Appraisal Buzz Newsletter

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Appraisal Buzz Interview with David Berenbaum, Executive Vice President for National Community Reinvestment Coalition

The Center for Responsible Appraisal and Valuations (CRAV) will be releasing a White Paper on August 2nd, 2006 exploring lender compliance with FIRREA in the wholesale mortgage markets dominated by mortgage brokers. David Berenbaum, Executive Vice President of the National Community Reinvestment Coalition and a founding board member of the Center, gives Appraisal Buzz readers a sneak peak as he shares some of it's findings and recommendations with us.

Buzz: Why is the Center for Responsible Appraisal and Valuation releasing a "white paper" on the role of mortgage brokers relative to the legal and fiduciary responsibilities of mortgage lenders?

Berenbaum: The paper is intended to provide a clear understanding of the duties and responsibilities of management and each director of a lender must consider when performing their fiduciary duties involving real estate-related financial transactions, including the utilization of mortgage brokers. The valuation professionals who serve on the Center's Partner's Council identified this issue for discussion, collaboration and as legislative and regulatory policy priority for the CRAV. These folks have repeatedly expressed concern about undue pressure from brokers and the fact that many honest appraisers have seen their businesses reduced or destroyed while others have had their integrity compromised in a situation that seems beyond their control. We are going to forcefully work to change this dynamic and invite every appraisal professional participate in the CRAV and work for change with us.

Buzz: Is their substantial non-compliance?
Berenbaum: FIRREA and Section 304 of the FDICIA establish clear legal expectations for compliance. Despite this, we see "wholesale" disregard pun intended - for these requirements in the market relative to how mortgage brokers and lenders comply, or fail to comply with these statutes. The CRAV is calling upon Federal and State policy makers and regulators to intercede. This non-compliance creates exposure for all parties to a mortgage transaction from Main street to Wall Street - and an ethical dilemma for valuation professionals to either be complicit with the "wink and nod" or to loose business from brokers and lenders who are gaming the system and creating a safety and soundness issue for the market and consumers alike.

Buzz: Is their a real issue relative to mortgage brokers and the lenders they do business with?
Berenbaum: Yes. And the situation will require market reform. If a institution buys a loan package from a broker, the broker, as an interested party, cannot order, manage, influence, review or control the appraisal. As this will interfere with the normal functions performed by the broker in "shopping the loan" for the borrower, it is necessary for the broker or lender to place a qualified, independent intermediary between it and the appraisal function. That intermediary, such as an appraisal management company or the staff appraisal compliance & management function of a lender, must be totally independent of the transaction.

Buzz: Does the CRAV identify any other issues?
Berenbaum: Another issue that we explore is "payment for valuation." There is a question as to propriety and legality of a payment practice that, apparently, is often used by mortgage brokers and correspondent lenders, who then sell the loan to lender who purchases and, often resells the paper. We also explore the role of AMC's, title companies and other marker players relative to the issue in the paper. Recently, Ken Harney in his syndicated column recently reported on the results of a mortgage brokers that the National Community Reinvestment Coalition conducted in six metropolitan areas. What was not reported was that that in these "shops" of mortgage brokers are mystery shoppers were frequently told by mortgage brokers that they had "appraisers who we work with who will make the deal work." The implications to consumers and the market alike is straightforward. The white paper will include vignettes from these "shops."

Buzz: Does the CRAV suggest that if the appraisal is prepared by a fee appraiser, the appraiser should be engaged directly by the regulated institution or its agent, and not the mortgage broker?

Berenbaum: Yes. In its October 2003 interagency statement, the federal banking and thrift agencies reminded banks and bankers of the need for independence within their Programs. The agencies restated, "It is important to ensure that the Program is safeguarded from internal influence and interference from an institution's loan production staff. Individuals independent from the loan production area should oversee the selection of appraisers and individuals providing evaluation services They also stated that this statement applies to all real estate-related financial transactions originated or purchased by a regulated institution for its own portfolio or as assets held for sale. We believe that this is an accurate interpretation of the regulation - Title XI of FIRREA applies to all real estate-related financial transactions, including retail, wholesale, capital markets transactions, and securitization and sales units.

Buzz: What can lenders do to change the current business climate in the wholesale environment?
Berenbaum: While the CRAV is continuing it's work to foster industry best practices, and the number of CRAV signatories continues to grow, we also intend to represent the interests of valuations professionals and the broader community who want to see the marketplace work responsibly. The White Paper will include guidance for lenders and their boards to ensure the markets work soundly.

Buzz: When will the report be available, and any concluding thoughts?
Berenbaum: The Board of Directors of financial institutions must work to ensure compliance with their fiduciary duties. Accounting firms who audit institutions must ensure the integrity of retail and wholesale valuation functions as these numbers directly effect the institutions financial statements. For lenders, the single, most important internal control is the independence of the institution's appraisal management practice from the loan production areas of each institution. This includes the selection of appraisers and the ordering of appraisals by someone not involved in loan production whether it is directly or through an independent third-party. On a pragmatic level, technical reviews should be performed by qualified state-certified or state-licensed appraisers not involved in loan production. All reviews must be documented. Administrative reviews can be conducted by any qualified individual within the institution.

And last, staff appraisers need to be more appreciated by the institutions that they work for. They are the most knowledgeable person in the institution about the requirements of the appraisal regulation and the real estate lending standards and assure the institution that the appraisals and evaluations received comply with the regulations and regulatory guidance. The same can be stated for fee appraisers as well.

The report will be released on Thursday, August 3rd, 2006 and can be downloaded at www.responsibleappraisal.org.

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