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Cuomo Agreement - What is your opinion?

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By John Galvin, MAI

Recently, New York Attorney General Anthony Cuomo announced an agreement with Fannie Mae, Freddie Mac and the Office of Federal Housing Enterprise Oversight (OFHEO). The agreement calls for the establishment of a New Home Valuation Protection Code that will create requirements governing the appraisal selection, solicitation, compensation, and assist with conflicts of interest and foster independence between the mortgage broker and the appraiser. As part of the agreement, mortgage brokers will be prohibited from selecting appraisers, lenders will be prohibited from using "in-house" staff appraisers to conduct initial appraisals and lenders will be prohibited from using appraisal management companies that they own or control. The code will start to be enforced beginning January 1, 2009 by Fannie Mae and Freddie Mac.

As part of the agreement, the formation of the Independent Valuation Protection Institute will be set up to implement and monitor the New Home Valuation Protection Code. It will include the establishment of a complaint hot line for consumers nationwide, serve as a contact for appraisers themselves if they are concerned their independence has been compromised, report publicly on activities to the New York Attorney General and OFHEA, implement and monitor new appraisal standards, and handle a number of other pressure concerns put on appraisers by the mortgage lending process.

There is a Code of Conduct affiliated with the agreement that is primarily targeted to lenders / mortgage brokers. It includes items such as "threatening to withhold timely payment for an appraisal report", "threatening to withhold future business for an appraiser", "promising future businessor increased compensation", "ordering a second or subsequent appraisalunless there is a reasonable basis to believe that the initial appraisal was flawed ...", "and any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality". In essence, the agreement will force lenders to hire what are now called Appraisal Management Companies (AMCs) to handle the ordering of appraisal for the lenders.

The agreement establishing the New Home Valuation Protection Code has a 90-day comment period and The Appraisal Institute is taking an active role in responding to the agreement. The Appraisal Institute's Government Relations Committee is currently looking for feedback from its members on the agreement. The Government Relations Committee will be meeting on April 25th to discuss comments and concerns made by Appraisal Institute members.

When first announced, most appraisers thought this was a good thing for the industry. However, upon further review of the agreement, there are a number of concerns that are coming to the surface that indicate the agreement, though a positive step in solving the problem of mortgage broker/lender pressure on appraisers, is not the right direction to take. The primary concern is that the agreement will give more power to the AMC industry. Over the past few years a number of

Appraisal Management Companies have cropped up. In addition, software services companies have been established to allow financial institutions with an active appraisal staff to easily order, monitor, and transmit appraisals with no contact with lending officers. Most appraisers who are involved in completing appraisals for this segment of the appraisal industry have had experience with at least one of the AMCs.

To date, comments from area appraisers are mixed. Though most understand the need to create a system, and many welcome the change, nearly all are concerned that the new agreement will give more power to the AMCs, and that some AMCs will take advantage of that power. A survey of several Connecticut appraisers had a general response that the same pressures will still be present, but from a different source. The concerns are over the historic trend already set by how AMCs select and monitor a business relationship with an appraiser. For example, one appraiser commented that if there is an appraisal problem that has to be solved with a particularly property, and the appraisal is late because of the additional time required to solve the problem, the appraiser is documented for being late with no credit given to taking the extra time to properly appraise the property - ultimately protecting the consumer.

Another appraiser commented that he was not getting work even though he had delivered every appraisal on time. Other concerns are over fees. One appraiser was upset that an AMC required them to pay an initial fee to participate in receiving work. Another was concerned that the AMC's continually try to reduce the appraisal fee, or get appraisers to complete the work for lower fees forcing some appraisers to reduce the quality of work in an effort to survive. Another appraiser commented "the same pressures but different person".

Of the software services being used by a number of national lenders, most of the feedback to date has been positive. These systems have enhanced the appraisal ordering process for lenders with appraisal staff and at the same time act as more of a firewall between the lender and the appraiser. These software services essentially create a market for lenders to go out and select bids and turnaround times from a larger pool of appraisers in a very timely manner. They allow the independent appraisal staff of the lender to select a competent appraiser experienced in a set market area for the lowest fee to the consumer. At the same time, the appraisal staff is available to go over any appraisal valuation problems while separating the appraiser from the pressures of the lender. Most welcome this change in the market and expect these software services to be used by more and more lending institutions over the next few years.

As one appraiser summed it up, "if the agreement adds controls to remove lender pressure on appraisers and does not make AMCs stronger, it is welcome". Despite the concerns that the AMCs may have more power over appraisers, it should be noted that several appraisers commented, that like many of the other changes faced by appraisers over the past couple of decades (i.e. USPAP, state licensing, FIRREA, etc.), that the "market" will eventually settle out these concerns. In the mean time, Appraisal Institute members are encouraged to contact their region's member of the Appraisal Institute's Government Relations Committee and voice their concerns / comments before the April 25th Government Relations Committee meeting on this topic.

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