

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 §88.104 (relating to Updating Application and Contact Information), §88.110 (relating to Denial, Suspension, or Revocation Based on Criminal History), §88.202 (relating to Annual Report), §88.304 (relating to Credit Counseling Standards), and §88.306 (relating to Fees for Debt Management Services), in 7 TAC, Chapter 88, concerning Consumer Debt Management Services.

The commission adopts the amendments to §88.104, §88.110, and §88.304 without changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9140).

The commission adopts the amendments to §88.202 and §88.306 with changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9140).

The rules in 7 TAC Chapter 88 govern debt management providers. In general, the purpose of the rule changes to 7 TAC Chapter 88 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 88 was published in the *Texas Register* on October 1, 2021 (46 TexReg 6547). 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 webinar regarding the rule

changes. The OCCC received no informal precomments on the rule text draft.

Amendments to §88.104 add a new subsection (b) specifying that debt management registrants must provide certain updated information within 30 calendar days after the registrant has knowledge of a change in the information. The information includes the name or operating name of the registrant, location of any offices, websites, names of principal parties, and criminal history. Current subsection (b) already provides that registrants are responsible for ensuring that all contact information on file with the OCCC is current and correct, but the current rule does not provide a deadline for providing updated contact information. The new subsection specifies a 30-day deadline for providing update information, similar to other OCCC rules that contain a 30-day deadline for licensees to provide updated contact information. The OCCC requires current and correct information about registrants in order to carry out its responsibilities under Texas Finance Code, Chapter 394.

Amendments to §88.110 relate to the OCCC's review of the criminal history of a debt management applicant or registrant. The OCCC is authorized to review criminal history of debt management applicants and registrants under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109 and §394.204; and Texas Government Code, §411.095. The amendments to §88.110 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 §88.110 implement these statutory changes from HB 1342. Other amendments to §88.110 include technical corrections, clarifying changes, and updates to citations.

Amendments to §88.202 specify information that debt management registrants must submit with annual reports. Amendments throughout §88.202 add descriptions of information that registrants must provide annually under Texas Finance Code, §394.205 and §394.206, and add citations to these statutory provisions. These amendments are intended to help registrants comply with reporting requirements by clearly identifying information required by the statute. The amendments remove current §88.202(b)(2), which requires a registrant to provide a list of all owners and principal parties with the annual report. The OCCC anticipates that this list will no longer be necessary based on the amendments to §88.104 described earlier in this adoption, and believes that removing this list will simplify the reporting process. New §88.202(d) specifies that the annual report must be verified by oath or affirmation, as required by Texas Finance Code, §394.205(c), and requires registrants to certify that they have reviewed contact

information and submitted any updates in accordance with the OCCC's instructions.

Since the proposal, changes have been made in §88.202(b) to further simplify reporting of information about consumer counseling. Under Texas Finance Code, §394.208(a)(1), before enrolling a consumer in a debt management plan, a provider must provide individualized counseling and educational information to the consumer. Currently, §88.202(b)(3) requires providers to include information about credit counseling with the annual report, including the number of credit counselors employed and the name of the accreditation organization. The adoption removes this provision and replaces it with new §88.202(b)(4), requiring the provider to state whether it has provided individualized counseling to each consumer. Combined with the amendment to §88.304(b) described in the following paragraph, this change will simplify annual reporting requirements relating to credit counseling, while maintaining the requirement to provide this information to the OCCC upon request.

An amendment to §88.304(b) removes language that currently requires providers to submit documentation of the certification of the provider's credit counselors with the annual report. The OCCC believes that removing this requirement will simplify the reporting process. The amendments maintain current language requiring a provider to provide this information upon request by the OCCC. The amendments also replace "commissioner" with "OCCC" in this subsection to ensure consistency with other rules.

Amendments to §88.306 add citations to statutory limitations on fees for debt management services. Currently, this section

states that a provider may not charge for services unrelated to debt management or financial education unless approved by the commissioner. Under Texas Finance Code, §394.210(a), a debt management provider may not charge any fees other than fees that are authorized by Texas Finance Code, §394.210. New §88.306(a) includes a reference to this statutory section and explains that providers may not impose a fee or other charge except as authorized by the statute. The amendments remove the phrase "unless approved by the commissioner in advance" from the current rule, because fees for services unrelated to debt management or financial education are not authorized by Texas Finance Code, §394.210. Although the commissioner may authorize certain counseling and education fees under Texas Finance Code, §394.210(d), this does not include fees for unrelated services. New §88.603(c) explains that the OCCC will periodically compute and publish adjustments to debt management fees, as provided by Texas Finance Code, §394.2101.

Since the proposal, a change has been made in §88.306(c) to specify the base year for purposes of the fee adjustments described in the previous paragraph. Under Texas Finance Code, §394.2101(a), the OCCC is authorized to adopt a base year for purposes of adjustments to debt management fees. The Texas Legislature added this language in 2011 (under SB 141). For this reason, new language in §88.306(c) explains that the OCCC has adopted 2011 as a base year for purposes of these adjustments.

The rule changes are adopted under Texas Finance Code, §394.214(a), which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 394.

Chapter 88. Consumer Debt Management Services

Subchapter A. Registration Procedures

§88.104. Updating Application and Contact Information

(a) Applicant's updates to registered provider application information. Before an application for registration is approved, an applicant must report to the OCCC any 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 within 14 calendar days after the person has knowledge of the information.

(b) Registrant's updates to registration application information. A registrant must report to the OCCC any information that would require a different answer than that given in the original registration application within 30 calendar days after the registrant has knowledge of the information, if the information relates to any of the following:

(1) the name or any operating name of the registrant;

(2) the location of any additional offices;

(3) the registrant's website address;

(4) the names of principal parties;

(5) criminal history;

(6) actions by regulatory agencies; or

(7) court judgments.

(c) [~~(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.

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

(a) Criminal history record information. After an applicant submits a complete registration application, including all required fingerprints, and pays the fees required by §88.107 of this title (relating to Fees), the OCCC will investigate the applicant. 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;

(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 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, 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:

(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) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a registration, 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 registration to engage in the occupation;

(C) the extent to which a registration 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 or [5] capacity [~~or fitness~~] required to perform the duties and discharge the responsibilities of a registrant; and [-]

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a registrant unfit to be a registrant, 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 registration, 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) Offenses involving moral turpitude. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant, ~~[or] registrant,~~ or a principal party has been convicted of or found civilly liable for an offense involving moral turpitude, as provided by Texas Finance Code, §394.204(i)(1), (k)(1)-(2). Offenses involving moral turpitude include the following:

- (1) forgery;
- (2) embezzlement;
- (3) obtaining money under false pretenses;
- (4) larceny;
- (5) extortion;
- (6) conspiracy to defraud; and
- (7) any other similar offense or violation.

(e) Revocation on imprisonment. A registration will be revoked on the registrant'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 registration application, or suspend or revoke a registration, 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) ~~[(3) [§53.021(a)(3)-(4)]]~~;

(2) ~~[(3)]~~ errors or incomplete information in the registration application, as provided by Texas Finance Code, §394.204(h);

(3) ~~[(4)]~~ a fact or condition that would have been grounds for denying the registration 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, §394.204(k)(1)-(2); 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, §394.204(i)(3), (k)(9).

§88.202. Annual Report

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

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

(1) if the provider is a nonprofit or tax exempt organization, the assets and liabilities at the beginning and end of the reporting period, as required by Texas Finance Code, §394.205(b)(1);

(2) the total number of debt management plans the provider has initiated on behalf of consumers in Texas during the reporting period, as required by Texas Finance Code, §394.205(b)(2);

(3) the total and average fees charged to consumers, including all voluntary contributions received from consumers, as required by Texas Finance Code, §394.205(b)(3); and

(4) if the provider has initiated one or more debt management plans during the reporting period, a statement of whether the provider provided individualized counseling to each consumer through the services of an independently certified counselor, as required by Texas Finance Code, §394.208(a)(1).

(c) Required documents. A provider must submit the following additional documents with the annual report, in accordance with the OCCC's instructions:

(1) a blank copy of any debt management services agreement used by the provider, as required by Texas Finance Code, §394.205(d) (the OCCC may allow a provider to certify current use of a previously submitted agreement);

(2) blank copies of the provider's consumer educational information, individualized financial analysis, initial debt management plan, and any other required disclosures relating to credit counseling, as required by Texas Finance Code, §394.205(d) (the OCCC may allow a provider to certify current use of previously submitted information); and

(3) a copy of the provider's surety bond or a compliant insurance policy, as required by Texas Finance Code, §394.206(a).

~~[(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) a list of all owners and principal parties, including any change in ownership that occurred during the preceding calendar year; and]~~

~~[(3) information regarding the provider's credit counselors, including the number of credit counselors employed at the time the annual report is prepared, and the accreditation organization or program that certifies the provider's counselors.]~~

(d) Certification. An annual report must be verified by the oath or affirmation of the owner, manager, president, chief executive officer, or chairman of the board of directors

of the provider, as required by Texas Finance Code, §394.205(c). The provider must certify that the provider has reviewed all contact information and principal party information on file with the OCCC, and has submitted any updates to this information in accordance with the OCCC's instructions.

(e) Other information. [(e)] Upon request by the OCCC, 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

§88.304. Credit Counseling Standards

(a) For purposes of Texas Finance Code, §394.202(2) and §394.208(a)(2), a provider must be accredited by an independent, third-party accreditation organization that covers, at a minimum, competency in the following core areas:

- (1) service environment and planning;
- (2) service accessibility and delivery;
- (3) training and supervision;
- (4) quality management and improvement;
- (5) ethical standards; and
- (6) financial education.

(b) Each provider must provide the name and contact information of the accreditation organization or program that certifies its counselors. The provider must maintain documentation of the certification of the

provider's credit counselors, which must be submitted [~~with the annual report and~~] upon request by the OCCC [~~commissioner~~]. The commissioner may issue an order disapproving the accreditation organization or program if the commissioner determines that the organization or program does not provide comprehensive education training on the following:

- (1) alternatives available to resolve an indebted consumer's credit problems;
- (2) how to analyze a consumer's current financial condition;
- (3) budget development;
- (4) money management; and
- (5) wise use of credit.

(c) The provider must maintain documentation of individualized counseling and analysis that has been provided under Texas Finance Code, §394.208(a)(2).

§88.306. Fees for Debt Management Services

(a) Limitation on fees. The maximum fees for debt management services are described by Texas Finance Code, §394.210. A provider may not impose a fee or other charge, or receive payment from a consumer or other person on behalf of a consumer, except as allowed under Texas Finance Code, §394.210.

(b) Fees for unrelated services. A provider may not charge a consumer for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services

concerning personal finance [~~unless approved by the commissioner in advance~~].

(c) Adjustment of fee amounts. As provided by Texas Finance Code §394.2101, the OCCC will periodically compute and publish dollar amounts of fees specified in Texas Finance Code, §394.210, to reflect inflation as measured by the Consumer Price Index for All Urban Consumers. These adjustments will be published on the OCCC's website. For purposes of these adjustments, the OCCC has adopted 2011 as a base year.

Certification

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on February 18, 2022.

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