



MORTGAGE BANKERS ASSOCIATION

December 18, 2019

Oscar B. Fears, III  
Deputy Commissioner  
Georgia Department of Banking and Finance  
2990 Brandywine Road, Suite 200  
Atlanta, GA 30341-5565  
[bfears@dbf.state.ga.us](mailto:bfears@dbf.state.ga.us)

Subject: Proposed Rulemaking Regarding Mortgage Loan Originator Temporary Authority

Dear Deputy Commissioner Fears,

On behalf of the Mortgage Bankers Association,<sup>1</sup> thank you for the opportunity to comment on the Department of Banking and Finance's (DBF) proposed rules regarding mortgage loan originator (MLO) temporary authority. MBA makes several recommendations in this letter and urges the DBF to make any changes to state rules expeditiously where possible, and re-propose other portions of this rule, e.g. the proposed consumer disclosure, as noted.

#### Opening Comments

MBA has long advocated for the establishment of rigorous standards and qualifications for all MLOs, regardless of whether they are employed by federally- or state-regulated lenders and has urged the United States Congress for many years to repair an incongruity it created between those two systems as it related to testing and qualifications of MLOs. Specifically, MBA worked with the Conference of State Bank Supervisors (CSBS) to successfully amend the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)<sup>2</sup> to address the asymmetrical requirements for qualified job seekers wishing to work for a state-licensed company versus their federal counterparts.

The passage by Congress of the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 (EGRRCPA) included important amendments to the SAFE Act, particularly by creating "temporary authority." MBA strongly supported this change as it helps achieve an important balance without jeopardizing important federal and state consumer protection laws.

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<sup>1</sup> 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 to 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 website: [www.mba.org](http://www.mba.org).

<sup>2</sup> 12 U.S.C. § 5101 et seq.



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Moreover, MBA believes that the new federal law requiring the states to recognize “temporary authority to originate” will lower barriers for bank MLOs who may choose for career reasons to seek employment with state-regulated firms. One by-product of this activity is that it fosters significant growth in the number of MLOs that will complete the SAFE Act licensing and testing process, even if they later return to work for a bank.

MBA appreciates the work over the last 18 months of the CSBS, individual state regulators, and the staffs of their respective agencies to prepare for implementation of temporary authority. MBA is also grateful to this community for working with industry in previous years to develop the language of the temporary authority legislation that was suggested to Congress. Significant effort was made by the states and the NMLS to ready the System for the implementation of temporary authority. In recent months, that action included many efforts to help the industry prepare through webinars, policy statements, frequently asked questions and demonstration videos. These tools have enabled MBA members to make operational and systems changes necessary ahead of the November 24, 2019 implementation date. This investment of regulators’ time and energy has resulted in an improved and streamlined licensing process, which hopefully reduces the workload and burden on regulators and industry alike.

#### Summary of Federal Government Actions on Temporary Authority

It is important to note at the outset that to help facilitate the implementation of the new temporary authority law by all stakeholders, the CFPB has issued two important and helpful statements. First, during September 2019, CFPB issued updates to its SAFE Act Frequently Asked Questions (FAQs)<sup>3</sup> to make clear that no changes to state laws are necessary to implement the new temporary authority in any state.

Additionally, on November 15, 2019 CFPB released an interpretive rule clarifying screening and training requirements for financial institutions which employ loan originators with temporary authority. Specifically, the interpretive rule clarifies that the employer is not required to conduct the screening and ensure the training of bank MLOs with temporary authority. The state will perform the screening and training as part of its review of the individual’s application for a state loan originator license, “because such duplication would not result in additional consumer protections that could justify these new burdens on loan originator organizations.”<sup>4</sup>

The Federal Housing Administration (FHA) was also helpful in providing clarity to the industry regarding temporary authority. To make certain there was no misunderstanding or ambiguity about whether loans originated by MLOs with temporary authority would be insured by FHA, the following language was added to a new Q&A: “...While operating under this temporary authority, the loan originator would not be in violation of the S.A.F.E. Act and therefore would not be operating in violation of FHA’s requirements.”<sup>5</sup>

<sup>3</sup> <https://www.consumerfinance.gov/policy-compliance/guidance/secure-fair-enforcement-for-mortgage-licensing-act/secure-and-fair-enforcement-mortgage-licensing-act-faqs/>.

<sup>4</sup> [https://files.consumerfinance.gov/f/documents/201911\\_cfpb\\_final-rule\\_loan-originator.pdf](https://files.consumerfinance.gov/f/documents/201911_cfpb_final-rule_loan-originator.pdf) Page 11.

<sup>5</sup> <https://www.hud.gov/fhafaq> search terms “temporary authority.”



### Comments on the Department's Proposed Rule

The proposed rule by DBF – published close to the federal law's implementation date with an unpublished timeline for a final rule or implementation – makes it difficult for individual loan originators, mortgage lenders, wholesale lenders or mortgage loan aggregators to comply with the proposed rule. It is imperative that the DBF provide industry with additional time after the finalization of the rule to make the necessary changes to internal systems and implement any appropriate updates to testing or training.

MBA also recommends DBF issue public written guidance to the real estate finance industry about the Department's views during this implementation period.

### Comments on the Proposed Consumer Disclosure

The DBF has proposed a disclosure that all MLOs in Georgia would need to use if they are originating a mortgage loan in the state under the federal temporary authority law. MBA is unclear what problem the proposed rule attempts to resolve with the disclosure and believes more information should be provided regarding DBF's intent before implementing this requirement. As currently written, the language would be confusing to consumers and leave them with the view that this notice is a "warning" that their MLO may not be permitted to act as a loan originator. This, of course, would not be accurate, as temporary authority is permitted (indeed, required) under federal law, and limited to MLOs that have:

- prior experience;
- been trained and registered by a bank, or tested and licensed in another state;
- not had an MLO license application denied;
- not had a license revoked or suspended;
- not been subject to, or served with, a cease and desist order; and
- not been convicted of a misdemeanor or felony that would preclude licensure under state law in the application state.

MBA believes the proposed disclosure is confusing and misleading and should be eliminated.

Should DBF feel there is a compelling need for a disclosure regarding temporary authority, it should be factual, not pejorative. First, MBA suggests adding mention of NMLS Consumer Access<sup>6</sup> and an MLO's unique NMLS identifier in the proposed language of the disclosure. Because this website is free, up-to-date, transparent and managed by state regulators, the industry supports Consumer Access as a consumer information and disclosure tool. It also displays each MLO's status in any state and all registration history/information for bank MLOs. This allows a consumer to be informed about an MLO's credentials or alternatively any potential flags in their background. Consumer Access is also critical because it is a vehicle that consumers may use to report any bad actors to the appropriate state regulator (or to multiple regulators) from a single web portal. Lastly, many lenders already use Consumer Access in their

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<sup>6</sup> [www.NMLSConsumerAccess.org](http://www.NMLSConsumerAccess.org)



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advertising along with their NMLS unique identifier (including nationally televised commercials), thus consumers are increasingly aware of the site and its powerful ability to illuminate and educate.

Other states have recognized the efficacy of Consumer Access and NLMS identifiers as consumer education resources. For instance, last year, Illinois unanimously passed legislation<sup>7</sup> that eliminated the need for mortgage companies licensed by the state to use the phrase “Illinois Residential Mortgage Licensee” in all advertisements and instead reference NMLS Consumer Access along with the company’s NMLS unique identifier. This is development MBA strongly supports to create more consistency and clarity for consumers and lenders alike.

The changes made to Consumer Access in recent months by state regulators also argues in favor of relying on it to communicate license status. For example, in the image below taken from an MLO’s profile on Consumer Access, it is clear when temporary authority was granted and whether the MLO is “authorized to conduct business” in the state.

Georgia Mortgage Loan Originator License Yes [Submit to Regulator](#) [-] Hide Details

Lic/Reg #: [REDACTED] Original Issue Date [?]:

Status [?]: Temporary Authority Status Date: 11/26/2019 Renewed Through [?]: None

Currently Authorized to Represent [?]  
None

[-] Hide Previously Authorized to Represent [?]  
None

[-] Hide License Status History [?]

Start	End	Authorized to	
		Conduct Business [?]	Temporary Authority Begin Date
11/26/2019	Present	Yes	11/26/2019

Moreover, to assist Georgia consumers in understanding the qualifications of an MLO with temporary authority to operate as a loan originator, MBA offers the following edits to the language provided by DBF for its temporary authority disclosure:

The Georgia Department of Banking and Finance (Department) requires us to inform you that our company is licensed by the Department, and the mortgage loan originator (NMLS # \_\_\_\_\_), responsible for your mortgage, has met preliminary state and federal requirements to originate your loan. Your mortgage loan originator is in the process of

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http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=SB&DocNum=2615&GAID=14&SessionID=91&LegID=109684



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completing the application for a mortgage loan originator license with the Department. Federal law (12 U.S.C. § 5117) authorizes certain mortgage loan originators with prior loan origination experience who meet strict federal background check to operate on a temporary basis in any state for which they have submitted a complete application while the mortgage loan originator completes additional state-specific requirements. For complete registration and license history information of your mortgage loan originator as well as this company, the Department encourages you to visit [www.NMLSCConsumerAccess.org](http://www.NMLSCConsumerAccess.org), a free tool maintained by state banking regulators.

Given that DBF is the only state regulator which has thus far proposed a disclosure of this kind, MBA recommends that the Department review stakeholder comments and re-propose a revised disclosure that relies on NMLS Consumer Access and receives input from industry, consumers, federal government agencies and policy makers as well as other stakeholders. Any new disclosure requirement should provide sufficient time for lenders and industry vendors to incorporate the disclosure into their system requirements, and MBA suggests a 120-day implementation period following publication of a final rule.

#### Other Comments on the Proposed Rule

The proposed rule would add a new Section 80-11-5-.09 to the regulations to codify three new paragraphs. In brief these would:

- hold licensed companies jointly responsible with MLOs operating under temporary authority in the state for providing the consumer disclosure;
- require the MLO operating under temporary authority to indicate “TAO,” “temporary authority to operate” or something substantially similar on any document signed by the MLO in connection with any residential mortgage loan application; and,
- require for any MLO who qualifies for temporary authority in the state to submit proof to DBF of their enrollment in a class to satisfy GA prelicensing education requirements as well as registering to take the NMLS MLO test within 30 days of DBF’s receipt of their license application.

The language of the first and second requirements uses the phrase “mortgage loan originator purporting to operate under the temporary authority requirements set for tin 12 U.S.C. Section 5517...” MBA finds the use of the term “purporting” in these instances to be inaccurate and troublesome as MLOs will either have temporary authority or they will not and the DBF will determine this status. To use “purporting” in state regulations could suggest, under one meaning of the term, that these MLOs are claiming they are falsely representing their status. MBA suggests that the phrase should be amended in both paragraphs of the final rule to read “mortgage loan originator operating under temporary authority requirements set forth in U.S.C. Section 5517...”

MBA presumes that the second requirement, which would direct the addition of “TAO” or “temporary authority to operate” on all documents the MLO is signing, is intended to reinforce DBF’s consumer protections objectives. This goal is better achieved, however, through a revised version of the consumer disclosure which includes NMLS ID numbers, directs the



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consumer to the NMLS Consumer Access website and which is provided at the start of the relationship between the MLO and the consumer. Thus, this requirement should only apply to documents on which the MLO's NMLS number is not present. If the intent for this requirement is instead to serve an oversight or examination need, there are better alternatives. Since companies will include in loan files the copies of the MLO's dated Consumer Access printout pages showing the MLO is authorized to conduct business or NMLS company reports showing the same details, this information is more easily provided to examiners through these existing industry practices.

With respect to the third requirement and providing DBF proof of an MLO's enrollment in prelicensing education and NMLS test registration, MBA asks for more explicit direction as to how such proof should be submitted to DBF and what exactly constitutes such proof of registration. For example, is information in the NMLS which DBF can access sufficient, or do emailed or mailed screen shots or email confirmations satisfy the rule? Also, is the 30-day period calendar days or business days? No information is provided in the rule, and it should spell out what is acceptable. Importantly, the Department should also be clear in the final rule that MLOs licensed in other states already satisfy the pre-licensing education and testing requirement and thus should not need to provide such information to DBF.<sup>8</sup>

Again, thank you for this opportunity to comment on the DBF's proposed rules. If you have any questions or would like more information, please feel free to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Pete Mills", written in a cursive style.

Pete Mills  
Senior Vice President  
Public Policy and Member Engagement  
Mortgage Bankers Association

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<sup>8</sup> All state licensed MLOs throughout the country are required to take and pass the NMLS National Test with Uniform State Content. Additionally, Georgia regulation Section 7-1-1004 (e)(4) notes that "The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in paragraph (1) of this subsection for any state shall be accepted as credit towards completion of prelicensing education requirements in Georgia."