



Temporary Authority to Operate (Temporary Authority) for Mortgage Loan Originators

Background

The Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155 or the amendments), which was signed into law on May 24, 2018, adds a new section to the federal SAFE Act (12 U.S.C. 5101 et seq.) entitled “Employment Transition of Loan Originators.” These amendments become effective November 24, 2019, 18 months after enactment.

What the Law Permits

What is “temporary authority” to act as a mortgage loan originator (MLO) provided by the amendments?”

Temporary authority to act as a loan originator permits:

- 1) qualified MLOs who are changing employment from a depository institution¹ to a state-licensed mortgage company, and
- 2) qualified state-licensed MLOs seeking licensure in another state,

to originate loans while completing any state-specific requirements for licensure such as education or testing.

Who is eligible for temporary authority?

MLOs must be:

- 1) employed and sponsored through NMLS by a state-licensed mortgage company, and
- 2) either:
 - a. registered in NMLS as an MLO during the one year preceding the application submission; or
 - b. licensed as an MLO during the 30-day period preceding the date of application.

¹ As that term is defined in the SAFE and FDI Acts (12 USC 5102, 12 USC 1813).

What would disqualify an MLO from receiving temporary authority?

MLOs who have:

- 1) had an MLO license application denied or an MLO license revoked or suspended in any jurisdiction;
- 2) been subject to, or served with, a cease and desist order; or
- 3) been convicted of a misdemeanor or felony that would preclude licensure under the law of the application state.

How long can an MLO operate under temporary authority?

Temporary authority begins on the date an eligible MLO submits a license application with the required background check information (fingerprints, personal history and experience, and authorization for a credit report as required in 12 USC 5104(a)), assuming there is no disqualifying event. It ends when the earliest of the following occurs:

- 1) the MLO withdraws the application,
- 2) the state denies or issues a notice of intent to deny the application,
- 3) the state grants the license, or
- 4) 120 days after the application submission if the application is listed on NMLS as incomplete.

What authority does the state regulator have with regard to MLOs operating under a temporary authority?

The amendments specify that any MLO operating under temporary authority is subject to the requirements of the federal SAFE Act, and all applicable laws of the application state, to the same extent as if that MLO was a state-licensed loan originator licensed by the state.

Frequently Asked Questions

1. As it pertains to S. 2155, will an MLO apply for a temporary authority license?

No. An MLO applies for an MLO license and, if eligible, receives temporary authority.

2. When can a registered mortgage loan originator (RMLO) or a state licensed MLO apply for an MLO license and originate mortgages under temporary authority?

The amendment states that temporary authority “shall take effect on the date that is 18 months after the date of enactment...” The amendments were enacted on May 24, 2018; therefore, MLOs cannot apply for a license and become eligible for temporary authority until November 24, 2019.

3. How is eligibility for temporary authority evaluated?

NMLS will be programmed to check certain elements of eligibility such as whether Criminal History Record Information (CHRI) exists and if an applicant has had an MLO license application denied, revoked, or suspended in any jurisdiction. NMLS will also be able to check the last date of registration for a federal MLO moving to a state-licensed company. Regulators may also need to manually check other elements of eligibility including the MLO's CHRI and cease and desist orders to make sure there is no disqualifying event.

4. What must be included in a license application in order to obtain temporary authority?

In order for an eligible individual to obtain Temporary Authority to Operate, the individual must submit a complete Mortgage Loan Originator License application through NMLS.

A complete application must include:

1. completed Individual Licensing Form (MU4) which contains personal history and experience;
2. explanation and supporting documentation uploads for any "Yes" answer to a disclosure question;
3. the receipt of a criminal history record information check from the FBI;
4. authorization for a credit report to be obtained; and
5. any state-specific document required as part of an MLO license application in the Application State.

Note: An eligible individual can submit an MLO license application without passing the SAFE Act Test or meeting Pre-Licensure education requirements.

5. Is it possible for an MLO to have temporary authority for more than 120 days?

Yes. At the end of the 120 days, if an application is complete (including testing and education) and the agency has not yet made a decision on the application, temporary authority exists until the agency acts on the application.

6. How would the system respond to the following three scenarios?

1. The MLO has a disqualifying event that can be ascertained from information in the system (e.g. a cease and desist order or a denial). The system would identify this, would not grant temporary authority, and would require that MLO SAFE Test and Pre-Licensure Education be completed prior to submission of the license application.

2. The MLO applies for an MLO license then the application-state determines the MLO does not meet requirements for temporary authority because they have been convicted of a misdemeanor or felony that would preclude licensure in the application state. Temporary authority is not granted in that state. Denial by an application-state ends temporary authority in **all** states. An issuance of an intent to deny ends temporary authority **only** in the application-state.
3. The MLO is granted temporary authority. After investigation of the application, a state determines that the MLO has a disqualifying event (e.g. a cease and desist order that is not in the system) thus the MLO should never have been granted temporary authority. The applicant state denies the application or issues an intent to deny and temporary authority is rescinded. Presumably, the state or states will bring an enforcement action against the MLO and the company, if the company knew, for failure to disclose the relevant event. Denial by an application-state ends temporary authority in **all** states. An issuance of an intent to deny ends temporary authority **only** in the application-state.

7. *Should a Regulator be permitted to issue an intent to deny if the individual attempts in good faith to meet all requirements needed to obtain state-licensure within 120 days?*

Under S. 2155, an applicant will not be applying for temporary authority, they will be applying for an MLO state license through NMLS. If eligible, they will be deemed to have temporary authority while their application moves through a state's normal licensing process. Therefore, under the amendments of the SAFE Act, an issuance of a denial or an intent to deny would simultaneously end temporary authority and would also stop the licensing process. The issuance of an intent to deny signifies that the regulator has reviewed the license application and has found one or more reasons to deny the license. An applicant may appeal the license denial, however, there is no appeal process for temporary authority.

S. 2155 does not require a regulator to wait the entire 120-day period before reviewing and making that final disposition on an application. The state regulator is responsible for making the final disposition and must follow their own internal processes, including managing any appeals that are filed. Regulators can review an application immediately upon receipt and can approve/deny the application or issue an intent to deny at any time.

The intent of S. 2155 is to permit qualified mortgage loan originators to originate loans while completing testing and pre-licensure education requirements. During this time period they will also be required to complete any follow up requests made by the regulator, such as updating any expired or incorrect documents. Temporary Authority will end if there is a disqualifying event. Two disqualifying events that could end temporary authority to operate are the state denying the application or

issuing an intent to deny. This is laid out in the “What the Law Permits” section of the FAQs.

8. Can an MLO obtain temporary authority in all jurisdictions currently on NMLS?

Yes. There is no language in S. 2155 that limits the number of states where an applicant can apply for an MLO license and thereby become eligible to operate under temporary authority.

9. Regarding MLOs who are moving from a Depository Institution to a Non-Depository Institution, S. 2155 uses the phrases “is a registered loan originator” and “was registered.” What is the effect of this inconsistent language?

CSBS believes the purpose of the law is to allow a current or formerly registered MLO to move from a depository institution that required registration to a non-depository institution that requires state licensure, as long as the MLO was registered within the last 365 days.

10. The amendments specifically address “temporary authority to originate loans for state-licensed loan originators moving interstate.” What is the intention of the word “move?” Does “move” refer to an MLO expanding their license from one state licensed jurisdiction to another or to an MLO moving physically to another state?

The amendments provide that an “application State means a state in which a registered loan originator or a State-licensed loan originator seeks to be licensed.” Based on this language, CSBS believes that “move” does not refer to nor require an MLO seeking temporary authority to change their physical address. CSBS believes that the intent of S. 2155 was to allow MLOs to expand their authority to originate mortgages from bank to non-bank and/or from state to state. With this understanding, an MLO could be eligible for temporary authority in any number of states at the same time.

11. Are the loans originated while an MLO is acting under temporary authority valid if the license is ultimately denied?

Loans, whether closed or not, are not affected by the intent to deny or denial of an MLO’s application. Loans not closed belong to the company and closed loans cannot be undone.

12. If a company were to apply for a license in a new state, would temporary authority permit the company's current MLOs to work in the new state once the company is approved?

A company moving from one state to another would first need to apply and be licensed as a mortgage company in the new state. Once licensed, the company's MLOs may then be eligible for temporary authority if they apply for licensure.

13. Will a status show on NMLS Consumer Access for MLOs with temporary authority? What will it be?

Consumer Access shows both the status of a license and whether a licensee or registrant is authorized to conduct business. An applicant who receives temporary authority is in the process of applying for an MLO license. The applicant is deemed to have temporary authority before a licensing decision has been made on their application. Therefore, the applicant's license status cannot be updated in Consumer Access. However, an MLO with temporary authority is authorized to conduct business if all qualifications are met. This means that the "authorized to conduct business" field in Consumer Access can be denoted with a "Yes."

14. Will an MLO with temporary authority be required to be covered by a surety bond or recovery fund?

Yes. Section 5107(f)(1) of the SAFE Act gives the Bureau of Consumer Financial Protection authorization to set minimum net worth or surety bond requirements for MLOs and for recovery funds paid into by MLOs. Section 5107(d)(6) explains that the states are required to base that bond or fund amount on the amount of loans originated by an MLO.

S.2155 adds section 5117(d) to the SAFE Act. 5117(d)(2) states that:

"Any individual who is deemed to have temporary authority to act as a loan originator in an application State under this section and who engages in residential mortgage loan origination activities shall be subject to the requirements of this chapter and to applicable State law to the same extent as if that individual was a State-licensed loan originator licensed by the application State."

Any MLO with temporary authority to originate must meet all requirements of the SAFE Act including bonding requirements. MLOs with temporary authority are able to originate loans, therefore, based on Section 5107(d)(6) above, their loan amount would need to be covered by a bond or fund. Similar language in 5117(d)(1) extends this applicability to employers of MLOs with temporary authority as well. A sponsoring company's bond satisfies the bonding requirement for an MLO.

15. Will the loans originated by an MLO with temporary authority be required to be included in the Mortgage Call Report (MCR)?

Yes. SAFE Act, section 5104(e) requires each mortgage licensee to submit a call report to NMLS in a form specified by NMLS. The NMLS Policy Guidebook states that, an MCR must be completed by all state licensed companies and companies employing state licensed mortgage loan originators.

Applicants who have received temporary authority have begun the application process for an MLO license. S. 2155 requires in both sections 5117(b)(1) and (c)(1)(B), that applicants must be employed by a state-licensed company in the application state. CSBS interprets this to mean that these employees must be included in the Call Report mandated in section 5104(e) because they are employees of a mortgage licensee.

16. Is company sponsorship required as proof of an MLO's employment in states where sponsorship is required?

Yes. Employment and sponsorship are required at the time of filing an MLO license application to receive temporary authority.

17. Can a federally registered MLO with an inactive state license obtain temporary authority in a different state?

Yes. If a federal registrant with an inactive license meets all requirements for eligibility, they can seek temporary authority.

18. Is an applicant with a pending prosecution matter eligible for temporary authority?

Yes. A pending criminal matter would not affect the eligibility for temporary authority until the matter is resolved and the resolution makes the applicant ineligible.

19. If an applicant submits an MLO license application that meets the requirements for temporary authority on Friday and the state begins the license application review on Monday, what day did temporary authority begin?

In this example, temporary authority would begin on Friday if the system is able to automatically verify eligibility. If manual state review is required to verify eligibility, temporary authority would begin at the completion of that review.

20. Are MLOs with temporary authority subject to the federal SAFE Act?

Yes. All provisions of the SAFE Act, including the enforcement provisions, apply to MLOs with temporary authority.

21. If an application state issues a license application denial or intent to deny during the temporary authority time period, does the applicant have administrative rights?

Yes. State Administrative Procedures Act rights attach to the license, not temporary authority. When a state denies a license application or issues a notice of intent to deny temporary authority is ended. The applicant can appeal the denial of the license, but not the termination of temporary authority. An MLO cannot conduct licensable activities without temporary authority or a license.