



November 24, 2009,

The Honorable Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
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Washington, DC 20552

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Dear Gentlemen:

On behalf of the more than 35,000 members of our professional appraisal organizations, we respectfully request you to consider revisions to the Seller/Servicer guides to address two issues: 1) the lack of defined protocols regarding the involvement of appraisal management companies (AMCs) in the loan origination process and, 2) mortgage broker participation in the appraisal ordering process. These issues have become prominent discussion points relative to the Home Valuation Code of Conduct (HVCC).

Our organizations have long advocated for an independent appraisal process and we continue to support the underlying intent of the HVCC. Appraiser independence is a vital component for ensuring confidence in our system of mortgage finance. Unfortunately, appraiser independence has too often been ignored or dismissed despite the observations and recommendations of our organizations and others. The investigation and research leading to the HVCC identified many of the same concerns we have expressed, in particular, the lack of effective regulation and conflicts of interest involved in the risk management process. We support strong risk management programs, and we want to work with you to improve the process as it relates to collateral valuation.

Despite the good intentions of the HVCC, new concerns have emerged, including the precipitous rise in the number of unregulated AMCs, and a disruption in the valuable relationships between highly competent professional appraisers and reputable and meaningfully regulated mortgage professionals at the local community level. It is important that all parties understand that the HVCC has created competitive disadvantages for small independent appraisers who strive to maintain their professionalism, provide expert services and meet industry and professional requirements. Aggregation of appraisal orders by lenders and AMCs has resulted in severe

market concentration, reducing the number of potential appraiser clients from dozens to merely a handful in most cases. Today, according to industry estimates, more than half of the residential appraisal market is controlled by a mere 40 national firms. It is essential, for the long term health of the lending industry, that these highly competent professionals not be driven from the market.

Our recommendations are not intended to eliminate or place a moratorium on the HVCC, as some have suggested, but rather enhance it and make it consistent with other regulatory actions taken since its inception. Our thoughts on these matters are provided below.

AMC Protocols

Regrettably, the HVCC has led many experienced professional appraisers to decline assignments from AMCs and even leave the business. In the view of many, the HVCC encourages lenders to use AMCs, and our members report that fees for assignments are as much as sixty percent below the customary fee for similar services in the same market area. As a consequence, many of these assignments are now going to inexperienced appraisers from outside the local market area as the more experienced appraisers forego the assignments. This is cause for concern for consumers, lenders, investors, and regulators as the quality of valuation services is set for a sharp decline.

Even before HVCC heightened the use of AMCs, previous policy of the Federal Housing Administration (FHA) clouded the issue of identifying appropriate fees and their proper reporting. Mortgagee Letter 97-46 established FHA's policy governing appraisal fees and the use of third-party entities providing appraisal services. In overruling earlier guidance (Mortgagee Letter 97-22) that limited the fee that could be charged to the mortgagor to the amount actually paid to the appraiser, the FHA effectively required AMCs to combine their administrative costs with the appraisal fee without allowing the "combined fee" to float at market rates.

Specifically, in Mortgagee Letter 97-46, HUD stated:

"[T]he Department will allow the mortgagor to pay a fee for the appraisal which may encompass fees for services performed by an appraisal management firm as well as fees for the appraisal itself. However, the total of these fees is limited to the customary and reasonable fee for an appraisal in the market area where the appraisal is performed."

Clearly, such a policy was ripe for abuse and with a growing reliance by mortgage lenders on AMCs to provide appraisal services, the restriction on total appraisal fees to "no more than" the customary fee for an appraisal unreasonably drove down the fees to well below the "customary and reasonable" standard.

Fortunately, FHA recognized the problem and recently addressed this critical flaw. Specifically, FHA adopted a new appraiser fee requirement found in Mortgagee Letter 2009-28. This policy states that:

- *FHA Appraisers are not prohibited by the lender, AMC or other third party, from recording the fee the appraiser was paid for the performance of the appraisal in the appraisal report.*
- *FHA Roster appraisers are compensated at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.*
- *The fee for the actual completion of an FHA appraisal may not include a fee for management of the appraisal process or any activity other than the performance of the appraisal.*
- *Any management fees charged by an AMC or other third party must be for actual services related to*

ordering, processing or reviewing of appraisals performed for FHA financing.

- *AMC and other third party fees must not exceed what is customary and reasonable for such services provided in the market area of the property being appraised.*

We believe Fannie Mae and Freddie Mac should adopt a similar policy to help alleviate the “flight of professionals” and build confidence in the appraisal process so fundamental to our mortgage finance system.

Further, we believe this is an opportunity to develop requirements, or a definitive protocol, relative to lender engagement with AMCs. Specifically, we encourage Fannie Mae and Freddie Mac to develop a set of rules and a protocol regarding their use. Few rules or guidelines exist relative to the use of AMCs by lenders. The aforementioned FHA Mortgagee Letters were the first guidelines released by a federal agency specific to AMC, but those guidelines are not comprehensive. Unreasonable turnaround time requests by AMCs and a propensity to seek the services of appraisers with questionable qualifications and competencies are widely reported by our members. Such practices are detrimental to appraisal quality and are cause for real concern.

Freddie Mac has recently issued new Appraisal Requirements and Best Practices for sellers and servicers as part of Seller/Servicer Bulletin 2009-18, and while we support the intent of this new guidance, these new rules and guidance are applicable only to seller/servicers. We believe these new guidelines and practices should be expanded to address five particular concerns:

- Prohibit unreasonable turnaround times for appraisal assignments;
- Ban “broadcast” ordering systems that disregard appraiser competency in the appraiser hiring decision;
- Require use of certified and designated appraisers for “complex” appraisal assignments;
- Require geographic competency for appraisers, and;
- Require full disclosure of all fees to the lender and consumer, including a breakdown of the amount paid to the appraiser and the amount paid for services provided by the AMC.

We are confident that such steps will help ensure the integrity of the valuation component of the mortgage finance system and help address one shortcoming of the HVCC.

Mortgage Broker Participation

We also encourage the parties to consider a review of mortgage broker participation in the appraisal ordering process in light of new regulatory and industry initiatives underway. Since the release of the HVCC, several important changes have been made by federal and state regulators. When coupled with initiatives underway at Fannie Mae and Freddie Mac, we believe the prohibition against mortgage broker participation should be reconsidered.

We suggest that the SAFE Act (P.L. 110-289) can be an effective tool to address improper influence by mortgage brokers. Mortgage brokers and originators are now subject to state licensing requirements mandated by Congress in the SAFE Act that include education and examination requirements, and a demonstration of financial responsibility. To date, nearly every state has enacted the required legislation to be compliant and according to the American Association of Residential Mortgage Regulators, only 49 percent of the total mortgage broker population has been able to meet all SAFE Act requirements. This substantiates that the new criteria and market conditions have had a dramatic impact on that industry.

In addition, 45 states have enacted state appraisal independence requirements that apply to mortgage brokers. The

SAFE Act was a conduit for approximately 32 of these laws, as an appraisal independence provision was included in the Conference of State Bank Supervisors "model bill" for SAFE Act implementation. As a result, we expect that most states will have independence requirements in place when the SAFE Act is fully implemented. These rules provide powerful new enforcement tools, including the ability to deny or suspend a license, issue cease and desist orders, and impose civil penalties up to \$25,000.

We believe HVCC appraiser independence provisions should apply to mortgage brokers and AMCs. Currently, the HVCC strictly prohibits mortgage brokers from engaging real estate appraisers. However, if the HVCC were to be applied directly to mortgage brokers, particularly the Appraiser Independence Safeguards in Section 1, it would effectively regulate brokers and hold them accountable when engaging real estate appraisers for mortgage related purposes. Further, we believe there is precedent for applying provisions of the HVCC to parties other than lenders and sellers to Fannie Mae and Freddie Mac. FHFA's July 22, 2009 release states: "For the first time, the Code places the same requirements for appraiser independence on AMCs...as the limits placed on lenders."

The new Truth in Lending requirements can also help and should be enforced by federal and state regulators. The Federal Reserve Board recently adopted new rules that prohibit appraiser coercion by all mortgage brokers and mortgage lenders. The rules call for penalties against any violator, and the rules can be enforced by any agency with oversight over the Truth in Lending Act, including state attorneys general. These rules took effect on October 1, 2009, and they provide a powerful tool in favor of appraisal independence and additional assurances for the individuals involved in the transaction.

In addition to mortgage repurchase agreements, Freddie Mac has a debarment process that can be used as an effective enforcement weapon. This process should be employed on bad-acting lenders, AMCs, brokers and appraisers. HVCC violations and violations of professional appraisal standards could result in debarment. With proper funding, state enforcement relative to appraisers and AMCs can be part of an effective system.

A new loan and appraisal data process known as Collateral Data Delivery (CDD) for Fannie Mae (and presumably Freddie Mac), scheduled for next year, will enable the entities to monitor SAFE Act compliance for both mortgage brokers and appraisers and better analyze the entire collateral process. This program can be used in concert with the National Mortgage Licensing System, which assigns unique identifiers to SAFE Act compliant brokers and tracks them in a nationwide system. We believe this system should be heavily relied upon.

Another tool that should be considered is utilization of unique identifiers. The FHA and VA are using unique case numbers for every mortgage transaction requiring an appraisal. In these transactions, an appraiser cannot perform an appraisal on a property that has a case number assigned to another appraiser. The unique case number stays with the property for six months. This policy has effectively limited "appraisal shopping" by mortgage brokers. Fannie Mae and Freddie Mac could adopt a policy similar to this and extend the amount of time the specific case number stays with the property to the life of the loan.

HVCC calls for an Independent Valuation Protection Institute (IVPI) and we suggest the IVPI be established to monitor and implement relevant requirements of HVCC. We stand ready to work with all parties in the development of a sustainable mechanism for an IVPI. A collaborative process should be convened with stake holder involvement to work through the challenges and result in meaningful, agreed upon rules governing the relationships between appraisers and lenders going forward.

These suggestions coupled with further legislative action such as H.R. 1728 which provides additional resources for

state appraiser enforcement, a national appraisal independence standard with strict penalties for violators, and regulatory requirements for appraisal management companies can help achieve the goals and intent of the HVCC. We urge your thoughtful consideration.

Regardless of an improved regulatory structure and additional accountability, some will argue that mortgage brokers still have a vested interest in the outcome of an appraisal, and should have no involvement in the appraisal ordering process. However, mortgage brokers now have much more to lose than ever before. Prior to the enactment of the SAFE Act, few mortgage brokers were subject to licensure requirements. Prior to the imposition of new licensing requirements, a mortgage broker had very little to lose – perhaps only a specific transaction - if they were caught placing inappropriate pressure on an appraiser to achieve a specific value. The benefits of placing inappropriate pressure on an appraiser to facilitate the closure of a deal outweighed the risks.

Now, however, the risks for a mortgage broker for such acts are significant. Violations of state SAFE Act requirements can bring license revocation which will immediately force a broker out of business. Civil fines of up to \$25,000 for each occurrence can be imposed, and in some states criminal sanctions can apply. Simply put, the risks for a broker inappropriately influencing an appraiser outweigh the benefits, and will serve as a real disincentive for inappropriate behavior.

We expect that the settlement parties will provide evidence relating to the performance of mortgage broker ordered loans and appraisals. It would not surprise us to hear concerns about the mortgage broker channel, as this channel

has been unregulated for far too long. Appraisal quality is likely to have suffered in this space as well. Nevertheless, it is our view is that applying the HVCC to brokers, coupled with regulatory changes and additional requirements, will achieve favorable results.

In conclusion, we believe the changes we suggest build on the foundation established by the HVCC by bringing participants in the mortgage finance system together in support of a long term solution to irregularities and abuses in the system. Through effective state law and federal regulatory authority, responsible professionals can deliver services and products to consumers, lenders and investors. A coordinated system of reasonable and reliable regulation will help rebuild consumer confidence necessary to stabilize the real estate markets around the country.

Thank you for your consideration and we would be happy to arrange a meeting and discuss this with you or your designee in person. Please contact Bill Garber, Director of Government Relations for the Appraisal Institute, at 202-292-5586 or bgarber@appraisalinstitute.org, or Peter Barash, Government Relations Consultant, American Society of Appraisers at (202) 466-2221 or peter@barashassociates.com, should you have any questions.

Sincerely,

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American Society of Appraisers
American Society of Farm Managers and Rural Appraisers
National Association of Independent Fee Appraisers