

Regulatory Bulletin 5.2-102 Standard of Review for Evaluating an Individual's Credit History to Determine Whether an Applicant Satisfies the Financial Responsibility Requirements for Obtaining License

By the [Division of Banks](#)

Regulatory Bulletin 5.2-102

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Standard of Review for Evaluating an Individual's Credit History to Determine Whether an Applicant Satisfies the Financial Responsibility Requirements for Obtaining a License

I. APPLICABILITY AND SCOPE

The purpose of this bulletin is to establish guidelines relative to the minimum standards to be applied in determining whether a license applicant's personal financial history supports a finding by the Division of Banks ("Division") that the financial responsibility, character, reputation, integrity, and general fitness ("Background Standard") of the individual are such as to support a belief that the licensed business will be operated honestly, fairly, soundly, and efficiently in the public interest. The standard of review set forth in this bulletin will be used in evaluating qualifying individuals, as further set forth below, for each of the licensed industries under the Division's supervision, including mortgage lenders, mortgage brokers, mortgage loan originators, small loan companies, retail installment finance companies, insurance premium finance companies, motor vehicle finance companies, debt collectors, check cashers, check sellers, and foreign transmittal agencies.

This bulletin applies to all individuals and entities applying for a license from the Division, including direct owners of the applicant who own more than 10% of the applicant and indirect owners of the applicant who own more than 25% of the applicant, as well as individuals identified as control persons (**A control person** includes any individual who directly or indirectly exercises control over the applicant by having the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. This includes any *person* that (i) is a director, general partner or executive officer; (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities; (iii) in the case of an LLC, Managing Member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 10% or more of the capital, is presumed to control that company.) or branch managers. The bulletin also applies to licensees who add new owners, control persons, or branch managers while a license is in effect. The standards set forth in this bulletin will also be followed in evaluating the application of an individual seeking to become individually licensed as a

mortgage loan originator under General Laws chapter 255F. However, the Division does not undertake an annual review of the personal financial history of any applicants seeking renewal of the above licenses.

II. **POLICY**

In addition to ensuring that the entity or natural person applying to the Division for such license meets all of the minimum requirements for obtaining the license, each applicant must grant significant consideration to their own personal and financial background prior to submitting a license application to the Division. Before the application is submitted, each applicant should strenuously self-test to determine if they satisfy the statutory Background Standard. An individual that does not illustrate a personal credit history of sound financial management will not be authorized to perform in the capacity of a control person or branch manager of a licensed entity or permitted to obtain an individual license to operate as a mortgage loan originator.

The implementation of this bulletin will require each qualifying individual to submit to the Division a credit report which has been issued not more than 30 days prior to the date on which the application is filed with the Division. The individual will be required, at the time the application is filed with the Division, to provide a detailed explanation of any adverse credit information appearing in the credit report and, if applicable, third party evidence of any resolution or settlement. Submission of a credit report that discloses adverse credit information which fails under the standards set forth in this bulletin may result in a formal denial of the license application. Appropriate self-testing and review prior to submission can prevent the entity or individual from receiving a formal, adverse decision in a matter of public record.

A. **The following guidelines detail how adverse credit information will be considered in determining whether an applicant meets the financial responsibility requirement:**

1. **Unresolved Derogatory Information Items**

The following derogatory items, if appearing on an applicant's credit report as an outstanding or unresolved item, will result in a finding that the applicant has not met the financial responsibility requirement, unless a satisfactory explanation is provided by the applicant which, in the Commissioner's discretion, will permit the Division to determine that an applicant meets the Background Standard.

- a. Any outstanding lien or unsatisfied judgment;
- b. Any unpaid collection account or charged-off account; or
- c. Any current delinquency of 60 days or more past due for which no supporting documentation was submitted at the time the application was filed with the Division to illustrate that the past due balance is in dispute.

Payment of any outstanding or delinquent debt after the submission of the license application or after being notified by the Division that derogatory reporting(s) are a cause for concern is not considered acceptable to support a finding that the Background Standard has been satisfied.

2. Recent Financial History

The following derogatory items, if appearing on an applicant's credit report within the 12 months immediately preceding the submission date of the application, will result in a finding that the applicant has not met the financial responsibility requirement, unless a satisfactory explanation is provided by the applicant which, in the Commissioner's discretion, will permit the Division to determine that an applicant meets the Background Standard.

- a. Three or more 30-day late payments on any account(s);
- b. Two or more 60-day late payments on any account(s);
- c. One 90-day late payment on any account;
- d. An account that went to collection and was subsequently settled or paid in full or in part by the applicant; or
- e. Any charged-off account.

3. Cumulative Financial History

The following derogatory items, if appearing in an applicant's credit history at any point in time will be considered in determining whether the applicant's personal and financial background, in its totality, supports a finding that the applicant meets the Background Standard.

- a. A payment history displaying a pattern of late payment delinquencies of 30 days past due or greater;
- b. Any satisfied tax liens;
- c. Any paid or released judgments;
- d. Any repossession;
- e. Any default upon a government sponsored loan or student loan;
- f. Any foreclosure on a residential or investment property; or
- g. Any voluntary or involuntary Bankruptcy petition filing.

B. Petition for Consideration of Additional Information Relating to Derogatory Information Appearing in the Credit Report

Any applicant who wishes to present an explanation or third party evidence of payment or settlement of an adverse item appearing on a credit report must provide all such evidence at the time of application when the credit report is submitted to the Division. As stated above, applicants must strenuously self-test, prior to submitting their application, to determine whether they meet the Background Standard. An applicant that does not illustrate a personal and financial history of sound financial management cannot be allowed to direct the management or policies of the licensed entity or engage in mortgage loan originator activity. Prospective applicants are further advised that all investigation fees and other licensing fees which are paid as part of the application are non-refundable.

III. **HISTORICAL NOTES**

This bulletin was first issued on April XX, 2008 to formalize standards which the Division has used as guidance in licensing under G.L. chapter 255E, G.L. chapter 140, G.L. chapter 255B, G.L. chapter 255C, G.L. chapter 255D, G.L. chapter 93, G.L. c. 169A, G.L. chapter 169 and G.L. chapter 167F.

IV. **AUTHORITY**

G.L. c. 93, 209 CMR 18.00, *et seq.*; G.L. c. 140, 209 CMR 20.00, *et seq.*; G.L. c. 167F, section 4, 209 CMR 44.00, *et seq.*; G.L. c. 169, 209 CMR 44.00, *et seq.*; G.L. c. 169A, 209 CMR 45.00, *et seq.*; G.L. c. 255B, 209 CMR 20.00, *et seq.*; G.L. c. 255C, 209 CMR 20.00, *et seq.*; G.L. c. 255D, 209 CMR 20.00, *et seq.*; G.L. c. 255E, 209 CMR 42.00, *et seq.*; G.L. c. 255F, 209 CMR 41.00, *et seq.* (pending).