

*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 §83.101 (relating to Purpose and Scope), §83.205 (relating to Loans by Mail and Internet), §83.301 (relating to Definitions), §83.308 (relating to Relocation), §83.404 (relating to Denial, Suspension, or Revocation Based on Criminal History), §83.504 (relating to Default Charges), §83.602 (relating to Default Charges), §83.703 (relating to Default Charges), and §83.834 (relating to Unclaimed Funds) in 7 TAC, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The commission adopts the amendments to §83.101, §83.301, §83.308, §83.504, §83.602, §83.703, and §83.834 without changes to the proposed text as published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1045).

The commission adopts the amendments to §83.205 and §83.404 with changes to the proposed text as published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1045).

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 83, Subchapter A govern regulated lenders. In general, the purpose of the rule changes to 7 TAC Chapter 83, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. In November 2021, the OCCC issued an advance notice of rule review, seeking

informal feedback on the rule review. Notice of the review of 7 TAC Chapter 83, Subchapter A was published in the *Texas Register* on December 3, 2021 (46 TexReg 8261). The commission received two official comments in response to that notice. Both of these official comments deal with whether the commission should amend the maximum administrative fee in §83.503 (relating to Administrative Fee). The OCCC intends to study this issue further.

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 five precomments on the rule text draft. The five precomments deal with whether the commission should amend the maximum administrative fee in §83.503. The OCCC intends to study this issue further.

Amendments to §83.101 ensure that language about the scope of the rules is consistent with amendments in HB 1442, which the Texas Legislature passed in 2019. HB 1442 amended Texas Finance Code, §342.005 to state that Chapter 342 applies to a consumer loan made to a person who is located in Texas at the time the loan is made. To be consistent with this statutory amendment, the adoption adds the phrase "to a person located in Texas at the time the loan is made" in subsection (b)(1)(B). The adoption also removes the phrase "or secured by a lien on real estate" in subsection (b)(1)(C)(i). This phrase is unnecessary, because subsection (b)(1)(C)(ii) specifies that the rules apply to a secondary mortgage

loan, which is the type of real-estate-secured loan that is subject to Chapter 342 (and therefore subject to the rules).

Amendments to §83.205 ensure that language about online loans is consistent with amendments in HB 1442 (2019). HB 1442 added the words "or online" to Texas Finance Code, §342.053(b), which deals with loans by mail. As a result of the amendment, Texas Finance Code, §342.053(b) now states: "A lender may make, negotiate, arrange, and collect loans by mail or online from a licensed office." This adoption adds the words "or online" in §83.205(b) and (c), to use wording that is consistent with the statute. The adoption removes previous subsection (d), which provided that an internet loan is considered a "loan by mail," because this language is no longer necessary due to the other changes to §83.205. The adoption also amends the title of the section to replace "and Internet" with "or Online," to use wording that is consistent with the statute.

Since the proposal, a change has been made to add the phrase "or online" in the second sentence of §83.205(c), in order to ensure consistency with the changes described in the previous paragraph.

Amendments to §83.301 update the definition of "net assets." The amendment explains that debt may be subordinated to the net asset requirement under certain conditions. This ensures consistency with other OCCC rules regarding net assets. This also ensures consistency with Texas Attorney General Opinion No. DM-332 (1995).

Amendments to §83.308 relate to notifying debtors when a licensed lender relocates. Previously, §83.308(b) required licensees to mail a notice to all debtors before

relocation of an office. An amendment to §83.308(b) explains that a licensee may send this notice by email in lieu of mail if the debtor has provided an email address to the licensee and has consented in writing to be contacted at the email address. The commission believes that this change will improve licensees' ability to use electronic communication to ensure compliance. This change responds to an informal comment that proposed revising this subsection to allow electronic notice.

Amendments to §83.404 relate to the OCCC's review of the criminal history of a regulated lender applicant or licensee. The OCCC is authorized to review criminal history of regulated lender applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The amendments to §83.404 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 §83.404 implement these statutory changes from HB 1342. Other amendments to §83.404 include technical corrections, clarifying changes, and updates to citations.

Since the proposal, a change has been made to correct a citation in §83.404(d). In this subsection, an adopted amendment replaces "(f)(2)" with "(f)(1)." This technical correction is necessary because previous subsection (f)(1) is being deleted in order to implement statutory changes described in the previous paragraph.

Amendments to §83.504, §83.602, and §83.703 remove references to the Federal Reserve Board's Regulation AA. The Federal Reserve Board repealed this rule in 2016. 81 Fed. Reg. 8133 (Feb. 18, 2016). The amendments to §83.504, §83.602, and §83.703 maintain current references to the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.4, and therefore do not affect the current prohibition on pyramiding late charges.

Amendments to §83.834(d) make technical changes relating to the escheat of unclaimed funds. Amended text in this subsection (d) reflects that unclaimed funds are submitted to the "Unclaimed Property Division" of the Texas Comptroller of Public Accounts. Another amendment adds a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

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

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter A. Rules for Regulated Lenders*

*Division 1. General Provisions*

*§83.101. Purpose and Scope*

(a) Purpose. The purpose of this subchapter is to assist in the administration and enforcement of Texas Finance Code, Chapter 342.

(b) Scope.

(1) This subchapter applies to all persons engaged in the business of making, transacting, or negotiating loans subject to Texas Finance Code, Chapter 342. As such, this subchapter only applies to lenders and brokers in the business of making, transacting, or negotiating loans that:

(A) contract for, charge, or receive interest in excess of 10% per year;

(B) are loans extended primarily for personal, family, or household use to a person located in Texas at the time the loan is made; and

(C) are either:

(i) unsecured [~~or secured by a lien on real estate~~];

(ii) secured under a secondary mortgage loan; or

(iii) secured by personal property.

(2) This subchapter applies to term loans extended primarily for personal, family, or household purposes.

(3) This subchapter also applies to a loan broker who arranges, negotiates, or brokers loans for a lender that funds the loan. This subchapter does not apply to any loans made under Texas Finance Code, Chapters 301 - 308 or Chapter 339, including commercial and agricultural loans.

*Division 2. Authorized Activities*

*§83.205. Loans by Mail or Online [~~and Internet~~]*

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §342.053(b) are to be construed according to the definitions contained in §83.204(a) of this title (relating to Multiple Licenses).

(b) Application. Any office, wherever located, making, negotiating, arranging, or collecting loans by mail or online must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices involved in lending by mail or online must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

(c) Authorized lenders. The following entities with offices located outside of Texas may make loans by mail or online to Texas residents and are considered to meet the definition of authorized lender as contained

in §83.102 of this title (relating to Definitions):

(1) a person who has obtained a regulated loan license from the OCCC;

(2) a bank, savings bank, savings and loan association, or credit union doing business under the laws of this state, another state, or the United States;

(3) a bank, savings bank, or savings and loan association chartered in another state and insured by the Federal Deposit Insurance Corporation; and

(4) a credit union chartered in another state and insured through the National Credit Union Share Insurance Fund.

~~[(d) Internet loans. For purposes of Texas Finance Code, §342.053(b), a loan made, negotiated, arranged, or collected by or through the Internet is considered a "loan by mail."]~~

*Division 3. Application Procedures*

*§83.301. 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) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit,

notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that the creditor forfeits its security priority and any rights it may have to current assets in the amount of \$25,000. Debt subject to such a subordination agreement would not be an applicable liability for purposes of calculating net assets.

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are principal parties:

(A) a proprietor;

(B) general partners;

(C) officers of privately held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 342;

(D) directors of privately held corporations;

(E) individuals associated with publicly held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation were privately held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 342. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) voting members of a limited liability company;

(G) trustees and executors; and

(H) individuals designated as principal parties where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

*§83.308. Relocation*

(a) Filing requirements. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be filed on the Amendment to Regulated Loan License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §83.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office, or of transactions as outlined in subsection (c) of this section, must be mailed to all debtors of record at least five calendar days prior to the date of relocation. A licensee may send notice to a debtor by email in lieu of mail if the debtor has provided an email address to the licensee and has consented in writing to be contacted at the email address. Any licensee failing to give the required notice must waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices must identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

(c) Relocation of regulated transactions. If the licensee is only relocating or transferring regulated transactions from one licensed location to another licensed location, the licensee must comply with subsection (b) of this section and provide, if requested, a list of regulated transactions relocated or transferred. This list of relocated or transferred regulated transactions must include the loan number and the full name of the debtor.

*Division 4. License*

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

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. 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 of the applicant and its principal parties;

(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 licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee 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 transactions 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 license, 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 license to engage in the occupation;

(C) the extent to which a license 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 [s] capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee; 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 licensee unfit to be a licensee, 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 license, 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) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(1) ~~[(f)(2)]~~ of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee'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 license application, or suspend or revoke a license, 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)(3)-(4)~~ ~~[\$53.021(a)(3)-(4)]~~;

(2) ~~[(3)]~~ errors or incomplete information in the license application;

(3) ~~[(4)]~~ a fact or condition that would have been grounds for denying the license 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, §342.156(3); 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, §342.104(a)(1) and §342.156.

#### *Division 5. Interest Charges on Loans*

##### *§83.504. Default Charges*

(a) Precomputed loans. Additional interest for default may be charged on a

precomputed loan, whether regular or irregular, or on a precomputed loan contracted for on a scheduled installment earnings method, to the extent it is authorized by Texas Finance Code, §342.203 or §342.206.

(b) Interest-bearing loans. Additional interest for default may be charged on an interest-bearing Chapter 342, Subchapter E loan as authorized under Texas Finance Code, §342.203 or §342.206.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) Missed payment covered by insurance. When any payment or partial payment in default is later paid by some form of insurance, such as credit disability insurance, unemployment insurance, or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramidizing prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.203 or §342.206 must comply with the prohibition on the pyramidizing of late charges provided by the Federal Trade Commission's Credit Practices Rule at 16 C.F.R. §444.4 ~~[or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable]~~.

(g) Default charge on final installment of multiple payment loan. A default charge is allowed on the final installment of a multiple installment loan.

(h) Default charge on single payment loan. A default charge under Texas Finance Code, §342.203(d) or §342.206(b) is not allowed on a single payment loan. After maturity interest may be contracted for, charged, and collected on a single payment loan.

*Division 6. Alternate Charges for Consumer Loans*

*§83.602. Default Charges*

(a) Precomputed loans. Additional interest for default may be charged on a Texas Finance Code, Chapter 342, Subchapter F precomputed loan to the extent it is authorized by Texas Finance Code, §342.257.

(b) Subchapter F loans less than \$100. If the cash advance of the loan is less than \$100, an authorized lender may assess, charge, and collect a default charge equal to 5% of the scheduled installment amount if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) Subchapter F loans equal to or greater than \$100. If the cash advance of the loan is equal to or greater than \$100, an authorized lender may contract for a default charge:

(1) that does not exceed 5% of the scheduled installment amount if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays; or

(2) that does not exceed 5% of the scheduled installment amount or \$10, whichever is greater, if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(d) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(e) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.257 must comply with the prohibition on the pyramiding of late charges provided by the Federal Trade Commission's Credit Practices Rule at 16 C.F.R. §444.4 [~~or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable~~].

(g) Default charge on final installment of multiple payment loan. A default charge is allowed on the final installment of a multiple installment loan.

(h) Default charge on single payment loan. A default charge under Texas Finance Code, §342.257 is not allowed on a single payment loan. After maturity interest may be contracted for, charged, and collected on a single payment loan.

*Division 7. Interest and Other Charges on Secondary Mortgage Loans*

*§83.703. Default Charges*

(a) Precomputed loans. Additional interest for default may be charged on a precomputed secondary mortgage loan, whether regular or irregular, or on a secondary mortgage loan that employs the scheduled installment earnings method, to the extent it is authorized by Texas Finance Code, §342.302 or §342.305.

(b) Interest-bearing loans. Additional interest for default may be charged on an interest-bearing Texas Finance Code, Chapter 342, Subchapter G loan as authorized under Texas Finance Code, §342.302.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) Missed payment covered by insurance. If any payment or partial payment in default is later paid by some form of insurance, such as credit disability insurance or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed secondary mortgage loan under Texas Finance Code,

§342.302 or §342.305 must comply with the prohibition on the pyramiding of late charges provided by the Federal Trade Commission's Credit Practices Rule at 16 C.F.R. §444.4 [~~or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable~~].

*Division 10. Duties and Authority of Authorized Lenders*

*§83.834. Unclaimed Funds*

(a) Escheat suspense account. The licensee must transfer any amounts due a borrower not paid within one year, i.e., unclaimed funds, to an escheat suspense account. The transfer must be noted on the account record of the borrower.

(b) Required information. Evidence of a bona fide attempt to pay a refund to a borrower must be kept in the records of the borrower. The licensee must place with the records of the borrower any information received by the licensee that indicates the borrower has died leaving no will or heirs, or has left the community and the borrower's whereabouts are unknown. If deemed necessary with respect to a specific borrower, a licensee may be required to send the unclaimed funds by registered or certified mail to the last known address of the borrower.

(c) Use of unclaimed funds. Use of unclaimed funds within the business until such time as paid to the borrower, to the estate of the borrower, or to the State of Texas is not prohibited; however, funds transferred to an escheat suspense account must not be commingled with the funds of the business.

(d) Escheat to state. At the end of three years, the unclaimed funds must be paid to

the State of Texas Comptroller of Public Accounts, Unclaimed Property [~~Treasury~~] Division, as required by Texas Property Code, §72.101 and §74.301, or must be paid to the appropriate state or other governmental entity under the time period provided by the other state's or entity's applicable law.

(e) Record retention. The records of the escheat suspense account must be retained for a period of 10 years.

### **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 April 22, 2022.

Matthew J. Nance  
Deputy General Counsel  
Office of Consumer Credit Commissioner