

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 83, Subchapter A, §§83.102, 83.302, 83.304, 83.404, 83.505, 83.606, 83.707, 83.802, 83.828, 83.829, 83.833, and 83.835, concerning Rules for Regulated Lenders. The commission also adopts the repeal of 7 TAC §83.408.

The commission adopts the amendments to §§83.102, 83.302, 83.304, 83.404, 83.505, 83.606, 83.707, 83.802, 83.828, 83.829, 83.833; and adopts the repeal of §83.408 without changes to the proposed text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5619).

The commission received no written comments on the proposal.

The adopted changes affect rules contained in Division 1, concerning General Provisions; Division 3, concerning Application Procedures; Division 4, concerning License; Division 5, concerning Interest Charges on Loans; Division 6, concerning Alternate Charges for Consumer Loans; Division 7, concerning Interest and Other Charges on Secondary Mortgage Loans; Division 9, concerning Insurance; and Division 10, concerning Duties and Authority of Authorized Lenders.

In general, the purpose of the adoption regarding to 7 TAC, Chapter 83, Subchapter A is to implement changes resulting from the commission's review of subchapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC,

Chapter 83, Subchapter A was published in the July 6, 2018, issue of the *Texas Register* (43 TexReg 4563). The commission received no comments in response to that notice.

The agency distributed an early draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCC did not receive any informal written precomments on the rule text draft. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments and repeal fulfill the following four purposes: 1) ensure consistency with current licensing terminology, agency procedures, and streamlined processes; 2) provide flexibility to licensees; 3) modernize or remove obsolete language; and 4) make technical corrections. Any regulated lender rule not included in this adoption will be maintained in its current form.

The individual purposes of the adopted amendments to each section, as well as the purpose of the adopted repeal, are provided in the following paragraphs. Specific explanation is included with regard to rule changes to ensure consistency, provide flexibility, and modernize language. The remaining changes throughout all sections consist of minor revisions to formatting, grammar, punctuation, and other technical corrections. The technical changes will be summarized more generally.

In §83.102, the definition of "Interpretation letter" in former paragraph (14) has been deleted, as this definition is not used in the subchapter. As a result, the remaining definitions have been renumbered accordingly.

The agency's acronym "OCCC," defined in adopted §83.102(17) (former §83.102(18)) replaces the use of "commissioner" in three instances in the introductory language of §83.302. The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition to §83.302, the following rules include amendments replacing "commissioner" with "OCCC": §83.802(b), concerning Authorized Property Insurance; and §83.835, concerning Annual Report.

Section 83.302, concerning Filing of New Application, includes numerous adopted rule changes to ensure consistency with current agency procedures. In §83.302(1)(A) and (1)(B), changes streamline the introductory wording (referred to as "taglines") and grammar to more closely track the OCCC's online licensing portal, and to no longer refer to specific titles used on paper licensing forms. In particular, a statement that the "responsible person is also known as the location contact" has been added to §83.302(1)(A)(ii), to further the use of online terminology.

Adopted changes are included in §83.302(1)(A)(iii) regarding the signature on a new license application. These changes involve the deletion of unnecessary language, allowing for the electronic signature of an authorized individual of the

applicant, without reference to particular titles of the person signing.

An adopted revision throughout §83.302(1)(B) relates to the percentage of ownership that must be disclosed by various entities. In the former rule, these percentages are 5%. In evaluating the appropriate level of disclosure necessary for the agency to properly assess principal parties, the agency had determined that 10% would achieve the needed information. Therefore, the amendments align the rule with current agency practice and provide consistency in disclosure of ownership for new applications with transfer applications found in §83.303. Consequently, 5% has been replaced with 10% in the following proposed provisions: §83.302(1)(B)(iii)(II), (1)(B)(iv), and (1)(B)(v). A parallel change has also been adopted in §83.304, concerning Change in Form or Proportionate Ownership, as found in subsection (c)(1).

Adopted amendments updating licensing terminology continue in §83.302(1)(C) through (1)(K), (2)(A), and (3), to better align the rule with the OCCC's online portal. In addition, §83.302(1)(G) concerning employment history includes an amendment to remove the phrase "with no gaps." As the rule still requires "a continuous 10-year [employment] history," the deleted language is not necessary.

Section 83.302(1)(D) contains several adopted amendments to ensure consistency with current agency procedure. First, the term "registered agent" will replace "statutory agent." These terms have been used synonymously, but "registered agent" is used by the Texas Secretary of State (SOS) and has become the more common term. Second, a natural person will require simply a different address from the licensed

location, as opposed to the outdated requirement of a physical residential address. Third, a company's secretary may submit certification identifying an agent that differs from the SOS filing. Furthermore, these amendments are consistent with rule revisions previously adopted for other industries regulated by the agency and will provide consistency in the licensing process.

In §83.302(1)(J)(i), an adopted amendment adds language requiring all entity types to provide a bank confirmation if requested by the agency. This amendment memorializes the long-standing OCCC licensing procedure to obtain bank confirmations if necessary to confirm account balance information with financial institutions of applicants.

Section 83.302(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. Adopted amendments in §83.302(2)(A)(iv) update the fingerprinting requirements and provide increased flexibility so that applicants will not need to resubmit if acceptable fingerprints are on file. These amendments correspond to changes approved by the commission in the OCCC's other licensed areas and will provide consistency across regulated entities.

Regarding the entity documents under §83.302(2)(C), several adopted amendments update the documents required for new applications, increasing the efficiency of the licensing process. The provisions under former (2)(C)(ii)(II) and (III), and (2)(C)(iv)(II) and (III) required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and

election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective clause and language has been added to reflect that such documents should only be provided upon request. Additionally, the requirements in former §83.302(2)(C)(ii)(IV)(-a-) and (2)(C)(iv)(IV)(-a-) have been deleted. These provisions required applicants to provide minutes electing the statutory agent. The agency has streamlined the process for verification of the registered agent by certification from the secretary of the company.

Further, these adopted changes align the rule with the OCCC's online portal, listing the required documents first, removing documents no longer required, and listing last documents to only be provided "if requested" by the agency. Parallel changes are adopted for corporations in §83.302(2)(C)(ii), and for limited liability companies in §83.302(2)(C)(iv).

An adopted amendment in §83.302(2)(C)(viii) allows applicants to submit a "certification of formation." This language is similar to that approved by the commission in the OCCC's other regulated areas. The amendment provides flexibility to applicants that may wish to submit this type of document, as opposed to an entity-specific formation document (e.g., for a corporation, articles of incorporation).

Section 83.304 describes what action a licensee must take when it changes the proportion of ownership in or the form of the licensed entity and lists the time frame within which the licensee must notify the agency. The adopted changes in §83.304(b) revise grammar and formatting concerning

mergers. Separate paragraphs have been created to distinguish the requirements for merger of a licensee, merger of a parent entity, and a merger beyond the parent level. These amendments do not change what is required for each type of merger, but are intended to provide clarity and improve readability.

Section 83.404 describes the effect of criminal history information on applicants and licensees. In §83.404(f)(2), unnecessary language has been deleted related to a citation update.

Section 83.408, concerning License Reissuance, has been repealed. Upon reissuance of a license, this rule requires the licensee to return to the agency the license certificate held prior to the reissuance. With the OCCC's online portal, licensees print their own licenses and the agency no longer issues license certificates. As a result, §83.408 has become obsolete.

In §83.505, concerning Deferment, adopted new subsection (j) provides important amendments that increase flexibility for licensees during times of natural disasters. With recent hurricanes and floods, the agency has recognized the need for licensees to assist borrowers in these difficult situations. In accordance with agency practice, the addition of §83.505(j) memorializes in the rule the deferment procedures the agency has recently permitted during natural disasters. This disaster exception allows the licensee to deliver the deferment notice without obtaining the borrower's signature if the borrower resides in an area designated as a state of disaster, and the deferment occurs before the state of disaster has been terminated. Further, the new exception is

similar to that approved by the commission for motor vehicle sales finance licensees.

An adopted amendment to §83.606(f) will update internal references to a definition being renumbered as part of this adoption. With the deletion of the definition in former §83.102(14), all remaining definitions will be renumbered, including the definition of "United States rule" contained in former §83.102(30). Section 83.606, concerning Maximum Term and Maximum Installment Account Handling Charge, references the United States rule definition. Thus, the adopted amendments to §83.606(f) update the internal references to the new definition number, §83.102(29).

Section 83.707(d)(2), concerning Other Fees, contains an adopted amendment to make a correction in terminology. The rule previously used the phrase "finance charge," where the intended phrase as adopted is "contract rate."

Several adopted changes modernize §83.802, concerning Authorized Property Insurance. Since §83.802 was adopted, the Texas Department of Insurance (TDI) does not fix or approve rates for property insurance, but rather has what is referred to as a "file and use" system. As a result, this terminology has been modernized throughout §83.802. The rates provided by Figure: 7 TAC §83.802(c) have also been amended. The existing rates have not been updated for many years. The adopted rates in the figure correspond to those recently accepted by TDI for dual interest personal property insurance. Additionally, adopted §83.802(d) maintains the requirement for licensees to file with the OCCC a copy of the relevant policy to be used for a rate that has not been filed with TDI.

The adopted changes to the following rules enhance recordkeeping and reporting for licensees. First, in §83.828(13), concerning Files and Records Required (Subchapter E and F lenders), an amendment streamlines the compliance file requirements to align with examinations issued through the online portal. An additional amendment removes the requirement to maintain compliance bulletins, as these are now posted on the OCC's website.

In §83.829(1)(H), concerning Files and Records Required (Subchapter G lenders), adopted terminology updates refer to the "compliance" file, as opposed to the prior term of "official correspondence" file.

Throughout §83.833(b), concerning Correction of Errors or Violations, adopted amendments make corrections in terminology. This rule previously used the term "retail buyer," where the intended term as adopted is "borrower."

In §83.835, concerning Annual Report, adopted changes in grammar and use of the agency's acronym will improve readability and consistency.

The amendments and repeal are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

Title 7, Texas Administrative Code

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

Division 1. General Provisions

§83.102. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342 have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) - (13) (No change.)

~~[(14) Interpretation letter--A formal interpretation of Texas Finance Code, Title 4 made by the commissioner and approved by the Finance Commission under Texas Finance Code, §14.108.]~~

(14) ~~[(15)]~~ Licensee--Any person who has been issued a regulated loan license pursuant to Texas Finance Code, Chapter 342. Another name for a "regulated loan license" is a "consumer loan license."

(15) ~~[(16)]~~ Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, or the act of funding the loan or transferring money from the lender to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(16) ~~[(17)]~~ Negotiating a loan--The process of submitting and considering offers

between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(17) [~~(18)~~] OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(18) [~~(19)~~] Precomputed loan--A loan in which the borrower agrees to pay the total of payments that includes both principal and all anticipated interest through the full term of the loan. If a borrower prepays a precomputed loan, the borrower is entitled to a rebate of all unearned interest and unearned charges.

(19) [~~(20)~~] Prepaid interest--Interest paid separately in cash or by check before or at consummation in a transaction, or withheld from the proceeds of the credit at any time. Some common terms such as points, discounts, and origination fees have been used to identify this charge.

(20) [~~(21)~~] Principal--The capital sum of the debt, including any interest capitalized and added to the cash advance at the inception of the loan. Principal is the amount of money which is used, forborne, or detained and upon which interest is charged. The principal amount does not include any interest accrued after the inception of the loan, such as default charges.

(21) [~~(22)~~] Pro rata method--A formula for determining the amount of unearned interest or other charges, such as

insurance, to be refunded following prepayment or acceleration by applying the amounts to equal unit periods. The formula for the pro rata method assumes that interest or other charges are earned in direct proportion to the time that a loan has been outstanding.

(22) [~~(23)~~] Rebate--A refund of all or part of a precomputed charge or interest.

(23) [~~(24)~~] Regulated loan--A loan made under the authority of Texas Finance Code, Chapter 342.

(24) [~~(25)~~] Renewal or refinance--A new loan contract that includes, in whole or in part, the net balance of one or more existing loan contracts.

(25) [~~(26)~~] Simple annual rate--The interest rate under the loan agreement expressed as a percentage rate per year employing the U.S. rule method.

(26) [~~(27)~~] Sum of the monthly balances or sum of the periodic balances method--A formula for determining the amount of unearned interest or other charges to be refunded. The sum of the balances method is a variant of the rule of 78s. This method provides that the fraction of the contract interest to be rebated at any given time in the loan term is the sum of the monthly loan balances for the months remaining in the originally scheduled loan term divided by the sum of the monthly balances for all of the months in the scheduled loan term. For example, for a six-month loan of \$600 that is scheduled to be repaid in \$100 monthly installments, the rebate fraction after two months would be: $400 + 300 + 200 + 100$ divided by $600 + 500 + 400 + 300 + 200 + 100 = 1000/2100 = 10/21 = 0.476$ (rounded). For any loan that

is paid off in equal installments, the sum of the balances method and the rule of 78s will provide identical rebates. If, however, a loan schedule contains unequal payments, and especially where the debt is retired by a final balloon payment, the rebates under the two formulas will be different.

(27) [~~(28)~~] Term loan--A loan made repayable in a single payment.

(28) [~~(29)~~] Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents and the transfer of money by the lender to the borrower or to a third party on the borrower's behalf. Transacting a loan also includes the act of arranging a loan.

(29) [~~(30)~~] United States rule--Ruling of United States Supreme Court in Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839) that, in partial payments on a debt, each payment is applied first to interest and any remainder reduces the principal. Under this rule, accrued but unpaid interest cannot be added to the principal, and interest cannot be compounded.

Division 3. Application Procedures

§83.302. Filing of New Application.

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the OCCC [~~commissioner~~] at the date of filing and in accordance with the OCCC's [~~commissioner's~~] instructions. The OCCC [~~commissioner~~] may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic

submissions. Appropriate fees must be filed with the application and the application must include the following:

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

(A) Application for license [~~License~~].

(i) Location. A physical street address must be listed for the applicant's proposed lending address. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named. The responsible person is also known as the location contact.

(iii) Signature. Electronic signatures will be accepted in a manner approved by the commissioner. Each applicant must have the application signed by an authorized individual.

~~[(I) If the applicant is a proprietor, the owner must sign.]~~

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

~~[(III) If the applicant is a corporation, an authorized officer must sign.]~~

~~[(IV) If the applicant is a limited liability company, an authorized member or manager must sign.]~~

~~[(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.]~~

(B) ~~[Disclosure of] Owners and principal parties [Principal Parties].~~

(i) 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.

(ii) 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.

(iii) Limited partnerships. Each partner, general and limited, 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% ~~[5%]~~ 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.

(iv) Corporations. Each officer and director must be named. Each shareholder holding 10% ~~[5%]~~ or more of the voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% ~~[5%]~~ or greater.

(v) Limited liability companies. Each "manager," "officer," and "member" owning 10% ~~[5%]~~ or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% ~~[5%]~~ 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% ~~[5%]~~ or greater.

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

(C) Disclosure questions. ~~[Application Questionnaire]~~. All applicable questions must be answered. Questions

requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) Registered agent. The registered agent must be provided by each applicant. [~~Appointment of Statutory Agent and Consent to Service. Each applicant must appoint a statutory agent and consent to service to that agent.~~]The registered [~~statutory~~] 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 [~~statutory~~] agent is a natural person, the address must be a different [~~physical residential~~] address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered [~~statutory~~] agent should be the registered agent on file with the Office of the Texas Secretary of State. If the registered [~~statutory~~] agent is not the same as the registered agent filed with the Office of the Texas Secretary of State, then the applicant must submit certification from the secretary of the company identifying the registered agent [~~certified minutes appointing the new agent~~].

(E) Personal affidavit [~~Affidavit~~]. Each individual meeting the definition of "principal party" as defined in §83.301 of this title (relating to Definitions) must provide a personal affidavit. All requested information must be provided.

(F) Personal questionnaire [~~Questionnaire~~]. Each individual meeting the definition of "principal party" as defined in §83.301 of this title must provide a personal questionnaire. Each question must be answered. If any question, except

question 1, is answered "yes," an explanation must be provided.

(G) Employment history [~~History~~]. Each individual meeting the definition of "principal party" as defined in §83.301 of this title must provide an employment history. Each principal party should provide a continuous 10-year history [~~, with no gaps,~~] accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Statement of experience [~~Experience~~]. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(I) Business operation plan [~~Operation Plan~~]. Each applicant must provide a brief narrative to the application explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(i) - (vi) (No change.)

(J) Financial statement and supporting financial information [~~Statement and Supporting Financial Information~~].

(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information [~~Supporting Financial Information~~]. All financial statements must be certified as true, correct, and complete. If requested, a bank confirmation to confirm account balance information with financial institutions must be submitted.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~], or provide a personal financial statement that contains all of the same information requested by the financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~]. The financial statement and supporting financial information [~~Financial Statement and Supporting Financial Information~~] must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the supporting financial information [~~Supporting Financial Information~~] must be submitted for the partnership itself and each general partner. All of the balance sheets and supporting financial information [~~Supporting Financial Information~~] documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a

balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and supporting financial information [~~Supporting Financial Information~~] must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the supporting financial information [~~Supporting Financial Information~~] must be submitted. The balance sheet and supporting financial information [~~Supporting Financial Information~~] must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(K) (No change.)

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §83.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by

the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the owners and principal parties [~~Disclosure of Owners and Principal Parties~~] under paragraph (1)(B)(iii)(I) of this section 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.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The OCCC may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted

to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) (No change.)

(C) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Office of the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with any amendments;

(II) a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application [~~a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation~~];

(III) a certificate of good standing from the Texas Comptroller of Public Accounts [~~a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current~~

~~officers and directors as listed on the Disclosure of Owners and Principal Parties];~~

(IV) if the registered agent is not the same as the one filed with the Office of the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent; [if the statutory agent is not the same as the registered agent filed with the Office of the Texas Secretary of State:]

~~[(a) a copy of the minutes of corporate meetings that record the election of the statutory agent; or]~~

~~[(b) a certification from the secretary of the corporation identifying the statutory agent; and]~~

(V) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation; and

(VI) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application [a certificate of good standing from the Texas Comptroller of Public Accounts].

(iii) Publicly held corporations. In addition to the items required for corporations, a publicly held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application [a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations];

(III) a certificate of good standing from the Texas Comptroller of Public Accounts [a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties];

(IV) if the registered agent is not the same as the one filed with the Office of the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent; [if the statutory agent is not the same as the registered agent filed with the Office of the Texas Secretary of State:]

~~[(a) a copy of the minutes of company meetings that record the election of the statutory agent; or]~~

~~[(b) a certification from the secretary of the company identifying the statutory agent; and]~~

(V) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations; and

(VI) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors a listed in the owners and principal parties section of the application [a certificate of good standing from the Texas Comptroller of Public Accounts].

(v) - (vii) (No change.)

(viii) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation provides the entity formation information required by this section for that entity type.

(D) (No change.)

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location including the application for license, disclosure questions, owners and principal parties, and a new financial statement [Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement] as provided in paragraph (1)(J) of this section. The responsible person at the new location must be listed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

§83.304. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger.

(1) Merger of licensee. If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a [A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a] license transfer application or a new license application on transfer of ownership pursuant to §83.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) Merger of parent entity. If a licensee's parent entity is a party to a merger [If the merger of the parent entity of a licensee] that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §83.310 of this title.

(3) Merger of entity beyond parent entity level. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of

ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% [~~5%~~] or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the OCCC in writing of the change in proportionate ownership. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §83.303 of this title.

(2) (No change.)

Division 4. License

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

(a) - (e) (No change.)

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

(1) (No change.)

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, [~~art. 42.12, §3g (effective through December 31, 2016);~~] art. 42A.054 [~~(effective January 1, 2017);~~] or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

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

~~[§83.408. 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. Interest Charges on Loans

§83.505. Deferment.

(a) - (i) (No change.)

(j) Disaster exception. A lender must deliver the deferment notice to the borrower, but is not required to obtain the borrower's signature, if the following conditions are met:

(1) The borrower resides in an area designated as a state of disaster under Texas Government Code, §418.014; and

(2) The deferment occurs before the state of disaster has been terminated:

(A) by executive order; or

(B) by expiration as described in Texas Government Code, §418.014(c).

(k) [(j)] Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this section are subject to refund to the borrower. In the event deferment fees are refunded to the borrower, no rescheduling of the loan contract is permitted.

Division 6. Alternate Charges for Consumer Loans

§83.606. Maximum Term and Maximum Installment Account Handling Charge.

(a) - (e) (No Change.)

(f) Maximum installment account handling charge for loan contract using the scheduled installment earnings method or the true daily earnings method.

(1) Generally. On a regular transaction or irregular transaction, a loan contract may provide for an installment account handling charge computed using the scheduled installment earnings method or the true daily earnings method. The installment account handling charge may not exceed the equivalent rate or effective return of the installment account handling charge for the original scheduled term of the loan.

(2) Scheduled installment earnings method. For a loan contract using the scheduled installment earnings method, the maximum installment account handling charge is computed by applying a daily rate to the unpaid principal balance as defined by this section, as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal. The computation of the installment account handling charge must comply with the United States rule as defined by §83.102(29) [~~§83.102(30)~~] of this title (relating to Definitions).

(3) True daily earnings method. For a loan contract using the true daily earnings method, the maximum installment account handling charge is computed by applying a

daily rate to the unpaid principal balance as defined by this section. The computation of the installment account handling charge must comply with the United States rule as defined by §83.102(29) [~~§83.102(30)~~] of this title. The earned installment account handling charge is computed as follows:

(A) multiplying the unpaid principal balance by the daily rate; and

(B) multiplying the results of subparagraph (A) of this paragraph by the number of days the actual unpaid principal balance is outstanding.

(4) - (6) (No change.)

(g) - (i) (No change.)

Division 7. Interest and Other Charges on Secondary Mortgage Loans

§83.707. Other Fees.

(a) - (c) (No change.)

(d) Broker fees. An authorized lender may pay a broker fee in a secondary mortgage loan if the consideration paid by the borrower in the loan that involves a broker does not exceed the consideration paid by the borrower in a loan that does not involve a broker.

(1) (No change.)

(2) Example 2: A prospective borrower is quoted a contract rate [~~finance charge~~] of 12% plus a 2% origination fee when the borrower makes the inquiry directly to an authorized lender. On this same individual, a broker quotes a contract rate of 12% plus a 2% origination fee for a loan of the same amount from the same

authorized lender. The loan is then consummated with the authorized lender paying a 2% fee to the broker for originating the loan. Since the authorized lender has absorbed the expense of the fee, no unauthorized charge has been assessed, charged, or received.

(e) - (g) (No change.)

Division 9. Insurance

§83.802. Authorized Property Insurance.

(a) Property insurance, other than insurance covering a motor vehicle, written in connection with a loan made under Texas Finance Code, Chapter 342 must be written at lawful rates that have been filed with ~~[not in excess of the rates fixed or approved by]~~ the Texas Department of Insurance ~~[if a rate structure has been fixed or approved for that particular type of coverage]~~.

(b) If property insurance, other than insurance covering a motor vehicle, requested or required on a loan is sold or obtained by a licensee at a rate that has not been filed with ~~[is not fixed or approved by]~~ the Texas Department of Insurance, the licensee must file information with the OCCC ~~[first obtain prior acknowledgment from the commissioner]~~ that the coverage and the rate bear a reasonable relationship to:

- (1) the amount, term, and conditions of the loan;
- (2) the value of the collateral; and
- (3) the existing hazards or risk of loss, damage, or destruction.

(c) A licensee who offers or provides property insurance, other than insurance covering a motor vehicle, requested or required on a loan sold or obtained by a licensee at a rate that is not filed with ~~[fixed or approved by]~~ the Texas Department of Insurance may use the rates found in ~~[, does not have to comply with the terms of subsection (b) of this section if the charges are equal to or less than the rates established by]~~ the following figure.

Figure: 7 TAC §83.802(c) *{{See page following rule text for amendments to figure.}}*

~~[(d) Insurance, other than insurance covering a motor vehicle, written at rates not fixed or approved by the Texas Department of Insurance, is subject to cancellation or adjustment if the insurance is not otherwise approved by the commissioner.]~~

~~(d) [(e) [If a licensee is seeking authority from the commissioner under subsection (b) of this section for a rate not fixed or approved by the Texas Department of Insurance, a] A copy of the relevant policy that is to be issued must be filed with the OCCC, together with any evidence that is probative on the factors listed in subsection (b) of this section.~~

~~(e) [(f)] Property insurance written in connection with a Texas Finance Code, Chapter 342 loan must be provided by a company authorized to do business in this state.~~

*Division 10. Duties and Authority of
Authorized Lenders*

*§83.828. Files and Records Required
(Subchapter E and F Lenders).*

Each licensee must maintain records with respect to each loan made under Texas Finance Code, Chapter 342, Subchapters E and F, and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. 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) - (12) (No change.)

(13) Compliance file. Each licensee must maintain a separate file for all communications from the OCCC and for copies of correspondence and reports addressed to the OCCC. This file must include, at a minimum, electronic or paper copies of the current Texas Finance Code, Chapter 342, the last three examination reports, correspondence relating to compliance[~~-, compliance bulletins~~] issued in the last two years, and current rules issued by the commissioner. A licensee will be considered to have maintained copies of the Texas Finance Code and current rules by having access to the websites containing the official versions of the current Texas Finance Code and the current Texas Administrative Code. A licensee will be considered to have maintained copies of

some or all of the last three examination reports if those reports were issued electronically by the OCCC.

(14) (No change.)

*§83.829. Files and Records Required
(Subchapter G Lenders).*

Each licensee must maintain records with respect to each loan made under Texas Finance Code, Chapter 342, Subchapter G and each home equity loan made under Texas Constitution, Article XVI, Section 50, and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. 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. The records required by this section must be retained and made available for inspection in the same manner as that specified in §83.828(14) of this title (relating to Files and Records Required (Subchapter E and F Lenders)).

(1) Required records. A licensee must maintain the following items in a substantially similar form to the respective provisions of §83.828 of this title, as follows:

(A) - (G) (No change.)

(H) A compliance [~~An official correspondence~~] file.

(2) - (5) (No change.)

§83.833. *Correction of Errors or Violations.*

(a) (No change.)

(b) In lieu of crediting an existing account, a refund may be made directly to the borrower by cash, check, money order, or other negotiable instrument. The licensee must maintain sufficient records that the refund was made.

(1) Cash refunds. If the refund is made directly to the borrower in cash, the licensee must obtain a signed or authenticated acknowledgment from the borrower. The signed or authenticated acknowledgment must contain the following information:

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

(D) a statement that the borrower received the refund in cash and that the licensee has not instructed or required the borrower [~~retail-buyer~~] to repay the cash refund.

(2) Refunds made by check, money order, or other negotiable instrument. If the refund is made directly to the borrower [~~retail-buyer~~] by check, money order, or other negotiable instrument, the licensee must, at a minimum, mail the refund to the last known address of the borrower [~~retail-buyer~~] by first-class mail. The licensee must maintain a complete paper or electronic copy of the check, money order, or other negotiable instrument. The licensee must also maintain sufficient information that could be used to determine whether the check, money order, or other negotiable instrument was successfully negotiated.

(c) - (g) (No change.)

§83.835. *Annual Report.*

Each licensee must file the required annual report by May 1 for the prior calendar year's [~~calendar~~] loan activity on forms prescribed by the OCCC [~~commissioner~~] and must comply with all instructions relating to submitting the report.

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 19, 2018.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

Figure: 7 TAC §83.802(c)

CHAPTER 342, SUBCHAPTER E TANGIBLE PERSONAL PROPERTY <u>DUAL INTEREST INSURANCE RATES</u>	
Insurable Amount	Rate per \$100 per year
<u>\$300 or more</u> [\$0.00 to \$1,000.00]	<u>3.00</u> [1.80]
[\$1000.01 to \$2,000.00]	[1.35]
[\$2000.01 or more]	[0.90]