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Truth In Lending Act (TILA) - Who is a Loan Originator and What Rules Apply?

The federal law TILA requires loan originators to be qualified. Habitat affiliates must first determine their state's SAFE Act requirements because that governs which qualification standards must be met – SAFE Act or TILA.

1. Affiliate in states that **have not** adopted a bona fide nonprofit SAFE Act exemption, must comply with the requirements set out for both a mortgage lender and for individual loan originators to be licensed and registered.
2. Some states have adopted a bona fide nonprofit SAFE Act exemption, which permits affiliates to operate without being SAFE Act licensed and registered. However, the individual loan originators must still become qualified. Refer to the guidance below for steps to take to become a qualified loan originator.
3. Other states have provided a “pathway” to obtain a bona fide nonprofit SAFE Act exemption (e.g. originate fewer than X number of mortgages in a calendar year, or apply to the state regulator for the exemption.) Affiliates in states with a pathway either satisfy the requirements to obtain the exemption **or** comply with the SAFE Act requirements for licensing and registration. Affiliates that obtain an exemption must ensure that their individual loan originators become qualified. Refer to the guidance below for steps to take to become a qualified loan originator.

WHO?

Loan Originators = Individuals who are compensated to perform activities such as:

- 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

Note, under Habitat policy, “Key Volunteers” performing these functions also must meet Loan Originator qualification. Also, individuals may be “Loan Originators” if they perform these functions, even if a third party lender originates the actual loan.

Who is **NOT** a Loan Originator under TILA? Individuals who:

- Perform *solely* clerical or administrative tasks
- Are front desk staff who just accept applications without discussion
- Are Board members who only review documents
- Only receives, collects, and distributes information common for the processing or underwriting (ability to pay) of a loan
- Only communicates with a consumer to obtain information necessary for the processing or underwriting (ability to pay) of a residential loan. The **communication must not include offering, negotiating or counseling consumers** about residential mortgage loan rates or terms.
- Solely underwrites loan (number crunching)



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WHAT?

Loan originator organizations (Affiliates) must ensure financial responsibility, character and general fitness of their individual loan originators. For loan originator organizations that are not required to be licensed, this requires the organization to:

1. **Obtain** (a) criminal background check, (b) credit report, and (c) information from the individual loan originator related to any civil, criminal or administrative decision.
2. **Determine** 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): (a) any felony during the last 7 years, or (b) any felony involving fraud, dishonesty, breach of trust, or money laundering at any time.
3. Ensure initial and ongoing **Training** is provided to individual loan originators on both federal and state laws pertinent to the types of loans originated. The ABA Loan Originator curriculum (12 courses) available to affiliate personnel, free of charge, meets the federal law training requirement. State law training may be obtained from a vendor approved to deliver SAFE Act training, or by a person/entity with the requisite experience in applicable state laws.

HOW?

In addition to the required information, affiliates must assess other, reasonably available information. You may determine that the individual meets the standards if you have no significant adverse information.

Your review and assessment of financial responsibility is sufficient if it considers, as relevant factors:

- The existence of current outstanding judgments, tax liens, or other government liens
- Nonpayment of child support
- A pattern of bankruptcies, foreclosures, or delinquent accounts
- You do not need to consider debts arising from medical expenses

Your review and assessment of character and general fitness is sufficient if it considers, as relevant factors:

- Acts of unfairness or dishonesty
- Dishonesty in the course of seeking employment
- Dishonesty concerning qualifications
- Disciplinary actions by regulatory or professional licensing agencies

No single factor necessarily requires that you determine that the individual does not meet the standards for financial responsibility, character, or general fitness, if you consider all relevant factors and reasonably determine that, on balance, the individual meets the standards. If you establish and follow written procedures for determining whether individuals meet the financial responsibility, character, and general fitness standards, you comply with the requirement for those individuals. (See, CFPB's [Small Entity Compliance Guide](#), March 2015.)