

# MBA SAFE ACT AMENDMENTS:

## TESTING FOR ALL LOAN ORIGINATORS AND TRANSITIONAL LICENSING

### 1. What is the SAFE Act?

The Secure and Fair Enforcement of Licensing Act, or SAFE Act, is the law that regulates individual loan officers or loan originators (LOs) in the residential mortgage industry. The SAFE Act established a registry for all LOs and a licensing system for LOs employed by nonbank lenders. Both the licensing system and the registry are managed by the National Mortgage Licensing System and Registry (NMLS), a self-regulatory organization under the auspices of the Conference of State Bank Supervisors.

### 2. What is the difference between Licensing and Registration?

LOs employed by nonbank lenders are required to be licensed, which includes testing, rigorous pre-licensing and annual continuing education requirements, and extensive criminal and financial background reviews conducted by state regulators. These LOs are also registered in the NMLS.

LOs employed by banks or bank affiliates must only be registered in the NMLS and undergo criminal and financial background reviews, conducted by their employer, similar to LOs of nonbank lenders. The SAFE Act does not require bank and bank-affiliated LOs to complete pre-licensing or continuing education, or to take and pass a test.

### 3. What is MBA's proposal?

MBA believes Congress should amend the SAFE Act to provide testing standards for all LOs. MBA is not advocating that all LOs should be licensed, only that they should all take and pass the same test, the National Test with Uniform State Content, also known as the Uniform State Test (UST). Also, the bill would require that states grant within seven days a license to a bank or bank-affiliated LO who has passed the test and meets the state's criminal and financial background requirements but wants to change employment to a nonbank lender.

### 4. Why are amendments needed?

Currently, only LOs at non-bank lenders are required to pass a test under the SAFE Act, while LOs at banks do not need to take a test to make mortgages. MBA believes that all consumers should know that every LO, regardless of what type of lender they work for, meets a demonstrated minimum threshold of knowledge of mortgage lending by passing a test.

The current bifurcated system of registered and licensed LOs also makes it difficult for lenders to compete on equal terms for qualified loan officers. LOs at banks and bank affiliates are unable to easily transition to work as an LO at a nonbank lender because of the differing treatment of LOs and the delays involved in obtaining a license from their state regulator.

As a result, nonbank lenders have difficulty in competing for talented loan officers that work for banks. In addition, loan officers that are unable to demonstrate the knowledge needed to pass the licensing exam often end up working for banks. According to data from the Conference of State Bank Supervisors (CSBS), more than 1,300 LOs that have failed the test one or more times are currently employed by bank or bank affiliated lenders.

Rather than being a uniform standard for all lenders and loan officers, the bifurcated system under the SAFE Act dilutes consumer confidence that every LO has met minimum standards knowledge and serves as a barrier to fair competition between bank and nonbank lenders for talented employees.

## **5. Would this bill increase regulatory cost for banks?**

The MBA proposal only requires bank LOs to be tested. Although banks and bank affiliates would have the added cost of registering their LOs for the test (which currently costs \$110), the cost of educating the loan originators is already part of normal bank operations. MBA recognizes that the testing standard may require some refinements to the content of their current training but these would be minor. The MBA SAFE amendments also clarify the definition of a loan officer under the SAFE Act to make it clear that the typical activities of bank tellers, administrative and clerical personnel, and mortgage servicing staff do not trigger LO testing requirements. For these reasons, MBA believes the overall cost, over time, will not be significant.

## **6. Will this bill alter or preempt existing regulatory authority of the federal banking agencies?**

No, the bill does not change the status quo regulatory authority of the federal banking agencies over their institutions, nor does it give states any new powers over federally-insured institutions. MBA's bill makes it clear that LOs at banks and bank affiliates are only subject to the LO rules established by their federal banking regulator, and prevents state regulators from exercising any oversight on banks and their affiliates under the SAFE Act.

## **7. What are the benefits of the amendments to the consumer?**

Consumers will be able to go to any LO at any lender and know that they have met minimum, verified standards of education and testing.

## **8. What are the benefits to banks and bank affiliates?**

The banks and bank affiliates would be given a legal safe harbor under the Consumer Financial Protection Bureau's loan originator compensation rule for fulfilling that rule's loan officer training requirements. These institutions would also have an industry-accepted method of verifying that their LOs know and understand critical mortgage information before working with consumers.

## **9. What are the benefits to LOs?**

In addition to enhancing the reputation among consumers of LOs at banks and bank affiliates by proving their competency through testing, LOs will have greater job mobility, particularly when moving from a bank or bank affiliate to a nonbank lender. Currently, a nonbank lender cannot hire an experienced LO from a bank or bank affiliate and have the LO start originating loans immediately without a lengthy and costly period while the LO fulfills the state licensing and testing requirements. This means the nonbank lender must pay the LO, typically for 60-90 days, but the LO cannot engage in loan origination activities (meeting with borrowers, soliciting business from referral sources, etc.) during this time. However, if all LOs are tested transition periods can be shortened to as little as 7 days (or states would be required to issue a temporary license).

## **10. What test would the LOs take?**

All LOs would take the UST. To administer the test which costs \$110, under the bill, federal regulators may use the same third-party testing service used by the majority of the states, Prometric, or they may establish a different platform.

## **11. What are the next steps?**

MBA is currently seeking sponsors to introduce the bill in Congress and other supporters to cosponsor and help see the bill enacted into law.