Qualified Loan Originator Status
Frequently Asked Questions

1. What is a loan originator and why is that important?

The federal SAFE Act and Truth in Lending Act (TILA) require individuals performing loan originator activities to meet certain qualification requirements. These "loan originator" activities are defined in the SAFE Act and the Truth in Lending Act (TILA)/Regulation Z.

Under the SAFE Act, a mortgage loan originator is as an individual who (i) takes a residential mortgage loan application; and (ii) offers or negotiates terms of a residential mortgage loan for compensation or gain.

Under TILA, a "loan originator" is a person who, in expectation of some compensation or other monetary gain, performs any of the following activities:

- Taking an application for purchase money mortgage or repair loan secured by real property
- Arranging a credit transaction
- Assisting a consumer in applying for credit
- Offering or negotiating credit terms
- Making an extension of credit
- Referring a consumer to a loan originator or creditor
- Advertising or communicating to the public that you can or will perform any loan origination services

Habitat policy also requires volunteers performing loan originator activities to be properly screened and trained to meet the SAFE Act/TILA qualification standards.

Generally speaking in the Habitat setting, loan originators are staff and volunteers who interface directly with the applicant and discuss loan terms and/or the applicant's financial qualification requirements, or provide the applicant guidance in completing the application.

2. What activities in the homeowner selection process do <u>not</u> constitute "loan originator" activities?

- Solely clerical or administrative tasks, including number crunching.
- "Front desk" personnel who just accept applications without discussion about the individual's loan.
- Underwriting or other functions performed by Board members who only review documents and do not engage with the applicants.
- Home visits, so long as no loan terms or financial qualification requirements are discussed

3. Do the loan originator qualification rules apply to volunteers?

The federal loan originator qualification rules refer to loan originators that are compensated. However, HFHI policy requires all staff and volunteers, whether paid or unpaid, performing loan originator activities to meet these standards. Importantly, even if a Habitat affiliate does not actually originate any mortgage loans and works with one or more third party lenders to originate mortgage loans for its Habitat homebuyers, the affiliate should have at least one, and preferably at least two, staff and/or volunteers who are qualified loan originators in accordance with TILA requirements at all times.

4. Are all Affiliates required to have a licensed mortgage loan originator?

The SAFE Act allows states to adopt an exemption from licensing for individuals who work as loan originators solely for a bona fide nonprofit organization. Affiliates in states that have adopted such an exemption, so long as the Habitat affiliate meets all criteria to be eligible for the exemption and has taken all required steps to qualify for the exemption (if any), are not required to have a licensed mortgage originator. Affiliates should work with a local attorney to ensure compliance with specific state law requirements. In addition, the Nationwide Multistate Licensing System & Registry (NMLS) Resource Center has information about licensing requirements for each state.

5. How do I know if a bona fide nonprofit exemption under the SAFE Act is available in my state, and if so, whether it is automatic or requires additional steps to qualify for the exemption?

Information about individual state requirements for licensing or availability of exemption is available on MPAR U. If your state has a Habitat State Support Organization (SSO), the SSO should be able to offer guidance on the state's SAFE Act requirements and/or exemptions available. If your state does not have an SSO, check with the state's regulatory agency with jurisdiction over residential mortgage loan origination. In addition, the Nationwide Multistate Licensing System & Registry (NMLS) Resource Center has information about licensing requirements for each state.

6. My affiliate is located in a state with a bona fide nonprofit exemption under the SAFE Act. What are the qualification requirements under TILA?

Assuming the Habitat affiliate has taken all required steps to qualify for the available exemption, individuals engaging in loan originator activities for Habitat affiliates must meet qualification requirements under TILA. These include:

a. Obtaining (i) criminal background check, (ii) credit report, and (iii) information from the individual loan originator related to any civil, criminal or administrative decision.
b. Determining that the individual meets financial responsibility and character and general fitness standards, according to a Board-approved policy and procedures. At a minimum, the individual must not have been convicted of (or pleaded to): (i) any felony during the last 7 years, or (ii) any felony involving fraud, dishonesty, breach of trust, or money laundering at any time.
c. Ensuring initial and ongoing Training: 12 ABA courses available to affiliates through my.habitat.org meet the federal requirement. Check with state regulators for specific state requirements.

More information is available on MPAR U.

7. Is there a frequency for when background and/or credit checks need to be done?

Once qualified, TILA does not require ongoing background and credit checks on loan originators unless the Habitat leadership has reasonable grounds to believe the loan originator has engaged in conduct that would render him or her unsuitable to perform the activities of a loan originator according to the original qualification criteria. Affiliates subject to their state's SAFE Act requirements should check the individual state requirements. Affiliates may choose to adopt more stringent requirements in their policy.

8. How often must our loan originators take the required training courses?

Once qualified, if subject to your state's SAFE Act requirements, those requirements will govern frequency and type of ongoing training. If your affiliate is operating under a SAFE Act exemption, then under TILA, individuals engaging in loan originator activities must continue to take the required training curriculum annually.

9. Do I need to change my homebuyer selection practices or just our origination activities at closing to be compliant?

Homeowner selection is just one phase of the mortgage origination process. Affiliates should consider the structure of their homeowner selection committee and the responsibilities of all staff and volunteers engaged in the homeowner selection process to ensure that only qualified loan originators engage in loan originator activities, as described above.

Affiliates must be aware that an application can be oral, written or electronic, and regardless of format, the process must be treated in the same manner and be fully compliant with applicable laws. All personnel that interact with applicants must receive training regarding how to respond to inquiries from potential applicants, to avoid turning an inquiry into an application and triggering loan originator qualification requirements under the SAFE Act or TILA (and other notice and disclosure requirements under other laws). All personnel that engage with applicants substantively, conducting activities that constitute loan originator activities (see FAQ #1, above), must be qualified under applicable standards.

10. Why do loan originator rules (and other federal requirements applicable to consumer loans and mortgages) apply during the homeowner selection process?

The purpose of the Habitat homeownership program is to sell a house to a qualified homebuyer based on need, willingness to partner and ability to pay. Accordingly, the selection phase includes a credit decision (even though the applicant's credit must be fully verified and reviewed again during the final underwriting phase prior to the final decision to close on a loan). During the application process, all pertinent information is gathered to qualify and/or approve a borrower on a conditional basis, subject to final approval prior to the closing on the sale and mortgage loan. Staff and/or volunteers who engage directly with applicants and interface directly with the applicant and discuss loan terms and/or the applicant's financial qualification requirements, or provide the applicant guidance in completing the application, are engaging in "loan originator" activities pursuant to the SAFE Act and TILA.

11. What is an application?

An application can be oral, written or electronic, and all must be treated in the same manner and be fully compliant with applicable laws. In the Habitat context, our application includes two phases: the homeownership assessment /ECOA phase and the final loan assessment/RESPA phase. Habitat affilaites should adopt a policy defining the elements of a completed application during the homeownership assessment/ECOA phase, to be sure they include all of their required elements (e.g., home visit). Please see the ECOA Job Aide on MPAR U for more information. An "application" under RESPA is deemed complete as soon as the affiliate receives six items of information: borrower's name, the borrower's monthly income, the borrower's social security number, the property address, an estimate of the value of the property, and the mortgage loan amount sought (affiliates not subject to the TRID rule may still require certain other information deemed necessary by the loan originator to process the application). While the "ECOA Phase" in the Habitat context typically occurs first, affiliates must be aware that substantive ECOA requirements apply throughout the loan process. The "RESPA Phase" typically occurs later in the process for Habitat, but there may be some overlap depending on the particular affiliate practices. Please see the Homeowner Support AOM and MPAR U for more information. .

12. My affiliate uses a third party lender to originate mortgage loans for our Habitat homebuyers. Do any of these rules still apply to my Habitat affiliate and personnel?

Yes. Even if a third party loan originator handles the final underwriting and issues the actual loan , the Habitat affiliate generally still conducts the loan originator activities during the homeownership assessment phase, as defined by TILA, such as assisting a consumer in applying for credit and referring a consumer to a loan originator.

Think of the Habitat program as a package deal: Habitat starts the application process in the homeownership assessment phase, and then Habitat makes homeownership affordable by working with prospective homeowners to provide a homeownership opportunity, with an affordable mortgage, whether originated by Habitat or a third party. Certain activities during the homeowner selection process are "loan originator activities" even if the Habitat affiliate isn't completing the entire origination process of the mortgage loan. Accordingly, the individuals, whether staff or volunteers must be duly qualified.

Generally speaking in the Habitat setting, staff and volunteers who interface directly with the consumer and/or discuss or negotiate the terms of the loan are performing loan originator activities. It would not include employees performing solely administrative or clerical tasks (including accepting applications at the front desk), board members who solely review documents, or staff whose tasks are limited to back-office underwriting analysis and calculations.

13. If my state does not currently have a bona fide nonprofit exemption under the SAFE Act, what should I do?

Check in with your State Support Organization (SSO) prior to taking any action. In many states, the SSO is leading this process and is already having regular conversations with decision makers. Affiliates should coordinate all outreach with SSO's and each other to coordinate efforts, speak with a unified voice and avoid working at cross-purposes. Affiliates in states without a SSO, should also coordinate efforts with each other. HFHI's Government Resources and Advocacy office may also be able to help. Contact the Affiliate Support Center for more information.

Additional Resources:

For more information on the requirements for loan originators under the SAFE Act and under TILA:

- Affiliate Support Center: ussupportcenter@habitat.org or 1-877-434-4435
- Loan Originator Collection on MPAR University collection on My.Habitat (MPAR University), including Loan Originator Qualifications Overview Video
- Reg H (SAFE Act) – provides guidance for states; affiliates must understand the laws implemented by the states under these regs
- Reg Z Loan Originator Rule (TILA)
- CFPB's Loan Originator Rule Compliance Guide (See, in particular, **Sections 3: Are you a loan originator?** and **10: What are the qualification rules for loan originators?**]
- Policy 23 Mortgage Origination (in particular, Section 2.2.3) and FAQ's for Policy 23
- Nationwide Multistate Licensing System & Registry

To register for loan originator training refer to the trainings found on My.Habitat (ABA Loan Originator Trainings).