

NOTICE OF PRECOMMENT DRAFT & ONLINE WEBINAR
Debt Management Rule Review
November 16, 2021 at 10:00 a.m.

The Office of Consumer Credit Commissioner (OCCC) will hold an online webinar on November 16, 2021, at 10:00 a.m. During the webinar, the OCCC will discuss the November 4 precomment draft of rule review amendments relating to debt management providers. The OCCC will also accept informal written precomments until 5:00 p.m. on December 1. The OCCC plans to present these rules for proposal at the Finance Commission's December 17 meeting.

Summary of Rule Amendments

In the OCCC's rules for debt management providers at 7 Tex. Admin. Code Ch. 88, the amendments include the following:

- Section 88.104 would be amended to explain that registrants are responsible for informing the OCCC of updates to certain contact information within 30 days (including the name of the registrant, locations of offices, names of principal parties, and criminal history).
- Section 88.110 would be amended to update language on evaluating criminal history of applicants and registrants, to ensure consistency with HB 1342 (2019).
- Section 88.202 would be amended to clearly refer to statutory requirements for filing annual reports. In addition, the requirement to provide a list of owners and principal party would be replaced with a requirement to annually certify contact information and principal party information. The OCCC is also considering modifications to reporting relating to credit counselors and accreditation organizations, and invites comments on alternative ways to report this information.
- Section 88.306 would be amended to explain that maximum debt management fees are described by Section 394.210 of the Texas Finance Code, and that a provider may not impose unauthorized fees.

Advisory Bulletin on Authorized Fees

The OCCC has published an advisory bulletin on authorized fees for debt management providers. This bulletin is intended to provide guidance for complying with the fee limitations in Section 394.210 of the Finance Code, as well as the Federal Trade Commission's Telemarketing Sales Rule. A copy of the bulletin is attached to this notice, and the OCCC invites comments that stakeholders have on the bulletin.

Participating in Webinar

Stakeholders are invited to listen and participate in the online webinar. Please follow the instructions available at: <https://attendee.gotowebinar.com/register/6563869332242963727>

Submission of Informal Precomments

Informal precomments on the draft rules may be submitted by email to rule.comments@occc.texas.gov, or by mail to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Blvd., Austin, Texas 78705.

Informal precomments on the OCCC's November 4 precomment draft must be received by 5:00 p.m. on December 1, 2021.

OCCC Debt Management Rule Review Amendments
11/4/2021 Precomment Draft

Title 7, Texas Administrative Code

Part 5. Office of Consumer Credit Commissioner

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 [;] 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;]

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

~~[(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) ~~[(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); and

(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).

(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);

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

~~[(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]~~

(4) ~~(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. The provider must sign a certification on a form provided by the OCCC, including a statement 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

§88.306. 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.

Debt Management Advisory Bulletin: Fee Limitations for Debt Management Services

This bulletin summarizes limitations on fees for debt management services. These limitations are located in Sections 394.210 and 394.2101 of the Texas Finance Code, as well as the Federal Trade Commission's Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(5).

This bulletin includes a flow chart with a series of questions that are relevant in determining which fee structure a provider should use. This bulletin also includes a table listing authorized fees and limitations.

This bulletin is just a summary. Debt management providers should carefully review Chapter 394 of the Finance Code, as well as the Telemarketing Sales Rule, to ensure that they are in compliance. Providers are responsible for ensuring that they comply with all applicable laws, not just the laws described in this bulletin.

Terminology Used in This Bulletin:

- **Debt management services:** Under Section 394.202, a “debt management service” generally includes any service where a provider, on a consumer’s behalf, seeks repayment to creditors on terms more favorable than the original terms of a debt. This term encompasses services that may have other labels in the industry (such as “debt settlement” or “debt negotiation”). Labels used by the parties do not govern whether a service is a debt management service.
- **Nonprofit organization:** Under the Federal Trade Commission Act, 15 U.S.C. §§ 44, 45(a)(2), the FTC’s authority applies to companies that carry on business for profit. In certain cases, the FTC has found that businesses labeled as “nonprofit” actually operate for profit. Providers should consult an attorney if they have questions about their nonprofit status.
- **Interstate telemarketing and unsecured debt:** The FTC’s Telemarketing Sales Rule generally applies to for-profit providers that use interstate telemarketing to alter terms of debt with unsecured creditors or debt collectors. Providers should review the definitions of “debt relief service” and “telemarketing” in the Telemarketing Sales Rule, 16 C.F.R. § 310.2(o), (gg).
- **Fee structures:** Section 394.210 of the Finance Code contains three different fee structures for debt management services. This bulletin refers to these fee structures as “Fee structure 1,” “Fee structure 2,” and “Fee structure 3.” A provider may use only one fee structure, and may not charge any fees except for specifically authorized fees.
 - **Fee structure 1:** This fee structure is contained in Section 394.210(f) and (n), and is typically appropriate for nonprofit providers that help consumers settle debt for amounts that include the full principal (typically called “debt management”).
 - **Fee structure 2:** This fee structure is contained in Section 394.210(g), (h), (i), and (n), and may be appropriate for certain nonprofit providers that settle debt for less than full principal.
 - **Fee structure 3:** This fee structure is contained in Section 394.210(j) and (n), and is typically appropriate for for-profit providers that help consumers settle debts for less than full principal (typically called “debt settlement”).

Flow Chart for Authorized Debt Management Fees

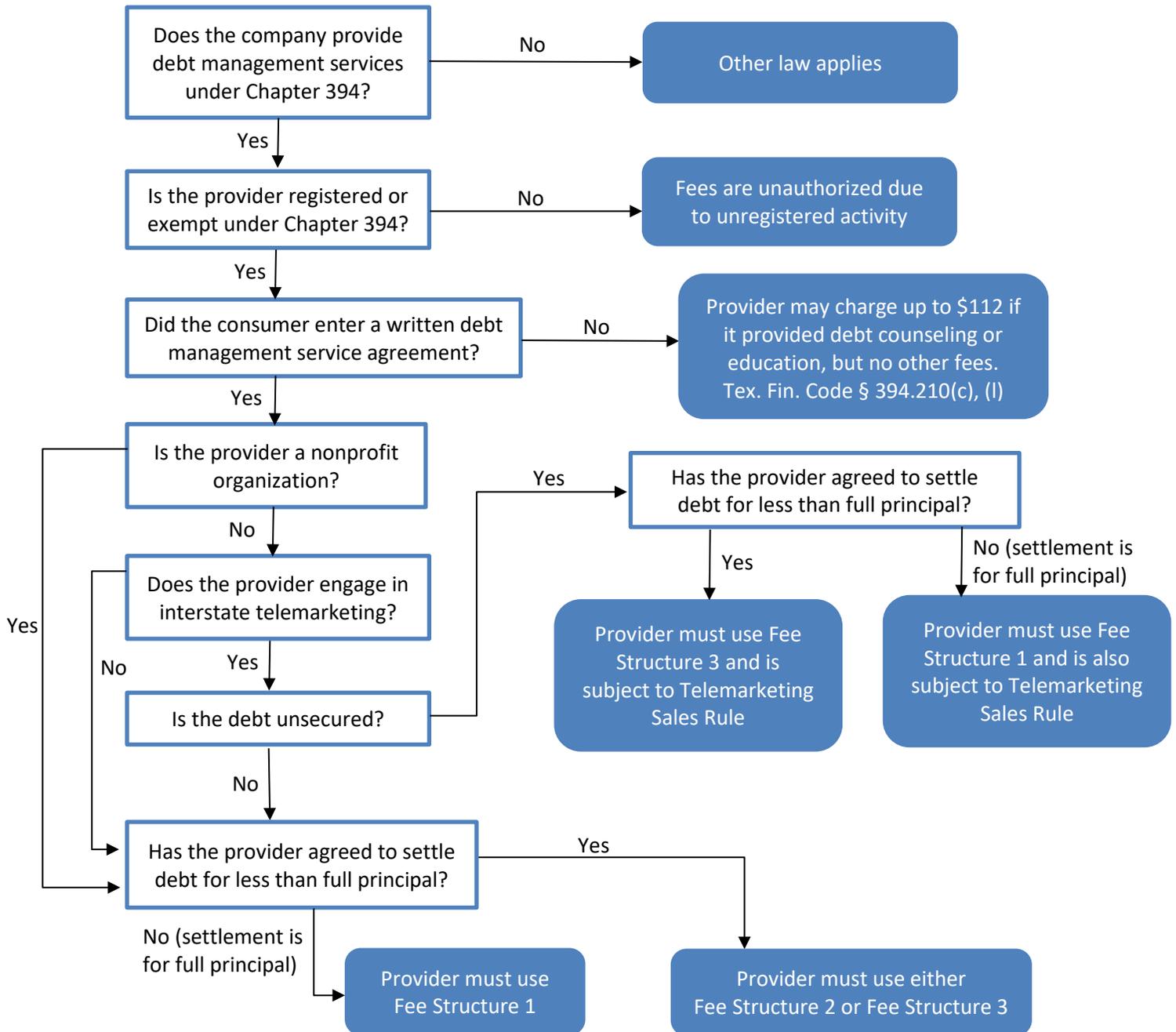


Chart of Authorized Debt Management Fees

Fee Structure & Citation	Authorized Fees (amounts effective through 6/30/2022)	Limitations
Fee Structure 1 Tex. Fin. Code § 394.210(f), (n)	Account setup fee, up to \$115 (394.210(f)(1)) Monthly service fee, lesser of \$12 per account or \$58 (394.210(f)(2)) Dishonored payment fee, up to \$29 (394.210(n))	No other fees may be charged. (394.210(a))
Fee Structure 2 Tex. Fin. Code § 394.210(g), (h), (i), (n)	Account setup fee, up to \$462 (394.210(g)(1)) Monthly service fee, lesser of \$12 per account or \$58 (394.210(g)(2)) One of the following two fees: <ul style="list-style-type: none"> • Flat fee assessed in equal monthly payments (394.210(g)(3)(A), (i)) - or - • Settlement fees, charged only as debts are settled, up to 30% of excess of outstanding debt amount over amount paid (394.210(g)(3)(B), (h)) Dishonored payment fee, up to \$29 (394.210(n))	No other fees may be charged. (394.210(a)) If provider charges flat fee, then total fees may not exceed 17% of principal amount of debt. (394.210(g)(3)(A)) If provider charges settlement fees, then total fees may not exceed 20% of the principal amount of debt. (394.210(h)) Portion of account setup fee is subject to refunding upon cancellation. (394.2095)
Fee Structure 3 Tex. Fin. Code § 394.210(j), (n) FTC Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(5)	Reasonable settlement fees (394.210(j)) Dishonored payment fee, up to \$29 (394.210(n))	No other fees may be charged. (394.210(a)) Fee may not be charged or received until at least one settlement agreement is reached with a creditor and at least one payment has been made toward settlement agreement. (394.210(j), 310.4(a)(5)(i)(A)-(B)) Fee must bear same proportional relationship for each debt, or must be percentage of amount saved from settlement. (394.210(j), 310.4(a)(5)(C))