

## **Federal Reserve Board's *Interim* Rule on Appraiser Independence**

The Board has issued a proposed rule on appraisal independence in the Federal Register on October 28, 2010.

The rule attempts to further amplify contents of a previous rule prohibiting coercion of appraisers. This is a worthy endeavor.

Unfortunately, this rule looks more like an appraiser trade association wish list than a serious attempt to improve the validity of appraisals. Rather than give additional credibility to appraisals, it simply ensures that appraisers get paid what they want and the consumer gets overcharged.

It also makes the false assumption that appraiser coercion occurs only to overestimate the value of a property. Like most reactionary regulation, the rule is shooting at past history. There is very little overestimation occurring at this time. Rather, underestimation is the order of the day. Consumers are regularly denied the true value of their home to provide an extra margin of safety to lenders who often own appraisal management companies or select the appraiser directly. While this may seem to protect individual lenders, it tends to destroy the housing market and lenders by creating ever-spiraling downward value pressure. The mere inference that all values are derived from past data postulated by the appraiser industry also ensures that a home purchaser will not be able to purchase for more than what has previously been purchased. Informed borrowers are regularly denied the price they are willing to pay for a property based in these archaic rules. This scenario plays out every day to the destruction of the housing market and ultimately, the economy.

Left without an advocate, such as a mortgage broker, the borrower is forced to accept whatever value the appraiser sees fit to assign. Even if the mortgage broker has not ordered the appraisal, their knowledge to refute an improper appraisal is invaluable to the borrower. The rule makes the unsubstantiated postulation that mortgage brokers are more likely to apply pressure to appraisers to create false values than employees of lenders. That claim cannot be substantiated. The misguided Home Valuation Code of Conduct (HVCC) arose from a retail lender pressuring an appraisal management company (AMC) to create false values. Somehow, this was construed that mortgage brokers created more false values than originators of lenders. The rule mirrors the HVCC in that it also supposedly prevents lender employee originators from ordering appraisals. Are we to presume that Washington Mutual and Ameriquest, who were alleged to have been notorious for appraisal coercion, had no pressure above the loan originator? Are

we to believe that companies with a profit motive for loan production will not manipulate appraisals at levels beyond the originator?

Even the HVCC was based in the need for another entity, the Independent Valuation Protection Institute (IVPI), to ensure abuses were dealt with. Absent the IVPI, the HVCC became little more than a money-making scheme for AMCs. The Board could easily have taken a far better approach than modeling a failed paradigm. CPAs are likely under more pressure to create fraudulent financial statements than appraisers are to create false values. To combat the problem, the accounting industry created peer reviews. This far more effective tool would act to eliminate false values, poor-quality assumptions, oversights and other problems the proposed rule and the HVCC fail to address.

The rule, as proposed, purports to ensure that appraisers are paid “Customary and reasonable compensation.” That is to be determined by studies no doubt to be conducted by appraisal-oriented entities. There is no provision in the rule that ensures that AMCs charge a “reasonable” price for their services. Rather, it virtually ensures that consumers will pay the additional fees that AMCs tack on as does the HVCC. The Board has ignored all of the abuses by AMCs that are well known such as overcharging borrowers for their services. It fails to comprehend that an appraiser receives nearly all or all of his/her work from a single source that was not the case prior to the HVCC. The appraiser must comply with every policy and nuance of the AMC or lose all of their income. This includes either overvaluing, undervaluing, turning appraisals before adequate research is performed, accepting assignments outside areas of complete expertise, using policies that tend to discriminate and other highly undesirable policies.

Consumers will continue to be the losers under this rule. Borrowers lost the portability of appraisals under the HVCC, despite its claims to the contrary. Consumers have overpaid countless millions for appraisals they could not use. The toll could easily be counted in the billions if lost opportunity and rate locks are considered.

The Board needs to reinvestigate this rule. It shows a poor understanding of problems at hand and is tied to a failed methodology, the HVCC. We can do better. In the mean time, the Board already has an anti-coercion rule in place that offers considerable protection until this rule can be better-researched.

Sincerely,

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