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Cuomo agreement - A good beginning but work needed

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Appraisers and users of appraisal services need to be aware of a pending agreement between New York attorney general Andrew Cuomo and Fannie Mae, Freddie Mac and the office of federal housing enterprise oversight (OFHEO). This agreement, announced March 3rd, is a response to the subprime debacle in N.Y. and may well become national in scope. A comment period is under way that expires April 30th. The purpose of the comment period is to identify any unintended consequences of the agreement.

From my vantage point, the agreement is a good beginning but more work remains to be done. As the agreement currently stands, the problems may simply be shifted from one entity to another without really solving the problem. In a nutshell, the agreement contains three major components that will impact appraisers:

*Mortgage brokers will be prohibited from selecting appraisers;

*Lenders will be prohibited from using "in-house" staff appraisers to conduct initial appraisals and will be prohibited from using appraisal management companies that they own or control.

*A clearinghouse will be established for consumers nationwide to call if they believe the appraisal process has been tainted or if they have been harmed by appraisal fraud and to serve as a contact for appraisers themselves if they believe their independence has been compromised.

Beginning January 1st, 2009, Fannie Mae and Freddie Mac will require that lenders represent and warrant that appraisals related to mortgage loans originated on or after January 1st, 2009 conform to the agreement or they will not be purchased. After examining the terms of the agreement, one major question remains unanswered: Just who will be ordering appraisals?

One of the major contributions to the subprime debacle is appraisal pressure whereby parties to the mortgage process pressed the appraiser to "come up with the right number." This pressure took the form of relatively subtle to the downright abusive. Those appraisers who refused to succumb suffered consequences such as not getting paid for their work, getting blacklisted and even losing their businesses. Those who succumbed may very well have violated their professional ethics.

Why were appraisers pressured into "coming up with the right number?" Because those applying the pressure would not get what they wanted if the "right number" was not generated. Mortgage brokers and lenders are usually paid on a commission basis. If the deal doesn't go through, they do not get paid. This is a huge incentive to apply pressure to the appraiser. However, from the larger perspective, if the values are not there, a house of cards is created that comes tumbling down.

The appraiser should be the reality check on the mortgage transaction. Theoretically, the appraiser is the only disinterested third party involved in the process. Our job, if done properly, is to accurately reflect what the market indicates the value of a property is based on solid market evidence consisting of comparable sales. The appraisal should not be a reflection of what the property owner thinks his/her property is worth or what the mortgage broker/lender needs to make the deal close so

they can collect their commission.

One answer to the question of who will order appraisals is Appraisal Management Companies or AMCs. AMCs already exist, but depending on how they are structured, they may be capable of applying just as much pressure on appraisers as mortgage brokers and lenders. This is just transferring the problem and not solving it.

A true solution will involve the licensing and regulating of mortgage brokers (Lenders are already regulated. How well the regulations are enforced is another issue); educating participants in the process on the importance of responsible and sound lending practices; anti-appraisal pressure legislation; and perhaps even restricting how participants are paid. In any event, we (meaning appraisers, mortgage brokers, lenders, and regulating government agencies) are all in this together and all parties need to be part of the solution.

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