



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

This information is not intended to provide legal advice and should not be relied upon in lieu of consultation with an attorney. The materials have been prepared for education and information purposes only.

Background

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

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

¹ As that term is defined in the SAFE and Federal Deposit Insurance 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. If an applicant is aware of a CHRI item that may require further review by a regulator, available documentation should be made accessible to the state upon application submission.

4. *Does an MLO who meets the registration or licensure requirements for Temporary Authority maintain eligibility for Temporary Authority if there is a break in service?*

A break in service is permitted, but shall not exceed fourteen calendar days. The break in service begins when federal registration or state licensure ends, and stops when the new employer submits a sponsorship request.

5. *What must be included in a license application in order to obtain Temporary Authority?*

The individual must submit a Mortgage Loan Originator License application, which is required for Temporary Authority to Operate.

An 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;
5. W2 Worker Classification; and

a request for sponsorship from the MLO’s employer.

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

A state cannot make a final decision on an application for licensure without the following information:

1. any state-specific document required as part of an MLO license application in the Application State,
2. SAFE Act Test, and
3. Pre-licensure education requirements.

6. 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, education and state specific documents required by the Application-State) and the agency has not yet made a decision on the application, Temporary Authority would remain in effect until the agency acts on the application.

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

Scenario 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).

System Result:

The system would identify this, and the MLO would not be eligible for Temporary Authority. Therefore, the system would prevent submission until the MLO SAFE Test and Pre-Licensure Education are completed.

Scenario 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.

System Result:

In the system, Temporary Authority would not begin in that state. Denial by an application-state would end temporary authority in **all** states. An issuance of an intent to deny ends temporary authority **only** in the application-state.

Scenario 3:

Temporary Authority begins for an MLO, but 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). Therefore, Temporary Authority should have never begun for the MLO.

System Result:

In the system, the applicant-state issues an intent to deny or denies the application and Temporary Authority is rescinded. Presumably, some states may bring an enforcement action against the MLO and/or the company for failure to disclose the relevant event. Denial

by an application-state would end Temporary Authority in **all** states. An issuance of an intent to deny ends Temporary Authority **only** in the application-state.

8. Can an MLO obtain Temporary Authority in all jurisdictions 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 continuously for the one-year period preceding application submission.

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. The company would need to transfer loans that are still in the origination or negotiation process to a properly licensed MLO employed with their company.

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. Once received, Temporary Authority will show as “Temporary Authority” on Consumer Access. 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 will 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 Consumer Financial Protection Bureau 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 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.”

An 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. A sponsoring company’s bond satisfies the bonding requirement for their MLOs.

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. 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.

17. 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.

18. 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?

If an MLO is eligible, Temporary Authority begins on the date of application submission. Therefore, in the example above, the MLO's Temporary Authority would have begun on the Friday that the application was submitted.

19. 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.

20. 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. Temporary Authority ends when a state denies a license application or issues a notice of intent to deny. 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.

21. When should the license item "Intent to Deny" be used?

The intent of S. 2155 is to permit qualified mortgage loan originators to originate loans for 120 days while completing state-specific requirements such as testing and education. During this time period, applicants are also required to submit any additional state-specific documents required for licensure and complete any follow-up requests made by the regulator, such as updating any expired or incorrect documents.

If eligible, an applicant will be deemed to have TA while their application moves through a state's normal licensing process. Under S. 2155, an issuance of an Intent to Deny would simultaneously end TA and would also stop the licensing process. An Intent to Deny license item signifies that the regulator has reviewed the license application and has found one or more reasons legally sufficient to deny the license and has issued a notice of intent to deny the license. In certain jurisdictions, an applicant may request a hearing on a notice of intent to deny the license. NOTE: There is no appeal process for the loss of TA.

22. Can an MLO originate loans at an unlicensed location?

If a state requires locations to be licensed prior to commencing origination activity, Temporary Authority does not change this requirement. Sections 5117(d)(1) and 5117(d)(2) of the SAFE Act state that employers of MLOs and MLOs deemed to have Temporary Authority in an application State shall be subject to the requirements of this chapter and to applicable State law to the same extent as if that MLO was a State-licensed loan originator licensed in the application State. Therefore, if a state requires a location to be licensed prior to commencement of origination activity, then neither the employer of the MLO or the MLO can engage in origination activity until the location is licensed. Licensees should follow each states' rules regarding licensing requirement applicability for remote work locations.

23. Can an Agency use their Abandonment Statute on a Pending-Deficient (Temporary Authority Eligible) application?

S. 2155 does not speak to how an application in a Temporary Authority Eligible status may be disposed of prior to obtaining Temporary Authority¹. In accordance with applicable state law, Agencies may apply their Abandonment/Non-Response Statutes to an application that is in a Pending-Deficient (Temporary Authority Eligible) status.

24. Can an MLO receive Temporary Authority if they become employed by a registered exempt mortgage company?

No. Section 5117(b)(1) of the SAFE Act states that an MLO is deemed to have Temporary Authority, "upon becoming employed by a state-licensed mortgage company" subject to certain conditions. A state-licensed mortgage company is defined as, "an entity that is licensed or registered under the law of any State to engage in residential mortgage loan origination and processing activities." §5117(a)(2). A registered exempt mortgage company does not meet the criteria of a "state-licensed mortgage company" for purposes of §5117(b)(1). Therefore, an MLO in their employ is not eligible for Temporary Authority.²

¹ To receive Temporary Authority applications must be in one of the following Temporary Authority Statuses: Pending-Deficient (Temporary Authority), Pending-Review (Temporary Authority), and Pre-Approved (Temporary Authority).

² An exempt registration is a functionality in NMLS that permits a state agency to track those individuals participating in certain business activities, but who are exempt from licensure or registration under state statute.