Implementation of MLO Transitional Authority

The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (S. 2155) amended the federal Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act of 2008 to provide for a 120-day temporary transitional authority period for a bank mortgage loan originator (MLO) moving to a non-bank lender, or for MLOs already working for a non-bank lender seeking licensure in another state. The law mandates that states implement transitional authority by November 24, 2019. However, many states have already taken action and could be ready much sooner. The Consumer Financial Protection Bureau (CFPB) should issue expedited written guidance to make clear that while all states must implement transitional authority in 18 months, states may implement the law sooner if they choose to do so.

OVERVIEW

- Since 2008, the SAFE Act required MLOs employed by non-bank lenders to be licensed, which includes pre-licensing and annual continuing education requirements, passage of a comprehensive test, and criminal and financial background reviews conducted by state regulators. These MLOs are also registered in the Nationwide Mortgage Licensing System and Registry (NMLS). By contrast, MLOs employed by federally insured depositories or their affiliates only have to be registered in the NMLS - they do not have to pass a test or meet standardized pre- and post-licensing education requirements.
- In Bulletin 2012-05, the CFPB responded to inquiries from state regulators regarding whether states may permit MLO transitions. MBA also submitted a legal opinion to the CFPB arguing that the SAFE Act did not prohibit states from issuing transitional licenses. While the Bulletin made clear that the SAFE Act did allow states to provide a transitional license to an MLO with a valid license in another state, the Bureau asserted that the Act did not allow states to provide a transitional license for a registered MLO who leaves a federally regulated company to act as a loan originator while they are obtaining a state license.
- To mitigate these challenges faced by MLOs and their employers, several states have taken action - either independently or through collaborative efforts facilitated by the National Mortgage Licensing System (NMLS) and the Conference of State Bank Supervisors (CSBS):
  - All 58 state regulators (includes, DC, Puerto Rico, Guam and the Virgin Islands) have adopted the NMLS’s MLO National Test Component with Uniform State Content (also known as the Uniform State Test, or UST).
  - Ohio, Virginia and North Carolina enacted laws to allow state-to-state MLO transitions. These state laws also included provisions to permit transitions from federally regulated to state regulated companies, provided the federal SAFE Act was amended to authorize such actions.

For more information, visit mba.org or call (202) 557-2700.
New Hampshire and South Carolina have also enacted laws permitting state-to-state transitions and New Mexico and Colorado enacted similar provisions through rule making.

In light of the fact Congress has now enacted legislation to require transitional authority for both state-to-state and bank-to-nonbank activity, MBA urges the CFPB to rescind Bulletin 2012-05 and allow states the option to operationalize the new transitional authority law earlier than 18 months if they are prepared to do so.

**IMPACT**

- State licensing of MLOs can be a slow and burdensome process, which creates a disincentive for MLOs already employed at bank and bank affiliated lenders from moving to non-bank lenders. Under the current process, an MLO making the move from bank to non-bank is required to sacrifice their income for several weeks or months. Alternatively, the lender is required to pay the MLO even though the MLO cannot originate loans or meet with prospective borrowers or referral sources. Neither option is tenable or appropriate for a competitive or mobile labor market.
- Congress and the President have now resolved this issue and created a fair and competitive labor market by eliminating barriers to:
  - The ability of non-bank lenders—especially small lenders—to compete for talented MLOs; and
  - The ability for MLOs to work for any employer—bank or non-bank—that offers them the best chance to earn income and succeed in their career.
- By breaking down artificial employment barriers, the new law will also result in more MLOs completing pre-licensing education and taking a standardized test—leading to a better-qualified MLO workforce, a larger number of test-takers and therefore greater compliance with lending laws.

**MBA’S POSITION / NEXT STEPS**

- The CFPB should consult with the CSBS and others to discuss transitional authority implementation and the NMLS system.
- CFPB should rescind Bulletin 2012-05 and issue expedited written guidance that:
  - Notes that federal law has been amended and now explicitly permits all federal MLO transitions for a period of 120 days;
  - Clarifies that all states must implement the law in 18 months; and,
  - Offers a clear path for states to adopt transitional authority sooner than 18 months if they are able to do so.
- State policy makers should review their laws to identify any changes needed to their statutes or regulations that could impede the implementation of the new law, and if necessary seek amendments as expeditiously as possible.
- MBA will continue to work with the NMLS to ensure expedited implementation to the greatest extent possible. MBA will also work with its state association partners to urge their regulators to prepare for timely implementation, and early adoption wherever possible.
- MBA members should review the NMLS FAQs on implementation of Temporary Authority and preparing for implementation by building new systems procedures to monitor expanded licensing activity by their MLOs.