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To: State Appraiser Board Chairs & Lead Staff Contacts

From: Appraisal Institute
American Society of Appraisers
American Society of Farm Managers & Rural Appraisers
National Association of Independent Fee Appraisers

Re: Brokers Price Opinions

Date: February 11, 2009

Our purpose in writing is to bring to your attention the possibility that brokers' price opinions (BPOs) are being ordered by financial institutions for purposes that are prohibited by your state law and, therefore, are being performed illegally by real estate brokers and sales people in your state. These illegal BPOs are being ordered and performed primarily for the purposes of loan modifications and workouts, as well as for foreclosures.

We strongly encourage your Board to review your state's laws regarding the performance of BPOs and to issue written guidance that reiterates the purposes for which BPOs may, and may not, be performed. We also urge the Board to thoroughly investigate and initiate disciplinary action (including referral to your Attorney General or state real estate licensing board) against individuals performing mortgage-related valuation services, including BPOs, without an appropriate appraiser's license or certification. Lastly, we urge the state Appraiser Board to bring this issue to the attention of the agency and board responsible for the licensing and regulation of real estate agents and brokers, so that they may investigate and take appropriate enforcement action, where justified, against any agent or broker that is performing a BPO for a prohibited purpose.

Our analysis indicates that in as many as 23 states¹, it is illegal for a real estate broker or salesperson to perform a BPO for any purpose other than a real estate listing (see attached summary of state BPO laws). For example, in Mississippi, it is only permissible for a broker or salesperson to "in the ordinary course of business, give[s] an opinion as to the price of real estate for the purpose of a prospective listing or sale."² Clearly, determining the value of a property to ascertain a loan-to-value ratio that establishes eligibility for a loan modification, workout, or as part of a foreclosure or short sale, is entirely different from a listing or sale of a

¹ AL, AR, CT, DE, GA, HI, ID, KY, MD, MI, MN, MS, NE, NJ, NV, NM, ND, OR, PA, RI, TN, UT, WV

² Mississippi Code § 73-34-5. Available at <http://michie.com/mississippi/lpExt.dll?f=templates&eMail=Y&fn=main-h.htm&cp=mscode/15df8/16b16/16b22>

property. Performing a valuation of property for any of these purposes, outside of the real estate listing process, is an appraisal and should be subject to your state's appraiser licensing or certification laws and appraisal standards.

A principal public policy reason that many states have severely restricted the purposes for which a BPO may be performed, relates to the fact that BPOs are largely unregulated and are performed with little oversight and training. As you know, licensed and certified appraisers are required to meet meaningful education, experience, and examination requirements and to perform real estate valuation assignments in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). BPO preparers have virtually no valuation-specific education, training, and testing requirements, and do not adhere to generally accepted valuation standards. As a result, BPO value estimates vary widely and are far less reliable than professionally prepared real estate appraisals.

Further, lenders have a fiduciary duty to obtain maximum value upon the sale of an acquired property, even if the loan is in distress. Our members inform us that many distressed loan assets are being sold below market value, as a result of unreliable BPOs, which could have an impact on overall neighborhood property values.

We understand that some financial institutions and loan servicers are turning to BPOs because BPOs are seen as cheaper and faster alternatives to appraisals. We dispute this contention. Many BPO providers routinely advertise turnaround times that are comparable to appraisals. The turnaround time for appraisals is largely a function of the scope of work of the assignment, and there is great flexibility in the scope of work for an appraisal assignment. The Uniform Standards of Professional Appraisal Practice (USPAP) give appraisers great flexibility to develop a "scope of work" consistent with the needs of their clients. Our organizations would ask that you reemphasize to appraisers in your state the flexibility permitted by USPAP to develop a scope of work that answers valuation questions for loan modifications, workouts and foreclosures in a concise report that may be prepared in a timely, cost-effective manner.

Thank you, in advance, for your prompt attention to this important issue. If you should have any questions, or if we can be of any assistance, please do not hesitate to contact Bill Garber, Appraisal Institute Director of Government and External Relations, at (202) 298-5586 or bgarber@appraisalinstitute.org, or Peter Barash, Government Relations Representative, American Society of Appraisers, at (202) 466-2221 or peter@barashassociates.com.

Enclosure: State BPO Law Summary