REGULATORYAPPRAISALUPDATE
National Association of REALTORS®

This is the Regulatory Appraisal Update – an e-newsletter for the National Association of Realtors® Appraisal Committee. This newsletter is E-mailed regularly to keep you informed of issues relevant to the activities of the committee. If you have suggestions for the newsletter or appraisal issues you would like to discuss contact Jerry Nagy at 202.383.1233, jnagy@realtors.org.

FHA Enhances and Amends Appraisal Policies

On September 18, 2009, Federal Housing Administration (FHA) Commissioner David H. Stevens announced plans to implement credit policy changes that will enhance the agency's risk management functions. As a part of these changes, FHA also issued two mortgagee letters focusing on appraisals. Commissioner Stevens said "to be clear, the fund's reserves are sufficient to cover our future losses, so the FHA will not require taxpayer assistance or new Congressional action. That said, given the size and scope of the FHA and its importance to today's market, these risk management and credit policy changes are important steps in strengthening the FHA fund, by ensuring that lenders have proper and sufficient protections."

FHA is implementing new policies in a mortgagee letter that will be effective January 1, 2010. The mortgagee letter will require audited financial statements by supervised mortgagees, modify the streamline finance process, and enhance appraiser independence. The streamline refinance process will include new requirements for seasoning, payment history, income verification, and demonstration of net tangible benefit to the borrower; provide for collection of credit score information when available; and to cap maximum loan-to-value (LTV) ratio at 125 percent. FHA will reaffirm existing policy on appraiser independence and geographic competence. Mortgage brokers and commission based lender staff will be prohibited from ordering appraisals. FHA's appraisal validity period will be reduced from six months to four.

In a statement by President Charles McMillan, NAR applauds the recommended credit policy changes. Mr. McMillan said “The Federal Housing Administration is very important to the housing market”. With this announcement, “FHA has taken some timely steps to protect taxpayer money.”

The following is a summary of FHA Mortgagee Letters released subsequent to the Credit Risk Policy announcement.

Appraiser Selection (ML 2009-28)

FHA-approved lenders are prohibited from accepting appraisal reports if the appraiser is 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 the loan.

Lenders are responsible for assuring the appraiser is correctly identified in FHA Connection. Lenders who fail to assure that FHA Connection reflects the correct name of the appraiser may face administrative sanctions.

Effective Date: January 1, 2010

Appraisal Management Companies (ML 2009-28)

FHA does not endorse or oppose the use of appraisal management companies (AMC). If the lender orders an appraisal through an AMC or another third party organization the lender must ensure that:

- FHA appraisers are not prohibited from recording the fee paid to the appraiser in the appraisal report;
- FHA appraisers are compensated at a rate that is customary and reasonable for the market where the property is being appraised;
- The Fee for the completion of the appraisal may not include a fee for the management of the appraisal process or any activity other than the completion of the appraisal;
- Management or other fees charged by an AMC or other third party must be for actual services related to ordering, processing, or reviewing appraisals for FHA financing; and
- AMC or other third party fees may not exceed what is customary and reasonable for the market area where the property is being appraised.

Effective Date: January 1, 2010

Portability (ML 2009-29)
This ML provides guidance when a borrower switches from one FHA-approved lender to another after the appraisal was ordered by the first lender. A second appraisal may be ordered by the second lender in the following circumstances: 1) the first appraisal contains material deficiencies, 2) the appraiser from the firs lender is on the second lender's exclusionary list of appraisers, and 3) failure of the first lender to provide a copy of the appraisal report to the second lender in a timely manner that would result in a delay in closing or other potential harm to the borrower. In cases where the borrower switches lenders, FHA does not require that the client name be changed on the appraisal. The lender is not permitted to request that the appraiser change the name of the client unless it is a new assignment.

Effective Date: January 1, 2010

Affirming Existing Policy - Improper Influence on Appraisers (ML 2009-28)
Consistent with ML 1996-26, 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. Prudent safeguards must be in place who cannot achieve absolute lines of independence because of small or limited staff size.

Affirming Existing Policy - Appraiser Independence Safeguards (ML 2009-28)
Consistent with ML 1994-54, ML 1996-26, and ML 1997-45, FHA reaffirms requirements of appraiser independence. 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.

Affirming Existing Policy - Geographic Competency (ML 2009-28)
The lender is responsible for determining whether an appraiser's qualifications are sufficient to enable the appraiser to competently perform appraisals before assigning an appraisal to them. Appraisers are reminded that USPAP applies to all appraisals performed for properties that are security for FHA, including the Competency Rule. Lenders and appraisers are both responsible for the quality and accuracy of the appraisal if the lender knew or should have known there were problems with the integrity, accuracy, or thoroughness of an appraisal report.

FHA Streamline Refinance Transactions (ML 2009-32)
A streamline refinance may occur with or without an appraisal. For a refinance without an appraisal, the maximum insurable mortgage may not exceed the outstanding principal balance plus the new upfront mortgage insurance premium (UFMIP).

Where an appraisal will be ordered in the refinance, the maximum insurable mortgage is the lower of 1) the outstanding principal plus closing costs, prepaid items in escrow, and the UFMIP or 2) 97.75 percent of the appraised value of the property plus UFMIP.

Effective Date: November 18, 2009

Upcoming Events
The National Association of REALTORS® Annual Conference & Expo will be held November 13-16, 2009, in San Diego, CA. Find all of your registration information at http://www.realtor.org/midyear.nsf.