



March 8, 2010

The Honorable Timothy Geithner
Secretary of the Treasury
1500 Pennsylvania Avenue, NW, Room 3330
Washington, DC 20220

Dear Secretary Geithner:

We are writing to express our deepest concern with regard to the Home Affordable Foreclosure Alternatives (HAFA) program, specifically, ongoing encouragements to conduct "short sales" without minimum safeguards to protect against conflicts of interests, waste and abuse. We understand the Administration is seeking ways to enhance short sales as a foreclosure alternative. However, we strongly believe continuing to allow "broker price opinions" (BPOs) in the property valuation component will not adequately protect the public interest (consumer, borrowers, etc.) or the interests of the various parties to the loan (lenders, loan servicers, etc.) and is likely to exacerbate mortgage fraud. To restore investor confidence around the world and dig out from the current financial crisis, we must end the culture of corruption that has permeated all levels of real estate finance. We urge the Department to reestablish independence in the valuation process to protect the safety and soundness of financial institutions, improve transparency, and safeguard the public trust.

As a preface to our concerns, we note that loan modification fraud (including short sales), has been highlighted as a new form of mortgage fraud by law enforcement officials in recent weeks. According to an independent fraud investigation firm, bank-owned fraud attributed directly to schemes involving shorts sales and REO inventories has increased by nearly 50 percent over the past year and 100 percent over the past two years.¹ The Financial Crimes Enforcement Network and other major law enforcement officials have also issued advisories and notices highlighting fraud scenarios involving loan modification, which oftentimes include short sales². Further, we also note a related trend called "property flopping," which is similar to property flipping, but in reverse³. In this arrangement, the property is artificially deflated below its actual market value (using a BPO) and sold as a REO property to a related party of the real estate agent, who quickly sells the property at its market value for a profit.

Generally speaking, real estate agents and brokers are not independent or properly trained valuation specialists. They have an inherent bias towards quick results and action which produces a fee for themselves irrespective of whether the lender/services/investor/property owner/borrower gets a fair return on the short sale.

We believe that such conflicts can and should be mitigated by implementing basic requirements reestablishing independence and competency in the valuation process. Specifically, any arrangements to encourage short sales must require competent appraisals prepared in accordance with the Uniform Standards of Professional Appraisal Practice. Such a requirement is a minimum safeguard to enhance the fiduciary responsibility of lenders, eliminate conflicts of interests, and ensure independence and objectivity in the short sale process.

We have expressed our previous concern with the acceptability of BPOs with the Administration's loan modification programs. Under the Home Affordable Modification Program guidelines released last year, BPOs were allowed to assist in establishing net present value calculations and valuing large numbers of properties held in portfolio. The BPO allowance was carried over in the HAFA program guidelines issued in November 2009⁴. Our concerns for this acceptance remain, but are deepened by the aforementioned reports of escalation in mortgage fraud involving short sales.

¹ Available at Mortgage Fraud Risk Report, 4th Quarter. http://www.interthinx.com/overview/fraud_reports.php

² Available at <http://www.fincen.gov/foreclosurerescue.html>

³ Available at <http://www.heraldtribune.com/article/20091115/ARTICLE/911151083>

⁴ Available at <http://www.ustreas.gov/press/releases/docs/05142009FactSheet-MakingHomesAffordable.pdf>

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Lastly, in at least twenty-three states the ability of a real estate agent or broker to perform a BPO is specifically limited to assisting a buyer or seller, or a potential buyer or seller, in establishing a listing or offering price for real property. The lender that has ordered the BPO in order to make a decision related to a short sale is neither the buyer nor the seller in the transaction. Therefore, in the aforementioned states, agents and brokers may not be authorized to provide BPOs in short sale situations. At a minimum, we urge the Administration to caution real estate professionals to review their state law regarding BPOs to ensure that they are authorized to provide this service in a short sale situation.

More specifically, we urge the Administration to revise the HAFA guidelines to prohibit the use of BPOs for property valuation requirements involving foreclosure alternatives including short sales. Doing so will reestablish independence in the valuation process and guard against conflicts of interest in short sales. There is an ample number of qualified real estate appraisers to perform these valuation services. Such a move would not only be in the best interests of financial institutions, but consumers and the public interest. We hope the Administration agrees.

We respectfully request a meeting to discuss these concerns in greater detail. Representatives from our organizations will contact your appointment secretary to confirm this discussion. Should you require any additional information or have any questions please contact Bill Garber, Director of Government and External Relations, at 202-298-5586 or bgarber@appraisalinstitute.org or Peter Barash, Government Relations Consultant, American Society of Appraisers at 202-466-2221 or peter@barashassociates.com.

Sincerely,

Appraisal Institute
American Society of Appraisers
American Society of Farm Managers and Rural Appraisers
National Association of Independent Fee Appraisers

Cc: Mr. Michael Barr, Assistant Secretary for Financial Institutions, U.S. Treasury
Mr. Seth Wheeler, Senior Advisor, U.S. Department of the Treasury
The Honorable Barney Frank, Chairman, House Financial Services Committee
The Honorable Spencer Bachus, Ranking Members, House Financial Services Committee
The Honorable Christopher Dodd, Chairman, Senate Banking Committee
The Honorable Richard Shelby, Ranking Member, Senate Banking Committee