In this unit, you’ll learn about:

- the history leading up to the licensing and registration of loan originators; and
- the activities which trigger loan originator licensing and/or registration with the Nationwide Mortgage Licensing System (NMLS).

THE SAFE ACT

If you’re taking this course, you’ve already obtained the loan originator license required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). Your license allows you to perform loan originator activities. However, your loan originator practice requires you to understand how you, and others, received your authority to originate loans.

For instance, do you know the difference between the two loan originator types set forth in the SAFE Act? Do you know how your status will be affected if you change jobs? Or what requirements must be met by prospective loan originators you recruit and plan to employ?

Even once licensed and/or registered, loan originators have misconceptions about which activities require them to hold a loan originator license. This module provides a review of the rules and requirements for obtaining a loan originator license and/or registration under the SAFE Act laws and regulations.

SAFE ACT TERMS

Before we take a look at the specifics of how the SAFE Act works, let’s define some SAFE Act terms.

**Administrative, clerical or support tasks**

Administrative and clerical tasks include the receipt, collection and distribution of information common for the processing or underwriting of a residential mortgage loan. Administrative tasks include communicating with the consumer to obtain information necessary to process or underwrite a residential mortgage loan. [12 United States Code §5102(4)(C); 12 USC §5102(5)(B)]

However, negotiating mortgage loan rates or terms with or on behalf of the borrower, or counseling the borrower about residential mortgage loan rates or terms are not considered administrative or clerical tasks. [12 Code of Federal Regulations §1008.23]

**Depository institution**

In the SAFE Act, this term means any bank, savings association or credit union. [12 USC §5102(3)]

**Employee**
An employee is an individual whose:

- manner and means of work are subject to the control of another person, the employer; and
- pay is reported on a W-2 form by their employer. [12 CFR §1008.23]

**Federal banking agency**

In the SAFE Act, this term collectively refers to:

- the Board of Governors of the Federal Reserve System;
- the Office of the Comptroller of the Currency (OCC);
- the National Credit Union Administration (NCUA); and
- the Federal Deposit Insurance Corporation (FDIC). [12 USC §5102(2)]

**Independent contractor**

An independent contractor is a person who performs their work independent of the supervision or control of a state-licensed or registered loan originator. [12 CFR §1008.23]

**Loan processor or underwriter**

Generally, a loan processor or underwriter is an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of either:

- a state-licensed loan originator; or
- a registered loan originator. [12 USC §5102(5); 12 CFR §1008.23]

The differences between the two types of loan originators will be discussed later in the course.

Although loan processors and underwriters are defined as clerical or administrative support staff, they are not always exempt from loan originator licensing or registration requirements. The rules governing when loan processors and underwriters are exempt or not exempt from registration will be discussed later in this course.

**Nationwide Mortgage Licensing System and Registry (NMLS)**

The Nationwide Mortgage Licensing System and Registry is the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). The system handles the state licensing and registration of state-licensed loan originators and the registration of registered loan originators. [12 USC §5102(6)]

**Nontraditional mortgage product**

A nontraditional mortgage product is any mortgage product other than a 30-year fixed rate mortgage. [12 USC §5102(7)]

**Real estate brokerage activity**

This term differentiates activities requiring a loan originator license or registration from related real estate activities. Real estate brokerage activity includes:

- acting as a real estate agent or broker for a buyer, seller, lessor or lessee of real property;
• bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;
• negotiating, on behalf of any party, any part of a contract relating to the sale, lease, rental or exchange of real property, \textit{except a contract for the financing of the property};
• engaging in any other activity for which a real estate agent or broker license is required; and
• offering to engage in any of the above activities. [12 USC §5102(4)(D)]

\textbf{Unique identifier}

The unique identifier is a number that permanently identifies a loan originator. The unique identifier is assigned by NMLS protocol. The purpose of the unique identifier is to electronically track the employment and disciplinary history of the identified loan originator. [12 USC §5102(13)]

The unique identifier is a loan originator’s “NMLS ID” or “NMLS Number.”

\section*{HISTORY LEADING UP TO THE SAFE ACT: A NEED FOR GREATER REGULATION}

During the Millennium Boom, lenders and loan originators aggressively solicited borrowers to accept complicated loan products yielding high interest rates. These brokered loans were then fed to other mortgage bankers, as well as commercial banks and thrifts. The lenders funding these defective loans resold them in bulk to bankers on Wall Street. Wall Street bankers bundled the loans into mortgage-backed bonds (MBBs) for purchase by bond market investors.

As the mortgage crisis emerged in 2007, the question arose: who in the tangled mortgage web was responsible for the faulty loans? And more importantly, what additional consumer protection rules were needed to curb improper lender and loan originator conduct?

The SAFE Act was passed on July 30, 2008 to reduce fraud and enhance consumer protection for mortgage consumers. Originally, the U.S. Housing and Urban Development Department (HUD) was the chief overseer of the SAFE Act. This supervision was passed to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011 under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Two regulations implement the SAFE Act:

\begin{itemize}
  \item Regulation G, which controls the requirements for \textit{registered loan originators} [12 CFR §§1007 et seq.]; and
  \item Regulation H, which controls the requirements for \textit{state-licensed loan originators}. [12 CFR §§1008 et seq.]
\end{itemize}

The stated purposes of the SAFE Act are to enhance consumer protection and reduce fraud by setting minimum uniform standards for licensing and registering loan originators. Specifically, the SAFE Act:

\begin{itemize}
  \item provides uniform license applications and reporting requirements for state-licensed loan originators;
  \item provides a comprehensive licensing and supervisory database;
  \item aggregates and improves the flow of information to and between regulators;
  \item provides increased accountability and tracking of loan originators;
  \item streamlines the licensing process and reduces the regulatory burden;
\end{itemize}
enhances consumer protections and supports anti-fraud measures;
provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators;
establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer;
facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending; and
facilitates the collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators. [12 USC §5101]

By increasing the education requirements of loan originators and increasing its own knowledge and oversight of their activities, the government hopes to improve responsibility and accountability among mortgage lenders, and increase its own understanding of a previously opaque and unregulated business.

REGULATORY AUTHORITY BELONGS TO THE STATES

The SAFE Act creates minimum licensing and reporting requirements for loan originators. To apply these laws, the SAFE Act called for state agencies to adopt laws and/or practices which meet the loan originator licensing and registration requirements. The SAFE Act went into effect on July 30, 2008. States were given one year from that date to pass legislation establishing the SAFE Act requirements. The states have the authority to oversee violation of state laws required by the SAFE Act. The CFPB has general oversight to enforce the SAFE Act and Regulations G and H.

The SAFE Act gives state loan originator licensing agencies the authority to:

- investigate violations of the SAFE ACT; and
- conduct reviews, investigations or examinations to ensure compliance with the SAFE Act. [12 USC §5114(1)]

States have the authority to review, investigate or examine:

- state-licensed loan originators;
- registered loan originators; and
- unlicensed individuals required to be licensed under the SAFE Act. [12 USC §5114(3)]

Upon state request, licensed loan originators and individuals required to be licensed must provide books and records relating to their loan originations. In their investigations, states have the authority to interview:

- officers;
- principals;
- loan originators;
- employees;
- independent contractors;
- agents; and
- customers. [12 USC §5514(2)]
The licensing state also has the responsibility to:

- discipline state-licensed loan originators for violations of state or federal laws;
- impose money penalties on individuals who act as loan originators without a valid license or registration; and
- report violations of state and federal lending laws to the NMLS. [12 CFR §1008.111(b); 12 CFR §1008.113]

### WHO IS REQUIRED TO BE LICENSED?

Individuals who engage in the business of a **loan originator** must:

- obtain and annually maintain either:
  - a license and registration as a **state-licensed loan originator**; or
  - a registration as a **registered loan originator**; and
- obtain a unique identifier. [12 USC §5103(a)]

A **loan originator** is an individual who:

- takes a residential mortgage loan application; and
- offers or negotiates the terms of a residential mortgage loan for compensation or gain; or
- represents to the public they will take a residential mortgage application or negotiate the terms of a residential mortgage loan. [12 USC §5102(4)]

An individual is not considered a loan originator if they:

- perform purely administrative or clerical tasks on behalf of a loan originator;
- perform only real estate brokerage activities and are licensed or registered under applicable state law, unless they also receive compensation from a lender, mortgage broker or a loan originator (e.g., receive a share of mortgage fees); or
- only make loans relating to timeshares. [12 USC §5102(4)(A)(ii)-(iv)]

For example, a loan processor employed by a loan originator to package residential loan application files and submit them to a lender is performing administrative or clerical work.

Under the SAFE Act regulations, a **residential loan application** is:

- a request, in any form, for an offer of residential mortgage loan terms; or
- a response to a solicitation of an offer of residential mortgage loan terms.

A residential loan application includes enough information about the prospective borrower for the lender to make a decision about whether they will extend a residential loan offer to the prospective borrower. Note that a residential loan application is a request for an offer of residential mortgage loan terms in any form, not just the formal written Residential Loan Application 1003 form. [12 CFR §1008.23]
A **residential mortgage loan** is any loan used primarily for a personal, family or household purpose, and is secured by a mortgage, deed of trust or other consensual security interest on:

- a dwelling; or
- residential real estate on which a dwelling will be constructed. [12 USC §5102(9); 12 CFR §1008.23]

A dwelling is defined as a residential structure that contains one-to-four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home or trailer, if it is used as a residence. [15 USC §1602(w); 12 CFR §1026.2(a)(19)]

The SAFE Act casts a wide net for the definition of a residential mortgage loan. Residential mortgage loans include:

- purchase-money loans;
- refinance loans;
- reverse mortgages;
- home equity lines of credit; and
- installment sale contracts, e.g. carryback sales. [12 CFR §1008.23]

Since a residential mortgage loan is used primarily for a personal, family or household purpose, loan originators who solicit, arrange or service investment, agricultural or business loans, or any loans secured by other than one-to-four unit residential property are not required to obtain a loan originator license and/or registration.

**The attorney “exemption”**

Attorneys are required to hold a loan originator license if they originate residential mortgage loans habitually, and for profit. In this respect, they are just like any other individual.

However, a small exception exists for attorneys who negotiate, arrange, or otherwise originate loans as part of their representation of a client as an attorney. An attorney is NOT required to be licensed under the SAFE Act if their loan origination activities are:

- considered to be an authorized practice of law within the state;
- carried out within an attorney-client relationship; and
- accomplished within the applicable laws. [12 CFR §1008 Appendix D]

Thus, attorneys are afforded an exemption if they perform loan originator services as an ancillary matter to their representation of a client, but not if they repeatedly hold themselves out as a loan originator.

**Commercial, habitual origination**

Under the SAFE Act, an individual must be licensed if they:

- act or hold themselves out as a loan originator in a **commercial context**; **AND**
- do so repeatedly or habitually. [12 CFR §1008.103(b)]

An individual acts in a **commercial context** if they perform the duties of a loan originator in exchange for something of value, rather than for public, charitable or family purposes. [12 CFR §1008 Appendix B]

The SAFE Act does not set a specific number of transactions as “repeated” or “habitual”. Rather, it leaves this standard broad, to provide a wide blanket of coverage for consumers. However, SAFE Act regulations provide
general guidance on what transactions do NOT require an individual to be licensed as a loan originator. An individual is NOT required to be licensed as a loan originator if they:

- provide financing for the sale of the individual’s own residence, as long as the individual does not frequently and habitually do so;
- provide financing for the sale of any other type of property owned by the individual, as long as the individual does not frequently or habitually do so;
- provide loan financing to their children;
- act as a loan originator only in their official capacity as a government employee;
- act as a loan originator only in their capacity as the employee of a state-recognized bona fide nonprofit organization; or
- do not act as a loan originator habitually or repeatedly, as long as the lender of the funds does not also provide mortgage financing or perform loan origination activities habitually or repeatedly. [12 CFR §1008 Appendix B]

Editor’s note — Though the SAFE Act regulations do not consider a seller carrying back a note on the sale of their residence to be performing the activities of a loan originator, Regulation Z does. Under Regulation Z, a seller financer is excluded from loan originator licensing only if they restrict their carryback financing to no more than three extensions of credit per 12-month period, and the carryback financing arrangement meets other requirements set by Regulation Z.

A carryback seller who is considered a loan originator under Regulation Z must then review the SAFE Act rules in their state to see if they are required to obtain and maintain a loan originator license. [12 CFR §1026.36(a)(4)-(5); §1026.36(f)]

Example 1:

Consider the owner of a dwelling. The owner sells his home to an owner-occupant buyer, and carries back a note and trust deed on the sale. The sale is thus an installment sale. The seller is represented by a real estate broker. The real estate broker holds himself out to be a carryback expert, who has arranged numerous installment sales in the past. The real estate broker negotiates the carryback financing arrangement with a buyer who will occupy the dwelling. The real estate broker collects from the seller a fee for negotiating the carryback sale, separate from his real estate brokerage fee. Is the broker required to be licensed as a loan originator?

QUICK QUIZ LINK: Yes/No

Yes! Carryback financing for a dwelling is considered a residential mortgage loan. The broker in this scenario habitually arranged carryback financing, negotiated the carryback sale and received a fee for the negotiation. Thus, they are considered to be a loan originator.

Example 2:

Consider a real estate broker hired to represent a buyer seeking to purchase a dwelling. The buyer inquires about financing and indicates they will pay the broker to negotiate on their behalf. The broker does not habitually arrange financing, but believes he is exempt from loan originator licensing requirements if he only originates one loan. The broker contacts a private lender and arranges the financing for the buyer. He then collects a fee from the buyer for his assistance in negotiating the financing. Has the broker violated the SAFE Act?
QUICK QUIZ LINK: Yes/No

Yes! Even though the broker was not a “habitual” or “repeated” loan originator, the private lender habitually provided loan funds. Thus, the broker was unlawfully originating mortgage loans without the required license, a violation of the SAFE Act.

Note that some states have stricter rules, and will require an individual to be licensed even if they originate just one personal loan, regardless of the federal “habitual” exemption.

WHAT IS AND ISN’T TAKING A LOAN APPLICATION

The SAFE Act requires any individual who engages in loan originator activities to hold and maintain a license or registration with the NMLS. Each licensed or registered loan originator is assigned a unique identifier. [12 USC §5103(a)]

Recall that a loan originator is an individual who:

- takes a residential mortgage loan application; and
- offers or negotiates the terms of a residential mortgage loan for compensation or gain. [12 USC §5102(4)]

In practice, the phrase “take a residential mortgage loan application” can be construed many different ways. The SAFE Act regulations provide additional guidance on what activities trigger the first prong in the loan originator definition: the taking of a residential mortgage loan application.

Activities which constitute the taking of a loan application

A residential mortgage loan application can be taken directly or indirectly. An individual who offers or negotiates a residential mortgage loan for compensation or gain can’t avoid licensing requirements simply by having another person physically receive the application from the prospective borrower and then pass the application to the individual. [12 CFR §1008.103(c)(1); 12 CFR §1008 Appendix A(a)(1)(i)(A)]

An individual is considered to have taken a residential mortgage loan application even if they are not responsible for verifying the information in the application. The fact that the individual has not verified the information does not mean they have not taken an application. [12 CFR §1008 Appendix A(a)(1)(i)(B)]

An individual who inputs the information into an online application of an automated system may be considered to have taken a residential mortgage loan application. [12 CFR §1008 Appendix A(a)(1)(i)(C)]

An individual can still take a residential mortgage loan application even if they are not ultimately responsible for approving the loan. A mortgage broker, for example, can take a residential mortgage loan application even though the application is passed on to a lender for a decision on whether the borrower qualifies for the loan. [12 CFR §1008 Appendix A(a)(1)(i)(D)]

Activities which do not independently constitute taking a loan application

The following activities do not in and of themselves constitute taking a loan application.
As established above, an individual is considered to have taken a residential mortgage loan application even if the application is received indirectly. However, the mere physical act of forwarding an application, without review, to loan approval personnel does not constitute taking a loan application. [12 CFR §1008 Appendix A(a)(1)(ii)(A)]

An individual who assists a borrower by explaining the contents of the application, or indicating where particular borrower information is to be placed on the application is not taking a residential mortgage loan application. Along the same lines, generally describing the loan application process is not taking a residential mortgage loan application, as long as the description does not include specific loan products. [12 CFR §1008 Appendix A(a)(1)(ii)(B)-(C)]

If a borrower responds to a prequalified offer for a residential loan application from a lender, the individual who collects the basic identifying information about the borrower is not taking a loan application. [12 CFR §1008 Appendix A(a)(1)(ii)(D)]

**OFFERING OR NEGOTIATING TERMS**

The second prong of the loan originator definition deals with whether an individual has offered or negotiated terms of a residential mortgage loan for compensation or gain.

**A little gain means a lot**

An individual acts for compensation or gain if they receive, or expect to receive, anything of value for their residential mortgage loan related services. This includes anything of value, including payment of a:

- salary;
- bonus; or
- commission. [12 CFR §1008 Appendix A(c)]

However, the SAFE Act calls for a broad interpretation of “compensation.” Anything of value is considered compensation, regardless of whether such payment is contingent on the closing of a residential mortgage loan. The concept of controlling a loan originator’s compensation to avoid improper influence is a common theme in recently enacted regulation. [12 CFR §1008 Appendix A(c)]

**Offering loan terms**

An offer of a loan has been made if the individual:

- presents the borrower with specific residential mortgage loan terms;
- communicates with the borrower to reach a mutual understanding about the terms of the residential mortgage loan; OR
- recommends, refers or steers a borrower to a specific lender or loan product based on an incentive from a third-party; AND
- receives or expects to receive compensation in connection with any of the above activities related to the residential mortgage loan term. [12 CFR §1008.103(c)(2)]

To provide the broadest protection to borrowers, the SAFE Act deems an offer to have been made even if:

- the offer is verbal;
• further verification of information is necessary;
• the offer is conditional;
• other individuals must also complete the loan process;
• the individual lacks authority to negotiate the interest rate or other loan terms; or
• the individual lacks authority to bind the person who will ultimately provide the funds. [12 CFR §1008 Appendix A(b)(1)(i)]

**Negotiating loan terms**

Any communications with a borrower to set residential loan terms are considered negotiations. This includes:

• indirect communications (e.g., negotiations through a third party or email);
• sending the borrower a revised loan offer in response to the borrower’s request for a different rate or different loan fees; and
• any communications regarding loan terms, even if the borrower does not ultimately accept the terms. [12 CFR §1008 Appendix A(b)(1)(ii)]

**Activities which do not independently constitute offering or negotiating the terms of a loan**

Similar to the taking of a loan application, some activities do not in and of themselves constitute the offering or negotiation of a loan application. Offering or negotiating terms of a loan does not include any of the following activities:

• providing general explanations in response to consumer inquiries;
  o EXAMPLE: Explaining loan terminology (e.g., debt-to-income ratio) or lending policies (e.g., the loan-to-value ratio policy of the lender), or describing product-related services.
• arranging the loan closing or other aspects of the loan process, including communicating with a borrower about those arrangements, but only if the discussion about loan terms only verifies terms already agreed to by the borrower;
  o EXAMPLE: An escrow officer, arranging the loan closing, coordinates with the borrower a time and place to sign loan documents.
• providing a borrower with information unrelated to loan terms;
  o EXAMPLE: Explaining the best days of the month for scheduling loan closings at the bank.
• making an underwriting decision about whether the borrower qualifies for a loan;
• explaining the steps that a borrower needs to take to obtain a loan offer;
  o EXAMPLE: Providing general guidance about qualifications or criteria that would need to be met that is not specific to that borrower’s circumstances.
• communicating on behalf of a loan originator that a written offer has been sent to a borrower without providing any details of that offer; or
• offering or negotiating loan terms solely through a third-party licensed loan originator, so long as the non-licensed individual does not represent to the public that they can or will perform covered activities and does not communicate with the borrower;
  o EXAMPLE: A seller who provides financing to a purchaser of a dwelling owned by that seller in which the offer and negotiation of loan terms with the borrower or prospective borrower is conducted exclusively by a third-party licensed loan originator;
o EXAMPLE: An individual who works solely for a lender, when the individual offers loan terms exclusively to third-party licensed loan originators and not to borrowers or potential borrowers. [12 CFR §1008 Appendix A(b)(2)]

Editor’s note — While underwriting and processing are not considered negotiating the terms of the loan, loan processors and underwriters are required to obtain and maintain loan originator licenses in certain circumstances. This will be discussed in greater detail later in this module.

LOAN MODIFICATIONS OR ASSUMPTIONS

Neither the SAFE Act nor its related regulations explicitly list loan modifications or assumptions as activities requiring a loan originator license and/or registration. However, some activities performed in a loan modification may fall under the broad definitions of “taking a loan application” and “negotiating a loan” as described above. The United States Department of Housing and Urban Development (HUD) indicated in published commentary that it would leave it up to the CFPB to determine whether loan modification services fell under the scope of the SAFE Act. [76 Federal Register 38467-38468; 38475]

The CFPB does have authority under the Dodd-Frank Act to pursue loan modification scams, independent of the SAFE Act. However, to date, the CFPB has not altered the SAFE Act or the SAFE Act regulations to require individuals who only perform loan modifications to be licensed or registered under the SAFE Act.

Under the SAFE Act licensing and registration scheme, states also have authority to determine minimum licensing standards within their boundaries. Some states, such as California, have taken the initiative and require individuals who modify loans to obtain a loan originator license.

Editor’s note — Any businesses which offers or advertises services to help homeowners avoid foreclosure are subject to Regulation O, the Mortgage Assistance Relief Service (MARS) rule. The MARS rule is discussed later in this course. [12 CFR §§1015 et seq.]

Now that we know generally what activities do and do not fall under the loan originator definition, let’s take a look at the requirements to be met by each of the two types of loan originators defined by the SAFE Act.

EXCEPTIONS FOR LOAN PROCESSORS AND UNDERWRITERS

Under the SAFE Act, some loan processors and underwriters are required to register as loan originators. An individual who is a loan processor or underwriter must obtain a state loan originator license if they:

- engage in or represent to the public that they will perform the duties of a loan originator; or
- are an independent contractor who performs loan processor or underwriter activities without direction, supervision or instruction from a licensed or registered loan originator. [12 USC §5103(b); 12 CFR §1008 Appendix C(a)]

Thus, independent underwriters and contract underwriting companies (such as private mortgage insurers) are required to comply with the SAFE Act registration and licensing requirements.
Additionally, a loan processor or underwriter is not required to obtain a license or registration as a loan originator if they process or underwrite loans for exempt loan originators. Exempt loan originators include individuals who only originate residential mortgage loans:

- for timeshares;
- as part of their duties as government employees; or
- as part of their duties as employees of bona fide nonprofit organizations. [12 CFR §1008.103(e)]

Loan originator supervision of loan processors and underwriters

How much supervision is enough supervision for meeting the SAFE Act requirements? The SAFE Act regulations require there to be a “nexus” between the licensed loan originator and the loan processor or underwriter. That is, the licensed loan originator must actually supervise, instruct and direct the loan processor or underwriter, not just hold nominal authority over them.

For example, SAFE Act regulations consider a proper nexus exists when the supervising loan originator:

- assigns, authorizes and monitors the loan processor’s or underwriter’s duties; or
- trains, mentors and evaluates the loan processor or underwriter. [12 CFR §1008 Appendix C(c)]

FEES

Reasonable fees may be charged to loan originators by the CFPB and/or the NMLS to cover the cost of maintaining the NMLS. However, members of the public will not be charged for accessing loan originator data contained in the registry. [12 USC §5109]

Currently, the fee for renewing a registration in the NMLS is $100 per company, $20 per branch, and $30 per individual state license or federal registration. State-licensed loan originators must pay additional fees to their state or states of licensure.

UNIT 2: THE LICENSE VS. THE REGISTRATION (20 MIN)

In this unit, you’ll learn about:

- the two different kinds of loan originators recognized by the Nationwide Mortgage Licensing System (NMLS); and
- the requirements to be met by each kind of loan originator under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).

TWO DIFFERENT TYPES OF LOAN ORIGINATOR

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) controls the Nationwide Mortgage Licensing System (NMLS) licensing and/ or registration of two different types of loan originators:
• **registered loan originators**, who are employed by banks, credit unions or other companies regulated by a federal banking agency; and
• **state-licensed loan originators**, who are licensed and regulated by individual states. [12 United States Code §5103(a)]

Both types of loan originators are required to register with and maintain (renew) a unique identifier through the NMLS. However, the requirements for obtaining and renewing these registrations/licenses are distinct from one another.

Why a dual system? Registered loan originators are employed and supervised by federally regulated banking entities, which are themselves beholden to federal banking agencies. These safeguards existed prior to the SAFE Act.

In contrast, before the SAFE Act was passed, the degree of oversight over non-bank-employed loan originators varied widely from state to state. The SAFE Act provides uniform minimum standards for licensing and regulation of loan originators. All 50 states have adopted the minimum SAFE standards. States have the authority to enact more stringent requirements.

It is also useful for loan originators to know and understand the different requirements, in case of a change in employment.

We’ll start with the federal **registered loan originator** requirements.

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**REGISTERED LOAN ORIGINATORS**

A **registered loan originator** is a loan originator who is an employee of:

• a national bank or a federal branch or agency of a foreign bank;
• member banks of the Federal Reserve system and their subsidiaries;
• insured state nonmember banks and their subsidiaries;
• savings associations and their subsidiaries;
• an institution regulated by the Farm Credit Administration;
• a federally insured credit union; or
• state-insured credit unions, if the respective states have an agreement with the National Credit Union Administration (NCUA) regarding the registration process. [12 USC §5102(8); 12 Code of Federal Regulations §1007.101(c)]

Under the SAFE Act regulations, the banks and depository institutions listed above are known collectively as **covered financial institutions**. [12 CFR §1007.102]

Bank loan officers are examples of registered loan originators.

A **covered financial institution** must require its employed loan originators to:

• register as loan originators and obtain unique identifiers from the NMLS; and
• maintain their registrations. [12 CFR §1007.103(a)]
To complete the required registration, individuals must:

- submit fingerprints to the Federal Bureau of Investigation (FBI) for a background check;
- provide a personal history and a history of employment;
- authorize the NMLS to obtain:
  - a credit report from a consumer reporting agency; and
  - information regarding any previous administrative, civil or criminal proceedings against the applicant; and
- be assigned a unique identifier in the NMLS. [12 USC §5106(a)(2); 12 CFR §1026.36(f)(3)]

A de minimis exception to the registration requirement exists. An employee of a covered financial institution is not required to register as a loan originator if:

- they have never been registered or licensed as a loan originator; and
- during the past 12 months, the employee acted as a loan originator for five or fewer residential mortgage loans. [12 CFR §1007.101(c)(2)]

Editor’s note — This five-or-fewer exception does not exist for state-licensed loan originators.

Information required for registration

A covered financial institution must require each employee who is a mortgage loan originator to submit to the NMLS the following information:

- identifying information, including:
  - name, and any other names used in the past;
  - home address and contact information;
  - principal business address and contact information;
  - Social Security number;
  - gender; and
  - date and place of birth;
- a history of financial services-related employment for the ten years prior to the date of registration or renewal;
- fingerprints; and
- criminal, civil or regulatory disciplinary actions taken against the individual. [12 CFR §1007.103(d)(1)]

The regulations governing registered loan originators require the following disciplinary or legal actions to be disclosed:

- criminal convictions or pretrial agreements regarding charges of dishonesty, breach of trust or money laundering;
- civil actions against the individual made in connection with financial services-related activities;
- dismissals of civil actions against the individual in exchange for a settlement;
- judicial findings that an individual violated financial services-related law;
- actions or orders by a government agency finding the individual has been dishonest, unfair or unethical;
- involvement in a violation of financial services-related law;
- denial, suspension or revocation of a registration or license to engage in financial services-related activity;
government prohibitions against the individual doing business with a government agency or engaging in financial services-related business;

- final orders issued by a government agency based on any violations of law prohibiting fraudulent, manipulative or deceptive conduct;
- revocation or suspension of the individual’s authorization to practice as an attorney, accountant or government contractor; or
- consumer-initiated arbitration or civil actions against the individual. [12 CFR §1007.103(d)(1)]

Covered financial institutions may submit the above information on behalf of individual loan originators. The employee of the covered financial institution who submits this information may not be a loan originator. [12 CFR §1007.103(d)(3)]

However, a loan originator registering or renewing their registration must themselves:

- authorize the NMLS and the employing covered financial institution to do a background check for any administrative, civil or criminal actions;
- attest to the correctness of the above information submitted by them, or on their behalf; and
- authorize the NMLS to make the required information public. [12 CFR §1007.103(d)(2)]

Confidentiality of information

Information discovered in background checks provided to the NMLS may be shared with state and federal regulatory officials overseeing the mortgage industry. [12 USC §5111(a)]

However, information and documents that are considered privileged or confidential will not be subject to:

- disclosure to the public under state or federal law; or
- subpoena, discovery or admission into evidence of any private civil action or administrative process, unless:
  - the privileged status of the information is overruled by the rights of the NMLS; or
  - the applicant waives the privileged status of their personal information. [12 USC §5111(b)]

Information related to a loan originator’s employment history and publicly adjudicated enforcement proceedings is not considered confidential, and will be available to the public through the NMLS. [12 USC §5111(d)]

Requirement to give unique identifier

Covered financial institutions must make the unique identifiers of their registered mortgage loan originators available to the public. [12 CFR §1007.105(a)]

In turn, registered loan originators must provide their unique identifier to a consumer:

- upon request;
- before undertaking the duties of a loan originator; and
- throughout the loan originator’s written communication with the consumer. [12 CFR §1007.105(b)]

Acquisitions, mergers and reorganizations
New fingerprints are not required when state-licensed loan originators or registered loan originators become the employees of a covered financial institution due to an acquisition, merger or reorganization. However, all the remaining requirements must be met within 60 days of the effective date of the acquisition, merger or reorganization. [12 CFR §1007.103(a)(4)(ii)]

Renewal requirements for registered loan originators

Registered loan originators must complete an annual renewal with the NMLS while they are originating mortgage loans. Like state-licensed loan originators, they must complete this renewal between November 1 and December 31 of each calendar year. [12 CFR §1007.103(b)(2)]

A small exception exists. A registered loan originator is not required to renew their registration the first year they register with the NMLS if their registration date is less than six months before the end of the annual renewal period (December 31). [12 CFR §1007.103(b)(3)]

Registered loan originator oversight

Registered loan originators are exempt from state licensing requirements since they are under the supervision of covered financial institutions, which are in turn regulated by federal banking agencies. Congress believed the existing regulatory structure was sufficient when they passed the SAFE Act.

However, covered financial institutions do have to take steps to ensure that they, too, are playing by the rules. Covered financial institutions must adopt and follow written policies and procedures to carry out their responsibilities under the SAFE Act. Specifically, a covered financial institution is required to:

- identify which of its employees are required to be registered as loan originators;
- inform employees who are required to be registered how to comply with the registration requirements and procedures, including the unique identifier requirement;
- confirm the adequacy and accuracy of employee registrations, updates and renewals by comparing the records submitted to the NMLS with its own records;
- monitor compliance with registration and renewal requirements;
- test compliance with the SAFE Act at least annually;
- take appropriate action when an employee violates the SAFE Act;
- review employee criminal history background reports and take appropriate action consistent with applicable federal law; and
- ensure that any party the covered financial institution does loan origination business with is compliant with the SAFE Act. [12 CFR §1007.104]

STATE-LICENSED LOAN ORIGINATOR REQUIREMENTS

The other type of loan originator defined by the SAFE Act is the state-licensed loan originator.
Editor’s note — If you are taking this course, you are either a state-licensed loan originator, or a very conscientious registered loan originator! We’ll discuss the difference in education requirements for the two types of loan originators later in the course.

A state-licensed loan originator is an individual who:

- engages in the business of a loan originator; and
- is not an employee of a depository institution or any other federally regulated banking agency. [12 USC §5102(12)]

Generally speaking, any individual who performs the duties of a loan originator and who does NOT fall under the federal registration scheme must obtain a state loan originator license. They must then register and maintain their loan originator license and registration annually. State-licensed loan originators must obtain a separate state license in every state in which they will originate loans, pursuant to each state’s loan origination laws.

Mortgage brokers and mortgage bankers are examples of state-licensed loan originators.

To become a state-licensed loan originator, an individual must:

- register as a loan originator and obtain a unique identifier from the NMLS;
- obtain and maintain a valid loan originator license from the state. [12 CFR §1008.103(a)]

The application to become a state-licensed loan originator requires applicants to:

- submit to a criminal background check;
- meet the minimum standards for licensure;
- complete pre-licensing education (PE) courses; and
- successfully pass a written exam. [12 USC §5104]

Minimum standards for licensure

To meet the minimum standards for state-licensed loan originators, an individual must show they have:

- never had a loan originator license revoked in any governmental jurisdiction;
- not been convicted of, pled guilty or pled nolo contendere to a felony in a domestic, foreign, or military court:
  - during the seven-year period preceding the date of the application; or
  - at any time, if the felony involved fraud, dishonesty, a breach of trust or money laundering;
- demonstrated financial responsibility and general fitness to warrant a determination that the loan originator will operate honestly, fairly and efficiently; and
- met either a net worth or surety bond requirement set by the state of licensure. [12 USC §5104(b)]

Editor’s note — Not all states require loan originators to meet a minimum net worth, or obtain a surety bond.

Expunged or pardoned convictions do not affect eligibility. Whether a crime is classified as a felony is based on the jurisdiction of conviction. [12 CFR §1008.105(b)(2)]
Neither the SAFE Act nor the NMLS enforce a minimum credit score. Each state regulator is to determine their own processes and standards for reviewing credit information and financial responsibility. For example, in California, no minimum credit score is required.

Likewise, negative financial events such as bankruptcies are not in and of themselves cause for a denial of license. Instead, regulators look for a history of liens, judgments, mishandling of trust funds, or financial or personal conditions which indicate a pattern of dishonesty on the part of the applicant. The credit report is used to verify or refute an applicant’s response to questions about their financial history.

**Pre-licensing education of state-licensed loan originators**

20 hours of PE is required of all individuals applying to be state-licensed loan originators. [12 USC §5104(c)]

The 20 hours must include at least:

- three hours of federal law and regulations;
- three hours of ethics, which must include coursework on:
  - fraud;
  - consumer protection; and
  - fair lending issues; and
- two hours of training on nontraditional mortgage products. [12 USC §5104(c)(1)]

States are able to require state-specific education as part of the PE. State-specific education, or other elective education, makes up the remainder of the 20 hour requirement.

Course offerings are reviewed and approved by the NMLS. To prevent a conflict of interest, the NMLS does not directly or indirectly offer pre-licensing education for loan originators. [12 USC §5104(c)(3)]

Although the NMLS approves PE courses, it is up to the states to determine the content and procedure for completing the courses.

**Further reading:**

Do you know what PE courses are required by your state? [Check out the State-Specific Education Chart from the NMLS Resource Center.](#)

(IMPORTANT: This link takes you outside of the course. You will not receive credit for time spent reading material outside of this course.)

Once licensed, a loan originator is never required to repeat PE.

**The written exam**

To become a state-licensed loan originator, an individual must take and pass a written test developed by the NMLS. The written test must measure the applicant’s knowledge and comprehension of laws and regulations on:

- ethics;
- mortgage origination;
- fraud;
• consumer protection;
• nontraditional mortgages; and
• fair lending issues.

The written test further breaks down these core requirements into state and federal components. [12 USC §5104(d)(2)]

The passing score for the exam is 75%. Applicants have three attempts to pass the exam successfully. A minimum of 30 days must pass between each of the three exam attempts. If the applicant does not pass within three attempts, they must wait at least six months before taking the test again. [12 USC §5104(d)(3)]

If a state-licensed loan originator fails to maintain their license for five years or longer, they are required to retake the exam in order to reacquire their state license. Any time spent as a registered loan originator does not count towards the five-year time period. [12 USC §5104(d)(3)(D)]

Further reading:

For current testing fees and procedures, check out the Testing Page from the NMLS Resource Center.

(IMPORTANT: This link takes you outside of the course. You will not receive credit for time spent reading material outside of this course.)

The Uniform State Test (UST)

On April 1, 2013, the NMLS rolled out a Uniform State Test (UST). The UST replaces the state-specific test components for the written test. The new UST is based on the SAFE Act and the Model State Law which many states used to implement the SAFE Act. Adoption is not compulsory.

Prior to the UST roll-out, each state had its own state component. This meant state-licensed loan originators who practiced loan origination in multiple states were required to take separate exams for each state. With the UST roll-out, candidates who take the UST satisfy the testing requirements for licensure in any state which has adopted the UST.

For example, Utah and Washington both adopted the UST on April 1, 2013. A prospective loan originator who takes the UST on April 1, 2013, or any time after, has met the testing requirement for both Utah and Washington. Of course, the prospective loan originator must still meet each state’s other individual licensing requirements to be a state-licensed loan originator in that respective state.

The UST is now only available as part of the National Test. That means an individual who wants to obtain a license in a state which has adopted the UST is required to take the National Test, even if they had previously taken the National Test before it included the UST.

Below is a map of states which have adopted the UST. Solid blue states have accepted the UST. Yellow states will adopt the UST on July 15, 2015. Gray states have not adopted the UST.
Prospective loan originators must take separate state tests for the gray states, which have not adopted the UST.

**Example:**

Harold is licensed in California and has satisfied all the SAFE Act and California licensing requirements including successful completion of the National Test Component and the California State Test Component. He wants to expand his business and become licensed in neighboring states, He’s considering Colorado, Nevada and Washington. What are his exam requirements?

Harold checks the UST Adoption Table on NMLS website and learns that both Nevada and Washington have adopted the UST, while Colorado has not.

Harold can satisfy the testing requirements for both Nevada and Washington by passing the National Test, which contains the UST adopted by those states.

However, to satisfy the Arizona testing requirement, he will need to take the Arizona-specific state test.

**An updated exam outline**

On October 3, 2015, the topics emphasized in the National Test Component with the UST will change slightly to reflect changes in law compelled by the Truth-in-Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) Integrated Disclosures (TRID) rule, and NMLS research. Beginning October 3, 2015, the composition of the National Test Component with the UST will be:
• federal mortgage-related laws, 23% (down from 25%);
• general mortgage knowledge, 23% (up from 21%);
• mortgage loan origination activities, 25% (up from 21%);
• ethics, 16% (up from 15%); and
• the UST, 13% (down from 18%).

Further reading:

For current information on the UST, see the Uniform State Test (UST) Implementation Information from the NMLS Resource Center.

For more UST Exam Scenarios, see the Candidate Enrollment Scenarios from the NMLS Resource Center.

(IMPORTANT: This link takes you outside of the course. You will not receive credit for time spent reading material outside of this course.)

MORTGAGE CALL REPORTS

Once licensed, state-licensed loan originators must submit reports about their loan origination activity and financial condition. The state mortgage call reports devised by the NMLS is used by loan originators to meet this SAFE Act requirement. Some states may require separate or additional information to be provided to the state agency, in addition to filing the mortgage call report with the NMLS. [12 USC §5104(e)]

Though the SAFE Act states loan originators must submit the mortgage call reports, the NMLS requires the mortgage call report to be reported at a company level. Some state agencies have tiered licensing structures in which the company or loan originator who employs state-licensed loan originators are required to submit the mortgage call report on behalf of employed loan originators.

For example, the California Bureau of Real Estate (CalBRE) requires licensed salesperson loan originators to report to work under the guidance of a licensed broker loan originator. In such a case, the licensed broker loan originator is required to make the report.

Further reading:

For current information on state mortgage call report requirements, see the State MCR Requirements Chart from the NMLS Resource Center.

(IMPORTANT: This link takes you outside of the course. You will not receive credit for time spent reading material outside of this course.)

There are two types of mortgage call reports:

• the standard mortgage call report; and
• the expanded mortgage call report.
A company that sells or services loans on behalf of Fannie Mae or Freddie Mac, or issues loans on behalf of Ginnie Mae must complete and submit an **expanded mortgage call report**. All other companies complete the **standard mortgage call report**.

The standard mortgage call report contains two components:

- the **residential mortgage loan activity (RMLA)** report, which collects data about applications received, closed loans, individual loan originators, lines of credit and loan repurchases by state; and
- the **financial condition (FC)** report, which collects financial information at the company level; it does not have to be completed by state.

The RMLA is due quarterly, within 45 days of the end of each calendar quarter.

The FC is due annually, within 90 days of the end of the company’s fiscal year.

Note that the mortgage call report must be filed even if there has been no loan origination activity within a given reporting period. As long as the company or loan originator either held a state license or employed state-licensed loan originators, they must complete the mortgage call report.

**Further reading:**

*For answers to questions about mortgage call reports, see the NMLS Resource Center’s [MCR Frequently Asked Questions](#).*

(IMPORTANT: This link takes you outside of the course. You will not receive credit for time spent reading material outside of this course.)

**Failure to file**

A loan originator or company that fails to file a mortgage call report within 45 days of the end of each calendar quarter will have a deficiency placed on their license and/or registration. Additionally, this failure can result in state regulatory action preventing license or registration renewal. [From “Public Comment Request for NMLS Call Report”, March 15, 2010]

**What is the purpose of the mortgage call report?**

In addition to meeting the requirements of the SAFE Act, the NMLS mortgage call reports help create uniform financial and mortgage activity reporting requirements. In 2010, when the NMLS mortgage call report was developed, roughly 40 states required state-specific loan originator reporting. One of the goals of the NMLS is to replace these individual state reports with the mortgage call report.

The data collected in mortgage call reports is used by the states to track and enhance regulatory oversight. For example, if the mortgage call report shows that loan originators are originating more reverse mortgages, regulators might focus consumer protection efforts on reverse mortgages. Or, a state agency might use the data to ensure surety bonds held by loan originators are in line with production volume.

Mortgage call report data will be published in aggregate by the NMLS for the public and regulators. Individual mortgage call report data (say, for a specific loan origination company) will not be released.
RENEWAL REQUIREMENTS FOR STATE-LICENSED LOAN ORIGINATORS

The SAFE Act requires all state-licensed loan originators to maintain and renew their licenses every year. The annual renewal period is November 1 through December 31. Each state can further restrict the renewal window.

To be eligible for renewal, loan originators must maintain the minimum standards for license issuance, as set by the states in which they are licensed. [12 USC §5104]

State-licensed loan originators must complete at least eight hours of NMLS-approved continuing education as part of their renewal. The eight hours must contain:

- three hours of federal law and regulations;
- two hours of ethics, which must include coursework on:
  - fraud;
  - consumer protection; and
  - fair lending issues; and
- two hours of training on nontraditional mortgage products.[12 USC §5105(b)(1)]

The topic of the remaining hour of continuing education is determined by the licensing state. If the state requires state law to be part of the annual continuing education, the hour is devoted to state mortgage law. If not, the education is an elective course, determined by the course provider and approved by the NMLS.

Some state agencies require more than the minimum eight hours of continuing education. Loan originators licensed in more than one state must check educational requirements for each state. If they complete the eight-hour comprehensive continuing education requirement, they may still be required to complete state-specific hours, or additional elective hours.

Continuing education credit is only good in the year the course is taken. Loan originators may not take the same course two years in a row. [12 USC §5105(b)(3)]

Further reading:

Do you know what continuing education courses are required by your state? Check out the State-Specific Education Chart from the NMLS Resource Center.

(IMPORTANT: This link takes you outside of the course. You will not receive credit for time spent reading material outside of this course.)

What happens if a state-licensed loan originator does not renew their license by the end of the annual renewal period? The SAFE Act allows each state agency to determine whether it will allow a reinstatement period. During the reinstatement period, a loan originator can complete late continuing education and reinstate their expired loan origination licenses.

States agencies also determine whether reinstatement fees apply, or if a new application, background check or credit report is required.

Remember, loan originators never have to retake PE. However, recall that the SAFE Act requires any state-licensed loan originator who fails to maintain their license for five years or longer to retake the written exam. [12 USC §5104(d)(3)(D)]
LOAN ORIGINATOR TRANSITIONS

In April of 2012, the CFPB released guidance on the proper procedures when practicing loan originators are in transition and moving from one state to another, or from one loan originator license/registration type to another.

State-to-state moves: which state law controls?

The location of the financed dwelling determines the state loan originator licensing requirements. For instance, if the dwelling is located in California, a state-licensed loan originator must hold a California loan originator license. The loan originator cannot relocate to Nevada and negotiate loans for California dwellings by telephone. This is an unlawful circumvention of California mortgage loan origination laws, and the SAFE Act. [HUD Commentary on Model State Law, Section E]

However, states have the authority to agree to reciprocity agreements with other states. States may take into consideration or rely on findings made by another state in determining whether an individual loan originator is eligible under its own laws. [76 Federal Register 38464, 38482 (2011)]

Also, when a loan originator licensed under State A’s laws moves to State B, State B may agree to issue a transitional license to the loan originator. A transitional license allows the loan originator to originate loans in a new state while they are in the process of fulfilling permanent state licensing requirements. Before a transitional license can be issued, a state-licensed loan originator must:

- meet net worth or surety bond requirements of the new state; or
- pay into the new state’s state fund. [CFPB Bulletin 2012-05]

Not all states offer transitional licenses.

State-licensed loan originator to registered loan originator transition

Consider an individual who becomes a state-licensed loan originator. After four years of originating loans as a mortgage broker under that license, the individual decides to make a career change. They obtain a position with a federally regulated bank as a loan officer. This change requires them to transition into being a registered loan originator, rather than a state-licensed loan originator.

Several questions arise: Is the loan originator’s unique identifier still valid? What steps does the loan originator need to take to transition from one type of loan origination scheme to the other?

First, a loan originator’s unique identifier does not change. The purpose of the unique identifier is to allow consumers to see the loan originator’s employment and disciplinary history, regardless of which type of loan originator they are under the SAFE Act. Thus, the unique identifier “follows” the loan originator throughout their career — across companies, registration types and states.

A loan originator transitioning from being a state-licensed loan originator to a registered loan originator and who has maintained their license has met the registration requirements if:

- their principal place of business and business contact information is updated;
• their ten-year financial services-related employment history is updated;
• new fingerprints are submitted to the NMLS for the background check;
• the loan originator re-authorizes the background check;
• the loan originator attests to the correctness of the updated information; and
• the loan originator authorizes the NMLS to publish the loan originator’s name, new principal place of business and any adverse disciplinary history on the public registry. [12 CFR §1007.103(a)(4)]

Fingerprints on file with the NMLS are sufficient to fulfill the fingerprint requirement if they are less than three years old. [12 CFR §1007.103(a)(4)(i)(B)]

The employing covered financial institution must then bring their information on file with the NMLS current, and confirm the employment of the transitioning loan originator. [12 CFR §1007.103(a)(4)(i)(C)]

These same steps must be taken when a registered loan originator moves from the employment of one covered financial institution to another.

**Registered loan originator to state-licensed loan originator transition**

Now consider a loan originator who has worked for several years as a registered loan originator with ABC Bank, a covered financial institution regulated by a federal banking agency. ABC Bank closes. The loan originator decides to open their own, non-federally regulated mortgage brokerage.

Can the registered loan originator use their federally registered loan originator status to originate loans for their own non-federally regulated mortgage brokerage? No! Remember, a registered loan originator, by definition, is one who is employed and supervised by a covered financial institution. Once Bank ABC closed, the loan originator was no longer employed by the covered financial institution. Additionally, since registered loan originators are exempt from obtaining state licenses to originate loans, the loan originator is not a state-licensed loan originator. Thus, the loan originator is not able to practice until they obtain a license from the state or states in which they plan on performing loan origination activities.

Several states questioned the CFPB on whether transitional licenses were allowed for registered loan originators who were in the process of obtaining their state loan originator licenses. The CFPB held that the SAFE Act did not allow for transitional licenses in such cases. The SAFE Act exempts a registered loan originator from state licensing only so long as the loan originator is an employee of a covered financial institution. Without meeting that employment requirement, the loan originator in this case is merely an unlicensed individual who is registered in the NMLS — unauthorized to practice until licensed.

The CFPB acknowledged that this impedes registered loan originators from changing jobs, and reiterated its commitment to working with the industry to finding a resolution that fits within the parameters of the SAFE Act. [CFPB Bulletin from April 19, 2012]

**Updating records**

Additionally, registered loan originators must update their registration information within 30 days of:

• a change in the loan originator’s name;
• the loan originator leaving the covered financial institution’s employment; or
• a change in the disciplinary history or legal actions taken against the loan originator. [12 CFR §1007.103(b)(1)]
The covered financial institution is also required to report to the NMLS within 30 days of a change in a registered loan originator’s employment. [12 CFR §1007.103(e)(2)(ii)]

### COMPARING THE TWO TYPES OF LOAN ORIGINATORS UNDER THE SAFE ACT

By now, you should have a handle of the differences between the two types of loan originators. Here is a summary of those differences.

**Obtaining a license**

Fingerprinting, background checks, personal financial information and criminal histories are required of both registered and state-licensed loan originators.

However, state-licensed loan originators must also meet specific personal and financial requirements, such as obtaining the requisite surety bond or paying into the state fund of the licensing state.

Additionally, only state-licensed loan originators are required to complete pre-licensing education and pass the written exam.

**Renewing a license**

Both registered and state-licensed loan originators must renew their licenses and/or registrations annually.

However, only state-licensed loan originators are required to complete continuing education.

In its FAQs, the NMLS suggests that commercial bank employees who are otherwise exempt from the pre-licensing and continuing education requirements might take relevant pre-licensing and continuing education courses to stay up-to-date in case they are later required to know this information due to a change in employment.

### UNIT 3: THE NATIONWIDE MORTGAGE LICENSING SYSTEM (NMLS) (3 MIN)

In this unit, you’ll learn about:

- the information available to the public on the Nationwide Mortgage Licensing System (NMLS) website; and
- current loan originator statistics.

### CONSUMER ACCESS TO THE NMLS

Recall that one of the goals of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) was to provide mortgage consumers with a national database of information about mortgage loan originators. The Nationwide Mortgage Licensing System (NMLS) Consumer Access website fulfills this goal. The NMLS Consumer Access website gives mortgage consumers access to their loan originators’ licensing and employment records. The fully-searchable list is updated nightly and feature information on loan originators such as:

- the loan originator’s unique identifier (NMLS ID);
Common misconceptions loan originators have about the Consumer Access site include:

1. “NMLS exam scores are available on the Consumer Access site.” A loan originator’s exam scores are not available on the site. Consumers also cannot see how many times a loan originator has taken the written exam.

2. “My credit scores/reports are available on the site.” Personal financial information is not available on the Consumer Access site. The credit report and any scores obtained as part of a loan originator’s application are protected by federal privacy rules, including the SAFE Act. [12 USC §5111]

Further reading:

Do you know what your Consumer Access profile looks like? Check out the NMLS Consumer Access site.

(IMPORTANT: This link takes you outside of the course. You will not receive credit for time spent reading material outside of this course.)

CURRENT LOAN ORIGINATOR STATISTICS

As of the first quarter (Q1) of 2015, NMLS reports 118,940 approved unique state-licensed loan originators holding 323,658 licenses. 3,341 individual loan originators held both state licenses and federal registrations.

State-licensed loan originator trends

Chart 1
The drop-offs seen in Q1 of each year reflect attrition due to license expiration. Thus, the pattern showing the number of loan originators increasing through each calendar year is due to an influx of late renewals and new licensees. However, the number of loan originators renewing their license from year to year is growing, as seen in a comparison of Q1 data for the last five years.

The bulk of individual state-licensed loan originators obtained their licenses in the first quarter the registry was active. Since then, the increase in the number of individual loan originators has grown at a steady clip. From Q4 2011 to Q4 2014, a net 14,732 new loan originators were added to the registry. This is an average annual percentage increase of around 14%. [See Chart 1]

The number of state licenses issued increased dramatically in 2013, but fell towards the end of 2014, and are increasing so far in 2015. (Remember, a loan originator can hold several state licenses.) The trend in multiple state licenses per originator is persistent, even after accounting for the annual attrition due to license expiration. This means that more loan originators are diversifying by obtaining licenses in multiple states.

The concentration of loan originators has equalized within the more densely populated areas of the nation. Still, California’s two state regulatory entities alone accounted for around 33% of total state-licensed loan originators at the end of Q1 2015.

Chart 2
New applications to become a state-licensed loan originator show seasonal patterns similar to other loan originator statistics, but are rising steadily from year to year. (Due to time taken for background checks and requests for more information, the quarter in which an application is received may not be the same quarter as when the application is approved or rejected. Thus, the percentage of applications approved in a quarter does not reflect a strict percentage of the applications received in the same quarter.)

Registered loan originators

Chart 3
The number of registered loan originators grew from 2011 through 2013, but has leveled off from 2013 heights. Q1 2014 dipped below the typical beginning-of-year seasonal adjustment in loan originator numbers, and rose only slightly again in 2015, indicating the population of registered loan originators has reached near maximum capacity, relative to loan volume.

**UNIT 4: SAFE ACT CASE STUDY (2 MIN)**

Campbell solicits residential mortgage loan modification business through his website. Campbell is physically located in New Jersey. However, Campbell’s mortgage loan modification services extend to properties in Pennsylvania. Pennsylvania loan originator law requires individuals who perform loan modifications to hold a state loan originator license.

Campbell does not hold a loan originator license in New Jersey or Pennsylvania. However, Campbell enters into an employment agreement with Donald, who is a Pennsylvania attorney. Donald agrees to oversee all loan modification activities undertaken by Campbell’s loan modification business. Donald also separately advertises his loan modification services on the website of his law practice. Donald does not hold a state loan originator license. Campbell and Donald advertise loan modification services by virtue of Donald’s authority as an attorney.

The Pennsylvania Department of Banking conducts an examination of Campbell and Donald’s activities, and determines Campbell and Donald are in violation of Pennsylvania loan origination laws intended to satisfy SAFE Act requirements.
Campbell and Donald claim their loan origination activities do not require a loan originator license since Donald is an attorney authorized to practice law in Pennsylvania.

The Department of Banking disagreed with this claim. They held that Pennsylvania law, and the SAFE Act, only provide a loan originator licensing exemption to attorneys who perform loan origination services ancillary to an existing attorney-client relationship.

However, in this case both Campbell and Donald advertised loan origination services to the public for a fee. Recall that a loan originator is an individual who:

- takes a residential mortgage loan application; and
- offers or negotiates terms of a residential mortgage loan for compensation or gain; or
- represents to the public they will take a residential mortgage application or negotiate the terms of a residential mortgage loan for a fee. [12 USC §5102(4)]

Thus, both Campbell and Donald were acting as loan originators, and were required to be licensed under the SAFE Act and Pennsylvania laws enacted to enforce the SAFE Act.

In this case, Campbell and Donald were ordered to cease all loan modification activities until properly licensed. Additionally, they were required to pay a fine pursuant to the authority granted to states under the SAFE Act to enforce SAFE Act requirements.

If at some point Campbell or Donald seek state loan originator licenses, they will be required to disclose the existence of this action. If they become state-licensed loan originators, this action will become part of the information available to consumers on the NMLS Consumer Access website.

Case study Assessment

This brief assessment will test your comprehension of how the case study applies to loan originator practice. Once you have selected an answer, you will see the explanation appear below the question. The score from this assessment is not recorded. This is a learning exercise. More than one answer may be correct.

Note: This is not the module quiz! Once you are done with this case study and assessment, click on the "Take Quiz" button below to start your module quiz.

1. Campbell and Donald were unlicensed. What conduct did they engage in which triggered the need to be licensed (or registered) under the SAFE Act?

   - (radio button) Clerical activities in relation to a residential mortgage application.
     ○ Feedback: No. Remember, clerical activities alone are not sufficient to trigger the need for the loan originator license or registration under the SAFE Act. See Unit 1, Pages 3-5.
   - (radio button) Interstate loan modification.
     ○ Feedback: Yes! In this case, Campbell was unlicensed in both states in which he was advertising loan modification services. Before offering loan modification services, Campbell should have confirmed whether each respective state considered loan modifications an activity which required a loan originator license. See Unit 1, Page 5. See Unit 2, Page 4.
   - (radio button) Representing to the public they would take a residential mortgage application or negotiate the terms of a residential mortgage loan.
Feedback: Yes! In this case, Campbell and Donald tried to circumvent the rules which mandate licensing under the SAFE Act and Pennsylvania law by working under an attorney status held by Donald. However, as the case study indicates, attorneys are only exempt from SAFE Act licensing requirements if they perform such duties as an activity ancillary to their primary representation of a client. See Unit 1, Page 3.

2. Assume that Campbell and Donald had lawfully sought to comply with the SAFE Act prior to engaging in loan modification activities in Pennsylvania. Since they were working independently of a bank, credit union, or other company regulated by a federal banking agency, which type of loan originators would they have been under the SAFE Act?

- (radio button) State-licensed loan originators.
  - Feedback: Yes! See Unit 2, Page 1.
- (radio button) Registered loan originators.
  - Feedback: No! See Unit 2, Page 1.