

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 2. Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner

Subchapter A. Application Procedures

The Finance Commission of Texas (commission) adopts amendments to §2.104 (relating to Application and Renewal Fees) and §2.106 (relating to Denial, Suspension, or Revocation Based on Criminal History), in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

The commission adopts the amendments to §2.104 without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1283).

The commission adopts the amendments to §2.106 with changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1283). The change addresses a recommendation from the staff of the Texas Register, as discussed below.

The commission received no written comments on the proposal.

In general, the purpose of the amendments to 7 TAC Chapter 2 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 2 was published in the *Texas Register* on December 27, 2019 (44 TexReg 8343). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to

interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

The amendments are intended to reduce costs for individual residential mortgage loan originators (RMLOs), to ensure consistency with current licensing procedures and processes, and to make technical corrections.

The amendments to §2.104 would lower the RMLO application and annual renewal fees from \$300 to \$200, resulting in lower costs to individual RMLOs. These amendments are intended to reduce barriers for individuals to engage in the licensed occupation of being an RMLO regulated by the OCCC.

The amendments to §2.106 relate to the OCCC's review of the criminal history of an RMLO applicant or licensee. The OCCC is authorized to review criminal history of RMLO applicants and licensees under Texas Occupations Code, Chapter 53, and Texas Finance Code, Chapter 180 (the Texas SAFE Act). Amendments to subsection (c)(1) list the types of crimes that directly relate to the duties and responsibilities of being a regulated lender, as provided by Texas Occupations Code, §53.025(a). Other amendments to §2.106 would 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 element 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 §2.106 would implement these statutory changes from HB 1342. Other amendments to §2.106 include technical corrections, clarifying changes, and updates to citations.

In the original proposal, §2.106(b)(2) was only amended to delete the phrase "from prosecution, law enforcement, and correctional authorities" in accordance with HB 1342. After the proposal was submitted to the Texas Register, staff of the Texas Register recommended adding the phrase "of this section" to §2.106(b)(2). Based on this recommendation, the adopted text of §2.106(b)(2) states: "(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation."

The rule amendments are adopted under Texas Finance Code, §180.061, which authorizes the commission to adopt rules relating to criminal background checks for RMLOs, as well as rules relating to payment of RMLO application and renewal fees. In addition, Texas Finance Code, §180.004(b) authorizes the commission to implement rules to comply with Texas Finance Code, Chapter 180. The amendments to §2.106 are also adopted under Texas Occupations Code, §53.025, which requires each state licensing

authority to issue guidelines relating to review of criminal history.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 53 and Texas Finance Code, Chapter 180.

§2.104 Application and Renewal Fees

(a) Required submission to NMLS. To become an RMLO, an OCCC applicant must submit the required fees to NMLS. A fee is required to be submitted at the time of application and at the time of renewal. All fees are nonrefundable and nontransferable. However, upon review of individual circumstances, the OCCC may refund or transfer the state fees.

(b) Fingerprint processing fees. Fingerprint processing fees must also be paid in the amount necessary to recover the costs of investigating the OCCC applicant's fingerprint record (amount required by third party).

(c) OCCC application and renewal fees. The Finance Commission of Texas sets the RMLO application fee at an amount not to exceed \$200 [~~\$300~~] and the RMLO annual renewal fee not to exceed \$200 [~~\$300~~] for applications filed with the OCCC. Annual renewal fees are due to NMLS by December 31 of each year. A third party operates NMLS and that third-party operator sets the amount of the required system fees. Applicants and RMLOs must pay all required application and renewal fees, fingerprint processing fees, and any additional amounts required by the third-party operator.

(d) OCCC reinstatement period and fee. The Finance Commission of Texas sets the RMLO reinstatement fee at \$50 for

applications filed with the OCCC. The reinstatement period for OCCC applicants runs from January 1 through the last day of February each year.

§2.106 Denial, Suspension, or Revocation Based on Criminal History

(a) Criminal history record information. After an applicant submits a complete application to NMLS, including a set of fingerprints, and pays the fees required under §2.104 of this title (relating to Application and Renewal Fees), the OCCC will investigate the applicant. 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 fingerprint information has been initially processed.

(b) Disclosure of criminal history by applicant. The applicant must disclose all criminal history information required to file a complete application with NMLS. Failure to provide any information required by NMLS or requested by the OCCC reflects negatively on the applicant's character and general fitness to hold a license. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions;

(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.

(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 licensed residential mortgage loan originator, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating residential mortgage loans involves making representations to borrowers regarding the terms of the loan and collecting charges in a legal manner. 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 the 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;

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(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; and

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph. [Consequently, — crimes — involving — the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.]

(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 capacity ~~[, 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) If a criminal conviction directly relates to the duties and responsibilities of the license ~~[In determining whether a conviction for a crime renders an applicant or a licensee unfit to hold a license],~~ the OCCC will consider the following factors in determining whether to deny a license application, or suspend or revoke a license, 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 financial responsibility, character, or general fitness. 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 relates to financial responsibility, character, or general fitness to hold a license, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A). If the applicant or licensee has been convicted of an offense described by subsections (c)(1), (f)(1), or (f)(2) of this section, this reflects negatively on the applicant or licensee's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant 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 applicant will operate lawfully and fairly. The OCCC will consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness. [Crimes that relate to

~~financial responsibility, character, or general fitness include the following:~~

~~[(1) — fraud, — misrepresentation, deception, or forgery;]~~

~~[(2) breach of trust or other fiduciary duty;]~~

~~[(3) dishonesty or theft;]~~

~~[(4) money laundering;]~~

~~[(5) assault;]~~

~~[(6) violation of a statute governing lending of this or another state;]~~

~~[(7) failure to file a required report with a governmental body, or filing a false report; or]~~

~~[(8) — attempt, — preparation, — or conspiracy to commit one of the preceding crimes.]~~

(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 licensed occupation and that was committed less than five years~~

~~before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);~~

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(1) [~~2~~] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 [~~art. 42.12, §3e~~], or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3) [~~§53.021(a)(3)-(4)~~];

(2) [~~3~~] a conviction for, or plea of guilty or nolo contendere to, a felony during the preceding seven years or a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, as provided by Texas Finance Code, §180.055(a)(2) and §180.201(2)(A);

(3) [~~4~~] a material misstatement or failure to provide information in a license application, as provided by Texas Finance Code, §180.201(2); and

(4) [~~5~~] any other information indicating that the financial responsibility, character, or general fitness of the applicant or licensee do not command the confidence of the public or do not warrant the determination that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of Texas Finance Code, Chapter 180 and other appropriate regulatory laws of this state, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A).

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on April 17, 2020.

Matthew J. Nance