

Regulated Lender Advisory Bulletin: Coronavirus Emergency Measures

This bulletin discusses emergency measures for regulated lenders to consider in response to the novel coronavirus and the resulting disease, COVID-19. On March 13, Governor Greg Abbott declared a state of disaster for all Texas counties due to COVID-19.

Working with Borrowers:

The OCCC urges lenders to work with borrowers during this crisis, and to be practical, flexible, and empathetic. Efforts to work with borrowers in communities under stress may contribute to the health and recovery of these communities. These types of efforts serve the long-term interests of both borrowers and lenders, provided the efforts are performed in a reasonable manner with proper controls and management oversight. Lenders should continue to communicate with borrowers through methods that borrowers have agreed to, in accordance with state and federal debt collection laws.

The OCCC encourages regulated lenders to carefully consider the following measures during this crisis:

- Increasing communication with borrowers regarding COVID-19 and the recommended methods for borrowers to contact the lender, especially if the lender has altered operations due to COVID-19.
- Working out modifications with borrowers to help ensure successful repayment, including deferred or partial payments, which would avoid delinquencies and negative credit reporting.
- Waiving late charges during the disaster declaration.
- Waiving deferment charges (in the case of add-on or scheduled installment earnings transactions) or waiving additional finance charge resulting from a deferment (in the case of true daily earnings transactions).
- Waiving nonsufficient funds fees for dishonored payments or unsuccessful ACH withdrawals.
- Suspending charging off accounts.
- Suspending repossessions of collateral and foreclosure of real property. (For certain FHA-insured mortgages, the Department of Housing and Urban Development has placed a moratorium on foreclosures).

Electronic Signatures:

Some OCCC licensees are considering using electronic signatures in response to COVID-19. Electronic signatures are generally allowed under Texas and federal law.

The federal E-Sign Act, 15 U.S.C. §§ 7001–7006, includes requirements for electronic disclosures and signatures. The E-Sign Act allows a disclosure to be made electronically only if the consumer consents to an electronic disclosure using a specified procedure that demonstrates the consumer’s ability to receive the disclosure electronically. 15 U.S.C. § 7001(c)(1)(A).

Before consenting, the consumer must be given a clear and conspicuous statement of:

- Any right or option to get the disclosure in non-electronic form;
- The right to withdraw consent and the procedures for and consequences of doing so;
- What transactions the consumer’s consent applies to;
- The procedures for updating the information needed to contact the consumer electronically; and
- How, after consenting to electronic disclosures, to obtain a paper copy of any disclosures, and whether any fee will be imposed.

15 U.S.C. § 7001(c)(1)(B).

The consumer must be given a statement of the hardware and software requirements for access to and retention of electronic records, and must either give consent electronically to receive electronic disclosures, or must confirm consent electronically. 15 U.S.C. § 7001(c)(1)(C). When disclosures are provided electronically, the E-Sign Act requires that the record be retained in a manner that “accurately reflects” the information in the record, and “remains accessible” to all persons in a form that is capable of being accurately reproduced for later reference. 15 U.S.C. § 7001(d). This means that consumers must have a way to keep electronic disclosures for use at a later time.

Activity from Unlicensed Locations:

Generally, Chapter 342 of the Texas Finance Code provides that any regulated lending activity must occur from a licensed location. This requirement is described in Sections 342.051, 342.052, and 342.053 of the Finance Code, as well as the OCCC’s rule at Title 7, Section 83.401 of the Texas Administrative Code.

The OCCC understands that businesses are taking action to protect public safety and minimize the spread of COVID-19. This might include work performed at unlicensed locations (e.g., employees working from home to take loan applications or service loans).

On a temporary basis, the OCCC will not take an enforcement action under the above-listed provisions against licensees that conduct regulated lending activity from unlicensed locations, if conducted in accordance with the following instructions:

- A licensee must prepare a written plan or documentation describing what steps it is taking, as well as the locations where regulated lending activity is taking place. The licensee must maintain this documentation until the OCCC's next examination of the affected licensed location.
- A licensee's employees must access information in accordance with the licensee's written information security program under the federal Safeguards Rule, 16 C.F.R. pt. 314. A licensee must continue to maintain the security of each consumer's personal information.
- If an employee accesses secure electronic information from the company, the employee must use a virtual private network or a similar system that requires authentication to access. Any devices must have up-to-date security updates or patches.
- A licensee may not keep any physical business records at a location other than a licensed location. All records (physical or electronic) must be accessible from a licensed location.

This temporary guidance does not amend the Texas Finance Code, the Texas Administrative Code, or any other requirement of state or federal law. Rather, it describes certain situations where the OCCC will not take enforcement actions against licensees under the above-listed provisions relating to licensed locations. This guidance is in effect through August 31, 2020, but it is subject to earlier revision or withdrawal.

The OCCC encourages all Texas citizens to be safe. Additional guidance and updates about COVID-19 are available on the website of the Texas Department of State Health Services.