



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

Dear Mr. Secretary:

This is a follow-up to the March 7th letter from the undersigned professional appraisal organizations expressing serious concern over the valuation policy established for the Administration's Home Affordable Foreclosure Alternatives (HAFA) program. Currently, that policy permits the lender or servicer of a mortgage eligible for the HAFA short sale program to determine the market value of the collateral property based "on either an appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) and/or one or more Broker Price Opinions (BPOs)..." While our organizations strongly support the HAFA concept, we believe that the use of broker price opinions as an acceptable alternative to professional appraisals to determine the market value of short-sale properties, will undermine a key purpose of the program, which Treasury describes as "stabilizing property values in neighborhoods hardest hit by foreclosures" and "bolster[ing] home values for the average homeowner by as much as \$6,000."¹ Indeed, we believe that the use of BPOs performed by real estate salespeople to value residential properties in such neighborhoods could have an effect which is opposite the program's intent.

Because lender or servicer decisions on the acceptability of short sale offers will inevitably be influenced by the market values assigned to those properties, those providing opinions of value must not only be valuation professionals, they must also be unmistakably independent of the process. The public – and borrowers involved in the program - are entitled to assurance that the opinion of a property's value in a pending short sale is not being provided by someone with a possible financial stake in whether the short sale occurs. We believe an inherent conflict-of-interest exists when the party valuing a property stands to benefit from the results of that valuation. Broker price opinions are provided by real estate sales agents and brokers who earn commissions for themselves and their firms only when a property is sold. While a real estate agent's commission in a short sale is entirely appropriate as compensation for services provided to a potential buyer of the property, the agent should not be permitted to engage in activities which otherwise influence whether or not the short sale will or should occur. Permitting a realtor to perform a valuation in connection with a financed purchase of property is hardly different than permitting the agent/broker to perform other services important to the underwriting process. No one would argue that the real estate

¹ When Treasury announced its Foreclosure Alternatives and Home Price Decline Protection Incentives, it stated that the program "will help to stabilize property values for homeowners in neighborhoods hardest hit by foreclosures. Based on estimates of the relationship between foreclosures and home prices, the Home Affordable Modification program could help to bolster home values for the average homeowner by as much as \$6,000."

salesperson or broker advising a potential buyer of property should be involved in performing a credit check of the borrower; conducting a Title search on the collateral property or be involved in any other activity bearing on whether the short sale should take place or whether a loan to the homebuyer should be approved. Why should the agent/broker be permitted to estimate the collateral property's value, which is important to decisions of the originator or servicer of the original mortgage in a short sale and to the lender financing the new purchase? The real estate salesperson promoting the short sale should not be involved in making decisions that bear on whether it occurs.

Although these views were expressed in our March 7th letter, we are writing again to reiterate our concerns and to renew our unanswered request for a meeting with senior Treasury officials responsible for HAFA and Make Home Affordable (MHA) programs.

We also note that in a March 12th letter, the National Association of Realtors (NAR) wrote to you about the use of broker price opinions in the HAFA program. Our organizations appreciate NAR's acknowledgment, in its letter, that "The appraisal is a very important part of a purchase money mortgage transaction..."; and, that the laws of some states prohibit the use of broker price opinions for mortgage-related transactions, including those contemplated under the HAFA and MHA programs.² But, for the reasons stated below, we strongly disagree with the letter's further assertion that an appraisal "may not be the best tool for other real estate transactions," such as short sales "refinances, home equity loans, and secondary market transactions related to loan portfolios":

- **Real Estate Agents and Brokers Lack Valuation Education, Training & Testing And Their BPOs Do Not Adhere To Uniform Valuation Standards:** In contrast to professional appraisers, real estate agents and brokers lack meaningful valuation education and training; do not adhere to uniform valuation methodologies or qualification standards; are not tested to establish their valuation competency; and, are not required to meet continuing education credits in valuation. In its letter, NAR states that "Realtors have a fiduciary responsibility...to perform their duties consistent with the 'standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage.'" With respect to valuation, however, the only recognized standards of practice and competency in the 50 states and territories are the Uniform Standards of Professional Appraisal Practice, to which those performing BPOs do not adhere. Moreover, we do not believe that the real estate industry has any standards of practice and competency in place which specifically relate to valuations;

² Our principal disagreement with NAR on this point lies only in the total number of states whose laws prohibit the use of BPOs for HAFA and other mortgage-related purposes. We are convinced that most of these state laws unambiguously prohibit use of a BPO while NAR believes that only some do. We think all parties will agree that the success of HAFA will be seriously impeded if the government and HAFA participants need to become entangled in sorting out the states in which a BPO can or cannot be used without breaking state laws.

- **Real Estate Agents/Brokers Who Perform BPOs Have A Serious Financial Conflict-Of-Interest If They, Their Associates Or Their Firms Benefit From The Sale Of The Property Valued:** Unlike professional appraisers who are required to be independent of any transaction in which they participate, real estate agents and brokers may have a financial interest in the results of valuations they perform. Values assigned to collateral properties can – and almost always do – influence the outcome of proposed mortgage-related transactions. Because real estate agents and brokers with an interest in gaining a listing benefit financially from commissions received when properties are sold, their involvement in the valuation of properties collateralizing mortgages represents an inherent conflict-of-interest which serves none of the parties to a mortgage and undermines the public’s confidence in the housing-related programs of government. An individual performing a valuation – and that individual’s firm – should be prohibited from collecting any commission or fee on the sale of property whose financing reflects that valuation;
- **The Performance of BPOs By Agents/Brokers Is Not Subject To Governmental Oversight or Regulation:** Unlike professional appraisers, the conduct and competency of real estate agents and brokers are not subject to oversight or regulation by any state or federal agency. There are no governmental checks and balances in place regarding the performance of BPOs. The activities of appraisers are subject to the ongoing scrutiny – including disciplinary actions – of state appraiser licensing agencies. By contrast, a search of the public enforcement databases of the real estate licensing agencies of many large states, failed to find a single instance of a real estate agent or broker being investigated or disciplined for any broker price opinion negligence or infraction. If there have been such enforcement actions, they appear to be few and far between. Without such governmental oversight and enforcement, there are no consequences for valuation misdeeds;
- **The E&O Policies Of Real Estate Salespeople Do Not Appear To Extend To The Performance of BPOs:** Unlike professional appraisers, most of whom carry errors and omissions insurance for valuation negligence, the E&O policies of many and perhaps most real estate agents do not extend to the performance of BPOs. Given the absence of generally-recognized standards of care and competency for real estate salespeople, it is little wonder that insurance carriers are unwilling or unable to include such coverage. If professional appraisers perform appraisals negligently, homebuyers, lenders or federal agencies which guaranty mortgage debt can sue for recovery of damages. This does not appear to be the case with respect to the performance of negligent BPOs.

Finally, there is an additional – and we think compelling – reason why the government’s HAFA program would benefit from reliance on professional appraisers to value short sale properties. It involves the fact that a professional appraisal used for a short sale can also be used in connection with a purchase of the short sale property by the new buyer. In the case of HAFA supported short sales where the buyer of the property requires a mortgage to finance the purchase, the same appraisal used to inform the short sale decision can also be used to value the property collateralizing a new mortgage. Conversely, if a broker price opinion is used in connection with the short sale, it cannot be used to value the collateral in a subsequent mortgage origination if it is to be sold into the secondary markets, if it exceeds the current de minimis set by the banking agencies, if it is a complex property or if the transaction occurs in real estate markets experiencing sharp price changes.

For these reasons, we urge the Administration to reverse its policy of allowing the use of BPOs to value properties that are considered for sale under HAFA or in connection with other taxpayer supported programs designed to assist distressed homeowners with financial incentives or guarantees. We readily acknowledge that the government’s reliance on professional appraisers benefits our members and the tens of thousands of other professional real estate appraisers who are state licensed or certified. But, we have no doubt whatsoever that such reliance is fully consistent with good public policy in that it fosters safety and soundness, protects consumers and safeguards U.S. taxpayers.

We would appreciate an opportunity to meet with senior Department officials to discuss these issues. Our representatives in Washington, D.C., Bill Garber, Director of Government and External Relations, Appraisal Institute (202-298-5586, bgarber@appraisalinstitute.org) and Peter Barash, Government Relations Consultant, American Society of Appraisers (202-466-2221, peter@barashassociates.com) will pursue our efforts to arrange a meeting.

Sincerely,

AI
ASA
NAIFA
ASFMRA

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