# Implementation of Temporary Authority to Act as a Mortgage Loan Originator is Just Around the Corner

Temporary Authority (TA) to act as a Mortgage Loan Originator (MLO) goes into effect November 24, 2019. TA permits qualified MLOs to engage in loan origination activities while completing state-specific requirements for licensure, such as education and testing, when (i) changing employment from a depository institution to a state-licensed mortgage company, or (ii) seeking licensure in an additional state.

There is no separate application process for TA. A MLO must apply for the desired state license and submit the required background check request (including fingerprints) and authorization to pull credit. The application then must be sponsored by the MLO's state-licensed employer. Once sponsored, and if eligible, the MLO will receive TA.

In order to be eligible for TA a MLO must:

1) Be a W-2 employee of a state-licensed mortgage company;

2) Have been previously licensed or registered as a MLO continuously for a specific period of time preceding the date of MLO application (30-days for previously licensed MLOs and one-year for previously registered MLOs); and

    *Notably, however, NMLS permits a fourteen (14) calendar day "break in service" between the time a MLO's federal registration or state licensure ends and when the new employer submits a sponsorship request for the MLO applicant.*

3) Not have any of the following activity that precludes eligibility for TA:
    - A prior MLO license application denied in any jurisdiction;
    - A prior MLO license revocation or suspension in any jurisdiction;
    - Have been subject to, or served with, a cease and desist order; or
    - Have been convicted of a misdemeanor or felony that would preclude licensure under the law of the application state.

NMLS will be programmed to verify certain elements of eligibility, such as whether Criminal History Record Information (CHRI) exists and if an applicant has had an application denied, revoked, or suspended. However, regulators may also need to manually check other elements of eligibility, such as the MLO's CHRI (if one exists) and/or credit history. **If an applicant is aware of a criminal or credit history issue or any other eligibility concern the applicant should be proactive and upload an explanation and supporting documentation to his/her MU-4 at the time of application.**

Generally, states only have two (2) business days to review CHRI before TA takes effect. However, NY Department of Financial Services indicated it extended this time period to five (5) business days for the initial review of the CHRI before permitting TA to take effect. Further, states may obtain additional time by posting a license item on the application. This will extend the total review period to nine (9) business days. During this review period, an applicant must submit an adequate response to the regulator in relation to a license item. If the regulator does not receive an adequate response within this timeframe, it may issue an "intent to deny," which will end TA eligibility. If the applicant remains in TA eligible status at the end of the nine (9) business day review period, NMLS will automatically update the MLO's status to TA granted.

Mortgage companies must be diligent in vetting their employees that may become eligible for TA. **A state may bring an enforcement action against a mortgage company, in addition to the MLO, if the mortgage company knew *or should have known* about a disqualifying event and failed to disclose it.** Mortgage companies must have some degree of comfort in a MLO's qualifications prior to sponsoring license requests. Sponsorship is necessary for TA eligibility so it may be used as a backstop in the event a mortgage company is not comfortable with permitting TA.

Mortgage companies will now need to act as a regulator to some degree. A mortgage company should consider some or all of the following due diligence activities when evaluating a candidate for TA <u>prior to</u> sponsoring a license application:

- Background checks;
- Credit checks;
- Performing a licensing interview with the MLO to identify any potential issues; and/or
- Requiring the MLO to complete a questionnaire, certification and/or affidavit with regard to disqualifying information.

TA ends when the earliest of any one of the following occurs:

1) The MLO withdraws his/her application;

2) The state denies or issues a notice of intent to deny the application;

3) The state grants the license; or

4) 120 days after the application submission if the application is listed on NMLS as incomplete.
    - Some states have statutory requirements in relation to how long a MLO application may remain active. These statutory requirements are often well in advance of the 120 day federal deadline and may end TA earlier.

There are several issues a mortgage company should consider prior to implementing TA. Below is a non-exhaustive list:

- State requirements with regard to criminal and credit history may vary. You must consider whether a state will take issue with a particular CHRI or credit item prior to sponsoring a

MLO application.

- Are you familiar with the new license statuses in NMLS that address TA and are comfortable knowing when an individual is properly authorized to act as a MLO?

- Do the lenders you work with have any requirements with regard to TA and are they prepared to accept loans originated by an employee with TA?

- Are your systems (both internal and external) updated and able to address TA?
    - Do you utilize your loan origination system (LOS) to assist with reporting? Will the LOS properly pull TA MLOs into your reports as may be necessary?

- What type of documentation will you need to maintain to demonstrate TA in the future (i.e. lender requests, state examinations, etc.)? It will be a good practice to include screenshots or print outs demonstrating TA at origination and closing within loan files as you may not have access to this information if an individual with TA leaves your employment.

- What type of training will you require of a MLO acting under TA if they have not completed their education requirements specific to the state they are now operating in?

- Are you prepared to monitor individuals with TA?
    - Once a MLO applies for a license and receives TA you need to make sure you are monitoring their activity with regard to completing education and testing requirements as you do not want to be caught off guard if TA expires or if the application is denied due to failure to complete these items.
    - What if the MLO's license application is ultimately denied? Any loans in the pipeline from that MLO for the state would need to be moved to a licensed MLO.
        - What if you do not have another licensed MLO or individual acting with TA in that state?
    - What if a regulator issues an "intent to deny" or other notification affecting licensure to the MLO outside of NMLS? How will you ensure you receive prompt notification from the employee?

- What will you permit the individual acting under TA to do from a marketing perspective?
    - It is important to remember that TA is not a license. Individuals acting under TA should not be indicating that they are "licensed in X state" as this could be viewed as false, misleading or deceptive.
    - MLOs need to be trained on how to represent themselves and marketing material must accurately reflect the MLO as having TA to act as a MLO in X state, rather than indicating the MLO is licensed in that state.

NMLS developed a webpage dedicated to TA. It includes a demo of the system as well as frequently asked questions to assist with implementation. You may locate this resource at https://nationwidelicensingsystem.org/slr/common/Pages/Temporary-Authority-to-Operate.aspx.