



July 1, 2009

The Honorable Shaun Donovan
Secretary
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Re: Mortgagee Letter 97-46

Dear Secretary Donovan:

On behalf of the more than 35,000 members of our respective professional appraisal organizations, please accept our congratulations on your appointment as Secretary of the Department of Housing and Urban Development. We are confident that your service will prove 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. Recent changes in appraisal requirements stemming from an agreement between Fannie Mae and Freddie Mac and the New York Attorney General (i.e., the Home Valuation Code of Conduct) have so greatly worsened a flaw in past guidance received from the Federal Housing Administration (FHA) [i.e., Mortgagee Letter 97-46] that we believe it requires your immediate attention.

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."*¹

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 Home Valuation Code of Conduct (HVCC) has caused a significant transfer of appraisal orders from mortgage brokers to AMCs. Mortgagee Letter 97-46's pricing restriction is causing many experienced and qualified appraisers decline FHA appraisal assignments ordered by AMCs because of their below market appraisal fees., adding unnecessary and substantial risk to the FHA program. While the HVCC does not directly impose rules upon FHA appraisal ordering practices, many lenders are now applying the same standard to their entire appraisal ordering practices.

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

¹ Available at <http://www.fhasecure.gov/offices/adm/hudclips/letters/mortgagee/files/97-46ml.txt>

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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 – in many cases. This is not transparent and should be remedied as soon as possible.

The procedure is compounded by a common practice among AMCs to instruct the appraiser not to have any conversation with the homeowner about the actual fee paid to the appraiser. HUD has a rule requiring that the lender pay the appraiser. Some AMCs managing FHA appraisals reportedly have instructed appraisers to collect a fee at the door (despite this being a violation of the HVCC and HUD regulations), keep a part of the fee, and send the remainder to the appraisal management company. In at least one instance that we are aware of, an appraiser blatantly was instructed to commit fraud by submitting an invoice with the appraiser's name, firm name, date and address, while leaving the amount of the fee blank, which the management company intended to fill in and submit to the lender.

The consequences of this are dire for FHA, mortgagors, and terrible for the mortgage process. With Mortgagee Letter 97-46, many highly qualified and experienced appraisers are declining to perform assignments for AMCs. In many instances, those companies are being forced to use appraisers from distant locations with less experience and training, or more pointedly: those who will work for less. Using less experienced and less qualified appraisers to perform FHA assignments is not a good business practice and is not good public policy.

We know that it was not the intent of these directives to create these issues, and we respectfully would like to request that you review this policy and take immediate action to rescind Mortgagee Letter 97-46. Further, we would like to request that the HUD-1 be revised to include a separate line for all AMC related fees such that the appraisal fee might be separate from non-appraisal fees. Finally, we request that the Department follow through on a commitment to propose rules for public comment relating to AMCs that would ban inappropriate practices, such as hiring an appraiser primarily on price or turnaround time, without consideration of competency or qualifications. The positive impact of such rules on the lending community, consumers, and the appraisal community would be profound.

Thank you, in advance, for your consideration of this request. If you need additional information, 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 Consultant, American Society of Appraisers, at (202) 466-2221 or peter@barashassociates.com.

Sincerely,

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