

## CFPB Loan Originator Rules and SAFE Act

Effective on January 1, 2014, the CFPB rules governing compensation paid to a loan originator became effective. Because of the expanded definition of “loan originator” under the regulation Z, credit unions sought clarification on the implication of those changes to the “mortgage loan originators” defined under the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). These FAQs are common questions received on the Compliance Helpline and are meant to provide credit unions with additional information and resources to assist with compliance and interpretation of the new rules on mortgage loan originator activities. Credit unions can also find further information and resources on the mortgage rules on the MCUL’s website, located [here](#).

*Please Note: Michigan Credit Union League & Affiliates services are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. For specific legal advice, please consult with your credit union’s attorney.*

### **Q.1. Who is considered a “mortgage loan originator” under the SAFE Act?**

A. The [SAFE Act](#) mandates a licensing and registration system for residential mortgage loan originators (MLOs). Credit unions were required to “register” their employees who are deemed to be MLOs with the national mortgage licensing system (NMLS). Under the SAFE Act, a mortgage loan originator is an individual who takes a residential mortgage loan application **and** offers or negotiates the terms of a mortgage loan in exchange for compensation or gain. The term does not include an individual who performs purely “administrative or clerical tasks” on behalf of an MLO. “Administrative or clerical tasks” means the receipt, collection and distribution of information common for the processing or underwriting of a loan in the residential mortgage industry and communication with a member to obtain information necessary for the processing or underwriting of a residential mortgage loan.

### **Q.2. Who is considered a “loan originator” under the new CFPB rules?**

A. Regulation Z was amended to define a “loan originator” to mean a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: 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. The term does not include a person who does not take a consumer credit application or offer or negotiate credit terms available from a creditor to that consumer based on the consumer's financial characteristics, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities. The CFPB published official interpretations that provide significantly more detail on the definitions, which can be found [here](#).

### **Q.3. Our credit unions sometimes has our Member Service Representatives (MSRs) provide mortgage loan applications to members who have inquired. Are they now considered “loan originators” under the revisions to Regulation Z?**

A. No, they are not. According to the commentary of regulation Z, “a loan originator’s or creditor’s employee who provides a credit application from the entity for which the person works to the consumer for the

consumer to complete is not a loan originator....as long as that employee did not assist the consumer in completing the application process or analyze information, or discuss particular credit terms that are or may be available from a creditor or loan originator to that consumer selected BASED on the consumer's financial characteristics.”

**Q.4. Do the new CFPB Loan Originator Rules require us to obtain NMLS IDs for additional people that meet the new Regulation Z definition of a “loan originator”?**

A. No. Although the CFPB revisions to Regulation Z includes a much broader definition of a loan originator, the revisions include prohibitions on certain types of compensation to those particular employees identified as loan originators. Nothing in the new CFPB rules require those employees identified as loan originators under Regulation Z to obtain an NMLS registration. That registration process is still governed by the SAFE Act, which has not been revised. In fact in the commentary of Regulation Z, it specifically states that “Section 1026.36(f) does not affect which loan originators must comply with State and Federal licensing and registration requirements. For example, the fact that the definition of loan originator in § 1026.36(a)(1) differs somewhat from that in the SAFE Act does not affect who must comply with the SAFE Act.”

**Q.5. Are there any additional requirements on loan originators as defined under the new CFPB rules who are not required to be registered under the SAFE Act?**

A. Yes. If you have an employee who does not meet the definition of an MLO under the SAFE Act, but does meet the loan originator definition under regulation Z, you will need to make sure that you comply with the new requirements under the revised regulation. Requirements are helpfully outlined in the [CFPB small entity compliance guide](#) on page 62 and include obtaining a criminal background check, credit report and information on any administrative, civil, or criminal findings by any government jurisdiction (such as disciplinary or enforcement actions).

**Q.6. Do I only need to obtain the information in question #5 for the loan originators that I hire after January 1, 2014?**

A. The credit union will be required to collect the information outlined in question #5 for loan originators hired after January 1, 2014 **AND** for loan originators hired before that date, but who weren't applicable to statutory or regulatory background standards at the time they were screened or hired. After that initial screening of the credit unions loan originators, the credit union will only need to perform a subsequent review or assessment if it has reliable information indicating that the loan originator likely does not meet the standards set by the rule.

**Q.7. What types of compensation is prohibited for loan originators under the new CFPB revisions?**

A. The revised CFPB rules prohibit loan origination compensation based on transaction terms, such as interest rate, or a proxy for transaction terms. Therefore, if you are a loan originator under the new rule for purposes of the compensation provisions, you generally may not receive compensation that is based on the terms of a single transaction, multiple transactions, or the terms of multiple transactions conducted by multiple loan originators taken in aggregate. Examples of transaction terms include the interest rate, APR, collateral type, existence of a prepayment penalty, origination points or fees paid to the credit union or loan originator, fees for creditor required title insurance. The regulation does recognize seven permissible compensation methods that are effectively safe harbors. For example, compensation paid based on the loan originator's overall dollar volume or an hourly pay rate based on the actual number of hours worked. For further examples, review page 40 of the [CFPB's small entity compliance guide](#).

**Q.8. Is it true that there is a new training requirement under the revised CFPB rules?**

A. Yes, the credit union must ensure that periodic training is provided to the loan originator covering federal and state law requirements that apply to their activities. This training requirement is required for all loan originators, regardless of their hire date. The training needs to be sufficient in frequency, timing, duration and content to make sure the loan originators know the federal and state legal requirements that apply to them. Someone from the credit union can deliver the training or it can be done via the internet, teleconference or other interactive technologies.

- Q.9. What are the requirements for credit unions and MLO's under the CFPB's MLO Compensation Rules and SAFE ACT relating to Mortgage Loan Originators' names and NMLSR (Nationwide Mortgage Licensing System and Registry) ID numbers? We have heard that the MLOs will need to provide their name and NMLS number on specific loan documents as well as the institution's name and NMLSR ID, currently we provide this information on their business cards. Is this correct?**
- A. The **SAFE ACT** requires MLO's to provide their unique identifier to a member 1) upon request; 2) before acting as a mortgage loan originator; and 3) through the originator's initial written communication with a member, if any, whether on paper or electronically.

The revisions to **regulation Z** require a loan originator organization (Credit Union) to include the credit unions name and NMLS number and the name and NMLS ID of the individual loan originator primarily responsible for the origination on the following documents: credit application, note or loan contract and security instrument.