



# ***TEXAS DEPARTMENT OF BANKING***

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## **SUPERVISORY MEMORANDUM – 1036**

**July 17, 2024**

**TO:** Money Services Business License Holders

**FROM:** Charles G. Cooper, Banking Commissioner

**SUBJECT:** Background Check Self-Certification for Money Services Businesses Chapter 152<sup>1</sup>

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### **PURPOSE**

This supervisory memorandum outlines the policy of the Texas Department of Banking (Department) with regard to background checks that are performed in relation to Money Services Businesses (MSBs) in accordance with the Department's statutory duties. This memorandum addresses when and how an MSB license holder may file a certification in lieu of having the Department review a person's background. This memorandum also addresses the responsibilities of the license holder with respect to self-certification.

### **BACKGROUND**

Pursuant to Texas Finance Code §§ 152.104, 152.105, 152.151, and 152.153, the Department routinely reviews the backgrounds of persons who apply for an MSB license, acquire control of an MSB, or become a key individual of an MSB. Background checks are conducted to determine whether the person has the financial responsibility and condition, the financial and business experience, and the general competence and character required by Finance Code §§ 152.106 and 152.151 to lead the affairs of an MSB. Toward this end, the Department requires such individuals to submit fingerprints and biographical information and sign a release form that authorizes the Department to obtain copies of the records and information necessary to evaluate the individual's background. In cases where an individual applicant has resided outside of the United States at any time in the preceding 10 years, the individual shall also provide an investigative background report prepared by an independent search firm that meets specified requirements.

### **DEFINITIONS**

For purposes of this memorandum, the following terms have the meanings stated as follows:

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<sup>1</sup> This policy has been updated to reference and conform to Texas Finance Code Chapter 152, the Money Services Modernization Act, which replaces the rescinded Chapter 151.

- "Background Check" means the sum of actions taken to gather and evaluate information regarding an individual's education, employment, credit and criminal history, and reputation; or a company's ownership, credit, regulatory background, and reputation.
- "Key Individual" has the meaning ascribed by Finance Code § 152.003(17).

#### **STATEMENT OF POLICY**

For all new MSB license applications, the Department must review the backgrounds of all key individuals. In cases of individuals who have resided outside the U.S. at any time in the preceding 10 years, the Department may accept and review reports prepared by acceptable search firms. Once licensed, pursuant to Finance Code §152.153(a), MSBs adding or replacing a key individual must notify the Department no later than 15 days after the effective date of the key individual's appointment and provide additional information required by Finance Code § 152.105 no later than 45 days after the effective date. During the first three years that an MSB holds a license, the MSB must comply with Finance Code § 152.153.

After three years of continuous licensure, if the license holder is in at least satisfactory overall condition as of its most recent examination and not subject to a formal enforcement action in any jurisdiction in which it operates, instead of providing the background check documents for a new key individual to the Department for review and approval, an MSB may file a certification form that attests to the fact that the MSB has performed the necessary background check review itself. However, when a personnel change results in a change of control as defined by Finance Code §§ 152.003(8), 152.151, the MSB may not self-certify in this manner. In order to sign the certification, the license holder must have investigated the financial responsibility and condition, the financial and business experience, and the general competence and character of the proposed key individual. The proposed key individual must also affirm that he or she meets certain statutory conditions. As such, the certification form must be completed and signed by both an executive officer with the authority to bind the license holder, and the proposed key individual. If the Banking Commissioner deems it necessary, the Department may require a license holder to submit to the normal background check procedure under Finance Code § 152.153 regardless of how long the license holder has been licensed.

#### **HOW TO SELF-CERTIFY**

When any license holder intends to change or add a key individual, the license holder must notify the Department no more than 15 days after the effective date of the key individual's appointment. Unless otherwise notified by the Banking Commissioner, if the license holder has been licensed at least three years, is in at least satisfactory overall condition as of its most recent examination, and is not subject to a formal enforcement action in any jurisdiction in which it operates, the license holder may state in the notice its intention to certify that the proposed officer meets the qualifications required by Finance Code Chapter 152. It must then submit an executed copy of the self-certification form provided by the Department on its website no later than 30 days after notifying the Department of the personnel change. If there are no regulatory concerns that would preclude self-certification, the Department will notify the license holder that the certification has been accepted and that no background check must be submitted for the Department to review and approve.