

Department: Administration
Chapter: Banking and Financial Institutions
Subchapter: Mortgage Broker and Loan Originator Licensing

2.59.1739 APPLICATION OF FINANCIAL STANDARDS

(1) Section **32-9-120**(1)(c) and **32-9-113**, MCA, require mortgage loan originators, as well as ultimate equity owners and control persons of entities, to meet financial responsibility standards. These persons are referenced in ARM **2.59.1739** through **2.59.1742** as "individuals."

(2) Financial responsibility, character, and general fitness are continuing requirements for individuals and must be met at all times including upon initial licensure and renewal.

History: **32-9-130**, MCA; IMP, **32-9-113**, **32-9-117**, **32-9-120**, **32-9-166**, MCA; NEW, 2012 MAR p. 183, Eff. 1/27/12.

2.59.1740 STANDARDS FOR DETERMINING FINANCIAL RESPONSIBILITY

(1) The department shall find an individual lacks the required financial responsibility if a pattern of disregard is shown regarding the management of the individual's personal financial affairs.

(2) In determining whether an individual has shown a pattern of disregard regarding their own personal financial affairs, the department shall consider the following factors:

(a) the existence of outstanding judgment(s), excluding judgments resulting solely from medical expenses;

(b) the existence of outstanding tax liens or other government liens or filings;

(c) a pattern of delinquency in child support or student loan payments;

(d) the existence of outstanding collection actions against the individual unless solely as a result of medical expenses;

(e) the existence of outstanding charged-off accounts with a remaining past due balance owed unless solely as a result of medical expenses;

(f) the existence of three or more accounts currently 90 days or more past due; and

(g) a foreclosure within the past three years.

(3) The department may not consider a bankruptcy as the sole basis for a finding that an individual lacks the required financial responsibility; however, the department may consider the factors that lead to the bankruptcy.

History: **32-9-130**, MCA; IMP, **32-9-113**, **32-9-117**, **32-9-120**, MCA; NEW, 2012 MAR p. 183, Eff. 1/27/12.

2.59.1741 PROCEDURES FOR DETERMINING FINANCIAL RESPONSIBILITY

(1) If an individual's credit report or response to any application disclosure question contains adverse information, the department shall:

(a) notify the individual in writing of the specific items that must be addressed; and

(b) specify the documentation that must be provided for the department's consideration and review.

(2) Examples of the type of documentation that the department may request include, but are not limited to, the following:

(a) a written explanation of the circumstances surrounding the adverse information reported; and

(b) documents that the department finds necessary for its review of the adverse information including, but not limited to, copies of:

- (i) satisfactions of judgment;
- (ii) bankruptcy discharge orders, schedules, or dismissal documents;
- (iii) satisfactions of outstanding tax liens or other governmental liens;
- (iv) court documents showing the factual basis underlying the adverse information being reviewed by the department and how the matter was resolved or adjudicated; and
- (v) account statements or letters from the individual's creditors, or lien or judgment holders, explaining and verifying the current status of any past due accounts, including documentation of any repayment plans and agreements, as well as any temporary or permanent modifications to such accounts.

(3) Any document provided must be legible and complete. Incomplete documents may not be accepted.

(4) If the individual is unable to obtain the documents the department requests, the individual shall support that fact with documentation from the source of the unavailable documents consisting of a written statement from the agency or creditor who holds or held the records. The statement must be:

(a) written on the agency's or creditor's letterhead indicating that:

- (i) the agency or creditor does not have any record of the matter;
- (ii) the record was lost, damaged, or destroyed, or cannot otherwise be produced; and
- (iii) the reason why the information is not available;

(b) signed by the agency's or creditor's records custodian; and

(c) include contact information such as phone number, mailing address, or e-mail address.

(5) Applications must be deemed withdrawn or abandoned if the applicant fails to provide the information requested by the department within 60 days of notification to the applicant by the department of deficiencies in the application or December 31, whichever comes first.

History: [32-9-130](#), MCA; IMP, [32-9-113](#), [32-9-117](#), [32-9-120](#), MCA; NEW, 2012 MAR p. 1253, Eff. 1/27/12.

2.59.1742 REVIEWING ADVERSE CREDIT HISTORY AND OTHER INFORMATION

(1) In making a determination whether an applicant has demonstrated financial responsibility, character, and general fitness, the department shall consider the following:

- (a) the individual's credit history reflected in a credit report;
- (b) supplemental information and documentation requested from and provided by the individual as determined necessary by the department;
- (c) responses and information contained in the individual's application filings;
- (d) previous and current license history with the department, to include any regulatory actions that have occurred;
- (e) other information that reflects upon the financial responsibility, character, and general fitness, whether favorably or adversely;

- (f) the timing and context of the information reviewed;
 - (g) patterns of conduct; and
 - (h) factors indicating that financially adverse information may be the result of the involuntary loss of job or income, divorce, or health issues. Under such circumstances, the individual shall provide documents showing attempted workout arrangements with creditors or other factors indicating the individual has made an attempt to correct his or her financial difficulties.
- (2) The department may not base a license application denial solely on a license applicant's credit score.
- (3) In determining financial responsibility, the department shall consider the totality of the applicant's credit history, and surrounding circumstances, in exercising its discretion under [32-9-120\(1\)\(c\)](#), MCA.
- (4) Although the following is not an exclusive list, the department may consider the following factors, or a combination thereof, in determining whether to deny, condition, suspend, or revoke a license. The individual:
- (a) has failed to fully provide any documentation required by the department;
 - (b) has made a false attestation associated with a filing related to an application for a license or a license renewal;
 - (c) has failed to pay in full any past due account, lien, judgment, or charged-off balance either as of the date of the issuance of a credit report to the department, or at time of initial licensure, designation as a control person or ultimate equity owner, or at renewal of any license. In reviewing this factor, the department shall make an exception for any account, lien, judgment, or charged-off balance that is solely due to medical expenses;
 - (d) is in arrears or has failed to comply with the terms of a repayment plan or agreement entered into with a creditor;
 - (e) has failed to make timely payments under a plan or agreement with any state or federal tax or other regulatory agency; and
 - (f) has any of the factors listed in ARM [2.59.1740\(2\)](#).

History: [32-9-130](#), MCA; IMP, [32-9-113](#), [32-9-117](#), [32-9-120](#), MCA; NEW, 2012 MAR p. 183, Eff. 1/27/12.