Issue Briefing

April 2015

Responses to Transitional Licensing for Mortgage Loan Originators

Issue: State-licensed, nondepository mortgage companies have indicated they are at a disadvantage in hiring mortgage loan originators (MLOs) who are actively registered with a federally chartered or insured depository institution due to the SAFE Act state licensing requirements. The companies assert that federally chartered or insured depository institutions do not have the same hurdles in hiring because federal registrants are not required to meet the same standards that apply to a state-licensed MLO. Industry has proposed a "Transitional License" authority that would allow an individual that is already state-licensed to apply for a transitional license in a different state in order to conduct business while completing all of the state's license prerequisites.

Background: Under the SAFE Act, passed in July 2008, requirements for mortgage loan originators differ depending on whether or not the MLO originates for a federally chartered or insured institution or an owned and controlled subsidiary. Loan originators employed by federally chartered or insured institutions, their regulated subsidiaries and affiliates, and institutions regulated by the Farm Credit Administration, must be registered with NMLS after having a criminal background check reviewed by their employer against standards established by their federal regulator. All other mortgage loan originators must be state licensed. In order to become a state licensed MLO, an individual must meet federally mandated minimum standards including pre-licensing education, testing, criminal background standards and financial responsibility.

Proponents of transitional state MLO licensing assert that state-licensed companies are disadvantaged in attracting and putting to work experienced and currently active originators from federally regulated institutions or other states. State-licensed originators may leave their place of employment and begin work within a few days at a banking institution, but a registered MLO is precluded from making a similar change to a state-licensed company until the MLO completes all of the license prerequisites. In order to address this issue, some companies hiring such individuals have had to have them on the payroll for extended periods of time without originating mortgages while they complete licensing requirements.

This issue was raised with the NMLS Ombudsman and the NMLS Policy Committee during several meetings held in 2011 and 2012, and both have undertaken extensive dialogue with the various members of the industry. In these discussions, state agencies expressed understanding of the business issues faced by state-licensed companies, and indicated an interest in working with industry to find ways to streamline the licensing process and help alleviate any obstacles that may hamper mortgage companies from hiring qualified loan officers while still remaining in compliance with state law and the SAFE Act.

In April of 2012, the CFPB issued a bulletin stating that a state may permit a transitional license for an individual that holds a license in good standing from another jurisdiction, but specifically noted that states may not issue a transitional license to an individual who is federally registered as that person does not meet the minimum standards for licensure under the SAFE Act. Since the issuance of that bulletin, three states (Ohio, North Carolina and Virginia) have passed legislation that permits transitional licenses for individuals holding a state license. Those laws also provide that if federal law

or rules change, a transitional license will also be made available to federally registered MLOs. At this time, there is no evidence of any changes to the federal law on this issue being made in the foreseeable future.

State agencies have identified two problems with a Transitional License, as proposed.

Legislative Authority:
States have particularly noted the uncertainty as to whether they have the legal authority to permit an individual who has not met the minimum licensing standards set forth in the SAFE Act to act as an originator, even for a defined period of time. Individuals working for a depository as a loan originator have not met the education and testing requirements and may not meet the standards for financial responsibility and criminal background that the SAFE Act or a particular state may require. The final SAFE Act rule did not address the issue of transitional licensing.[1] The final rule commentary did contain a discussion of reciprocal (state to state) licensing and concluded that in order to grant a license to an individual, the state must find that the individual has satisfied the minimum eligibility requirements, but that "states may take into consideration or rely upon the findings made by another state in determining whether an individual is eligible under its own laws."

Thus, one prerequisite cited consistently by state regulators has been that the Consumer Financial Protection Bureau (CFPB), as the regulator of the state agencies compliance with the SAFE Act, would have to approve such a transitional license authority in writing. In April 2012, the CFPB issued a bulletin in response to inquiries regarding whether it is consistent with the SAFE Act for states to permit transitional licensing of mortgage loan originators (CFPB Bulletin 2012-05). In the bulletin, the CFPB stated that Regulation H prohibits states from allowing unlicensed individuals to engage in the business of a loan originator which precludes states from providing for a transitional license for a registered MLO. However, the CFPB also opined that Regulation H does permit state reciprocity with respect to transitional loan originator licensing begin granted to an individual who is already state-licensed.

As noted above, since the issuance of this bulletin, three states have passed legislation that allows transitional licensing for individuals that are already licensed in another jurisdiction. All three laws also state that if the federal law or rules change on this issue, a transitional license would be available for federally registered MLOs. As the CFPB has stated that it does not have the authority to permit such transitional licensing, only a change in the federal SAFE Act would trigger such a provision.

Administrative Issues:
Establishing a process to issue a reciprocal license may be problematic to state agencies from a staffing and resource standpoint as it will require another level of application processing and approvals that must be tracked and analyzed during the transitional period and then followed by a final license approval (or denial). In most cases, this would add duplicative costs to both the agency and the licensee.

Recognizing that Transitional Licensing may not be an acceptable solution but also wanting to assist the industry in streamlining the licensing process, the NMLS Ombudsman and the NMLS Policy Committee have undertaken three initiatives:

1. Approved Inactive License Status for MLOs: In order to assist individuals seeking state licensure, industry has asked that state agencies approve MLO license applications by individuals not currently employed by a state licensed company in an Approved-Inactive status, indicating to potential employers that the individual meets all licensing requirements (except

[1] The SAFE Mortgage Licensing Act rule (Regulations G & H, 12 CFR Part 1007 and 1008) can be found at: http://www.consumerfinance.gov/regulations/.

employment) and is an eligible candidate for hiring. The license status may be placed in an Approved-Inactive status until sponsorship by a mortgage company is approved by the state agency. Although some states did previously permit this action, it was not clear on the state license check lists.

State agencies that will place qualified individuals who are not currently employed by a mortgage company into an Approved-Inactive license status include: AZ, CA-DOC, CA-DRE, HI, ID, IL, IN-DFI, IA, LA, MD, ME, MA, MT, NC, ND, NY, OH, OR, SC-BFI, SC-DCA, SD, TN, TX-OCCC, TX-SML, UT-DRE, VT, WA, AND WY.

2. Limiting Access to State Information. NMLS was constructed to give employers, both state licensed companies and federally regulated depository institutions, access to an MLO's complete record. One issue that was raised by state-licensed companies as a deterrent to encouraging federally registered MLOs to seek licensure prior to obtaining employment by a state-licensed entity is the ability for an institution to view the MLO's education and testing activities in NMLS. A federally registered institution with Access to the MLO's record was able to see when they schedule to take the National or State components of the SAFE MLO Test or have pre-licensure credit hours banked in the system (though there is no active notification to the employer when this activity occurs). Although preventing a federal institution from viewing the MLO's education and testing activity in NMLS will result in an inability for institutions to confirm such activity through the system, the SRR NMLS Policy Committee decided to remove federal registered institutions' ability to access information regarding any testing and education taken by an employed MLO in NMLS, but retain ability to view other information such as disclosure questions. This change became effective July 23, 2012.

3. Uniform State Test. On April 1, 2013, NMLS launched the National SAFE MLO Test Component with uniform state content. This new test replaces the existing individual state test components. In states where the new test has been adopted, MLOs will no longer be required to take a second state-specific test component in order to be eligible for a state license, thus significantly reducing the time that an individual needs to become eligible for a state license. Forty-six state agencies have adopted the new test. In addition, two more have recently passed legislation to authorize adoption of the test and one state has a bill that is currently moving through the legislature.