

**FHA Single Family / Mortgagee Letters / 2009 Mortgagee Letters / ML 2009-28:
Appraiser Independence (09/18/09)****ML 2009-28: Appraiser Independence (09/18/09)**

**TO: ALL APPROVED MORTGAGEES
ALL FHA ROSTER APPRAISERS**

This Mortgagee Letter provides clarification and reaffirms Federal Housing Administration (FHA) appraisal requirements related to appraiser independence and announces new requirements pertaining to entities that are eligible to order appraisals for FHA insured mortgages.

FHA has long advised lenders and appraisers of the importance of appraiser independence in the context of generally accepted prudent lending practices. In this mortgagee letter, FHA reiterates the importance of appraiser independence, and advises of new requirements regarding who is eligible to request an appraisal from an FHA Roster appraiser. The new requirements set forth in this mortgagee letter will be effective for all case numbers assigned on or after January 1, 2010. The existing requirements will remain in effect.

New Requirements**Prohibition of mortgage brokers and commission based lender staff from the appraisal process**

Historically FHA prohibited mortgagees from accepting appraisal reports completed by an appraiser selected, retained or compensated, in any manner by real estate agents. To ensure appraiser independence, FHA-approved lenders are now prohibited from accepting appraisals prepared by FHA Roster appraisers who are selected, retained or compensated in any manner by a mortgage broker or any member of a lender's staff who is compensated on a commission basis tied to the successful completion of a loan.

Appraiser Selection in FHA Connection

Lenders are responsible for assuring that the appraiser who actually conducted the appraisal used for the FHA-insured mortgage is correctly identified in FHA Connection. FHA has found that, on numerous occasions, the name of an appraiser in the appraiser log-in screen is not the appraiser who actually completed the appraisal. Lenders who fail to assure that the FHA Connection reflects the correct name of the appraiser will be subject to administrative sanctions.

Appraisal and Appraisal Management Company (AMC)/Third Party Organization Fees

FHA does not require the use of AMCs or other third party organizations for appraisal ordering, but recognizes that some lenders use AMCs and/or other third party organizations to help ensure appraiser independence. To address several questions that have already been raised regarding compensation, this mortgagee letter corrects and expands existing fee requirements set forth in Mortgagee Letter 1997-46.

FHA-approved lenders must ensure that:

- FHA Appraisers are not prohibited by the lender, AMC or other third party, from recording the fee the appraiser was paid for the performance of the appraisal in the appraisal report.

- FHA Roster appraisers are compensated at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.
- The fee for the actual completion of an FHA appraisal may not include a fee for management of the appraisal process or any activity other than the performance of the appraisal.
- Any management fees charged by an AMC or other third party must be for actual services related to ordering, processing or reviewing of appraisals performed for FHA financing.
- AMC and other third party fees must not exceed what is customary and reasonable for such services provided in the market area of the property being appraised.

Affirming Existing Requirements

Prevention of Improper Influences on Appraisers

Mortgagee Letter 1996-26 requires that FHA Roster appraisers avoid conflicts of interest and the appearance of conflicts of interest. In order to help appraisers avoid conflicts or the appearance of conflicts, no members of a lender's loan production staff or any person (i) who is compensated on a commission basis upon the successful completion of a loan or (ii) who reports, ultimately, to any officer of the lender not independent of the loan production staff and process, shall have substantive communications with an appraiser relating to or having an impact on valuation, including ordering or managing an appraisal assignment.

The DE Underwriter who has responsibility for the quality of the appraisal report is allowed to request clarifications and discuss with the appraiser components of the appraisal that influence its quality.

If absolute lines of independence cannot be achieved as a result of the lender's small size and limited staff, the lender must be able to clearly demonstrate that it has prudent safeguards to isolate its collateral evaluation process from influence or interference from its loan production process.

Appraiser Independence Safeguards

When FHA transitioned from rotational assignment of appraisers to "Lender Select," Mortgagee Letter 1994-54 was issued to advise of the necessity for appraisal independence. Mortgagee Letter 1994-54 prohibited loan officers and loan production staff from supervising or directing appraisers and prescribed penalties for mortgagees that unduly influenced or pressured appraisers. Subsequent Mortgagee Letters enhanced the importance of appraiser independence, and clarified and supplemented Mortgagee Letter 1994-54. In Mortgagee Letter 1996-26, FHA directed that the mortgagee and the appraiser avoid even the appearance of a conflict of interest, which would include providing the appraiser with anything of value in consideration of returning the appraisal at a given value. With the release of Mortgagee Letter 1997-45, FHA instructed mortgagees that they may not condition continued selection of an appraiser on inflating values or disregarding repair requirements.

FHA is reaffirming these requirements. Mortgagees and third parties working on behalf of mortgagees are prohibited from:

- Withholding or threatening to withhold timely payment or partial payment for an appraisal report.

- Withholding or threatening to withhold future business for an appraiser, or demoting or terminating or threatening to demote or terminate an appraiser.
- Expressly or impliedly promising future business, promotions or increased compensation for an appraiser.
- Conditioning the ordering of an appraisal report or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached, or on a preliminary value estimate requested from an appraiser.
- Requesting that an appraiser provide an estimated, predetermined or desired valuation in an appraisal report prior to the completion of the appraisal report, or requesting that an appraiser provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal report.
- Providing to the appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase must be provided.
- Providing to the appraiser, appraisal company, appraisal management company or any entity or person related to the appraiser, appraisal company or management company, stock or other financial or non-financial benefits.
- Allowing the removal of an appraiser from a list of qualified appraisers or the addition of an appraiser to an exclusionary list of qualified appraisers, used by any entity, without prompt written notice to such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice (USPAP) or state licensing standards, improper or unprofessional behavior or other substantive reason for removal.
- Ordering, obtaining, using, or paying for a second or subsequent appraisal or automated valuation model (AVM) in connection with a mortgage financing transaction unless: (i) there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such appraisal is clearly and appropriately noted in the loan file, or (ii) unless such appraisal or automated valuation model is done pursuant to written, pre-established bona fide pre- or post-funding appraisal review or quality control process or underwriting guidelines, and so long as the lender adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value; or
- Any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality or violates law or regulation, including, but not limited to: the Truth in Lending Act (TILA) and Regulation Z and USPAP.

Appraiser Engagement – Knowledge of Market Area – Geographic Competency

Mortgagees are reminded that they are responsible along with the appraiser for the quality and accuracy of the appraisal if the lender knew or should have known that there were problems with the integrity, accuracy and thoroughness of an appraisal submitted to FHA for mortgage insurance purposes and must select an appropriate appraiser for every assignment.

An appraiser who is primarily experienced in appraising detached, single family dwellings in one market may lack the knowledge, experience and/or sources for obtaining market data that will enable the appraiser to perform quality appraisals on condominiums or manufactured homes in the same market or detached, single family homes in another market a short distance away. The valuation principles for appraising all residential properties are essentially the same no

matter the market in which a property is located, however not all appraisers are knowledgeable and experienced or have access to sources of data for all markets. A lender must not assume, simply because an appraiser is state-certified, that the appraiser is qualified and knowledgeable in a specific market area. It is incumbent upon the lender to determine whether an appraiser's qualifications, as evidenced by educational training and actual field experience, are sufficient to enable the appraiser to competently perform appraisals before assigning an appraisal to them.

Appraisers are reminded that the Uniform Standards of Professional Appraisal Practice (USPAP) apply to all appraisals performed for properties that are security for FHA insured financing including the Competency Rule. Per the Appraiser's Certifications contained in the property specific Fannie Mae/Freddie Mac appraisal reporting forms adopted by FHA, appraisers must certify that:

"I have knowledge and experience in appraising this type of property in this market area" (Appraiser's Certification # 11)

and

"I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located." (Appraiser's Certification #12)

If you should have any questions concerning this Mortgagee Letter, call 1-800-CALLFHA. Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483)

David H. Stevens, Assistant Secretary for Housing -
Federal Housing Commissioner