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# ONDECK

Welcome to the *Valuation Review* in 2012. The VR team has a lot of cool new website features and content ideas to take the editorial coverage beyond the printed page. Keep an eye on every print edition, as well as online at [www.valuationreview.com](http://www.valuationreview.com) for all the latest and greatest.

# VALUATION REVIEW



January 2, 2012 Volume 10, No. 16  
News and analysis for the valuation industry: [www.valuationreview.com](http://www.valuationreview.com)

## ***We didn't start the fire: The appraisal industry responds to pointed blame***

It's hard to say who fired the first shot. In the heated climate of foreclosures, record low home prices and the "Great Recession," everyone is looking to point the finger of blame. Unfortunately for appraisers, that finger often points to them. Last August, a *Wall Street Journal* editorial took a shot at appraisers, blaming a home valuation for the fall through of a refinance. More recently, the National Association of Realtors (NAR) posted a blog on Dec. 7, 2011, entitled "Appraisals: Still a thorn in your side." In that same week, the National Association of Home Builders (NAHB) sent out a press release headlined with "Flawed appraisals killing home sales, hampering housing recovery."

While the NAR blog post is more tactful in its approach to appraisers (despite the headline), the association recommends working with appraisers. On the other hand, the NAHB has called out an "inappropriate" use of distressed and foreclosed sales as comparables in its press release.

"Too often, due to faulty appraisal practices, brand new homes with sparkling appliances and interior upgrades get compared to a distressed property that has been sitting vacant and in disrepair. The result, in many cases has been that the new house winds up getting appraised at less than the cost of construction," the NAHB press release stated. "That is precisely what is occurring in today's marketplace, according to the NAHB

survey, where a full 60 percent of respondents reported they were experiencing appraisals coming in below their contract sales price. Of those reporting that they had encountered this problem, 53 percent said the appraisal amount was actually less than the cost of building the home."

The NAHB reported that one out of three builders are reporting losing signed sales contracts during the preceding six months because appraisals on their homes were less than the contract sales price, according to a recent nationwide survey conducted by association. Of course, that didn't sit well with *Valuation Review* readers, who took

# Editor's Note

Welcome to the future!

It's 2012, and while we're still a couple years away from flying cars, vacations to the moon and underwater bubble cities that hasn't stopped the techies in the *Valuation Review* R&D department from coming up with some very cool, very futuristic stuff for our readers this year. It's going to be a big one in the name of innovation. So follow me on a tour into the dark laboratory recesses of *Valuation Review* for a sneak peak at our plans.

We're going to kick start the year with a brand new website. In Lab 1, we've tracked traffic and charted online behavior to bring you the new and improved, easy-to-use *ValuationReview.com*, complete with new content delivery methods. We'll be opening our resources up to our readers in the form of live chats with industry leaders. You'll be able to log on, ask questions and get answers. There will be live Twitter feeds to keep up with all the appraisal-related tweets ... the suits just informed me that I can't give away all our secrets, so we'll move on.

Lab 2 houses all our resources — from age-old volumes of primitive valuation dating back to the Stone Age to Space Age guidelines for appraising green building technologies. We've looked at print copies of *Valuation Review* dating back to the publication's inception 10 years ago. It's within these pages that we took our inspiration for our publication redesign. Take nostalgic comfort in the next few print editions and get ready to be blown away by the brand new *Valuation Review* print edition.

We're streamlining the experience between the print and online offerings. We realize our readers consume content in different ways through different mediums. Moving on to Lab 3, you'll see how you'll be able to jump from online to print without missing a beat. Take a break, kick your feet up with the cover story from the latest print edition and then log on, sound off in the comments and check out related features — from breaking news to interesting archived stories.

I'd be happy to take you into Lab 4, where we're already working on technology that surpasses our latest offerings, but it looks like my clearance has been pulled. So keep an eye on *ValuationReview.com* and the print editions you receive every other week for the exciting new future of *Valuation Review*. Please exit through the gift shop.



Jason Morgan, Editor  
*Valuation Review*

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**October Research,**  
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and information for the valuation  
industry and real estate appraisal  
professionals, and is published 24  
times a year.

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**Volume 10, Number 16**  
**ISSN: 1937-3864**

## ❑ Blame — From Page 1

to our LinkedIn group page to voice their own opinions.

“I think if someone is building a home in a declining market they are crazy in the first place. The problem I see with builders is they are pre-selling homes before they are built, and they wait until they build them to get them appraised. They build them to their clients’ liking and when they are done, their client goes to the bank and what a surprise, the home isn’t worth what they had planned,” said **Gary Troescher**, owner of Troescher and Associates, based in Biloxi, Miss. “All builders should know their market and whether they should build in it or not. Just because you have a buyer does not mean you have a deal.”

“If the builder or borrower is dependent on the appraisal of the home, then neither one of them did their homework,” added **Patrick Noland**, owner of TGF Appraisals Inc., based in the Chicago area. “The builder should be aware that in a declining market, the home will most likely be worth less at the end of construction than at the beginning. If the borrower cannot buy the home due to a slight decrease, then they couldn’t afford that home in the first place. I understand that the builders need to stay in business, but if you build homes that don’t close or at a loss, you won’t stay in business for long.

“Personally, I think anyone is crazy right now to buy a brand new home when you can scoop up a foreclosure or short sale of a couple year old home at a significant savings,” he continued. “Sure, it probably needs some cosmetic work, but thousands and thousands of dollars in savings is worth a little spring cleaning or minor repairs.”

The topic also caught the attention of the Appraisal Institute, which responded with a blog post of its own entitled “Don’t shoot the messenger: Appraisers not to blame for real estate woes.”

“Many in the real estate industry have tried to blame the market’s distressed condition on appraisers, saying that appraisers are at fault for producing opinions of value that don’t match a home’s contract or sales price, delaying a recovery in the housing market. But appraisers don’t set the market; they reflect what’s happening in the market,” The institute’s blog reminded the industry.

“The simple fact that the NAHB either does not understand, or is choosing to ignore, is that cost does not equal value. It never has,” echoed **Steve King**, appraisal review manager at Appraisal Management Services, based in the Atlanta area. “Appraisals, as we all know, are based on the principal of substitution, which is a product of basic supply and demand principles. It is simply less expensive to buy a steeply discounted REO [real estate owned] or short sale home and renovate.”

## **Comparable conflicts**

Certainly a market full of run-down foreclosures and forgotten homes adds a wrinkle in the appraisal process, but it doesn’t break it. When foreclosures and distressed sales are prevalent in a market, it may be necessary to use them as comparables. And there is a proper method for selecting the best comparables.

“Appropriate adjustments should be made for condition, quality, stigma,

etc., as reflected in the market,” said **Kathy Coon**, chief appraiser at FNC. “New homes typically always sell higher and also appraise higher than resales. Even in stable markets, many buyers prefer ‘new’ and will pay a premium. When markets are depressed, the values of new homes are still at the top of their market, but the high end of a market is also impacted by economic conditions.”

Coon singled out a statement in the NAHB press release that said, “a new house winds up getting appraised at less than the cost of construction.” Like her appraiser peers, she pointed out cost does not equal value. In declining markets, houses may sell for less than cost; likewise, in increasing markets these same houses may sell for much more than cost.

“All things being equal, it is certainly true that the more similar a competing property is to the subject property, the better a comparable it is likely to be,” said **John Brenan**, director of appraisal issues at The Appraisal Foundation. “However, there are often reasons why an appraiser may have to consider comparables that are not as physically similar to the subject property as may be desired.”

In a letter to the NAHB, Brenan also explained the Principle of Substitution, which essentially states that knowledgeable and typically motivated buyers would not pay more for a property if a similar property could be built (or if competing properties are available in that marketplace at a lower price.

“In marketplaces where many of the properties being bought are distress sales — e.g., foreclosures, bank-owned properties, short sales, etc. —

## ❑ Blame — Page 4

## □ Blame — From Page 3

It is not only permissible for appraisers to consider and potentially use these sales as comparables, but appraisers are required to determine the impact this activity is having in the marketplace,” Brenan said. “This is due to the fact that distressed sales may very well impact the value of more ‘conventional’ sales because in several markets buyers may be reluctant to pay more for any property than the price level set by the distress sales. Further, if the number of distress sales, or distress properties available for sale, becomes so significant in a marketplace that it represents virtually the only activity occurring, the distress activity may actually become the marketplace.

“To even suggest that appraisers are subjective in the performance of their appraisals is contrary to an appraiser’s most basic ethical obligations under USPAP,” Brenan said, taking exception to the NAHB press release.

In the reality of the industry, appraisers aren’t completely off the hook.

“There is no denying that there are incompetent appraisers, as well as those who rush through assignments without the proper research and development of the appraisal,” Coon said. “It should be emphasized that there is a difference in the experience, education and qualifications of appraisers. To prevent faulty appraisals, banks and lenders should have stringent requirements for approving appraisers.”

Quality appraisers have the ability to accurately reflect markets, whether declining or increasing. It is often overlooked that appraisers take no pleasure in values coming in lower than contract prices; it is actually stressful and they will tend to work harder on those assignments to be sure nothing has been overlooked, Coon stressed. Depressed markets and falling home prices affect everyone.

the decline in home prices appearing to have ended or coming to an end in most parts of the country, resolving the appraisal and credit crunch issues remain a top priority for the association,” it said.

Everyone in the real estate industry would agree that it’s time to turn things around, but the appraisal industry does not agree that there is an “appraisal issue.”

**“We can only compare to what has sold; we don’t make this stuff up. We own houses and properties too, but the reality is the reality. My home is not worth what it used to be worth.”**

**John Center**  
*Center Appraisals*  
*Albany, N.Y.*

“We can only compare to what has sold; we don’t make this stuff up,” said **John Center**, Center Appraisals, Albany, N.Y. “We own houses and properties too, but the reality is the reality. My home is not worth what it used to be worth.”

## **Appraisal problem?**

The NAHB maintains that appraisal values for land and subdivisions under development have led some financial institutions to stop lending to developers and builders, and makes them a contributing factor to the acquisition, development and construction (AD&C) crisis. “With

In a study released prior to the NAHB release, FNC’s senior research economist **Yanling Mayer** wrote, “Based on a large dataset of recently completed purchase-mortgage appraisals — representing nearly 20 percent of the monthly purchase-mortgage appraisal volume in the U.S. — we fail to find strong evidence to support the claims that low appraisal valuation

might have contributed significantly to prevent contract closings, thereby undermining a much-needed housing recovery.”

Additionally, that same FNC study found that less than 10 percent of recent appraisals have provided an opinion that falls short of the sales contract price, that more than 60 percent of appraisals are biased upward and 30 percent fall in the middle, neither biased low or high.

“In some areas of the country, values are still declining. Now, more than ever, it is important for builders to know where they stand before they break ground,” said **Tim Hillman**, Hillman Appraisal,

Charleston, S.C. “There are often simple, inexpensive changes that can be made that will eliminate problems before you are trying to get to the closing table.”

Hillman provided the example of a consulting assignment he took in which a buyer wanted to build a house that had two bedrooms, two baths and a four-car garage. The other houses in the neighborhood had three or four bedrooms, two-and-a-half baths and two-car garages.

“This house would not conform to the neighborhood and would cost more to build than it would ever appraise for,” Hillman said. “There were no comparables in the area for a two-bedroom, four-car garage [home].”

Hillman suggested adding a closet

to what was going to be an office to qualify it as a bedroom and add a half bathroom off that room. That way, the property conformed to the neighborhood norms and eliminated the need to bracket a two-bedroom, two-bath house, which crushed the appraised value, according to Hillman.

“When you hire an appraiser as a consultant, the appraiser is working for you, not the lender,” Hillman said. “Builders and real estate agents could minimize appraised value problems before they build, simply by consulting a qualified appraiser early in the building process. A subject to completion

appraisal or a consulting appraiser is always a good idea.”

*Questions? Comments? Contact Jason Morgan, editor, at [jmorgan@octoberresearch.com](mailto:jmorgan@octoberresearch.com)*

**“In marketplaces where many of the properties being bought are distress sales ... it is not only permissible for appraisers to consider and potentially use these sales as comparables, but appraisers are required to determine the impact this activity is having in the marketplace.”**

*— John Brenan  
director of appraisal issues  
at The Appraisal Foundation*

## ***Lenders: Are you UCDP compliant?***

Do you know what your responsibilities are under the new Uniform Collateral Delivery Portal (UCDP)? Are the loans you are submitting to the government-sponsored enterprises (GSEs) compliant? What is required for the Uniform Appraisal Dataset?

If you're a lender and don't know the answer to these questions, it's time for a crash course in digital loan submission. The UCDP, which is the portal used to submit appraisal data, went into effect in June. The UAD went online on Sept. 1. The uniform loan delivery dataset (ULDD) will go into effect on Dec. 1. Lenders or their agents must submit appraisal data to the UCDP, which is separate from the loan data. UCDP submission becomes mandatory on March 19,

2012, for loans sold with an application date of Dec. 1, 2011, or later.

“If you sell and deliver the loan to Fannie or Freddie prior to March 19, there is no requirement that you will have successfully submitted the appraisal to UCDP,” said FNC Chief Strategy Officer **Mike Mitchell** to clarify the requirements in a recent FNC webinar. “I think the reason why the GSEs set up a soft mandate date on Dec. 1, prior to the hard mandate of March 19, 2012, is to allow pipelines to be cleaned out and for cases that a loan is originated and sold to another lender before it is actually sold to the GSEs.”

In a presentation covering UCDP, Mitchell outlined what lenders

should have already done:

- Received UAD-formatted appraisals;
- Set up account credentials on the UCDP and configured a technology vendor;
- Received appraisals in a supported format — AI Ready, MISMO XML or ACI format — from appraisers and appraisal management companies (AMCs);
- Determined a go-live date to begin submitting to the UCDP;
- Determined how to get UCDP submission results — UCDP document identification and submission summary reports (SSRs) — into the loan delivery system.

“SSRs are generated by the UCDP when a submission is made,” explained **Shawn Telford**, FNC director of product management. “The SSR contains the information from the submission that you need to sell the loan to Fannie, Freddie or, in some cases, an aggregator as a correspondent. Some people will input information from the SSR documents into their LOS to move the process forward. Others will print the document, which comes back as a PDF, and put it in the loan file.”

Telford was quick to point out that everyone submitting to the UCDP must be registered. There are distinct paths for current sellers, non-sellers and lender agents. The registration process takes several days to complete, as certain steps have a three- to five-day processing time. If lenders wait, there might be a rush at the deadline.

The UAD appraisal format is also another hitch in the system. It’s required for 1004, 2055, 1073 and 1075 appraisal forms.

“Appraisers today can create UAD appraisals,” Telford said. “I think we’re past this as an event in the industry. Appraisers have the software. The software has done a good job of creating UAD

capabilities and appraisers can do this. As of Sept. 1, it was required that UAD-formatted appraisals be delivered. If you haven’t made that delineation in your workflow, it’s time to move forward on that.”

## **Hard stops**

As a submitter to the UCDP, the submissions will take about one minute and will hopefully generate a successful result with no additional action needed. However, hard stops will occur when certain rules are triggered. These must be addressed. An example of a hard stop is an appraised value is missing or provided in an invalid format or that there is missing appraiser license information. Typically, UAD format issues will not return a hard stop, but that won’t be the case forever.

“Today, the UAD issues trigger warnings and are made available to be shown to a submitter to address them, but they don’t require any further action to get a successful submission,” Telford said. “Over time, the GSEs have indicated that they will make some of the UAD issues move from a warning to a hard stop.”

There are exceptions to that rule, however. There are a few UAD issues that will be fatal errors.

To combat these issues before they are caught by the UCDP, technology vendors have integrated quality checks into their submission process. In the case of FNC, the company

developed Generally Accepted Appraisal Rules (GAAR) as checks for all UAD and UCDP requirements. GAAR rules are triggered UAD warnings for issues identified in the appraisals submitted by appraisers and AMCs.

There are three types of rules:

1. **Compliance:** Automated check for compliance with USPAP, Fannie Mae and Freddie Mac guidelines (*i.e.* UAD) and banking and thrift regulatory requirements.
2. **Risk:** Automated check for risk issues in the valuation document; available for automated valuation models (AVMs), appraisals, broker price opinions (BPOs), and Federal Housing Agency (FHA) guidelines.
3. **Client or investor-specific rules:** Monthly audits and reports on performance and rule firings that are delivered through FNC’s Collateral Management System (CMS) and online at [www.collateraldna.com](http://www.collateraldna.com).

FNC actively updates GAAR to properly process UAD submissions.

“The purpose of FNC’s GAAR rules set was to streamline, standardize and make the automated checking of an appraisal an efficient process,” Telford explained. “The main goal is to help a lender be compliant. Clearly, having a UAD-compliant appraisal is part of being in compliance. GAAR can be used to check for UAD compliance and monitor warnings as the appraisals are submitted and pre-screen them prior to the actual UCDP submission. As time passes and you learn how your work flow should be monitored and adjusted, you can set GAAR rules to help protect yourselves against risk.”

**“Today, the UAD issues trigger warnings and are made available ... but they don't require any further action to get a successful submission. Over time, the GSEs have indicated that they will make some of the UAD issues move from a warning to a hard stop. ”**

**Shawn Telford**  
*FNC director of  
product management*

# Frequently-asked ULDD questions

The uniform loan delivery dataset (ULDD) is in effect for loans sold with an application date on or after Dec. 1. There is still some wiggle room — submission becomes mandatory on March 19, 2012. The whole process can be confusing; so, we asked **Jennifer Creech**, president and chief executive officer of InHouse, and **Jeff Bradford**, chief executive officer of Bradford Technologies, the questions lenders are asking.

*Question:* Give us a quick overview of ULDD — how does it fit into the overall process? What new requirements exactly will be required on Dec. 1?

**Jeff Bradford:** ULDD stands for uniform loan delivery dataset. Fannie Mae and Freddie Mac are transitioning their single-family loan delivery file formats to the industry standard MISMO Version 3.0 Reference Model. All loans delivered on or after March 19, 2012, with application dates after Dec. 1, must be delivered meeting ULDD requirements.

**Jennifer Creech:** uniform loan delivery dataset defines the data that will be required at loan delivery, including loan type, loan feature and other business requirements. As of Dec. 1, lenders must collect the standardized appraisal data for new loan applications to be delivered to Fannie Mae and Freddie Mac.

*Question:* What will be the most common trouble spots for lenders?

**Bradford:** Making sure that their loan origination systems and the systems of their service providers such as appraisal management companies (AMCs) are compatible with ULDD. There will be continual change in the industry as the standards and regulations evolve. Lenders need to make sure their current service providers have the capacity to keep up with these changes.

**Creech:** Many lenders still have not registered for UCDP nor assigned their lender agent. This will delay them from submitting to UCDP.

*Question:* What advice would you give to lenders to be ready for the Dec. 1 deadline?

**Bradford:** One of the critical requirements will be to ensure that the appraisal for the loan has been submitted to UCDP and has been approved by the government-sponsored enterprises (GSEs) prior to funding the loan. Only lenders or lender agents are allowed to submit appraisals to UCDP. Streamlining the appraisal submission process is a critical step in ensuring that the entire loan process proceeds smoothly.

Lenders and their lender agents will have to find UCDP submission service vendors that have been approved for full

submissions in the production environment. To our knowledge, not all UCDP vendors are going to be in production by Dec. 1.

**Creech:** Lenders need to get registered and determine who will be responsible for clearing edits for UCDP.

*Question:* What software and/or delivery options are available to lenders?

**Bradford:** There are a number of options available to lenders for submitting the appraisal to the UCDP portal. One option is to use the GSE's website where appraisals can be uploaded manually. However this option is prone to human errors and not recommended for high volumes. Lenders and lender agents will want to have their loan origination systems or their appraisal management systems directly connected into the UCDP portal.

Direct connections are highly automated so that hundreds or thousands of appraisals can be uploaded and tracked automatically. Bradford Technologies has a direct connection service called PortalDirect; this is an on-demand cloud based service fully enabled in Windows Azure. PortalDirect allows unlimited scalability and reliability, perfectly suited for small as well as large-scale operations. Some of the top service providers have already adopted PortalDirect and are currently running live orders.

**Creech:** There is a list of direct integrators available for lenders to submit electronically. InHouse is available to lenders and offers a plug-and-play solution with limited start-up time and no integration fee.

*Question:* How do you see the ULDD (and the entire UCDP system) impacting appraisers in the future?

**Bradford:** Appraisers will need to be able to deliver appraisals in the UAD format [to lenders or their agents] and meet very strict data formatting requirements in the future. In the near term, these requirements have been relaxed as everyone gets up to speed, but eventually, the requirements will be enforced.

Any issues with data formatting that causes UCDP submission errors may result in the appraiser being docked for noncompliance. The industry is experiencing an understandable and considerable amount of confusion in regards to the new standards and requirements.

**Creech:** I think it will initially cause delays in delivering completed UCDP-accepted appraisal reports. However, once appraisers are more comfortable with the process it should improve turn times and help underwriters reviewing the appraisal based off of standardized data.

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## Can't fight this feeling: REOs poised for growth in 2012

By Chris Crowell,

October Research editor

It's not overstating the issue to say that there are too many foreclosures in the marketplace right now, but according to data from RealtyTrac, the totals are not as bad as they could be — and will be going forward. RealtyTrac pinpoints the start of the current foreclosure climate in 2007, which saw around 400,000 foreclosures. In 2008, REO activity jumped to 861,000, and in 2009, it went to 918,000. The yearly REO numbers peaked in 2010 at 1,050,500, but RealtyTrac told *Valuation Review* it saw no reason why 2011 wouldn't yet again beat the previous year's high. Instead, 2011 looks like it will end at around 825,000 for the year.

But that's a good thing, right? Is the market starting to stabilize? **Daren Blomquist**, director of communications for RealtyTrac, said "No." The low number in 2011 is only going to make 2012 that much more packed with REO activity.

"You have this artificial dip in 2011, and then it's going to bump back up in 2012," Blomquist said. "That's how we see it playing out."

The dip is artificial because of last year's robo-signing controversy, which created a backlog of foreclosures that never quite pushed through this year. Blomquist noted that they are seeing signs that lenders are recovering from that slow down as initial default notices have picked back up month over month.

"In October, nationwide, we saw a 10 percent month over month increase in official default notices," Blomquist said. "It started in little waves. It hasn't been consistent, but in August there was a 33

percent month-over-month increase in default notices. The last three months we're averaging about 75,000 new default notices a month whereas in November 2010 to July we were averaging 68,000."

The increases are even more evident in the state data, according to Blomquist. California had a big increase in August in default notices and had another slight increase in October, putting that state at a 13-month high. The same was true for Florida and Michigan, both at 12-month highs for default notices.

"We're not completely out of that; we haven't put the whole foreclosure processing delay issue behind us completely, but it definitely looks like the foreclosure industry is on its way to ratcheting back up after those delays," he said. "We thought initially those delays wouldn't last as long as they have lasted. We were originally projecting more than 1 million properties would be foreclosed on and become REOs.

"We believe the difference there will just be pushed into 2012 and beyond," Blomquist continued. "Those delays just pushed this whole cycle out further, so you'll see a continued ramp up in foreclosure starts into 2012, which will result in more REOs or actual foreclosures in '12 and '13. It's pushing this cycle out further and prolonging the cycle of elevated foreclosure activity. I think this increase we're seeing now in the default category will translate into more REOs in 2012 and the next

three to 12 months after that."

The other stat still out of whack with history is the average time a house is in foreclosure. Third quarter data from RealtyTrac showed that, on average, it took 336 days to be foreclosed on, which is up from the third quarter of 2007, which was at 140 days. Blomquist believes the delinquencies just being introduced the last few months will work through the system faster because lenders are more confident about the paperwork.

"But we'll have to see. I think [the average time] will still be longer than it was in 2007 because states have enacted laws to extend the process, but we'll start seeing that number come down in future quarters," he said.

As a result of this revived REO cycle, home prices might take another dip. Blomquist noted that some markets artificially stabilized right along with the decline in foreclosures. So, when the foreclosures ramp back up, it might put more downward pressure on prices.

"At the very least it will keep them from appreciating quickly and keep them flat. But on the more pessimistic side, it might mean some markets will see a hit in home prices," he said.

"You have this artificial dip in 2011, and then it's going to bump back up in 2012 ... It started in little waves. It hasn't been consistent, but in August there was a 33 percent month-over-month increase in default notices. The last three months we're averaging about 75,000 new default notices a month."

**Daren Blomquist**

RealtyTrac director of communications

## Appraiser associations petition CFPB to clarify fees on forms

By Jason Morgan and Angela Rulffes,

October Research editors

On Nov. 16, the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers wrote a letter to **Raj Date**, special advisor to the secretary of the Treasury, urging the Consumer Financial Protection Bureau (CFPB) to separate appraisal fees from administration and processing fees on the new settlement disclosure form prototype.

On Nov. 8, the CFPB released two disclosure prototypes that will replace the HUD-1 Settlement Statement and Truth in Lending (TIL) final disclosure documents. The HUD-1 is required under Section 4 of RESPA and 24 CFR part 3500 (Regulation X) of the U.S. Department of Housing and Urban Development's (HUD) regulations. It is a statement of the actual charges and adjustments paid by the borrower and seller in connection with a settlement. Section 4 requires that a HUD-1 be prepared and provided to the borrower at or before closing.

After reviewing the prototype, the Appraisal Institute determined that some changes need to be made.

"The CFPB has proposed two versions of the new settlement disclosure form, both of which continue to bundle appraisal fees with fees paid to appraisal management companies," the letter said. "As you know, the Dodd-Frank Act authorized separation of appraisal and appraisal management fees, and doing so would fully inform borrowers of actual costs paid. We see no consumer benefit with continuing to bundle two separate services and not fully disclosing such information to borrowers. We urge the CFPB to revise

these forms with a separate line for Appraisal Management, or management fees in total, as Congress authorized last year when it enacted the Dodd-Frank Act."

The letter stated that consumers are paying higher costs for appraisal fees as reported on HUD-1 statements, but at the same time, the Appraisal Institute's members are reporting reductions in appraisal fees. According to the Institute, consumers are paying for appraisal management company (AMC) fees on the appraisal line of the HUD-1 as well as paying for appraisal fees on that same line.

"Traditionally, appraisal management fees were allocated as part of loan processing or administration fees or through the interest rate," the letter said. "However this has changed over the years as more lenders have outsourced appraisal functions to third party management companies. This is enabled by interpretations of RESPA, the foundation of which date back to the origins of the HUD-1 in 1974, long before the current appraisal management business model was established. This allows the bundling of appraisal and appraisal management expenses when appraisal management companies are used."

The Appraisal Institute said that the CFPB has an opportunity now to separate the fees for appraisal services and appraisal management services. The Institute argued that the services are separate and unique.

"Appraisal services certify values in accordance with the Uniform Standards of Professional Appraisal Practice, while appraisal management services involve administration and processing functions for lenders," the letter said.

"We believe that consumers deserve to know who is providing services relative to their loan and how much was paid," the letter continued. "This is the spirit of transparency and the core presumption with development of a consumer disclosure form. Otherwise, why segregate any of the settlement service costs? Additionally, without itemization, the consumer does not know the level of service provided by the appraiser and may be misled to believe that a more thorough appraisal analysis was performed."

The Appraisal Institute wrote that it recently met with CFPB staff to discuss the issues in the letter and would be happy to continue discussions in the future.

**Francis Riley**, partner at the Princeton, N.J.-based law firm of Saul Ewing, addressed the new forms and the Appraisal Institute's complaints.

"After last year's GFE reform which required most fees to be broken out independently, the new proposed forms — both phase I and phase II forms — seem to take a step back," Riley said. "I don't think one way is better than another. It just depends on where on the transparency scale you want to be. Moreover, more transparency does not always equate to more comprehension. It's like a menu. Sometimes having more information about more choices actually bogs you down and results in an unpleasant experience and a meal that really was not what you expected."

The Appraisal Institute isn't the only group concerned about the new settlement disclosures. *Valuation Review* previously spoke to **Ken Trepeta**, director of real estate services at the National Association of Realtors (NAR), about the forms and issues that

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NAR would like to have reviewed and changed.

## **ASA, NAIFA letter**

The American Society of Appraisers (ASA) and National Association of Independent Fee Appraisers (NAIFA) sent a letter to Date that urged the bureau to make a modification to the prototype settlement forms by adding a single additional data point to the “Appraisal Fee” line of the settlement form that discloses to borrowers how much of the appraisal fee is being paid to the appraiser and how much to the AMC.

According to the two associations, the CFPB’s settlement form disclosure initiative has fallen short in this important area.

“It fails to inform mortgage applicants that when the appraisal of the collateral property is ordered through an appraisal management company, a substantial portion of the appraisal fee shown on line 906 of the prototype disclosure forms does not go to the person who actually performs the appraisal but instead pays for the backroom administrative services of the AMC — a company that is sometimes an affiliate of the mortgage lender making the loan,” the letter

stated. “While there is nothing unlawful or improper about an appraisal being ordered through an affiliate of the borrower’s mortgage lender, this arrangement does represent an undisclosed, even a hidden, consumer payment to that lender.”

ASA and NAIFA believe that this violates the bureau’s “Know Before You Owe” policy and undermines the agency’s objective of making mortgage-related costs “clear at all stages of the mortgage process.”

“Second, it deprives consumers of important information that would allow them to make informed decisions about the valuation component of the mortgage lending process,” the letter explained. “Third, the bureau has already recognized the importance of providing consumers with the details of the costs of certain important settlement services, specifically the fees associated with title insurance, which are appropriately broken out by the inclusion of several lines on the ‘1000 Title Charges’ section of the settlement form prototypes. We believe that understanding the details of the appraisal fee is no less important to borrowers than understanding the fees associated with title insurance; and that the inclusion of one additional line on the appraisal fee portion is more

than justified.”

The associations also believe it is important to point out that the prototype forms include separate lines for mortgage-related services and their associated fees which, while certainly important to borrowers, are less costly than an appraisal and require less labor-intensive effort and professional knowledge.

“It is also noteworthy that in situations where a mortgage lender orders appraisals directly from an independent appraiser, rather than through an AMC, the lender’s administrative costs for doing so are added to and typically treated as part of, the lender’s ‘Origination Charges,’” the associations said in the letter. “Under such circumstances, the consumer clearly understands that the appraisal fee on the GFE and settlement forms is actually the fee paid to the appraiser. As a matter of consumer protection and clarity, we fail to understand why, when the lender uses an AMC to order the appraisal, the administrative costs associated with that order are lumped together on the appraisal line. When the two fees are conflated, the borrower has no way of knowing the true cost either of the actual appraisal or of the administrative activities that result in an order for an appraisal.”

## ***FDIC goes after allegedly negligent appraisers***

For 29 appraisers, it wasn’t a very thankful holiday. In the weeks leading up to Thanksgiving, the appraisers in question were sued by the Federal Deposit Insurance Corp. (FDIC), reported **Peter Christensen** in his Appraiser Law Blog. The 29 California-based appraisers face FDIC complaints alleging that they were professionally negligent by over-appraising the value of properties securing loans by the failed Downey Savings.

Christensen reports that the average claim value against the appraisers is \$314,674, based on the unpaid principal, interest, late charges, foreclosure costs and other fees on the nonperforming loans.

“Some of the allegations of negligence against the defendant appraisers suggest that the FDIC is seeking to hold appraisers liable for things most appraisers would not normally expect — such as failing to provide analysis of whether the appreciation of a comparable sale was sustainable or the product of real estate speculation,” Christensen explained. “The full stories behind the failed loans and the FDIC’s lawsuits against the appraisers are more about a lender’s — Downey Savings’ — willingness to buy loans from mortgage brokers without any checking or quality control of the accuracy of information submitted by the broker with regard to borrower financial qualifications.”

## 2.0 upgrade: The pros and cons of HARP revision

The Federal Housing Finance Agency with government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac announced a series of changes to the Home Affordable Refinance Program (HARP), dubbed HARP 2.0, in an effort to attract more eligible borrowers who can benefit from refinancing their home mortgage. The program enhancements were developed at FHFA's direction with input from lenders, mortgage insurers and other industry participants.

"We know that there are many homeowners who are eligible to refinance under HARP and those are the borrowers we want to reach," said FHFA Acting Director **Edward DeMarco**. "Building on the industry's experience with HARP over the last

two years, we have identified several changes that will make the program accessible to more borrowers with mortgages owned or guaranteed by the enterprises. Our goal in pursuing these changes is to create refinancing opportunities for these borrowers, while reducing risk for Fannie Mae and Freddie Mac and bringing a measure of stability to the housing markets."

CoreLogic released its response and commentary to the new HARP 2.0 program from **Mark Fleming**, the company's chief economist.

"Time will reveal the true impacts of HARP 2.0, but it is certain that many more borrowers will benefit than would have otherwise," Fleming stated in the report. "The impacts will be targeted to

housing markets and local economies that are the hardest hit by the housing collapse, as these are the markets with the largest shares of insufficient and negative equity borrowers. HARP 2.0 will be positive for the government-sponsored entities, Fannie Mae and Freddie Mac, because it reduces delinquency risk; positive for the origination market because it will generate additional demand for mortgage refinances; may have some modest impact on consumption and the economy; neutral for the housing market itself; and negative for bondholders of high coupon GSE mortgage-backed securities [MBS]. There are no silver bullets that will solve the issues facing the housing and mortgage markets, only solutions that play their small part. In the end, the best solution will be a stronger economy and the passing of time."

Because of the significant concentration of insufficient and negative equity in the markets hardest hit by house price declines, HARP 2.0 will provide targeted stimulus to borrowers in those markets. That said, HARP 2.0's primary benefit — increased refinancing of insufficient and negative equity borrowers — will not be a panacea for the housing market directly, because it doesn't address the two biggest downdrafts for housing: distressed borrowers and shadow inventory.

The primary issue underlying HARP is insufficient and negative equity risk preventing borrowers from access to today's low cost credit, a deterrent to consumption and improvement of household balance sheets. Because of the concentration of insufficient and negative equity, the tax benefit of reduced mortgage payments will be a targeted stimulus to many of the hardest hit markets.

### Key changes to HARP 2.0

- Removal of the 125 percent LTV ceiling so that borrowers with significant levels of negative equity are now potentially eligible;
- Reduction of risk-based fees, also known as loan-level pricing adjustments, although the reduction depends on the term of the newly refinanced loan among other factors;
- Representation and Warranty relief for the lenders committing loans to the program. The details of this relief are not specifically disclosed, but it is likely that it will not cover outright fraud and egregious and willing misrepresentation. Instead, the relief will likely be around determination of value, the quality of the appraisal and reasonable and prudent underwriting;
- The allowance for the use of reliable AVMs to establish eligibility of the LTV, hence the relief described above;
- The ability to re-subordinate existing second liens that had been a significant impediment to refinancing under HARP; and
- Extension of the program until the end of 2013.

## ***American dream lives on: U.S. will remain homeowners, says NAR***

An analysis over a 31-year period across 23 metropolitan areas compared the ownership benefits in terms of appreciation and interest deductibility and the costs homeowners incur with downpayment, taxes, insurance and maintenance. When it was assumed that renters reinvested any savings in rent (versus a higher monthly mortgage payment), maintenance and downpayment, renters had a greater portfolio than buyers in 91 percent of the areas examined. However, when the model allowed renters to spend any savings rather than reinvest those savings, 84 percent of buyers came out ahead.

“We knew that homeowners, on average, accumulate more wealth than renters,” said **Ken Johnson**, editor, Journal of Housing Research at Florida International University. Johnson conducted the analysis with **Eli Beracha**. “These findings indicate that homeownership is a self-imposed savings plan. Not

everyone should own a home, but from a financial perspective, people who are planning to stay in a property over the long term can benefit from buying.”

According to the most recent data from the Federal Reserve Board, a homeowner’s net worth is 45.9 times that of a renter’s.

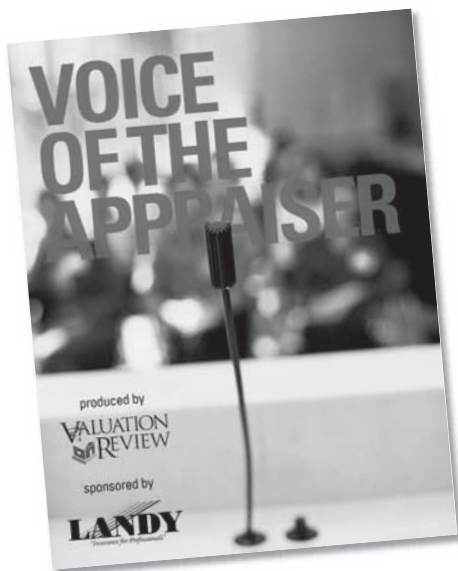
Another analysis conducted by Johnson, Beracha, **Hilla Skiba** and **Mark Hirshey** determined that housing affordability is at record levels. Twenty-three states are at 30-year record levels of affordability based on price-to-income ratios, and all 50 states are at 30-year record affordability levels based on mortgage payment-to-income ratios.

“Homeownership is more affordable today than at anytime over the last 30 years,” Johnson said.

Beyond the financial advantages of homeownership, Johnson also cited

several studies that have demonstrated how homeownership enhances civic pride, improves voter turnout, increases personal happiness, reduces crime and provides a better familial environment.

“These findings are no surprise to Realtors,” said National Association of Realtors President **Ron Phipps**, broker-president of Phipps Realty in Warwick, R.I. “We, like the nation’s 75 million homeowners and many others who aspire to one day own a home, know homeownership is an investment in the future of our families, communities and nation. That is why we will continue to fight for public policies that promote responsible, sustainable homeownership; we believe that anyone who is able and willing to assume the responsibilities of owning a home should have the opportunity to pursue that dream.”



October Research and presenting sponsor Landy have teamed up to create an exclusive special edition of *Valuation Review* packed with information from our recent Voice of the Appraiser survey.

The goal of the survey was to gauge the appraisal community’s sentiments about current business pressures, opportunities and challenges, as well as gain insight into the operations and processes of today’s valuation professional.

Appraisers are fighting an uphill battle. They struggle against poor industry practices, federal regulations and even each other. One appraiser alone cannot combat all the issues that threaten his or her business, but together appraisers can raise their collective voices to make their opinions heard. That’s why *Valuation Review* launched the 2011 Voice of the Appraiser survey.

To download the FREE special report, visit <http://www.valuationreview.com/voa>