



Open Letter

May 15, 2008

To Whom It May Concern:

Earlier this year, the New York State Attorney General's Office and the Office of Federal Housing Enterprise Oversight reached an agreement with Fannie Mae and Freddie Mac to establish a Home Valuation Code of Conduct and an Independent Valuation Protection Institute. The agreement is an effort, in part, to protect appraiser independence and guard against unsound lending practices. The National Association of Independent Fee Appraisers (NAIFA) joined other leading appraisal organizations in providing comments to address a number of concerns raised by the agreement. NAIFA applauds the attempt to secure appraiser independence in the real estate financing process in the proposed agreement. Despite its laudable intent, we find that the current structure of the agreement may lead to unanticipated and potentially damaging results for borrowers, the public, real property appraisers, and users of real property appraisals.

While we support the efforts of the broader appraisal community to address the shortcomings of the agreement, we believe the agreement is attempting to solve a problem for which a solution already exists. Banking regulations promulgated by the Federal Financial Institutions Examination Council (FFIEC) and its member regulatory agencies, as the Office of Comptroller of the Currency and the Office of Thrift Supervision provide adequate guidance. Regrettably, these regulations are not flowing through the proper channels, to the end user, the loan originators, nor have the users been trained to implement the regulations. Title XI clearly delineates the lenders' role in the real estate financing arena. This legislation also defines the obligation of the appraiser to protect the financial institutions while maintaining a high level of public trust¹, an obligation cited throughout the Uniform Standards of Professional Appraisal Practice (USPAP). If the existing legislation was adhered to and enforced as designed, the current proposed agreement, negotiations and discussions would not be necessary.

Should the agreement move forward, however, NAIFA, along with many other related appraisal and financial organizations, believe significant changes to the agreement as written are necessary.

A portion of the agreement, the Home Valuation Code of Conduct (HVCC), reflects a strong attempt to support the independence of appraisers who are to provide an unbiased, supportable valuation of real property. However, some parts of the HVCC appear to neuter the intent of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), including:

- The agreement as proposed encourages the weakening of quality valuations for real estate financial transactions.
- Broker Price Opinions (BPOs) are not a reliable valuation tool since they are typically produced by individuals who lack in-depth training in valuation methodology or real property economics.

¹ Title XI of Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

- An Automated Valuation Model (AVM) is “mechanically” produced without consideration of negative external influences on a property, market fluctuations, or onsite observation for condition. The rampant fraud currently existing in the real estate market is the result of sales not being verified and the condition of the subject property not being checked, neither of which can be accomplished through the automated valuation model.
- Most importantly, there is no regulation over these evaluation methods. A lender can pressure a BPO provider to “hit a specific number” or can run numerous valuations and/or manipulate AVM's to achieve the desired result.
- The intent to protect collateralized loans and protect the public trust is not realized by the use of these unregulated by-products.

NAIFA takes umbrage at the proposed Independent Valuation Protection Institute (IVPI):

- First, the term “institute” within the appraisal profession denotes a particular appraisal organization—The Appraisal Institute. Such a moniker may well provide an unfair competitive edge to one particular organization over the other professional appraisal associations, all of which are founding members of The Appraisal Foundation. This could be construed as a direct violation of Title XI². It also suggests the direct affiliation of this specific appraisal association with the IVPI, which again could be regarded as a discriminatory violation under Title XI. A more appropriate term would be “Clearinghouse” in lieu of “Institute.”
- Secondly, the proposed IVPI appears to be one more layer of bureaucracy, a boondoggle ultimately funded by the taxpayers. There are already systems in place for reporting misdeeds, coercion, undue influence, and misleading appraisal reports. Each state has an appraisal licensing/regulatory agency plus a banking department. Those are the “go to” entities for filing complaints and reporting fraud. They actually have the enforcement ability to deal with these issues.
- Thirdly, the Appraisal Subcommittee (ASC), created by FIRREA, provides a link between FFIEC and state regulatory agencies. This government agency has trained individuals who can assist with investigations and enforcement. Rather than creating a new entity, has the possibility of expanding or enhancing the responsibilities of an existing agency been considered?
- If Fannie Mae and Freddie Mac are willing to provide funding for an IVPI, we suggest they redirect that funding to the entities who actually govern those involved in the lending process.

The primary perpetrators of mortgage fraud, sub prime lending abuse, and appraiser pressure are the mortgage brokers and loan originators. These parties to the lending process are typically uneducated in their duties, unlicensed, and not held accountable for any misdeeds. Real estate practitioners and appraisers, the other participants in a real estate financial transaction, are continually educated, tested, licensed and liable for their actions under penalties of law. NAIFA strongly supports licensing of mortgage brokers and loan originators to provide further protection to the public.

The Agreement’s accepted use of Appraisal Management Companies (AMCs) is unsettling, especially in light of the lawsuit New York Attorney General Cuomo filed against eAppraisal:

² Title XI of Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), SEC. 1122. MISCELLANEOUS PROVISIONS, c) PROHIBITION AGAINST DISCRIMINATION. - Criteria established by the Federal financial institutions regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation for appraiser qualifications in addition to State certification or licensing shall not exclude a certified or licensed appraiser for consideration for an assignment solely by virtue of membership or lack of membership in any particular appraisal organization.

- The lawsuit details pressure placed on the AMC to provide appraisals with inflated home values in order to “make the deal” for Washington Mutual.
- AMCs are not regulated. They were the brainchild of individuals seeking to make money by relieving lenders of their obligation to ensure the quality of their approved appraisers.
- AMCs were given the responsibility of identifying and approving qualified appraisers, but instead, they farmed out appraisals to the lowest bidders, who, in actuality, may have been the least competent under the Uniform Standards of Professional Appraisal Practice (USPAP).
- Appraisers receive only a portion of the fee lenders are charged for valuation services.
- Some AMCs provide a notoriously substandard work product, as demonstrated by Attorney General Cuomo’s recent lawsuit against eAppraisal.
- These unregulated AMCs apply pressure on the appraiser for value, altering verbiage, removing pictures and other pertinent information without fear of retributions.
- AMCs often demand unreasonable turnaround times and harass appraisers with frequent calls and emails, often several times a day, adding to the pressure on appraisers.

Our association of licensed and certified professional real estate appraisers suggests additional RESPA disclosure supporting the loan determination. Separate line items on the HUD I and/or closing documents should delineate the fee paid to the appraiser and the fee retained by the AMC or lender. Borrowers should receive copies of all valuation products used to support the collateralized loan.

If left unchanged, this agreement may have a result that is the direct opposite of its intent. Rather than strengthening the appraisals used in collateral valuations, developed by ethical and competent appraisers who have spent years professionally educating themselves and developing a reputable clientele, these appraisers may feel penalized and leave the profession. That would place lenders and the public at risk for receiving valuations by inexperienced and uneducated appraisers who could possibly provide appraisals beyond their competency level. This would once again place a borrower’s biggest investment in jeopardy and violate the public trust, by allowing lending decisions to be based totally on restricted methods such as BPOs and AVMs. Cheaper is not always better.

NAIFA supports retaining the appraisal approval process with regulated financial institutions and the ordering of appraisals by entities that are regulated by law. This agreement between New York Attorney General Cuomo, Fannie Mae, Freddie Mac and OFHEO is not legally enforceable. It is a cooperation agreement outlining some new standards without penalties enforceable by Federal or state law. NAIFA suggests redirecting these efforts to support pending legislation requiring licensing of all parties within the lending process and eliminating any type of influence on appraisers. Pending legislation, coupled with the enforcement of regulations already in place, would provide the lender and public protection that is the intent of this agreement.

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