

Loan Origination Rules for Non-Institutional Lenders and the Loan Originator

Source of Rule	SAFE Act (federal)	NMLS Model Act	HUD/CFPB Regulation on SAFE Act	Dodd Frank amendment to Truth in Lending	CFPB Regulation on SAFE Act (LO Comp and Qualification)
Citation	<p><u>Secure and Fair Enforcement of Mortgage Licensing Act of 2008</u> Title V of PL 110-289 Passed July 30, 2008 Effective date for state compliance August 29, 2011</p>	<p>CSBS/AARMR Model State Law for the Implementation of the S.A.F.E. Act—MSL Final 10/24/08 State Model Language For Implementation Of Public Law 110-289, TITLE V—S.A.F.E. MORTGAGE LICENSING ACT</p>	<p>SAFE Mortgage Licensing Act: Minimum Standards and Oversight- 76 FR 38464 Issued June 30 2011 (HUD) NOTE: Effective July 21, 2011, the SAFE Act transferred to CFPB for administration and enforcement Recodified by CFPB as 12 CFR 1008 (Reg H)</p>	<p>PL 111-203- Section 1401 Definitions- New TIL Section 103 (cc)(2)(E) Passed July 21, 2010 New TIL section 15 U.S.C. 1602 Section 103 (cc)(2)(E) Effective July 21, 2011</p>	<p>78 Fed Register 11279: Reg Z 12 CFR 1026.36(a)(1) 12 CFR 1026.36(a)(4) 12 CFR 1026.36(a)(5) See Comment 36(a)(4)-1 If not exempt must comply with 12 CFR 1026.36(f) Qualifications for Loan Originators Issued January 10, 2013 Effective January 10, 2014</p>
Summary	<p>Requires each state to pass statute enacting LO oversight; HUD/NMLS issues sample; EACH state passes own version of Act-MOST except from coverage Loans made to immediate family members; Loan with sale of personal residence SOME except Minimum # of loans Non Profits Enforcement: See state law- Federal- Failure be licensed does not invalidate mortgage loan</p>	<p>Exempts from coverage (LO license under state act): Individual offering residential mortgage loan to immediate family member (spouse, child, sibling, parent, grandparent, grandchild, and steps/adoptives); Individual offering residential mortgage loan secured by that individual’s residence</p>	<p>Clarification of LO status: §3400.103/1008.103 An individual engages in the business of a loan originator if the individual, in a commercial context and habitually or repeatedly: (1) (i) Takes a residential mortgage loan application; and (ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain or advertises that can do above acts Examples in Appendix B: Sale of own residence; sale of own property; loan to child; gov’t or non-profit employee</p>	<p>LO is not: A person, estate or trust who finances 3 properties (sale) in 12 months of property owned by person, estate or trust IF: Didn’t build it; Loan amortizes; Buyer has ability to repay; FRM or 5 + ARM and Any other Board rules</p>	<p>(a)(1) (D) –definition of LO does not include a seller financier under (a)(4) or (a) (5); (a) (4)-a natural person or an organization [(a)(22)]; finances 3 or fewer sales in 12 months; owned them; did not construct them; fully amortizing; borrower has ability to repay; FRM or 5+ ARM; (a)(5)-a natural person, estate or trust; finances 1 sale in 12 months; owned it; did not construct it; no neg. am.; FRM or 5+ARM Comment 36(f)-2 SAFE Act state statutes still control LO licensing rules- but if this rule is more onerous, it must be followed</p>

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Other: Type of Loan (personal, household, family)-TILA vs Type of Real Estate collateral (residential property 1-4 family)- RESPA Creditor	Mortgage Loan Originator: "An individual who for compensation or gain or in the expectation of compensation or gain Takes a residential mortgage loan application; or Offers or negotiates terms of a residential mortgage loan"	NOTE the Model Act was not adopted in the same format in each state and each must be referred to for specifics	NOTE most State Acts passed before this clarification and did not use the broader language, so each must be referred to for specifics	Residential mortgage loan: mortgage on a dwelling (not open-end credit)	(f) Qualifications to comply with LO rule include: (1) comply with state law for doing business; (2) License all LO's under state law (3) investigate any LO not required to be licensed by state

Question: My client wants to extend real estate financing and is not an institutional lender (Depository or State Licensed Lender/Mortgage Company), What would require that he/she/it be licensed (as a lender or loan originator) under any law? What criteria of the transaction exempt him/her/it from licensing?

Source of Law: State statute implementing the SAFE Act, as implemented by state regulations and Federal Truth in Lending (as amended by Dodd Frank Act) and implemented by new Reg Z for Loan Originator Compensation and Qualifications effective January 10, 2014 and

What state is the real estate located in?

Review state law regarding who must be a licensed and who is excepted from the state act/regulations- specific provisions to look for include:

Type of entity **making loan** (individual, natural person, person, business entity (corporation, partnership), trust, estate; is Lender license required)

Type of entity **originating loan** (individual, natural person, person, business entity (corporation, partnership), trust, estate; is Loan Originator license required)

Type of entity **receiving loan** (relationship to lender-family defined; individual, consumer, business entity)

Type of **collateral** (residential or commercial use; 1-4 family; primary residence of borrower, occupied by borrower; non-owner occupied)

Use of **loan proceeds** (personal, family, household vs. business, commercial or agricultural; sale; refinance)

De minimis exceptions for number of loans made by entity per year (calendar; within 12 months)

Relationship of **lender to collateral** (seller of collateral, seller of residence/primary residence; no ownership interest)

Penalty for non-compliance? (most laws have fines or orders compelling cease and desist; check for status of validity of mortgage)

State	SAFE Act Citation	Reg. Citation	Who is covered/excepted	Company license	LO License	Liability for failure to comply

Assuming no state requirement for license, does federal law (TILA/ Reg Z) require it? Any law/regulations for lender status?

Type of entity **making the loan**: TILA/Reg Z does not apply to the entity making the loan if not a “creditor” defined as making to a consumer (see entity receiving the loan) more than 5 consumer credit loans(see use of loan proceeds) secured by a dwelling (see type of collateral) in the preceding calendar year (see de minimus exception). It may apply to entity originating the loan (see entity originating the loan).

Type of entity **receiving the loan**: TILA/Reg Z does not apply if borrower is not a “consumer” defined as a natural person to whom consumer credit is offered or extended.

Type of **collateral**: TILA/Reg Z does not apply if collateral is not a “dwelling” defined as a 1-4 unit residential structure.

Use of **loan proceeds**: TILA/Reg Z does not apply if loan proceeds (a) are not for personal, family or household use or (b) are for business, commercial or agricultural use.

De Minimus exception: If no data for preceding calendar year, numerical standards apply to current calendar year. For loans subject to [§1026.32](#) or through a mortgage broker “creditor” is defined as one loan per year.

Type of entity **originating the loan**: Loan Originator defined by Regulation Z: means a person who, for gain: “takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities”.

A Loan Originator for a consumer credit transaction secured by a dwelling must, when required by applicable State or Federal law, be registered and licensed in accordance with those laws. (see above for State Law chart).

Reg Z exempts from the federal licensing requirement 2 groups of “seller financiers”:

(a) (4)-a natural person or an organization [(a)(22)]; financing 3 or fewer sales in 12 months; involving property owned it; which it did not construct; with mortgage loan that is fully amortizing; to a borrower who has the ability to repay; and a loan term that is FRM or 5+ ARM;

(a)(5)-a natural person, estate or trust; financing 1 sale in 12 months; involving property owned by it; which it did not construct it; with a mortgage loan that does not have negative amortization; and a loan term that is FRM or 5+ARM

Penalty for non-compliance? Failure to be a licensed/registered Loan Originator does not affect the “validity or enforceability of any mortgage loan contract” (75 FR 44661) however, failure to conduct an assessment of the Ability to Repay can create a 3 year right of rescission and a defense (at any time) to foreclosure.