



September 16, 2009

The Honorable David H. Stevens
Assistant Secretary
Housing/Federal Housing Commissioner
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dear Mr. Stevens:

On behalf of the more than 35,000 members of our respective professional appraisal organizations, please accept our congratulations on your appointment as Assistant Secretary for Housing and Federal Housing Administration (FHA) Commissioner. We are confident that your service will prove most valuable as our nation works through the challenging times we face.

As you know, real estate appraisers play an important role in the mortgage finance system. Appraisers are independent third-party professionals who deliver unbiased opinions on the market value of real estate held as collateral for mortgage loans. Because of this, our organizations read with great interest recent statements regarding the Home Valuation Code of Conduct (HVCC), indicating that FHA was examining the possibility of adopting elements of the HVCC.

We are strong advocates for appraiser independence as a fundamental safeguard that benefits lenders, home buyers and investors, and we applaud the principle of independence that is at the core of the HVCC. Nonetheless, as you assess your needs relative to this initiative you should consider it with a broad perspective and examine any unintended consequences that have surfaced since its implementation.

Ironically, implementation of the HVCC has resulted in several new concerns for appraisers, including a dramatic increase in the number and influence of unregulated appraisal management companies (AMCs) and a disruption of valuable relationships between professional appraisers and their longtime clients—mortgage lenders and brokers. Many independent fee appraisers are facing new pressures as a result of client dislocation and changing market dynamics with lender clients, and many experienced appraisers are unfortunately choosing to leave the profession. This spells trouble for all of us as today's complex real estate market demands the services of competent and experienced professional appraisers.

With this in mind, we offer the following suggestions to bolster FHA's lender oversight and appraisal independence requirements.

Recommendation 1: Establish the Conditions for Mortgage Broker participation in the FHA appraisal ordering process. If FHA looks to improve on the foundation intended by the HVCC, we recommend that you review recent actions taken by industry and other government agencies on the issue

of appraiser independence. Specifically, FHA should examine recently enacted licensing requirements for mortgage brokers (and originators), considering these reforms in light of new state and federal appraisal independence requirements separate from and apart from the HVCC. We believe these new rules are meaningful, and if enforced aggressively, coupled with agency reforms, will provide significant protections for the FHA Insurance Fund.

Specifically, mortgage originators are now subject to state licensing and examination requirements mandated by Congress. As of this summer, nearly every state has enacted the required legislation to be SAFE Act compliant. Under the SAFE Act (PL 110-289, The Secure and Fair Enforcement for Mortgage Licensing Act of 2008), Congress established educational requirements (20 hours of qualifying education and 8 hours of continuing education), a SAFE Act Mortgage Originator Test, and financial responsibility requirements for all mortgage originators through net worth or surety bond requirements. According to the American Association of Residential Mortgage Regulators, only 49 percent of the total mortgage broker population has been able to meet SAFE Act requirements, indicating that the new criteria and market conditions have had a dramatic and positive impact on the industry.

Currently, the SAFE Act imposes education requirements in ethics and law, plus courses in appraisal will likely qualify for credit. Further, the SAFE Act Mortgage Loan Originator Test measures an applicant's knowledge of ethical directives, including appraisal related considerations. SAFE Act amendments could include the appraisal independence standard that is found in H.R. 1728 and mortgage brokers that are in compliance with SAFE Act requirements could be an asset to the FHA program.

Given the advent of these new requirements, we strongly encourage FHA to establish a requirement that all mortgage brokers be in good standing with the SAFE Act, including passage of the SAFE Act Mortgage Originator Test.

Recommendation 2: Supplement state and Federal appraiser independence requirements with more robust appraiser independence requirements specific to FHA. In addition to the SAFE Act licensing, examination and financial responsibility requirements, 44 states have enacted state appraisal independence requirements that apply to mortgage originators. 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 this year. These rules provide powerful new enforcement tools, including the ability to deny, revoke, or suspend a license, issue cease and desist orders, and impose civil penalties up to \$25,000.

Further, The Federal Reserve Board recently adopted new rules that prohibit appraiser coercion by all mortgage brokers and mortgage lenders. The rules bring the force of TILA 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 take 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. We believe these new rules will be very helpful in protecting appraisal independence.

We believe it is reasonable for FHA to establish similar rules for its mortgagees. Specifically, if FHA considers adopting provisions of the HVCC, we strongly encourage you to adopt the Appraisal Independence Safeguards found in Section 1 of the HVCC as part of a broader effort to strengthen FHA's

appraisal independence standards. Further, we believe many stipulations found in the HVCC could be applied directly to mortgage brokers, such as requirements for written policies adopting the appraisal independence safeguards and annual audits of internal processes. Such provisions, when coupled with the new state and federal requirements, would dramatically improve appraisal administration by mortgage brokers, if applied directly to brokers and actively enforced.

Recommendation 3: Rescind Mortgage Letter 97-46. Mortgagee Letter 97-46 revised the Department's policy governing appraisal fees and the use of third-party entities providing appraisal services. In earlier guidance (Mortgagee Letter 97-22), FHA stated that it no longer would establish maximum dollar limits on appraisal fees, but would limit the fee that could be charged to a mortgagor to the amount actually paid to the appraiser when a third-party appraisal management firm was used. Yet, later in Mortgagee Letter 97-46, HUD states:

"[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."

Given the rapidly growing reliance by residential mortgage lenders on appraisal management companies (AMCs) to provide appraisal services, the restriction on total appraisal fees to "no more than" the customary fee for an appraisal has driven down the fees paid to large numbers of appraisers to well below what has been customary and reasonable in given market areas. This has become a problem of enormous proportions because the HVCC has caused a significant transfer of appraisal orders from mortgage brokers to AMCs. Mortgagee Letter 97-46's pricing restriction is causing many of the most experienced and qualified appraisers to decline FHA appraisal assignments ordered by AMCs because of their below market appraisal fees, adding unnecessary and substantial risk to the FHA program.

Further, regarding HUD-1 reporting, the Mortgagee Letter makes no distinction, as we believe it should, between the fee paid to the individual who performs the appraisal (in compliance with the Uniform Standards of Professional Appraisal Practice) with fees charged for the administration of the appraisal process (the AMC charges). Traditionally, appraisal administration functions of lenders/banks were paid for through overhead costs (i.e., loan processing charges, interest rates, etc.) and reported on the appropriate line of the HUD-1. However, with lenders increasingly outsourcing these functions to AMCs, the costs are being passed through the Appraisal line of the HUD-1 statement. This leaves consumers with the mistaken impression that they are paying the customary fee for the highest level of service from an appraiser who has substantial experience in performing appraisals in their geographic area when, in fact, the consumer is receiving a much lower level of service – often from appraisers who do not know the local market. This is not transparent and should be remedied as soon as possible.

Recommendation 4: Develop rules and expectations relating to Appraisal Management Companies. While FHA developed rules relating to fees charged to consumers when utilizing the services of appraisal management companies, few rules have been established relating to the requirements and expectations of FHA for appraisal management companies. This is a significant omission in the HVCC, as it set forth options for enhanced lender engagement of AMCs, but failed to establish meaningful rules or expectations regarding AMC practices.

Our members are reporting widespread concern about AMC practices that must be addressed in any long term solution. Of particular concern are growing complaints about unreasonable turnaround time requests and a propensity to seek out the services of appraisers with questionable qualifications and competencies. Both issues should be of concern to FHA, given the potential negative impact these may have on appraisal quality. As a result, we urge FHA to develop rules and expectations relating to AMC practices, specifically prohibiting unreasonable turnaround times and establishing requirement regarding AMC hiring decisions.

In sum, we believe these reforms will provide critical protections to the FHA Insurance Fund. When viewed in context with FHA's overall program, we believe FHA will be positioned for long-term success.

We respectfully request an immediate meeting to discuss these recommendations with you or your designated staff. We will follow up with your office to make these arrangements. Please contact Bill Garber, Director of Government and External Relations, Appraisal Institute, at 202-298-5586 or bgarber@appraisalinstitute.org or Peter Barash, Government Relations Representative, American Society of Appraisers at 703-466-2221 or peter@barashassociates.com if you have any questions or require more information.

Sincerely,

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