

GUIDANCE DOCUMENT

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MORTGAGE LOAN ORIGINATOR GENERAL LICENSING QUESTIONS

I. Licensing Requirement

Q. What is the definition of “mortgage loan originator”?

A. A mortgage loan originator is an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan.

Q. What is the definition of “application”?

A. The term “application” includes any request from a borrower, however communicated, for an offer (or in response to a solicitation of an offer) of residential mortgage loan terms, as well as the information from the borrower that is typically required in order to make such an offer.

Q. What is the definition of “takes a residential mortgage loan application”?

A. The term “taking an application” means the receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower. The Department has issued [Interpretative Opinion No. 1](#) which provides more guidance concerning activities constituting taking a loan application and negotiating terms of a residential mortgage loan.

Q. I live and work in a state other than Nebraska and am licensed in that state. Must I obtain a license in Nebraska to originate Nebraska residential mortgage loans?

A. Yes. Nebraska requires that an individual obtain a license in Nebraska prior to originating loans secured by a dwelling located in this state.

Q. I work in a call center where I contact individuals who own a dwelling located in Nebraska and solicit them to apply for a residential mortgage loan. Must I be licensed to make these solicitations?

A. Yes. You are contacting potential borrowers and offering to take a residential mortgage loan application. All individuals who offer to take a residential mortgage loan application or offer to negotiate loan terms must be licensed.

Q. If I am not licensed in Nebraska, and I receive a telephone call from a Nebraska resident, what should I do?

A. Since you are not licensed in Nebraska, you cannot take an application from the potential customer. You should transfer the caller to a Nebraska-licensed mortgage loan originator. If no Nebraska-licensed mortgage loan originator is available, you may collect only the information necessary to allow a Nebraska-licensed mortgage loan originator to contact the potential borrower (i.e name, address, telephone number(s), email addresses, and spouse’s name, address, telephone number, and email address, if it is a joint loan application).

Q. If I am not licensed in Nebraska, may I refer a customer to a co-worker who is licensed in Nebraska and split the fee with the licensed individual?

A. No. An unlicensed mortgage loan originator may not receive compensation in connection with a loan made that is secured by a Nebraska dwelling or residential real estate.

II. Compensation or Gain

Q. What is the definition of “compensation or gain”?

A. Compensation is broadly defined to include the receipt of money or anything of value.

Q. My employer does not charge borrowers fees. Since I am not receiving anything directly or indirectly from the borrower, am I receiving compensation?

A. Yes. You are receiving a salary. It does not matter whether the compensation comes in the form of a commission or a fixed salary.

Q. I work in the servicing department of a licensed mortgage banker where I answer questions from customers regarding payments. Occasionally, I will take an application from a borrower for a new loan, but I do not receive a commission. Do I need to be licensed as a mortgage loan originator?

A. Yes. You took a residential mortgage loan application and received something of value (i.e. your salary or wage) from your employer. A salary or wage is always compensation, even if it is paid for duties other than acting as a mortgage loan originator.

III. Loan Processors and Underwriters

Q. What is the definition of “loan processor or underwriter”?

A. Loan processor or underwriter means an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a licensed mortgage loan originator and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

Q. What is the definition of “clerical or support duties”?

A. Clerical or support duties are those tasks which occur after the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan.

Q. I am a loan processor. Do I need to obtain a mortgage loan originator license?

A. It depends. You do not need a license if you are an employee of a mortgage banker or installment loan company and are supervised by a licensed mortgage loan originator. A license is required in all other circumstances. See [Interpretative Opinion No. 2](#) for more details.

Q. If I am a loan processor who is licensed as a mortgage loan originator, may I advise customers about the terms of a residential mortgage loan?

A. Yes. A loan processor who obtains a mortgage loan originator license may conduct all of the activities of a mortgage loan originator.

Q. I am a loan processor for an independent processing company. Do I need to be licensed as a mortgage loan originator?

A. It depends. See [Interpretative Opinion No. 3](#) which addresses issues related to independent mortgage loan processing companies.

Q. Can I contact a consumer if I am a loan processor or underwriter employed by a licensee?

A. You cannot contact a borrower prior to receiving an application. After the application is received you may contact a borrower to obtain information necessary to process or underwrite a loan. However, such communication cannot include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

IV. Exemptions¹

Q. I am a mortgage loan originator who is employed by a company that qualifies for an exemption from the Residential Mortgage Licensing Act (“the Act”). Am I automatically exempt from obtaining a mortgage loan originator license?

A. No. An individual must qualify for his or her own exemption and cannot rely upon an exemption that may be granted to their employer.

Q. I work for a mortgage company located out of state. Can I act as a mortgage loan originator on a small number of loans in Nebraska without obtaining a license?

A. No. There is no exemption to allow a mortgage loan originator to originate a small number of loans in Nebraska without a license.

Q. I wish to sell my primary residence using seller financing. Do I need to be licensed to negotiate loan terms with the potential buyer?

A. An individual who does not act as a mortgage loan originator on a repetitive and habitual basis may take an application or negotiate loan terms in connection with such sale without being licensed as a mortgage loan originator.

Q. I have been approached by a friend who wants me to give him a loan to purchase a house, which he intends to use as his residence. Do I need to be licensed as a mortgage loan originator to negotiate the terms of such a loan?

A. A license is not required if (1) you are making this loan for your investment with your own funds and do not intend to resell the residential mortgage loan and (2) you do not repetitively or habitually act as a mortgage loan originator.

Q. My granddaughter is buying her first house and has asked me to make her a mortgage loan to buy the house. Do I need to be licensed as a mortgage loan originator to negotiate the terms of such a loan?

A. No. There is an exemption for acting as a mortgage loan originator in connection with a loan to a member of the borrower’s immediate family.

¹ These frequently asked questions only address exemptions for individuals who are acting as mortgage loan originators. For questions concerning company level exemptions for mortgage bankers, please refer to the mortgage banking FAQs.

Q. Are there any other requirements that individuals who are making their own loans must meet?

A. Individuals making their own loans must comply with Nebraska's usury limitation. Therefore such loans cannot exceed 16% per annum.

Q. I am a real estate broker licensed by the Nebraska Real Estate Commission. Am I exempt from the Act?

A. Yes, unless you are being compensated by a lender, mortgage broker, or other mortgage loan originator, or an agent of a lender, mortgage broker, or other mortgage loan originator.

Q. I work for a government agency which makes loans to low-income borrowers to make improvements to their properties. Do I need to be licensed as a mortgage loan originator to negotiate the terms of such a loan?

A. No. Employees of government agencies are exempt from licensing for mortgage loan origination activity conducted on behalf of the government agency.

Q. I am an employee of a nonprofit organization which makes home improvement loans to low-income borrowers. Do I need to be licensed as a mortgage loan originator to negotiate the terms of such a loan?

A. A nonprofit organization can apply for a certificate of exemption from the Department. Employees of a nonprofit organization which has received such a certificate are exempt from the Act in connection with their duties on behalf of the nonprofit organization if the terms of the loans are favorable to the borrowers.

V. Licensed v. Registered Mortgage Loan Originators

Q. What is the definition of "depository institution"?

A. A depository institution is an institution which accepts deposits from customers such as a bank, savings and loan, building and loan, credit union, etc.

Q. Do I need a license if I work as a mortgage loan originator of a depository institution?

A. Employees of a depository institution are required to register in lieu of obtaining a license. For more information on registration, you should refer to the federal registry information on the [NMLS Resource Center](#).

Q. I am an employee of a bank subsidiary. Do I need to be a registered or a licensed mortgage loan originator?

A. The RMLA provides that employees of a bank subsidiary must register with the federal registration system if the subsidiary is "wholly owned and controlled" by the depository institution and if the subsidiary is regulated by a federal banking agency. The subsidiary must meet both prongs of the definition for its mortgage loan originators to qualify for the federal registry; otherwise its mortgage loan originators must obtain licenses from the Department.

Q. I work as a mortgage loan originator for a credit union service organization. Do I need to be a registered or a licensed mortgage loan originator?

A. Credit union service organizations are not regulated by a federal regulator; therefore a mortgage loan originator license is required. See also, [NCUA Opinion Letter No. 08-0843](#).

Q. I originate mortgage loans for a bank as an independent contractor. Do I need to be a registered or licensed mortgage loan originator?

A. Registration is only available to those individuals who are “employees” of a financial institution. Therefore, an independent contractor does not qualify for registration and must obtain a mortgage loan originator license. For further information concerning the definition of “employee”, the Department has issued [Interpretative Opinion No. 2](#).

Q. I work part time for a bank and part time for a mortgage banker. Since I am a registered mortgage loan originator for my mortgage loan origination activities conducted at the bank, am I exempt from obtaining a mortgage loan originator license when I originate residential mortgage loans for the mortgage banker?

A. No. The exemption in the Act for registered mortgage loan originators only applies when the mortgage loan originator is acting on behalf of the financial institution. If a mortgage loan originator also originates residential mortgage loans for a mortgage banker, the exemption does not apply and the mortgage loan originator must obtain a mortgage loan originator license. Therefore, in this situation the mortgage loan originator would need to be both federally registered and licensed by the Department.

VI. Loans Which Require a License to Originate

Q. What is the definition of “residential mortgage loan”?

A. A residential mortgage loan is any loan or extension of credit, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling.

Q. What is the definition of “dwelling”?

A. A dwelling is a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.

Q. Is a license required to act as a mortgage loan originator in connection with a real estate installment contract for the purchase of a dwelling?

A. Yes. A real estate installment contract for the purchase of a dwelling is an extension of credit, primarily for person, family, or household use, and is equivalent to a mortgage loan in Nebraska.

Q. Is a license required to act as a mortgage loan originator in connection with a residential mortgage loan secured by a second home owned by the borrower?

A. Yes. The definition of “dwelling” is not limited to a person’s primary residence. Therefore, a mortgage secured by the borrower’s second home is a residential mortgage loan and must be originated by a licensed mortgage loan originator.

- Q. I am making a loan for a mobile home which will not be attached to the real estate. Is a license required to act as a mortgage loan originator in connection with this transaction?**
- A. Yes. A mobile home falls within the definition of a dwelling regardless of whether it is attached to land.
- Q. I work for a manufactured housing dealership. Do I need to be licensed as a mortgage loan originator to assist buyers who are seeking financing from a third-party lender?**
- A. It depends on the nature of that assistance. The Department has issued [Interpretative Opinion No. 1](#) which outlines certain activities which do constitute acting as a mortgage loan originator, and certain activities which do not constitute acting as a mortgage loan originator.
- Q. Is a license required to act as a mortgage loan originator in connection with a home equity loan or home equity line of credit?**
- A. Yes, if the proceeds are being used primarily for personal, family, or household uses.
- Q. My customer is obtaining a home equity loan on his residence and intends to use the proceeds to start a business. Must this loan be negotiated by a licensed mortgage loan originator?**
- A. No. A loan that is obtained for business purposes is not a residential mortgage loan, even if secured by the borrower's dwelling. Since the loan is not a residential mortgage loan, a license is not required. However, the lender must obtain and maintain sufficient documentation to show that the loan was for business purposes.
- Q. My customer owns an 80 acre farm and lives in a house located on a portion of the farm. Must this loan be negotiated by a licensed mortgage loan originator?**
- A. It depends. If the primary use of the proceeds of the loan will be used for the farming operation, the loan will not be for personal, household, or family purposes and no license would be required. By contrast, if the purpose of the loan is to remodel the dwelling or build a new dwelling, then the purpose of the loan would likely be for personal, household, or family purposes, and the individuals taking the application or negotiating the loan terms would need to be licensed as a mortgage loan originator. It is the lender's responsibility to obtain and maintain sufficient documentation regarding the use of the proceeds.
- Q. Is a license required to act as a mortgage loan originator in connection with a construction loan for a single-family residence?**
- A. It depends on the borrower. If the borrower intends to live in the completed dwelling, the loan is a residential mortgage loan and the person taking the application or negotiating the loan terms must be licensed. If the borrower is a builder who doesn't intend to live in the completed property, the loan is a business loan, not a residential mortgage loan, and no license is required.
- Q. I work for a servicer. As part of my duties I work with borrowers seeking a loan modification. Am I required to be licensed as a mortgage loan originator?**
- A. Yes. A loan modification involves collecting information from the borrower to determine whether the borrower qualifies for a loan modification, and offering or negotiating the terms of such loan modification to the borrower. Therefore, such person is acting as a mortgage loan originator and needs to obtain a license to do so.

VII. Unique Identifier

Q. What is the unique identifier?

A. The NMLS assigns a unique identifier to each company, branch, and individual who creates an account on the NMLS. The unique identifier allows regulators and consumers to track mortgage companies and mortgage loan originators across state lines and over time.

Q. Is there a difference between a unique identifier assigned to an individual who has a state license as opposed to a person registered in the federal registry?

A. No. The NMLS uses the same process to assign the unique identifier. You will have this identifier even if you subsequently change from state licensed to federally registered (or vice versa).

Q. Does the Department require me to list my unique identifier on loan documents?

A. All loan applications must contain the unique identifier of the individual mortgage loan originator who took the application. Some lenders and investors may also require the unique identifier to be on additional loan documents.

Q. Does the Department require me to list my unique identifier on advertising?

A. Yes. A mortgage loan originator must list his or her unique identifier on all solicitations. For more information regarding this requirement, please refer to [Interpretative Opinion No. 5](#). This Opinion discusses the types of material which constitute solicitations that must contain the mortgage loan originator's unique identifier.