202, and 88.302; and adopts the repeal of §88.106 without changes to the proposed text as published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7487).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to 7 TAC, Chapter 88 is to implement changes resulting from the commission's review of Chapter 88 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 88 was published in the *Texas Register* on November 3, 2017, (42 TexReg 6211). The agency did not receive any comments on the notice of intention to review.

The adopted rule changes primarily relate to four areas: (1) registration procedure updates, (2) recordkeeping and disclosure, (3) clarification, and (4) technical corrections.

The agency that enforces these rules, the Office of Consumer Credit Commissioner (OCCC), circulated an early draft of proposed changes to interested stakeholders. The OCCC did not receive any informal written precomments on the draft.

Any Chapter 88 rule not included in this adoption will be maintained in its current form. The individual purposes of the amendments to each section and the purpose of the repeal are provided in the following paragraphs.

Regarding Subchapter A, concerning Registration Procedures, many of the adopted amendments update the rules to conform to current practice, including the use of the OCCC's online registration portal. Several amendments align the rules with the OCCC's current registration practice and use language similar to that adopted by the commission in other areas regulated by the OCCC.

In §88.101, definitions for "Commissioner" and "OCCC" have been added throughout the chapter. The remaining definition of "Principal party" has been renumbered accordingly.

Section 88.102 outlines the requirements to file a new application. Adopted amendments to §88.102(a) remove unnecessary language and add references to the agency's acronym, OCCC. The agency believes that the use of "OCCC" provides better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Corresponding changes to further use this terminology are included throughout Chapter 88. The following provisions include amendments to replace "commissioner" or "commissioner's" with a reference to the OCCC: §§88.102(a) and (b)(5), 88.103(b)(1) and (c), 88.105, 88.201(3), 88.202(a)-(c), and 88.302(a)-(b).

Adopted amendments in §88.102(b) provide a general description of application items that better align with the OCCC's online registration portal. These phrases replace the titles of paper forms that are no longer used.

In §88.102(b)(3)(B), adopted amendments remove the current requirement to list spouses with community property interests as principal parties. These amendments help streamline the registration process and reduce regulatory burden. The amendments also make the application process simpler and more straightforward for applicants. If requested by the OCCC, applicants would still have to disclose the names of principal parties' spouses under §88.102(b)(3)(B)(iv).

Adopted amendments to §88.102(b)(3)(B) adding clauses (iii) through (vii) update the disclosure of owners and principal parties to outline the application information that must be submitted for different entity types (i.e., limited liability companies, proprietorships, partnerships, and trusts or estates). These amendments provide better clarity to applicants regarding the ownership information necessary as it relates to each ownership structure.

Also in §88.102, adopted amendments to subsection (b)(4) provide clearer guidance for applicants on the required registered agent information that must be submitted with an application.

Section 88.103 describes how an application for a debt management services provider registration is processed. Subsections (a) and (f) contain amendments to provide clarity and improve grammar and readability. Additionally, subsections (b) and (c) include amendments to incorporate the terminology change described earlier under §88.102.

Section 88.104 relates to a provider's duty to update information. The current language of §88.104 has been reorganized into subsection (a) as adopted, providing better clarity and grammar. The addition of subsection (b) explains that applicants and registrants must keep their contact information up-to-date. This provision are intended to ensure that the agency can contact registrants, and so that the agency can carry out its responsibility to monitor providers and ensure compliance, as provided by Texas Finance Code, §394.214.

Section 88.105 contains technical corrections as described earlier in the discussion regarding §88.102.

Section 88.106 has been repealed, as an inactive operation status is not currently used by debt management services providers.

Section 88.107 outlines the required fees for debt management services providers. A corresponding amendment to the repeal of §88.106 is contained in §88.107(c), removing inactive status from the list of registration amendments. In addition, the phrase "sent by mail" has been added to §88.107(d). As providers print their own registrations through the OCCC's online portal, a \$10 charge is only applicable if the registrant requests that the OCCC send a duplicate registration by mail.

Technical corrections are contained in §88.108 regarding public records. The amendments use the acronym "OCCC" and

also update the name of the agency that oversees state records, the Texas State Library and Archives Commission.

Adopted amendments to the criminal history rule at §88.110 provide clarification and updates. In §88.110(b)(4), an amendment would clarify that any costs or fees due may be paid or current. In subsection (c), the amendments improve formatting and outline clearer guidance regarding the list of offenses directly related to the occupation of being a debt management services provider. Additionally, a statutory citation update is included in §88.110(f)(2).

Sections 88.201 and 88.202 contain terminology changes as described earlier in the discussion regarding §88.102. In §88.202(b)(1), an amendment would allow the OCCC to establish a procedure for a provider to certify current use of documents previously submitted with the provider's annual report. In further development of the OCCC's online portal, this amendment provides increased flexibility in the annual report process.

Adopted amendments to the recordkeeping rule at §88.302 add subsection (c), which explains that providers must maintain a file for each debt management plan, including a copy of the debt management services agreement and an account history. These amendments are intended to provide clarity and guidance regarding the records required by Texas Finance Code, §394.205.

The addition of subsection (d) to §88.302 requires debt management services providers to provide a notice explaining how consumers can file a complaint with the OCCC and is similar to notices required for other OCCC licensees and registrants. Subsection (d) describes the content of the OCCC notice,

which includes the provider's contact information and the OCCC's contact information.

The adopted notice in §88.302(d) may be included in the provider's privacy notice or in its agreement required by Texas Finance Code, §394.209. This requirement is based on Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices. Because debt management services providers perform credit counseling services, they are required to provide privacy notices to consumers under federal law, as provided by Regulation P, 12 C.F.R. §1016.3(l)(3)(ii)(L) and §1016.4(a).

These amendments and repeal are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C. The amendments in §88.302(d) are adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adopted amendments and repeal are contained in Texas Finance Code, Chapter 11 and Chapter 394, Subchapter C.

Title 7, Texas Administrative Code

Chapter 88, Consumer Debt Management Services

Subchapter A. Registration Procedures

§88.101. Definitions [Definition].

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 394, Subchapter C, have the same meanings as defined in Chapter 394. The following terms [~~term~~], when used in this chapter, will have the following meaning, unless the context clearly indicates otherwise.

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) OCCC--The Office of Consumer Credit Commissioner.

(3) Principal party--All adult individuals with a substantial relationship to the proposed debt management services business of the applicant. Individuals with a substantial relationship to the proposed debt management services business of the applicant include:

(A) [(4)] corporate officers, including the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and those with substantial responsibility for debt management services operations or compliance with the Finance Code;

(B) [(2)] shareholders owning 10% or more of the outstanding voting stock; or

(C) [(3)] owners, trustees, or governing persons of other organizational entities applying for registration under this chapter.

§88.102. Filing of New Application.

(a) An application for issuance of a new debt management services provider registration must be submitted as prescribed by the OCCC [~~commissioner~~] at the date of

filing and in accordance with the OCCC's [~~commissioner's~~] instructions. Applications may be submitted electronically [~~by Internet or e-mail, or by mail~~].

(b) The application must include the following required forms and filings. All questions must be answered.

(1) Application for registration [~~Registration of Debt Management Services Provider~~].

(A) - (C) (No change.)

(2) Application questionnaire [~~Questionnaire for Debt Management Services Provider~~]. All applicable questions must be answered.

(3) Owners and principal parties. [~~Disclosure of Owners and Principal Parties of Debt Management Services Provider.~~]

(A) Detailed ownership and for-profit affiliate disclosure of nonprofit or tax exempt organizations. If the applicant is a nonprofit or tax exempt organization, a detailed description of the ownership interest of each officer, director, agent, or employee of the applicant must be provided. Any member of the immediate family of an officer, director, agent, or employee of the applicant, in a for-profit affiliate or subsidiary of the applicant, or in any other for-profit business entity that provides services to the applicant or to a consumer in relation to the applicant's debt management services business must also be provided.

(B) Ownership disclosure. The section inquiring about owners requires an answer based upon the applicant's entity type. [~~If an individual's interest in an entity is community property, then spouses with a~~

~~community property interest must also be listed. If the business interest is owned by a married individual as separate property, then a statement authenticating that fact must be provided.]~~

(i) All entity types. All applicants must disclose the name and home address of each officer and director of the applicant and each person that holds at least a 10% ownership interest in the applicant.

(ii) Corporations. All shareholders holding 10% [5%] or more voting stock must be named. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be provided that describes each level of ownership and management. This narrative or diagram must include the names of all officers, directors, and stockholders owning 10% [5%] or more stock at each level.

(iii) 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. [Other organizations. The owners, trustees, or governing persons must be named.]

(iv) 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.

(v) 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.

(vi) Limited partnerships. Each partner, general and limited, fulfilling the requirements of subclauses (I) - (III) of this clause must be listed and the percentage of ownership stated.

(I) 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.

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

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(vii) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(4) 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 business 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. [Statutory—Agent Disclosure. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must list a Texas address for legal service. If the statutory agent is an individual, the address must be a residential address.]

(5) Surety bond or insurance. An applicant must file with the OCCC [~~commissioner~~] either:

(A) - (B) (No change.)

(6) - (8) (No change.)

(9) Fingerprints.

(A) The applicant must provide a complete set of legible fingerprints for each person meeting the definition of "principal party" in §88.101 of this title (relating to Definitions [~~Definition~~]). All fingerprints must be submitted in a format prescribed by the OCCC and approved by the Texas Department

of Public Safety and the Federal Bureau of Investigation.

(B) For limited partnerships, if the owners and principal parties [~~Disclosure of Owners and Principal Parties~~] under paragraph (3) of this subsection 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.

(C) - (E) (No change.)

§88.103. Processing of Application.

(a) Initial review. The agency will generally respond to incomplete applications 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 the OCCC's [~~commissioner's~~] published instructions;

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

(c) Failure to complete application. If a complete application has not been filed with the OCCC [~~commissioner~~] within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

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

(f) Processing time.

(1) A registered provider application [~~The commissioner~~] will ordinarily be approved or denied [~~approve or deny a registered provider application~~] within a

maximum of 60 days after the date of filing of a completed application.

(2) More time may be taken [~~The commissioner may take more time~~] where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time period in paragraph (1) of this subsection.

§88.104. Updating Application and Contact Information [~~Amendments to Pending Application~~].

(a) Applicant's updates to registered provider application information. Before an application for registration is approved, an applicant must report to the OCCC any [~~Upon discovery of new or changed information, each applicant must provide the commissioner with information supplemental to that contained in the applicant's original application documents. Any action, fact, or~~] information that would require a materially different answer than that given in the original registered provider application and which relates to the qualifications for registration [~~must be reported to the commissioner~~] within 14 calendar [~~10 business~~] days after the person has knowledge of the [~~action, fact or~~] information.

(b) Contact information. Each applicant or registered provider is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for registered providers to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§88.105. Relocation of Registered Provider Location.

A registered provider may move the business office from the registered provider location to any other location by giving notice of intended relocation to the OCCC [~~commissioner~~]. The notice must include the present address of the registered provider location, the contemplated new address of the registered provider location, and the approximate date of relocation.

[~~§88.106. Designation of Inactive Status.~~]

[~~A registered provider may cease operating under a debt management services provider registration and render the registration inactive by giving notice of the cessation of operations to the commissioner. Notification must be filed on the Registration Amendment Form for Debt Management Services Provider.~~]

§88.107. Fees.

(a) - (b) (No change.)

(c) Registration amendments. A fee of \$25 must be paid each time a registered provider amends a registration by changing the assumed name of the registered provider[; ~~inactivating an active registration;~~] or relocating the registered provider location.

(d) Registration duplicates sent by mail. The fee for a registration duplicate to be sent by mail is \$10.

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

§88.108. Applications and Notices as Public Records.

Once a registration application or notice is filed with the OCCC [~~Office of Consumer Credit Commissioner (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 Texas State Library and Archives Commission [~~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 debt management services provider application or notice to the applicant or registered provider. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

§88.110. 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 registered occupation. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of an offense that directly relates to the duties and responsibilities of a debt management services provider, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing debt management services involves making representations to consumers regarding the terms of the services, holding money entrusted to the provider, remitting money to third parties, ~~[and]~~ collecting charges 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 registered provider and may be grounds for denial, suspension, or revocation: ~~[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 registrant 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 transaction 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 registration application, or suspend or revoke a registration, 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 [~~art. 42.12, §3g~~], or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

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

Subchapter B. Annual Requirements

§88.201. Annual Renewal.

Not later than February 1, a registered debt management services provider may

renew its registration by providing the following:

(1) an annual report, according to §88.202 of this title (relating to Annual Report);

(2) the fees required by §88.107(e) of this title (relating to Fees); and

(3) any other information required by the OCCC [~~commissioner~~].

§88.202. Annual Report.

(a) Each authorized debt management services provider must file an annual report under this section and must comply with all instructions from the OCCC [~~commissioner~~] relating to submitting the report.

(b) Each year, at the time of annual renewal, an authorized debt management services provider must file with the OCCC [~~commissioner~~], in a form prescribed by the OCCC [~~commissioner~~], a report that contains the following:

(1) the information required by Texas Finance Code, §394.205 (the OCCC may allow a provider to certify current use of previously submitted information required by this paragraph);

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

(c) Upon request by the OCCC [~~commissioner~~], the provider must provide any other information the commissioner deems relevant concerning the provider's business and operations during the preceding calendar year.

Subchapter C. Operational Requirements

§88.302. Recordkeeping.

(a) Generally. A provider must maintain records required by Texas Finance Code, §394.205 by using either a paper or manual recordkeeping system, electronic recordkeeping system, or optically imaged recordkeeping system unless otherwise specified by statute or regulation. All required books and records must be reasonably available for inspection at any time by OCCC staff [~~the commissioner or the commissioner's authorized representatives~~].

(b) Availability of records. The OCCC [~~commissioner~~] may require that the provider make records available in the State of Texas for examination purposes.

(c) Debt management plan file. A licensee must maintain a paper or electronic file for each individual debt management plan under Texas Finance Code, Chapter 394, or be able to produce this information within a reasonable amount of time. The file must be maintained for at least three years after the date of the last service on the plan, as provided by Texas Finance Code, §394.205(a). The file must include the following documentation for each debt management plan:

(1) the written debt management services agreement described by Texas Finance Code, §394.209;

(2) any written educational information provided to the consumer under Texas Finance Code, §394.208(a)(1);

(3) the individualized financial analysis and initial debt management plan

described by Texas Finance Code, §394.208(a)(2);

(4) an account history showing each payment made by the consumer, each amount charged by the provider, and each amount that the provider has disbursed to a creditor;

(5) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 16 C.F.R. Part 1016;

(6) any document signed by the consumer in connection with the plan;

(7) any other documentation created or obtained by the provider in connection with the debt management plan.

(d) OCCC notice. A debt management services provider must provide the following notice to each consumer: "For questions or complaints about this transaction, contact the debt management services provider, (insert name of provider), at (insert provider's phone number and, at provider's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to the provider. If a complaint or question cannot be resolved by contacting the provider, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." A provider must provide this notice by one or both of the following methods:

(1) including the notice on each privacy notice that the provider is required to

provide to a consumer under state or federal law; or

(2) including the notice on each written agreement that the provider is required to provide to a borrower under Texas Finance Code, §394.209.

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 February 16, 2018.

Laurie B. Hobbs
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