

MBA

MORTGAGE BANKERS ASSOCIATION

August 22, 2016

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Dear Utah Mortgage Regulatory Commission Members,

Thank you for your voluntary service as representatives of our mortgage banking industry on the Utah Division of Real Estate (DRE) Mortgage Regulatory Commission (MRC). Thank you also for taking the time to review these comments as you prepare for your public meeting on September 7, 2016.

I write on behalf of MBA's 2,200 member companies,¹ which include many headquartered in Utah as well as many others doing business in the State and licensed by the DRE. **MBA urges you to support the DRE's adoption of the Nationwide Mortgage Licensing System and Registry's (NMLS) National Mortgage Loan Originator Test with Uniform State Content, commonly known as the "UST," as the sole test for DRE mortgage loan originator (MLO) licensing.**

MBA's support of the UST echoes the attached letters to the DRE and MRC on March 1, 2016 from nine independent mortgage banking company leaders whose businesses have their

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org

headquarters in Utah. Please note that a majority of those businesses are MBA members, and that MBA's membership also includes many companies from other states who are licensed by the DRE and who share the views expressed.

Additionally, please consider that the industry's UST support has been consistently communicated to all state regulators by MBA since the UST was announced at the August 2012 NMLS Ombudsman meeting in Boston, Massachusetts. Twice each year since that announcement, at the NMLS User Conference in February and the American Association of Residential Mortgage Regulators (AARMR) Conference in August, MBA has reiterated its UST support in-person to all state regulators, including the DRE.

The UST Addresses Our Industry Concerns without Diminishing Consumer Protections

With the UST's initial implementation in April 2013, state regulators began offering our industry a positive opportunity to help address many of the issues created by Congress in the federal Secure and Fair Enforcement (SAFE) for Mortgage Licensing Act of 2008. That law established two asymmetrical regulatory regimes for MLO qualifications that places a heavier and more expensive burden on state-regulated companies and the MLOs they employ. Streamlining testing requirements brings greater symmetry to the state-licensing system, in turn allowing more parity with the federally-regulated side of the industry. Importantly though, embrace of the UST does not compromise the important consumer protection and business knowledge goals of licensing. In many states UST adoption has led to an increased focus on state law during preliminary and continuing education. MBA views this development positively as it ensures that aspiring MLOs and those MLOs renewing their licenses are learning or relearning their obligations to their customers under the laws and rules of the states in which they operate.

These are among the reasons the UST has the full support of MBA and its member companies and why it was officially endorsed by a resolution of the MBA Residential Board of Governors in October 2012. The Residential Board of Governors consists of bank and non-bank lenders, including some of the nation's largest lending institutions.

The UST is a Good Screening Tool for Those Unready or Unprepared to Work with Consumers

It has been suggested that the UST is not a thorough test, nor is it effective at screening out unprepared or unqualified future MLOs. MBA disagrees, and the wide reliance across the country on this test also suggests that most state regulators concur with MBA.

The UST's degree of difficulty is best judged by a review of the facts presented by state regulators themselves. In the most recent data available, the UST's pass rate for first-time test takers is only 63.2 percent and drops to only 45 percent for subsequent attempts.² If an aspiring MLO fails the test, they must wait 30 days before retaking the test. If they fail again, they must wait an additional 30 days before retaking. If they fail again, they must then wait 180 days—or a

² A chart of "NMLS SAFE Mortgage Loan Originator Test Pass Rates" available on the NMLS website at the link below provides data on the number of times taken and the pass rates for the National Test Component with Uniform State Content—for tests administered between July 1, 2014 and June 30, 2016. This information is updated quarterly.

<http://mortgage.nationwidelicencingsystem.org/profreq/testing/Documents/SAFE%20MLO%20Test%20Pass%20Rate%20Announcement.pdf>

full eight months since the first failed attempt—before a new attempt. Thus, the UST serves as a real barrier to entry for aspiring MLOs unready for state licensure.

In considering whether the UST is a thorough test, it is also important to remember that the test's 125 questions cover ethics, federal and state law and regulation pertaining to mortgage origination, fraud prevention, consumer protection, the nontraditional mortgage marketplace, and fair lending. The UST has content taken from the model state law of the SAFE Act, which was developed by state regulators and is based on SAFE's Common State Test Outline. Lastly, the UST was affirmed by the CFPB in its May 2013 Guidance Bulletin (#2013-05) for an approved state test under the SAFE Act.³

MBA believes that the challenge for the DRE and other state regulators is not whether the UST is effective as a screening mechanism, which it already has proven to be, but rather what to do about MLOs who fail the UST who can then immediately go work for a federally-regulated institution and almost as quickly begin negotiating mortgage loan terms with Utah consumers outside of the DRE's supervision.⁴ For these and other reasons, MBA has urged Congress to consider national testing of all MLOs. Until then, however, public policy should seek to make it easier, not more difficult, for federally-registered MLOs to move toward a state regulated system. The UST is a good example of such thoughtful policy.

Education, Not Pre-License Testing, Best Ensures Any New State Consumer Protection Laws Are Understood and Practiced by State-Licensed MLOs

Another important challenge for state legislators and regulators is how best to ensure that any new state consumer protection law or rule is thoroughly understood and obeyed by all licensed MLOs in a state. A one-time pre-licensing test, perhaps taken years ago, is far from the most effective means of ensuring such compliance. Rather, MBA believes only continuing education can achieve the desired result among the thousands of currently licensed MLOs in Utah. While testing has its virtues in the licensing process, they do not include an assurance that currently licensed MLOs are aware of and up-to-date on recent policy changes. Continuing education can, and is achieving this goal for the majority of MLOs operating in Utah or in other states.

And most aspiring MLOs taking their pre-licensing education requirements will do their required course work on-line in a controlled environment. The same holds true for almost all MLOs seeking a license renewal and this applies regardless of whether the courses relate to federal or state law. Importantly, all students are routinely tested during the delivery of the course material to ensure more than just their participation. They are tested to ensure their mastery of the material, and cannot proceed in their coursework without passing each of these several tests. They generally are also assessed at the end of the course for the same reasons. Given that Utah has some of the most extensive state-specific pre-licensing and annual continuing education requirements, the State is already ensuring that its MLOs are the most questioned and reviewed in this manner.

³ http://files.consumerfinance.gov/f/201305_cfpb_bulletin_safeactuniformtestguidance.pdf.

⁴ According to the NMLS Mortgage Industry Report, 2016 Q1 Update, Released June 10, 2016 there were 4,039 registered MLOs in Utah and 4,581 MLOs licensed in Utah by the DRE. See pages 11 and 3 respectively at: <http://mortgage.nationwidelicencingsystem.org/about/Reports/2016Q1-Mortgage-Report.pdf>.

The UST is a Success and Leads to More MLOs in Adopting States Complying with Licensing Requirements

As noted above, the UST has not generated any negative feedback from any state regulator since adoption. Additionally, the most recent data available from state regulators suggests encouraging results in states that now rely only on the UST.⁵ “The adoption of the UST has had a very positive impact on the increase of MLO applications in adopting states and has contributed to more licensees holding multiple licenses.”⁶ This chart below from the 2015 Annual Report of the State Regulatory Registry, LLC, demonstrates these facts more clearly.⁷

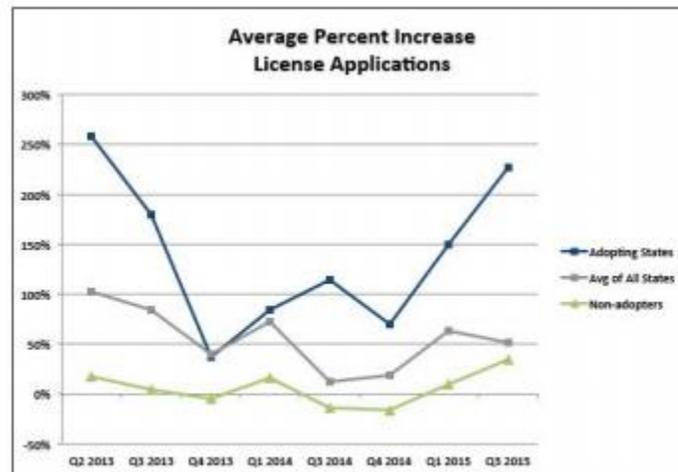


FIGURE 28. IMPACT ON LICENSE APPLICATIONS AFTER UST ADOPTION

It is important to add that in some states this increase has been a concern for state regulators who can in a short period of time face a large increase in MLO applications. This increase can place a strain on any agency processing those applications and MBA stands ready to work with the DRE and MBA member companies in Utah to help advocate for more DRE staff funding to help address any potential administrative issues that may result.

However, it is also important to note that adopting states have experienced increased revenues from those additional license applications. Moreover, MBA believes that more MLOs studying for, taking and passing the UST is good for consumers as this will significantly increase the probability that the MLO a consumer works with has passed a test, has gone on to obtain a state license and works under the supervision of Utah’s DRE.

⁵ The National Mortgage Loan Originator Test with Uniform State Content has been required of all state-licensed MLOs (including all MLOs licensed in Utah) since April 2013. Adoption of the UST would mean its use as the sole DRE testing component.

⁶ State Regulatory Registry, 2015 Annual Report, pages 19-20

http://mortgage.nationwidelicencingsystem.org/about/Documents/SRR_2015AR_Web.pdf.

⁷ Ibid, page 20.

Conclusion

Again, MBA urges MRC members, in their capacity as Utah's real estate finance industry representatives, to vote in favor of the widely supported industry position to eliminate use of the Utah DRE's state-specific test for MLO licensing and to instead solely rely on the test developed by state regulators—the NMLS' National Mortgage Loan Originator Test with Uniform State Content, more commonly known as the UST.

Thank you for taking the time to review these comments. If you have any questions prior to your next meeting, please contact me at pmills@mba.org or William Kooper at wkooper@mba.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is fluid and cursive, with a large initial "P" and "M".

Pete Mills
Senior Vice President
Residential Policy and Member Engagement

Attachments

CC: Francine A. Giani, Executive Director, Utah Department of Commerce, fgiani@utah.gov
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