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FAQs – ML 09-28 Appraiser Independence

Prior Guidance in ML 1997-46

The prior guidance in ML 1997-46 required FHA approved lenders to ensure that the total of the fees charged by an appraiser and those fees charged by an Appraisal Management Company (AMC) must not exceed what is a customary and reasonable fee for an appraisal in the market area where the appraisal is performed. Has this changed with the guidance issued in ML 2009-28?

Yes. ML 09-28 requires FHA approved lenders to ensure that all parties to the appraisal process; appraisers, AMC's or other third parties, are compensated at rates that are customary and reasonable and are commensurate with the level of the respective service provided.

Payment of Fees

Who is allowed to pay for fees associated with the appraisal process?

FHA does not prohibit the borrower from paying the fee for the appraisal report, AMC fee or additional fees charged by the lender for management or review functions.

Are borrowers precluded from directly paying a mortgage broker? New FAQ.

No. Appraiser Independence does not prohibit a borrower from directly paying a mortgage broker who must transmit the payment for the appraisal directly to the lender or an authorized third party agent of the lender, a lender or AMC.

Who may directly pay an appraiser for appraisal services? New FAQ.

Only the lender or a third party specifically authorized by the lender (such as an AMC) may directly pay an appraiser for an appraisal. Mortgage brokers are prohibited from paying an appraiser for appraisal services.

Customary and Reasonable Appraisal Fees

What does FHA consider customary and reasonable fees for preparing an appraisal report?

Customary and reasonable appraisal fees are reflective of those fees established and negotiated by an FHA approved self employed independent fee appraiser or an appraisal firm that may directly employ FHA approved roster appraisers or retain FHA approved roster appraisers as independent contractors, for appraisal services rendered, regardless of whether a lender, AMC or a 3rd party company or vendor is ordering/requesting appraisal

services. The fee charged must be commensurate with the level of services provided and should reflect the amount of research, level of difficulty, and due diligence required on the appraiser's part to produce a credible, reliable and accurate appraisal report that is in compliance with all FHA guidelines and USPAP.

Customary and reasonable **Appraisal** fees, for purposes of FHA, do not include:

- AMC or other third party fees.
- Management or review fees charged by lenders.

Appraisal Fee

Will FHA set appraisal fees, AMC fees or lender fees for appraisal management or review functions?

No. FHA does not set fees or fee schedules for appraisers or other real estate related service providers and believes that the marketplace best determines what is reasonable and customary in terms of fees for these types of services.

Appraisal Fee Disclosure

Disclosure of appraisal fees is not required by FHA. However, FHA approved lenders must ensure that appraisers are not prohibited by the lender, AMC or other third party, from recording the fee the appraisal firm or self employed independent fee appraiser was paid for the performance of the appraisal within the appraisal report. Does the term *fee* refer to the amount the appraisal firm is paid for an assignment or the amount the appraisal firm actually pays as income to the FHA roster approved employee or independent contractor for completing the assignment?

An accurate reflection of customary and reasonable fees does not include fee splits or other internal compensation arrangements in the appraisal fee disclosure. Because lenders must ensure that appraisers are paid a reasonable and customary fee, appraisers are encouraged to record the fee received so the lender may utilize this information as a data point in order to comply with the requirement that appraisers are compensated commensurate with the level of services provided.

The appraisal fee recorded within the appraisal report **must not** include:

- AMC or other third party fees.
- Management or review fees charged by lenders.

Adoption of HVCC

Is FHA adopting HVCC by releasing this mortgagee letter?

No. FHA is explicitly excluded from the agreement that produced the HVCC. However, FHA is adopting language from HVCC to ensure alignment with the rest of the residential mortgage lending industry. This new guidance reinforces FHA’s long-standing policy of appraiser independence.

AMC

What is an Appraisal Management Company (AMC)?

An appraisal management company (AMC) is a business entity that — for a management fee — administers a network of certified and licensed appraisers to fulfill real estate appraisal assignments on behalf of mortgage lending institutions. The AMC recruits, qualifies, verifies licensure, and negotiates fees and service level requirements with a network of 3rd party appraisers. Services typically include appraisal ordering and assignment, tracking and delivery, record retention and often include appraisal review and other quality control measures.

An appraisal management company, therefore, is an outsourcing action or solution that is paid by a lender-client to act on the lender/client’s behalf to engage real estate appraisers and to perform the administrative functions involved in the appraisal ordering, tracking, and delivery process.

Mortgage Broker

How does FHA define mortgage broker for the purposes of Mortgage Letter 2009-28?

Mortgage Broker:

One who facilitates transactions between mortgage borrowers and lenders. Mortgage brokers typically are responsible for providing paper work between the parties and generally streamline the process of making a mortgage. A broker must be FHA approved and affiliated with an FHA approved “Full Eagle” lender in order to participate in the origination of an FHA insured loan. An FHA approved broker may not order an appraisal.

May Mortgage Brokers be listed as a client on an appraisal report? New FAQ.

No. Mortgage Brokers are prohibited from ordering appraisals and may not be identified as a client on an appraisal report. For the appraisal to be acceptable to FHA, the lender must be identified as the client on the appraisal report.

**Ordering
Appraisals**

May a lender direct a broker to use a web portal set up either by the lender, or by the lender's authorized agent, through which the broker inputs a request for an appraisal and then triggers the lender's system to order and appraisal? New FAQ.

Yes.

May a mortgage broker order an appraisal directly from an AMC that was specifically authorized by the lender? New FAQ.

Yes. Mortgage brokers may initiate the appraisal selection process on a lender's behalf in accordance with arrangements made by the lender as long as the mortgage broker has no financial or fiduciary interest in the AMC and has no influence in the selection of a specific appraiser.

May a lender order an appraisal by directing a broker to select an AMC from among a group of specifically authorized AMCs, one of which would receive information from the broker about the loan application and begin the appraisal process? New FAQ.

No. Such a process would give the broker an element of responsibility for selecting or retaining the appraiser, and therefore would not be compliant with Appraiser Independence.

May Mortgage Brokers be listed as a client on an appraisal report? New FAQ.

No. Mortgage Brokers are prohibited from ordering appraisals and may not be identified as a client on an appraisal report. For the appraisal to be acceptable to FHA, the lender must be identified as the client on the appraisal report.

May a lender accept an appraisal prepared by an appraiser that was ordered by a mortgage broker? New FAQ.

No

May a mortgage broker provide the lender with an approved appraiser list for the lender to use when ordering appraisals for that particular lender? New FAQ.

No.

**Separating
Fees**

Does FHA expect lenders to separate appraisal fees from AMC fees and other 3rd party real estate service provider fees on the HUD-1?

No. FHA expects lenders to ensure that appraisers and other real estate service providers are paid fees that are reasonable and customary and reflect the level of service provided but does not expect lenders to break out or itemize these fees on the HUD-1, which is consistent with RESPA guidelines.

**Appraiser
Competency**

How does a lender determine if an appraiser is competent to appraise in a particular market or appraise a particular property type?

In order to demonstrate competency in a particular market or for a property type, an appraiser should be able to demonstrate:

- Ready access to sources for market data unique to that market such as MLS.
 - Familiarity with the market by way of actual field experience in and working knowledge of the market.
 - Experience in appraising property types such as manufactured housing or 2-4 unit single-family homes.
 - Educational qualifications.
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