

INTERPRETIVE OPINION NO. 4

FINANCIAL RESPONSIBILITY

The Nebraska Department of Banking and Finance (“Department”) hereby issues this Interpretive Opinion regarding the financial responsibility requirements required for issuance of a mortgage loan originator license.

Neb. Rev. Stat. § 45-729(1)(c) of the Residential Mortgage Licensing Act provides that the director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

(1)(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Residential Mortgage Licensing Act. For purposes of this subsection, an individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The director may consider the following factors in making a determination as to financial responsibility:

- (i) The applicant's current outstanding judgments except judgments solely as a result of medical expenses;
- (ii) The applicant's current outstanding tax liens or other government liens and filings;
- (iii) The applicant's foreclosures within the past three years; and
- (iv) A pattern of seriously delinquent accounts within the past three years by the applicant;

In analyzing an applicant or licensee’s financial responsibility, the Department will consider many factors including, but not limited to, the following:

- (A) Outstanding judgments.
- (B) Tax or other government liens.
- (C) A pattern of delinquent child support payments.
- (D) Outstanding collection accounts.
- (E) Outstanding accounts with a remaining balance.
- (F) Accounts that are ninety (90) days or more past due.
- (G) A pattern of delinquent accounts.
- (H) A foreclosure within the preceding three years.

- (I) A bankruptcy active within the preceding 10 years.

The Department does not consider any of the factors above if those factors are related solely to medical debts. However, it is the responsibility of the applicant or licensee to supply information to the Department to document that the debts are medically related.

In addition, the Department does not consider a credit score in making a determination as financial responsibility. Furthermore, the presence of a particular factor will not automatically result in a finding that a person is not financially responsible. Instead, the Department determines financial responsibility based upon the facts associated with each individual application. The presence of an item above would warrant further inquiry by the Department.

If an individual has any of the items listed above, the individual must provide additional supporting documentation to the Department. If sufficient documentation of the items listed above is not submitted at the time of application, the Department will contact the individual. The Department may use secure, electronic messages sent directly to the individual and the posting of deficiencies on the individual's Nationwide Mortgage Licensing System record.

Additional documentation requested by the Department may include, but is not limited to, the following:

- (1) Narrative explaining the circumstances which surround the adverse item reported.
- (2) Satisfaction of judgment.
- (3) Bankruptcy discharge order or dismissal.
- (4) Bankruptcy schedules.
- (5) Satisfaction of tax or other governmental lien.
- (6) Letters or agreements establishing a repayment plan.
- (7) Account statements, receipts, bank statements, cancelled checks or other documentation which establishes the balance due, and the date and the amount of payments
- (8) Explanations concerning an ongoing settlement negotiation or dispute between the individual and creditor or creditor's assignee

After review of these items, the Department will make a determination as to whether a person meets the financial responsibility requirement. To make this determination, the Department may consider the following factors:

- (a) Whether the individual has provided complete information as requested by the Department.

- (b) The number of delinquent accounts, collection accounts, judgments, liens and charged off items.
- (c) The amount of any delinquent accounts, collection accounts, judgments, liens and charged off items.
- (d) The age of any delinquent accounts, collection accounts, judgments, liens and charged off items.
- (e) The length of time since a discharge in bankruptcy.
- (f) Any viable repayment agreements with creditors or creditor's assignees concerning delinquent accounts, collection accounts, judgments, liens and charged off items.
- (g) Good faith negotiation and repayment plans concerning any past due tax liability.
- (h) Failure to make payments pursuant to a repayment plan negotiated with a creditor or governmental tax agency.

As stated in (e) above, the Department will consider the length of time that has elapsed since a debtor has received a bankruptcy discharge. The Department does not consider the bankruptcy filing itself in making a determination as to financial responsibility. The Department will, however, examine the circumstances which led to the bankruptcy and will consider whether an individual has been using credit responsibly since receiving his or her discharge. New delinquencies and subsequent bankruptcy filings will reflect negatively upon the person's financial responsibility.

In order to make this determination post bankruptcy, a sufficient period of time must elapse for the Department to review the individual's use of credit after bankruptcy. Therefore, the Department will require a minimum of six months credit history after receiving a Chapter 7 discharge prior to it making a determination that such an individual is financially responsible. For Chapter 13 bankruptcies with confirmed bankruptcy plans, the Department will examine whether the individual is making the payments required by his or her Chapter 13 bankruptcy plan and may condition a license upon the individual continuing to make his or her required payments.

As stated in (f) and (g) above, the Department will also consider the existence of any repayment agreements with creditors and the good faith negotiation and repayment plans concerning tax liabilities. The Department may condition a license upon the licensee continuing to meet the requirements of the repayment plans. Such conditions may include requiring a licensee to submit periodic reports to the Department documenting that the individual has continued to make payments as agreed.

Financial responsibility is a continuing requirement for mortgage loan originators and must be met at all times, not just at initial licensing and at renewal. The Department may conduct such investigation as it deems necessary to determine whether a licensed mortgage loan originator continues to meet the financial responsibility requirement. Failure to meet the requirement may result in an initial license application being denied, a renewal request being denied, or a license being suspended or revoked.

EFFECTIVE DATE: April 16, 2012