



February 2, 2023

Commissioner Julia Gordon
Federal Housing Administration (FHA)
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

RE: Borrower Request for Review of Appraisal Results

Dear Commissioner Gordon:

The Housing Policy Council¹ and our member companies thank you for your leadership and commitment to eliminate bias and discrimination in the valuation process. HUD's role in leading the PAVE Taskforce and highlighting ways to strengthen our nation's anti-discrimination policies, are commendable.

We endorse the commitments laid out in the PAVE Taskforce Action Plan, including the pledge related to the Federal Housing Administration's process for tracking cases for which a borrower or lender request a Reconsideration of Value (ROV).² While this is a worthwhile policy objective, as is the purpose described in the draft mortgagee letter, we have several concerns.

First and foremost, one of the most significant benefits of PAVE is the multi-agency nature of coordinating solutions. The reconsideration process³ is no exception. A standardized approach to the reconsideration process with uniform practices, such as common forms for borrowers, standard data fields for tracking purposes, and consistent procedural steps and requirements for all of the parties involved, would directly benefit the government, industry, and borrowers alike.

In addition to this very fundamental concern, the Mortgagee Letter uses language that is ambiguous and subject to interpretation, undermining uniform application across FHA-approved lenders, which is a core component for tracking outcomes. Further, the proposed policy does not set forth a process to give FHA the tools it needs to improve appraisal quality or identify patterns that could indicate discrimination. Rather, the draft policy imposes this burden on FHA lenders that will have only a limited view into a minimal set of transactions and provides no examples of what they should be looking for.

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org

² *PAVE Report, 2022*: FHA lenders to track usage and outcomes of ROVs and to report this data to FHA via FHA systems, leveraging insight from VA's existing ROV process where helpful, so that HUD can better identify patterns of ROV usage and evaluate the impact ROVs might have on possible discrimination.

³ We feel the term "ROV" is generally not as accurate as simply describing the "reconsideration process" since value in an appraisal is the opinion of the appraiser and a low value alone is not an appropriate reason to request a reconsideration.

Our goal in providing this direct feedback, is to encourage HUD to work with the other government agencies and the GSEs collectively, to develop a comprehensive policy that will standardize the reconsideration process such that it will allow the government and industry (if the information were released publicly), to discern patterns and problems that could lead to the identification and ultimately prevention of discrimination.

Defining and Identifying Bias

A necessary element to identify and eliminate bias and discrimination in the valuation process is to clearly define what bias is, and what indications of bias look like. Another is to clarify the role that both FHA and FHA stakeholders, including FHA-approved lenders and FHA roster appraisers, can play in identifying and rooting it out. We believe that HUD and FHA could lead a workstream with other government agencies and the GSEs collectively, to develop a standardized definition of bias, so that all market segments can share information and work together to solve this challenge.

While we understand the significant difficulties associated with defining bias, a policy approach that relies on lenders to “know it when they see it” will lead to subjectivity and inconsistent treatment from different lenders. Another complication with identifying “indications” of bias without more clarity, is disentangling the appropriate work of an appraiser from data that is potentially biased due to the vestiges of redlining in America. In the absence of clearer direction from FHA, lenders will not consistently report cases that reflect appraisal errors. Without accurate, consistent information, HUD will not be able to track trends and identify patterns that show potential discrimination or take action to sanction individuals violating laws.

In its current form, the approach proposed in the Mortgagee Letter has the potential to significantly increase the risk and cost to originate FHA loans for lenders. We are concerned that the heightened liability could cause lenders to reduce their FHA originations or disengage from FHA altogether, which could limit access to credit to those individuals who need it most. Further, the proposed procedures could impose a new workload burden on appraisers at a time when the appraiser profession is declining. These new constraints on lending activity could occur as a result of policy that is likely to achieve minimal, if any, impact on appraisal discrimination.

Our concerns can be summarized as follows:

- The language in the policy is too broad and ambiguous;
- The policy fails to standardize the process across the residential mortgage lending sector and leaves unanswered basic questions about how the process will work;
- It has the potential to perpetuate misconceptions about the valuation process and could encourage borrowers to request new appraisals for inappropriate reasons, creating unnecessary costs, delays, and disappointment;
- It places a new responsibility on lenders to identify *undefined* valuation bias, a significant new compliance burden; and
- It doesn't commit HUD to any new efforts to monitor or improve the quality of the work performed by appraisers on the FHA Roster of Appraisers.

The remainder of the letter will go section-by-section through the lender letter to provide detailed feedback for your consideration.

II.A.1.a.iii(B)(9)(a) Second Appraisal by Original Lender

We agree that an appraisal that violates local, state, or federal fair housing and nondiscrimination laws is materially deficient and should qualify the loan application for a second appraisal. However, the Mortgagee Letter does not provide clear, unambiguous information regarding how a lender will observe and discern an “indication of unlawful bias in the Appraisal” nor how a lender is supposed to determine that an appraisal violated local, state, or federal fair housing and nondiscrimination laws. A more helpful policy approach would be to identify what objective indications of unlawful bias look like in an appraisal. For example, we could clearly support an objective policy that deems some appraisals worthy of flagging for a review. We would also encourage FHA to conduct training that illuminates best practices in identifying unlawful bias.

As currently written, the ambiguous policy will inevitably lead to an operational divergence and implementation disparities across lenders. The inconsistent application could delay any useful tracking impact for FHA, as lenders would gradually learn what is expected of them through FHA enforcement actions over an extended period. If lenders are uncertain as to expectations, they may be less assertive in their approach. To prevent this avoidable policy misstep, FHA should provide clear standards for determining when unlawful bias or violations of the law are present in appraisals. If FHA cannot define such standards, it is reasonable to ask how each individual lender will be able to do so.

Compounding the challenges with this ambiguous policy is the requirement that lenders have the responsibility to pay for a second appraisal. In the absence of a well-defined standard from HUD, lenders who employ a more limited approach and a restrictive standard for what qualifies as bias or a violation of the law will have lower costs compared to lenders who take a more expansive and inclusive approach. A more reasonable policy would be that neither the borrower nor the lender should have to pay for a second appraisal, due to the deficiency of the work done by an appraiser. Rather, if the first appraisal is found to be materially deficient, the original appraiser should either not be paid for the deficient work, forced to reimburse the lender for the original appraisal, or if an appraisal management company was utilized, that intermediary should provide a replacement report at no cost and would not have an obligation to pay for the initial materially deficient appraisal. To add force to this policy, appraisers who routinely fail to reimburse the costs for a materially deficient appraisal should lose their eligibility to remain on the FHA Roster of Appraisers. This change in policy would appropriately provide aligned incentives to reduce and ultimately eliminate materially deficient appraisals. The party who made the error should and would bear the costs.

II.A.3.a. Property Acceptability Criteria - v. Appraisal Review and Quality of Appraisal

The new policy requires the underwriter to review all appraisals to ensure that they are “accurate.” In the context of appraisals, an underwriter will have no way of determining whether the opinion of value is “accurate” without conducting a duplicative determination of the opinion of value, including an independent market analysis of the subject property. We assume the intent of the proposed policy is not to require duplicative work, but rather is to provide an objective standard for the underwriter to affirm that an appraisal meets the appropriate FHA standards in establishing value. We ask HUD to clarify this intent and eliminate the use of the term “accurate” and substitute in an appropriate standard such as “credible,” “defensible,” or “adequately supported.”

Importantly, HPC also recommends FHA continue to use “mortgagee” in this section of its guidance, in lieu of “underwriter,” thereby ensuring the borrower benefits from a qualified member of the mortgagee’s team, staff with expertise in collateral valuation, to re-examine the appraisal report.

viii. Reconsideration of Value

As mentioned at the outset of this letter, we recommend that FHA work with other government agencies and the GSEs to standardize the reconsideration of value process across market segments. A standardized process would provide borrowers, lenders, appraisers, and the government agencies/regulators with clear roles and responsibilities within the process. A well-designed, uniform process will ultimately lead to better outcomes – to improve the quality of individual appraisals, prevent undue pressure for appraisers to meet a certain property value, and provide HUD the information it needs to identify appraisers who fail to meet professional expectations. Unfortunately, the reconsideration policy articulated in this Draft Mortgagee Letter cannot achieve any of these worthwhile policy outcomes without additional detail and standardization of the process.

The most basic element that should be articulated in an appraisal reconsideration policy is, when is a reconsideration request a reasonable next step? In other words, when is it appropriate for a mortgagee to request that an appraiser conduct a reconsideration process? When is it appropriate for a borrower to initiate a reconsideration request? Without a clear and objective standard, we have significant concerns that this process can and will be abused to pressure appraisers to change their opinion of value, even when there is no information or evidence that a reconsideration is necessary. Without clear policy standards that establish what data and information is required to pursue an appraisal reconsideration, the government may impose significant new operational and cost burdens on lenders and appraisers. Additionally, a lack of clarity could conflict with existing legal requirements regarding the relationship and professional communications between the lender, the appraiser, and the borrower. For example, under current regulations, appraisers are prohibited from sharing with borrowers the appraisal assignment results, because borrowers are not an “intended user.”

In view of these concerns, we recommend a market-wide reconsideration process that sets forth objective standards for when an appraisal reconsideration is appropriate, a policy that articulates the expectation for all parties, including borrowers. As part of this objective standard, there should be clarity about what information a mortgagee or borrower should compile to provide to the appraiser to perform the reconsideration. There should also be clarity about what information is unsuitable to include as part of a reconsideration request.

Additionally, there should be significantly more clarity about the appropriate resolution for a reconsideration process. Most critically, what is the appraiser’s responsibility and what is the appropriate resolution when an appraiser makes no change to the appraisal as part of the reconsideration? Is there a next step that a lender or borrower should take if an appraiser refuses to assess the additional information provided? In cases where the reconsideration process does not result in a revised appraisal report, does the lender have the authority to appeal? A responsibility to appeal? Can or should the lender request permission from FHA to get a second, third, or multiple appraisals?

We emphasize that lenders are very aware of the regulatory risk they face regarding appraisal independence and valuation shopping. Lenders must keep this at the forefront of balancing appraisal

credibility and fairness with safety and soundness and this critical requirement needs to be reflected in any standards developed by HUD.

As a process matter, we also question whether it makes sense that an appraiser “must” create a revised version of the appraisal in all cases, even when if the appraiser is making no changes. Instead, we think that a simpler approach that is more aligned with current operations is for an appraiser to create an addendum to the original appraisal that directly responds to the information provided by the underwriter or borrower.

Lastly, another policy ambiguity is around whether the revised version of the appraisal or the addendum restarts the Equal Credit Opportunity Act timeline for consumer review. We ask HUD, CFPB, and other government agencies to work collectively to develop a single, consistent reconsideration process to clearly answer this question.

II.A.3.d Borrower Requests for Review of Appraisal Results

We urge FHA and HUD to work with other PAVE Task Force members to standardize the process for borrowers to request a review of the appraisal. To begin, the government should provide borrowers with clear, actionable information about when and how to raise concerns about the accuracy of an appraisal. The Draft Mortgagee Letter references a disclosure that will be updated to provide consumers with increased awareness of the reconsideration process. This approach should also include information about when the reconsideration process may be appropriate, what information a borrower will need to provide to qualify for a reconsideration of value, a detailed explanation of how the reconsideration process works, and how the reconsideration process is typically resolved. This will provide consumers with the awareness and ability to request a reconsideration yet discourage inappropriate or frivolous requests for reconsideration.

To supplement the disclosure of information to consumers about the reconsideration process, we encourage HUD and the other government agencies to develop a borrower application/checklist to standardize the process for borrowers to request a review. An application/checklist would instruct the borrower to produce information to serve as an objective basis for the request. This would allow lenders to play an important quality control role, reviewing and confirming that all borrower requests are complete and include the appropriate basis for a reconsideration request to an appraiser. As part of the quality control process, a lender should retain discretion to determine if a reconsideration process is necessary and appropriate based on the information provided by the buyer, considering factors such as a borrower’s responsiveness to clarifying questions and the number of reconsideration requests made by the borrower. Under a standardized process, all borrowers would be treated the same, regardless of their lender. This should lead to increased customer awareness and transparency.

If instead, and as currently written, the policy doesn’t require a clear and unambiguous basis for the borrower to request an appraisal review (or at the very least provide clarity about what information from the borrower is needed) the reconsideration process will continue to be dependent on individual lender policies, which will lead to industry inconsistency. Further, the process will be prone to borrower insistence on reconsideration based solely or primarily on dissatisfaction with the valuation result itself. A continuation of the current, inconsistent process will make it nearly impossible for HUD to have confidence in the data it may track on reconsideration requests; in the absence of uniformity, any process will merely serve as a method for tracking different lender policies.

Lastly, the draft policy reasonably requires the lender to provide a response to the borrower at the conclusion of the reconsideration process. However, as part of our request for standardization, we think it is critical for the policy to describe the precise elements that are necessary for inclusion in a borrower response. Some potential elements include the above-recommended appraiser-generated addendum to the appraisal report describing how the additional information was considered and how it impacts the opinion of value along with any next steps that a borrower can request, if any.

General Appraiser Requirements

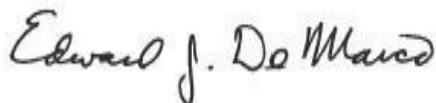
FHA maintains an approved Appraiser Roster, which implies that FHA performs some level of oversight to permit appraisers to participate in the program. Thus, our members were disappointed that this new policy doesn't describe any additional efforts that HUD will undertake to enhance FHA's own enforcement activities, including monitoring appraiser compliance with applicable local, state, or federal fair housing and nondiscrimination laws. A further concern is that the current approach may result in appraisers avoiding FHA orders simply because they do not want to risk even being accused of discrimination and/or bias.

We commend the recent Veteran's Affairs' efforts, through VA Circular 26-23-5, committing the agency to review appraisals for indications of discriminatory bias and looking for patterns of discriminatory bias. VA indicates that, should the agency identify appraisals exhibit discriminatory bias, the agency will remove the appraiser from the program and refer the case to the proper regulatory authorities. This policy announcement demonstrates that the VA will take a proactive approach of monitoring the performance of appraisers that participate in VA's home loan guaranty program. We recommend that the FHA consider actions the agency could take to enhance the oversight of FHA Roster. Further, FHA and other agencies should determine whether it is possible to share information regarding identified patterns of discriminatory bias in the work of appraisers and/or removal determinations to prevent poorly performing appraisers from continuing to work on federally related transactions.

Conclusion

We thank you in advance for utilizing the FHA drafting table to seek public comment on this critical policy issue and for consideration of our recommendations. We also request that the FHA leadership team continue to engage with the industry and other stakeholders as you work on this important topic. Should you have any immediate questions regarding this set of recommendations, please do not hesitate to contact us.

Yours truly,



Edward J. DeMarco
President
Housing Policy Council