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TEMPORARY AUTHORITY TO OPERATE: PRACTICAL LICENSING ISSUES IN A COVID-19 WORLD

On November 24, 2019, Section 106 of the Economic Growth, Regulatory Relief and Consumer Protection Act went into effect, amending the federal Secure and Fair Enforcement for Mortgage Licensing Act (“SAFE” Act) to provide eligible federal registrants and state mortgage loan originators (“MLOs”) with temporary authority to operate (“TA”) in a state while their application for MLO licensure in that state is pending. TA went into effect by operation of law, whether or not states had made implementing changes to their corresponding statutes, and the Nationwide Multistate Licensing System & Registry (“NMLS”) was ready. Then a global pandemic came along. In this article, the author discusses issues arising for employers and MLOs in connection with TA-eligible MLO applications, as affected by the pandemic.

By Stacey Valerio *

Thanks to the NMLS and its on-line availability from anywhere, stay-at-home orders were much less disruptive to state mortgage licensing application processes (and other industries managed on the NMLS) than to some other financial services industries that have not yet transitioned onto the system and that require paper submissions to the agency. The mortgage loan origination application process, with TA available to eligible applicants, remained open and available. The pandemic, however, presented a few issues for employers and MLOs to think about in connection with TA-eligible MLO applications.

TO SPONSOR OR NOT TO SPONSOR

In fairness, the issue of whether to sponsor or not to sponsor an MLO as required for TA is actually not an

issue unique to the pandemic, but one that perseveres in the pandemic.

What’s the Issue?

The issue is that there is no button to toggle in order to request TA in connection with an application submitted through the NMLS. Generally speaking, an MLO determined to be eligible is “automatically” granted TA.¹ This concept is presumably rooted in congressional use of the word “deemed” in subsections

¹ This is so even where a criminal background check result is generated, and thus, the possibility of a preclusive criminal event under applicable state law. Even then, the state must affirmatively act to prevent attachment of TA. See NMLS Resource Center, Temporary Authority to Operate, Criminal History Record Information Review Period Scenarios.

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