

808 KAR 12:055. Uniform standards for mortgage loan processor applicant employee background checks.

RELATES TO: KRS 286.8-010, 286.8-255(9), 15 U.S.C. 1681, et seq.

STATUTORY AUTHORITY: KRS 286.8-140(1), 286.8-255(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. Prior to hiring a mortgage loan processor applicant, KRS 286.8-255(9) requires licensees to perform an employee background check in accordance with uniform standards established by the commissioner demonstrating that the mortgage loan processor applicant has not been convicted of, pled guilty to, or pled nolo contendere to certain felonies and that the mortgage loan processor applicant has demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan processor applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of KRS Chapter 286.8. This administrative regulation establishes the uniform standards for these employee background checks.

Section 1. Definitions.

(1) "Adverse action" means a denial of employment based in whole or in part on information obtained from an employee background check conducted pursuant to KRS 286.8-255(9) and this administrative regulation.

(2) "Consumer report" is defined by section 603(d) of the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

(3) "Control person" means the following:

(a) A director, general partner, managing member, or executive officer;

(b) Any person who:

1. Directly or indirectly has the right to vote ten (10) percent or more of a class of a voting security; or

2. Has the power to sell or direct the sale of ten (10) percent or more of a class of voting securities;

(c) In the case of a partnership or limited liability company, any person that has the right to receive upon dissolution ten (10) percent or more of the capital; or

(d) Any person that exercises control.

(4) "Governmental agency" means any executive, legislative, or judicial agency, department, authority, political subdivision, or instrumentality of a state, the United States, or a foreign government.

(5) "Licensee" is defined by KRS 286.8-010(15).

(6) "Mortgage loan processor" is defined by KRS 286.8-010(22).

(7) "Mortgage loan processor applicant" means a person making an application with a licensee to be employed by the licensee as a mortgage loan processor.

(8) "Nationwide consumer reporting agency" means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined by section 603(p) of the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

Section 2. Uniform Standards for Mortgage Loan Processor Employee Background Checks.

(1) Each background check conducted by a licensee pursuant to KRS 286.8-255(9) shall:

(a) Be in writing;

(b) Be conducted no earlier than six (6) months prior to hiring a mortgage loan processor applicant; and

(c) At a minimum include the following:

1. A consumer report compiled by a nationwide consumer reporting agency that includes information reflecting the mortgage loan processor applicant's credit history;

2. A report detailing the search for any publicly available criminal records of the mortgage loan processor applicant involving felonies in Kentucky and in all other states or foreign jurisdictions where the mortgage loan processor applicant has resided or worked and any records found or obtained; and

3. A report detailing the search for any publicly available criminal records of the mortgage loan processor applicant involving misdemeanors of which an essential element is fraud, breach of trust, or dishonesty in Kentucky and in all other states or foreign jurisdictions where the mortgage loan processor applicant has resided or worked for the five (5) years preceding the date of application and any records found or obtained.

(2) In obtaining the information required by subsection (1) of this section, a licensee may reasonably rely upon written reports, statements, or records obtained from any of the following:

(a) A governmental agency;

(b) A nationwide consumer reporting agency; or

(c) A search firm that:

1. Conducts background investigations in accordance with all applicable law; and

2. Produces a written investigative report that contains the date the report was prepared, the scope of the search, the results of the search, and a statement indicating that the report is accurate and complete to the best of the firm's knowledge and belief.

(3) When conducting the employee background check and making the determinations required by KRS 286.8-255(9) and this administrative regulation, each licensee shall comply with the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., and all other applicable state or federal laws.

Section 3. Factors Used to Make the Determinations Required by KRS 286.8-255(9).

(1) A licensee shall determine whether a mortgage loan processor applicant has demonstrated financial responsibility pursuant to KRS 286.8-255(9)(b) after review of:

(a) All information obtained from the mortgage loan processor applicant; and

(b) The mortgage loan processor applicant's consumer report for the following information:

1. Any outstanding judgments, excluding judgments arising solely from medical expenses for the mortgage loan processor applicant or an immediate family member;

2. Any outstanding tax liens or other governmental liens;

3. Any foreclosures occurring within five (5) years of the date of the consumer report;

4. Any bankruptcies occurring within five (5) years of the date of the consumer report; and

5. Any delinquent accounts occurring within five (5) years of the date of the consumer report.

(2) A licensee shall determine whether a mortgage loan processor applicant has demonstrated character and general fitness pursuant to KRS 286.8-255(9)(b) after review of all information obtained from the mortgage loan processor applicant and the employee background check conducted in accordance with this administrative regulation, including information shown on the mortgage loan processor applicant's consumer report.

(3) Prior to conducting the reviews required by subsections (1) and (2) of this section, and in accordance with subsection (4) of this section, the licensee, at a minimum, shall obtain the following information and disclosures from the mortgage loan processor applicant:

(a) A complete residential and employment history for the ten (10) years preceding the date of application;

(b) Whether a bonding company has ever denied, paid, or revoked a bond for the following:

1. The mortgage loan processor applicant; or
2. An entity in which the mortgage loan processor applicant acted as a control person if the denial, payment, or revocation was based on acts that occurred while the mortgage loan processor applicant exercised control;

(c) Whether the mortgage loan processor applicant has ever been convicted of, pled guilty to, or pled nolo contendere to the following in any domestic, foreign, or military court:

1. Any felony during the seven (7) year period preceding the date of application made with the licensee;

2. Any felony, regardless of the date of conviction or pleading, if the felony involved an act of fraud or dishonesty, a breach of trust, or money laundering; or

3. Any misdemeanor for which an essential element is fraud, breach of trust, or dishonesty during the five (5) year period preceding the date of application made with the licensee;

(d) Whether there are any pending charges against the mortgage loan processor applicant involving a crime referenced in paragraph (c) of this subsection;

(e) Whether any domestic or foreign court ever found, or there is pending in any court an action alleging, that the mortgage loan processor applicant violated or was involved in a violation of a financial services-related statute or regulation;

(f) Whether any governmental agency or self-regulatory organization ever entered an order or made a finding determining, or there is pending an action initiated by any agency or organization alleging, that the following person or entity made a false statement, engaged in dishonest, unfair, or deceptive conduct or practices, engaged in fraudulent conduct, or violated or was involved in the violation of a financial services-related statute or regulation:

1. The mortgage loan processor applicant; or

2. An entity in which the mortgage loan processor applicant acted as a control person if the order, finding, or action was based on acts that occurred while the mortgage loan processor applicant exercised control;

(g) Whether the following person or entity has had a license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of any state or the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by any state or the United States under threat of administrative action:

1. The mortgage loan processor applicant; or

2. An entity in which the mortgage loan processor applicant acted as a control person if the denial, suspension, revocation, or termination was based on acts that occurred while the mortgage loan processor applicant exercised control;

(h) Whether the mortgage loan processor applicant has ever been named as a respondent or defendant in a financial services-related consumer-initiated arbitration or civil action that resulted in an arbitration award, civil judgment, or settlement involving the payment of money or taking of corrective action by the mortgage loan processor applicant;

(i) Whether the mortgage loan processor applicant has ever been found to have violated or is the subject of a pending investigation involving the violation of any rule of conduct for test takers of the S.A.F.E. Mortgage Loan Originator Test administered by the Nationwide Mortgage Licensing System and Registry; and

(j) Complete details of all events and proceedings disclosed by the mortgage loan processor applicant.

(4) Any conviction, plea, denial, suspension, revocation, surrender, termination, order, or finding that has been formally vacated or set aside shall not be deemed a conviction, plea, denial, suspension, revocation, surrender, termination, order, or finding for the purposes of subsection (3) of this section.

Section 4. Mortgage Loan Processor Applicant's Right to Review and Submit. If information is discovered or obtained by a licensee concerning a mortgage loan processor applicant that may result or contribute to an adverse action by the licensee concerning the mortgage loan processor applicant, the mortgage loan processor applicant shall be given a minimum of ten (10) days to do the following prior to the making of a final employment decision by the licensee:

- (1) Review the information and any documents relating to the information;
- (2) Dispute the accuracy of the information; and
- (3) Submit additional, corrected, or mitigating explanation, information, or documents for the licensee's review. (43 Ky.R. 155, 548; eff. 11-4-2016; 45 Ky.R. 2207; eff. 5-3-2019.)