Must Read SAFE Act Implementation Update

By: Rob Chrisman | Mon, Jul 4 2011, 1:43 PM

On this day in 1776, the Declaration of Independence was approved by the Continental Congress. Who has time to read a darned commentary on mortgages when there are parades, fireworks, and backyard barbecues across the country? According to the Census Bureau, who has the budget to tabulate us, there are 312 million living in the US today - compared to 2.5 million 235 years ago.

I am not going to go on a rant about our nation and offshore jobs, but there are some jobs that can be done overseas (airline operator, computer helpline, underwriting, doc review) and some that can't (doctor, plumber, local appraiser, notary). It is a two-way street, however, and the U.S. Department of Commerce's Economics and Statistics Administration (ESA) reported that *foreign direct investment (FDI) in the United States over the past decade has supported more than 5 million U.S. jobs that, on average, paid 30% more than other jobs*. Total FDI has exceeded $1.7 trillion over the past decade. The manufacturing sector relies heavily on FDI, where close to 2 million FDI-supported jobs reside. In 2010, $78 billion, or 41 percent of total FDI, was spent on the manufacturing sector.

On the flip side, the Census Bureau, using data from County Business Patterns, reported that in the U.S. in 2009, "*businesses with paid employees numbered 7.4 million, a decline of 168,000 establishments from 2008, marking the second consecutive year of decline*. (2008 dropped 104,000.) These are things to keep in mind ahead of Friday's unemployment data, a very closely watched measure of our economy's health. Jobs and housing, jobs and housing...

After 18 months of consideration, **HUD finalized its rule implementing the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008 (the "SAFE Act") last Thursday**. The SAFE Act required states to establish a licensing and registration regime for residential mortgage loan originators (other than those employed by certain financial institutions and their owned and controlled subsidiaries). If HUD determines a particular state's regime does not meet the SAFE Act's minimum requirements, the SAFE Act directs HUD to provide for the licensing and registration of loan originators in that state. HUD's rulemaking thus sets forth the minimum standards for state licensing and registration of loan originators (as well as requirements for operating the Nationwide Mortgage Licensing System and Registry ("NMLSR")). For the 38 pages of thrills and chills, feel free to look at the **Federal Register**, Vol. 76, No. 126 / Thursday, June 30, 2011 / Rules and Regulations.

This all takes effect August 29th. It also defers many issues to the CFPB, and may or may not clear up which originators have to be licensed. **States are certainly allowed to add their own requirements over and above the federal guidelines**. HUD's final SAFE Act rule explains that **certain individuals do not need to be licensed as loan originators**, but the states may or may not follow HUD's lead. HUD's final rule emphasizes that "an individual required to be licensed under the SAFE Act is an individual who is 'engaged in the business of a loan originator' - "an individual who acts as a residential mortgage loan originator with respect to financing that is provided in a commercial context and with some degree of habitualness and repetition." Feel free to give HUD a call and ask what defines "habitualness and repetition" - does once a day, once a week, once a year mean the person is in the business of originating a loan?

According to **K&L Gates LLP**, the final rule provides that the SAFE Act "does not require a state to license as loan originators employees of government agencies, housing finance agencies, or bona fide nonprofit organizations that meet certain criteria. This provision should be well received and accepted by qualifying nonprofits and by the states, particularly since it provides relief for state employees." But the final rule does not address employees working on HAMP loan modifications. The SAFE Act requires loan originator "employees" of financial institutions or of their owned and controlled subsidiaries to register, rather than obtain a license, and in turn most states have ruled that individuals who are so registered are exempt from state licensing.

The final rule states that the SAFE Act does not require licensing of individual loan processors or underwriters, so long as those individuals perform only clerical or support duties and are sufficiently supervised by a licensed or registered loan originator or an individual excluded from the licensing or registration obligation, per K&L Gates LLP. It apparently does not narrow things down on third party contract processor and underwriters, especially since it applies to individuals and not necessarily companies that have a contract to provide processing or underwriting services, and employ the individuals who perform those services. And let's not forget the question: how can loan originators supervise loan processors or underwriters, when investor and insurer requirements and prudent business practices require the separation of the sales function from the verification and underwriting functions? Call HUD... or your state. Mark Twain said, "Sometimes I wonder if the world is really being run by smart people putting us on or imbeciles who really mean it."

According to the **OCC's S.A.F.E. Act website**, the federal registration requirements apply to any individual who acts as a residential mortgage loan originator (MLO) and is employed by a financial institution, and certain subsidiaries, regulated by any of the following: the Federal Reserve, the OCC, the FDIC, the OTS (are there still thrifts to supervise?), NCUA, or the Farm Credit Administration. "There are several registration requirements, including fingerprinting and a background check, so allow enough time to complete all of the requirements. Find the registration requirements and more information on the Federal Registration page of the NMLS Resource Center website: NMLSFedReg.

Last week was not a good week for anyone waiting to lock - if loan agents have enough control over their pipelines to wait on locking. The "benchmark" 10-yr was at 2.86% on Monday and ended the week nearly 30 basis points higher. The flight to quality bid lost momentum through the course of the week as investors breathed a sigh of relief that Greek situation remains contained, at least for the time being. On top of that, the end of the Fed's QEII program played a minor role in the movement - but we've known for months and months that it was going to end on June 30th.

Speaking of which, markets like certainty, and generally react negatively to uncertainty. So when rumors start swirling Thursday about the **Treasury Secretary bailing**, that generally does not help the markets. Bloomberg reported that Treasury Secretary Timothy Geithner "signaled" to White House officials that he was considering leaving the administration after President Barack Obama reaches an agreement with Congress to raise the national debt limit. Not so fast! Then later Timothy Geithner dismissed reports that he would quit after the U.S. debt ceiling is raised. "I live for this work. It's the only thing I've ever done. I believe in it," he told former President Bill Clinton at a conference. "I'm going to be doing it for the foreseeable future." *Geithner's family, however, is moving back to New York from the Washington area*.

The Federal Reserve Bank of New York suspended sales of mortgage-backed securities acquired from American International Group during the financial crisis. "Given prevailing market conditions" for MBS, "we do not anticipate any sales of bonds in the near term or until such time as the New York Fed deems it will achieve value for the public," wrote Jack Gutt, a spokesman for the New York Fed.

Since last Friday's close, 10-yr Treasury prices plunged 90/32nds, the yield surged 33 basis points...and rate-sheet MBS prices were worse by about 1-1.50. But there is definite buying interest at these levels ("heck, if investors like MBS yields & risks a week ago, they really must love them now"). If you have to explain it to someone at a BBQ today, you can attribute the bond market's move to rally "exhaustion" (markets are like springs, and never move one way forever), Greece avoiding default (for now), the end of the Fed's QEII bond buying program, the end of the second quarter, and "not as bad as expected" June economic data.

This week's main event will be the June employment data - look for Friday's report to show an increase last month of about 90,000 but with the unemployment rate going from 8.9% to 9.1%. Ahead of that tomorrow we have Durable Goods & Non-Manufacturing ISM. The ADP Private Payrolls Report (always of dubious predictive ability) is released on Wednesday.

On Wednesday, the **Treasury Market Practices Group (TMPG)** announced revised fails charge recommendations for Agency MBS. The revised recommended practice consists of a fails charge equal to the great of 0% and (2% minus the federal funds target rate) and would be applicable to transactions entered into on or after February 1, 2012 and to transactions entered into prior to that date but remaining unsettled as of February 1, 2012. In a report from Deutsche Bank, MBS analysts said one impact from the penalty could be higher TBA dollar rolls as pay-up pools are likely to be delivered in the TBA market to avoid the penalty, and that specified pool pay-ups would likely come under pressure on the higher rolls. Indeed, pay-ups were slightly weaker on the news.

(Parental discretion advised.)
A man wakes up one morning in Alaska to find a bear on his roof. So he looks in the yellow pages and sure enough, there's an ad for 'Bear Removers.'
He calls the number, and the bear remover says he'll be over in 30 minutes.
The bear remover arrives, and gets out of his van. He's got a ladder, a baseball bat, a shotgun and a mean old pit bull.
"What are you going to do?" the homeowner asks.
"I'm going to put this ladder up against the roof, then I'm going to go up there and knock the bear off the roof with this baseball bat. When the bear falls off, the pit bull is trained to grab his testicles and not let go. The bear will then be subdued enough for me to put him in the cage in the back of the van."
He hands the shotgun to the homeowner.
"What's the shotgun for?" asks the homeowner.
"If the bear knocks me off the roof, shoot the dog."

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