

ADVANCE RULE REVIEW NOTICE Rules for Regulated Lenders

The OCCC is seeking your input in reviewing the rules in Texas Administrative Code, Title 7, Chapter 83, Subchapter A, relating to regulated lenders.

Rule review is a standard process that occurs once every four years for each of the OCCC's rules. During rule review, the OCCC and the Texas Finance Commission review rules to determine whether they should continue to exist and whether they should be amended or updated.

Before publishing official notice of the rule review, the OCCC would like to know if stakeholders have any input on the rules for regulated lenders.

- Should any of these rules be updated or changed?
- Do any of these rules make compliance difficult?
- Is the text ambiguous or out of date?
- Are any of these rules inconsistent with the statute (the Texas Finance Code)?
- Do the rules continue to be necessary and serve their original purpose?
- Do the rules create a barrier to market participation? Do the rules result in higher prices or reduced competition?
- Should the rules be updated in light of lenders' response to the COVID-19 pandemic?

The OCCC invites stakeholders to send informal feedback on these rules until December 2, 2021. During the month of December, there will be an opportunity to provide official comments on the rule review. If the rule review results in any proposed rule amendments, there will be additional opportunities to provide comments on the amendments.

Administrative Fee Rule

In particular, the OCCC invites comments on the administrative fee under Chapter 342, Subchapter E. The OCCC has received an informal request to review the rule at Texas Administrative Code, Title 7, Section 83.503, which provides the maximum administrative fee for a loan under Chapter 342, Subchapter E of the Texas Finance Code. A group of lenders has requested a rule amendment that would increase the maximum administrative fee from \$100 to \$200.

To determine whether a rule amendment is appropriate, the OCCC would like to gather information from stakeholders about costs that regulated lenders incur in connection with regulated consumer loans. In order to proceed with a rule amendment, a reasoned justification for the amendment, as well as the legal and factual basis for the amendment, is required.

In 2013, the Finance Commission adopted Section 83.503, including the \$100 maximum fee amount. As the Finance Commission explained in its preamble to the adoption, the administrative fee "compensates the lender for the administrative costs of closing a loan and providing money to the borrower."

In July 2021, the OCCC previously requested information about the administrative fee and conducted a stakeholder webinar. In response to the request, the OCCC received some information from lenders who provided their estimates of the amount of costs. However, this information did not describe the specific methodology that lenders used to calculate cost amounts, and did not describe any reduced costs that have resulted from increased efficiency since 2013. For this reason, it is not clear that the OCCC currently has a sufficient factual basis for proceeding with an amendment to the administrative fee amount.

To continue reviewing this issue, the OCCC is interested in gathering information in response to all of the following questions:

- **Amount of costs:** Can lenders provide dollar amounts for the administrative costs of closing a loan? How have costs changed since 2013?
- **Methodology:** What is the specific methodology that lenders use for calculating each component of their costs? Have lenders performed professional studies of their costs, and if so, are they willing to provide copies of these studies to the OCCC?
- **Scope of costs:** How can lenders show that their analysis is limited to the administrative costs of closing a loan?
- **Marketing and lead generation:** Are marketing and lead generation appropriately within the scope of costs that should be included in the administrative fee? Why or why not? If so, should one consumer's administrative fee subsidize the costs of marketing to other consumers who do not ultimately take out a loan? Should a consumer pay the same administrative fee when renewing a loan, or when taking out a second loan with the same lender?
- **Ancillary products:** What amount of time, costs, or resources do lenders spend on marketing optional ancillary products (such as insurance or automobile clubs)? How, specifically, do lenders account for this when calculating their costs?
- **Reduced costs resulting from efficiency:** Have any costs gone down since 2013 due to increased efficiency? Are these reduced costs outweighed by other costs that have increased? What have publicly traded lenders reported to their investors about changes in administrative costs?
- **Projections:** How do lenders project that cost amounts will change in the next five years?
- **Consumers served:** If the administrative fee were increased, how many additional consumers would be served? What loan amounts or terms would this enable lenders to offer (that are not currently being offered)?
- **Benefits and drawbacks:** What would be the benefits and drawbacks of amending the rule at this time?
- **Other information:** Do stakeholders have other information relating to this rule?

Submitting Informal Comments

If you have any feedback on the rules in Title 7, Chapter 83, Subchapter A of the Texas Administrative Code at this time, please send an email to rule.comments@occc.texas.gov no later than 5:00 p.m. on December 2, 2021.

Rule updates are available on the OCCC's website at <https://occc.texas.gov/publications/rules>.

The OCCC appreciates the continuing input of stakeholders. This input is crucial to producing the best rules possible.