MORTGAGE BANKERS ASSOCIATION

Government Shutdown Implications for Mortgage Industry

As Congress continues to negotiate legislation to fund the federal government in FY2014, the federal agencies are preparing for the possibility of a government shutdown when the current continuing resolution expires at midnight on Monday, September 30, 2013. The House last week passed a continuing resolution funding the government through December 15, 2013, and the Senate passed a different continuing resolution on September 27, 2013 which would fund the government through November 15, 2013. If the House and Senate are unable to resolve the differences between their approaches over the weekend, there will be a furlough of certain federal employees and a significant curtailment of certain agency operations beginning October 1, 2013.[i]

Employees exempted from furlough include those performing emergency services protecting human life and property, individuals executing minimal activities to suspend agency operations, and other work deemed “excepted,” by the Office of Management and Budget (OMB) and agency heads.[ii] Agencies and employees who operate and/or are compensated outside of appropriations will be retained.[iii] In previous guidance from OMB to the heads of agencies that were affected during the 1996 furloughs, “activities essential to the preservation of essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury,” were exempt from shutdowns.[iv] Because individual agencies make discretionary decisions about essential services, it is not entirely clear how a furlough beginning on Tuesday, October 1, 2013, would impact the mortgage industry. The outline below contains the latest information MBA has gathered from key agencies, but we note that this is a highly fluid situation subject to change.

I. HUD, FHA, and Ginnie Mae

The Department of Housing and Urban Development’s (HUD) operations, specifically the Federal Housing Administration (FHA), should not be significantly impacted as long as the shutdown is brief. In a document issued September 27, 2013 HUD indicated:

- FHA will be able to endorse single family loans during the shutdown, however, only a limited number of FHA staff will be available to underwrite and approve new loans so the process may take longer.
- Most loss mitigation for homeowners facing foreclosure (including FHA loan modifications, FHA-HAMP, etc.) will continue.
- Limited FHA staff will be available to respond to questions, emails or other correspondence.
- Lenders will be able to obtain an FHA case number from the FHA Connection.
- If FHA runs out of commitment authority during a shutdown, then lenders’ Lender Insurance (LI) approval will be temporarily suspended.
- CAIVRS will be available to determine if a borrower has a delinquent federal debt.
- FHA Total Scorecard will be available.
- If a lender submits loans for approval if the lender is in pre-closing, FHA staff will not be available to underwrite and approve loans.
- FHA will collect the Upfront Mortgage Insurance Premiums (UFMIPs) during a shutdown.
- Lenders are required to submit monthly MIPs to FHA during a government shutdown.
- Lenders can file a claim and convey a property. The properties will be assigned to an Asset Manager and listed for sale. Claims will be paid.

- FHA will not recertify any lenders during the government shutdown.
- FHA will not approve any lender applications during the government shutdown.
- FHA will not perform any post technical endorsement or Quality Assurance Reviews during a government shutdown.
- The Office of Housing will continue to work on planned sales of defaulted notes, as required for the orderly termination of HUD's fiduciary insurance and servicing obligations.[v]

In the case of a government shutdown, Ginnie Mae will retain essential functions. Essential functions include making all payments due to investors in Ginnie Mae MBS, all pool formation operations, and the granting of commitment authority. Essential personnel and contractors will be available to issuers and investors to tend to these functions.[vi]

Multifamily/Healthcare

HUD has a contingency plan it will deploy in case there is a government shutdown on October 1, 2013, the first day of the new government fiscal year. First, HUD staff will work a partial day on October 1 in order to put the contingency plan into action. Second, there will be "critical staff" at work during the shutdown, if it occurs, in order to meet the obligations of the federal government. This will include support for closings of FHA multifamily and healthcare loans that meet the respective programs' criteria. Lenders with pending FHA Multifamily loan closings in October should be in touch with the appropriate HUD field office. Lenders with pending Healthcare closings should have been contacted by the Office of Healthcare Programs. HUD's Contingency Plan says that for the first 10 days after a government shutdown, lenders servicing construction draws may, at their and owners' and general contractors' risk, process interim construction draws. Construction inspections by HUD or its contractor will occur when HUD reopens. Neither initial and final draws nor change orders will be processed or approved.

II. VA

The Department of Veterans Affairs (VA) will continue to operate if there is a government shutdown, which means lenders will be able to continue originating VA-guaranteed loans. Both lenders and borrowers will be able to obtain their Certificate of Eligibility online (webLGY for lenders, and eBenefits for Veterans), and they will still be able to submit applications and follow up on COEs that require more research with the Atlanta Eligibility Center. Lenders can and should continue to remit funding fees through the Funding Fee Payment System (FFPS).

In addition, servicers will still be able to perform Loss Mitigation on VA-guaranteed loans and VALERI will still be active. Servicers should continue to report all required actions in that system. Lastly, servicers will still be able to submit claims for guarantee, be paid, and convey properties to VA.[vii]

III. Rural Housing

USDA has not issued guidelines yet, but indications are that they may be similar to those in the 2011 contingency plans issued by OMB. Under this plan Rural Development would cease all but essential functions and no new loans or guarantees will be made.

IV. Internal Revenue Service (IRS)

The Internal Revenue Service (IRS) has indicated that they will not process any forms, including issue tax return transcripts (Form 4506 T), should a government shutdown occur. Without tax transcripts, loan processing may be delayed, depending on individual housing agency requirements and aggregator guidelines.

V. Social Security Administration (SSA)

For verification of borrowers' social security numbers, lenders rely on either third party vendors or the Social Security Administration (SSA). In previous shutdowns, SSA has only retained employees that deal directly with the processing of new claims and benefits; therefore lenders may not be able to continue to verify social security numbers through SSA.[viii]

VI. Government Sponsored Entities (GSEs) and Federal Home Loan Banks (FHL Banks)

The housing Government Sponsored Entities (GSEs), Fannie Mae and Freddie Mac, would not be directly affected, except to the extent that they rely on verification and other functions of HUD, IRS, and SSA. The FHL Banks will not be directly affected either. Both GSEs have indicated that they will be distributing communications to lenders in the event a shutdown occurs.

The primary impact of a shutdown will be lenders inability to obtain a transcript of the applicant's tax return from the IRS, since the IRS will not be processing Form 4506 T requests. The GSE's pointed out that this document is a delivery requirement only in cases where the borrower has multiple properties being financed. Many lenders obtain tax transcripts to document their diligence in preventing and detecting borrower income fraud prior to origination and delivery of a loan. Lenders may use alternative documentation measures, but remain ultimately responsible for borrower misrepresentation.

Fannie Mae has informed us that they will continue to require verification of employment for government employees as a condition of delivery. Freddie Mac has told us that they will not require lenders to obtain a VOE after the fact if it was not available at closing as a result of the shut down. However, representations and warranties will still apply.

VII. Federal Reserve

The Federal Reserve – including the reserve banks – is not funded through the annual appropriations process; thus a government shutdown would have no impact on Federal Reserve operations, including payment system and open market functions.

VIII. Consumer Financial Protection Bureau (CFPB)

The CFPB is not funded through the annual appropriations process; thus a government shutdown should have no impact on CFPB operations

IX. Bank Regulators

The banking agencies – the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) are funded outside the appropriations process, so these agencies will continue to function.

X. Financial Industry Regulatory Authority (FINRA)

This self-regulatory organization is not impacted by the shutdown because FINRA is not funded by the government.

XI. FEMA Flood Insurance

FEMA is likely to provide information through a bulletin in the case of a government shutdown. While many functions will be unaffected, because of their use of contractors and public/private partnerships, and it is likely that mapping issues or amendments will be impacted.[ix]

XII. Securities and Exchange Commission (SEC)

The SEC's website currently indicates that it will remain open and operational in the event that the government undergoes a lapse in appropriations. It goes on to say that any changes to that status will be announced on it's website on October 1.

However, guidance issued by the SEC in 2011 stated that in the event of a government shutdown, that they would have an extremely limited number of staff members available to respond to emergency situations involving the safety of human life or the protection of property, including law enforcement. This guidance indicated that certain SEC systems will operate under modified conditions and although the SEC's EDGAR system will remain fully functional, the Divisions of Corporation Finance, Investment Management, and Trading and Markets, and the Office of Compliance Inspections and Examinations will be unable to process filings, provide interpretive advice, issue no-action letters or conduct any other normal Division and Office activities. As a result, new or pending registration statements or applications for exemptive relief will not be processed regardless of the status of any review of those filings.[x] This may or may not be the case this year.

XIII. Commodity Futures Trading Commission (CFTC)

Reports have indicated that only a limited number of CFTC employees will be exempt from the furloughs and that only essential functions will be performed.

Although it is difficult to quantify all of the impacts of a government shutdown, lenders processing loans that need tax transcripts or social security number verification, or FHA loans should anticipate delays and reduced functionality from HUD, IRS, and SSA. A shutdown lasting a few days would slightly inconvenience lenders in processing loans; however a longer delay would have more serious impacts. Purchase loan volume could shrink and impede the recovery of the housing market. The impact would be most severe in states where loan production is dominated by FHA-lending. Long-term furloughs may disrupt time-sensitive mortgage transactions by interfering with borrower lock agreements and causing interest rate disparities from the time of closing and the time the loan is securitized. A prolonged shutdown also risks shaking consumer and market confidence.[xi]

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[i] Bass, Clinton. "Shutdown of the Federal Government: Causes, Processes, and Effects." Congressional Research Service. February 18, 2011. http://www.fas.org/sgp/crs/misc/RL34680.pdf.

[ii] "Guidance and Information on Furlough: The Potential Impact of a Lapse in Appropriations on Federal Employees." Office of Personnel Management. April 5, 2011.

[iii] "What Would the Effect of a Potential Government Shutdown be on Agencies and Federal Contractors?" ReedSmith LLP. April 7, 2011.

[iv] Office and Management and Budget Memorandum. "Agency Operations in the Absence of Appropriations." November 17, 1981.

[v] HUD FY 2013 Contingency Plan for Lapse in Appropriations, September 27, 2013. http://portal.hud.gov/hudportal/HUD.

[vi] Ginnie Mae. http://www.ginniemae.gov/pages/default.aspx.

[vii] Department of Veterans Affairs staff.

[viii] Bass, Clinton. "Shutdown of the Federal Government: Causes, Processes, and Effects." Congressional Research Service. February 18, 2011.

[ix] Impact of Potential Lapse in Appropriations, FEMA Memorandum, April 8, 2011.

[x] Securities and Exchange Commission Memorandum, Plan of Operations During a Lapse in Appropriations, April 8, 2011, http://www.sec.gov/about/2011_fed_shutdown_contingency_plan.pdf.

[xi] Tau, Bryon. "Shutdown Could Roil Housing Market." Politico. April 6, 2011.