



February 2, 2023

The Honorable Julia Gordon
Assistant Secretary for Housing and Federal Housing Commissioner
U.S. Department of Housing and Urban Development
451 7th St SW Rm 9132
Washington, D.C. 20410-0001

RE: Draft Mortgagee Letter 2023-XX: Borrower Request for Review of Appraisal Results

Dear Commissioner Gordon,

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to offer comments on the Federal Housing Administration's (FHA) Draft Mortgagee Letter 2023-XX: Borrower Request for Review of Appraisal Results (draft ML). The industry applauds FHA for its continued use of the FHA Drafting Table, allowing the industry the important opportunity to provide feedback before FHA implements new policy.

MBA appreciates the Biden Administration's focus on appraisal bias as MBA members are committed to ensuring fairness in all aspects of home lending. MBA has been and continues to be very active in providing government loan program administrators like FHA with industry-supported suggested policy reforms to improve the appraisal process. The Action Plan to Advance Property Appraisal and Valuation Equity (PAVE Report)² evaluates the cause and ramifications of appraisal bias on minority homeowners and provides the Department of Housing and Urban Development (HUD) with recommendations to help prevent the influence of racial bias on property valuations. MBA applauds HUD for quickly drafting and requesting feedback on new policy in line with the recommendations suggested by the PAVE Report. The Reconsideration of Value (ROV) process is an important avenue by which borrowers may seek to remedy valuation findings potentially impacted by appraiser bias.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,100 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

² Action Plan to Advance Property Appraisal and Valuation Equity (March, 2022) Available At: [PAVE Action Plan \(hud.gov\)](https://www.hud.gov/PAVE)

While MBA is committed to providing FHA with substantive industry feedback on the draft ML, MBA strongly suggests that FHA consider first working with other PAVE Taskforce participants to standardize and align the ROV process across federal mortgage insurers, guarantors, and investors. Implementing uniform and simultaneous reform in the ROV process would prevent differences from arising that could be confusing to borrowers and difficult for industry to operationalize.

If FHA is to be the first agency to issue more formalized ROV policy guidance, MBA encourages FHA to address operational concerns identified by MBA members ahead of the draft ML's publication, implementation, and incorporation into the FHA Single Family Housing Policy Handbook.³ We also encourage FHA to actively engage with the other federal agencies on an aligned ROV policy. MBA hopes the following feedback will be heavily considered as we work together to implement policies to combat appraisal bias.

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

FHA policy currently allows for a Direct Endorsement (DE) Underwriter to request a second appraisal if they determine the first appraisal report is materially deficient and the appraiser is unable or uncooperative in resolving the deficiency.⁴ The draft ML expands the list of acceptable material deficiencies to include identified bias in the appraisal report. FHA policy requires lenders to pay for the second appraisal.

MBA supports FHA expanding its list of material deficiencies to include acts of bias and violations of applicable local, state, and federal housing and nondiscrimination laws. MBA has concerns, however, in the lack of clarity given to underwriters in identifying bias. MBA requests FHA to better define appraisal bias and provide additional guidance along with examples to underwriters on identifying an act or indicators of bias in an appraisal report. FHA should provide ample training opportunities on identifying indicators of bias which qualify as material deficiencies. In developing its guidelines and trainings on identifying acts of bias, FHA should ensure any new guidelines align with FHA Nondiscrimination Policy.⁵

Insofar as certain instances of bias are difficult to identify or require significant "judgement calls" on behalf of underwriters, MBA suggests that FHA assume responsibility for identifying and enforcing appraisal bias policies. MBA has reviewed the recent VA policy regarding detecting racial bias in valuations and holding bad actors responsible. MBA appreciates that the VA is taking ownership of both identification of bias in appraisal reports and initiating appropriate enforcement action. If FHA is unable to provide underwriters with enough guidance and clarity necessary to make them

³ FHA Single Family Housing Policy Handbook 4000.1

⁴ FHA Single Family Housing Policy Handbook 4000.1 (II.A.1.a.iii(B)(9)(a))

⁵ FHA Single Family Housing Policy Handbook 4000.1 (II.D.2.a): "No part of the appraisal analysis or reporting may be based on the race, color, religion, sex, actual or perceived sexual orientation, actual or perceived gender identity, age, actual or perceived marital status, disability, familial status, national origin of either the prospective owners or occupants of the Property, present owners or occupants of the Property, or the present owners or occupants of the properties in the vicinity of the Property, or on any other basis prohibited by federal, state, or local law."

comfortable with identifying certain types of bias within appraisal reports, MBA recommends FHA follow the VA model, and establish the infrastructure for evaluating FHA appraisals for possible racial bias within its agency operations. When bias is found, FHA should ensure that appraisers are held accountable (pursuant to proper due process) for findings of racial bias in their appraisal reports.

MBA appreciates FHA's requirement that a borrower not be charged for a second appraisal when a lender identifies a material deficiency but finds it unreasonable to demand that the lender pay for the second appraisal. Given firm legal standards of appraiser independence, lenders are functionally unable to control the original appraiser's findings or wording of the appraisal report. Nor is the lender the party responsible for the violation of HUD's policies. MBA recommends, alternatively, that FHA allow lenders to hold the appraisal fee until it can be determined that no material deficiency has occurred. With this change, if the first appraisal shows evidence of material deficiency, the lender can withhold the appraisal fee for the first appraisal and use it for the second. Not only would this important policy change alleviate the financial burdens on the borrower and lender, it would serve as a crucial accountability mechanism for appraisers. Absent such a process, origination fees costs could rise for all borrowers to offset the cost of increased ROVs resulting in second appraisals.

Section II.A.3.a.v. Appraisal Review and Quality of Appraisal

As written, the draft ML requires individual *underwriters* to review the appraisal report to "ensure that it is complete, accurate, and provides a credible analysis of the marketability and value of the Property". While the quoted certification language aligns with the current standard as set by the FHA Handbook, the Handbook assigns this responsibility more broadly to the *mortgagee*.⁶ MBA 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 examining the appraisal report.

MBA also recommends that in addition to a DE Underwriter designation, FHA consider a separate designation for individuals to solely review appraisals, similar to the VA Staff Appraisal Reviewer designation. Many institutions have staff that exclusively review appraisals. Many are appraisers themselves, but do not have the required credit underwriting experience. Having an appraisal reviewer designation in addition to the existing DE Underwriter designation will give lenders the option to deepen their staff with appraisal specific expertise that can assist in combating bias.

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

Under the proposed language of the draft ML, Borrowers will be permitted to request a Review of Appraisal Results. MBA recommends the following measures be

⁶ FHA Handbook 4000.1 Section II.A.3.a.iv Appraisal Review. Available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsg-011823.pdf>

implemented to encourage appropriate expectations on behalf of borrowers seeking ROVs, curb unrealistic requests, and provide uniformity in borrower deliverables.

- Reason for ROV Request
As written, the draft ML does not implement a criteria for borrowers to meet to request a ROV. Without a basic criterion in place for borrowers to request an ROV, lenders may be inundated with trivial applications due to dissatisfaction with their home's appraisal value. MBA urges FHA to implement a criterion for borrowers to meet when requesting an ROV, such as identifying a specific material deficiency in the appraisal report.
- Multiple ROV Requests
The draft ML does not limit the number of ROV requests a borrower may submit or provide guidance on if lenders must process all submitted requests for an ROV for the same property. MBA members have voiced concern that if borrowers are able to submit multiple requests for an ROV and the lender is required to process, it may lead to borrowers submitting multiple ROV requests until one suits their preference and increasing the price of appraisals due to increased demand. MBA recommends FHA limit the number of ROV requests a borrower is able to initiate, as well as provide lenders with the discretion to determine if the ROV or second appraisal is necessary.
- Determination of Merit
While the draft ML states mortgagees must review all borrower requests for review of appraisal results, FHA should clarify that only requests which hold merit must be submitted to the appraiser.⁷ FHA should specify that mortgagees have authority to examine the borrower request and determine if the request contains relevant information that would warrant review by the appraiser. If there is no merit for subsequent review, mortgagees should be permitted to close the borrower request.

Borrowers may not always have relevant information available to them regarding comparable sales and the amenities in those properties. This is especially true in relation to new construction appraisals, as new construction builders don't always publicly post information about their closed transactions.

- Response to Borrower
As written, the draft ML does not provide lenders with guidance on what should be included in the borrower response regarding their request for an ROV. MBA recommends FHA provide guidance on what information should be conveyed to the borrower in the lender response.

⁷ Draft ML Section II.A.3.d.(2) Standard

MBA suggests, moreover, that the term “mortgagee” be used instead of “underwriter” in this section to ensure the appropriate team member can review the borrowers request for ROV.

Conclusion

MBA greatly appreciates FHA continued use for the FHA Drafting Table and the opportunity to provide comments on the HUD Draft Mortgagee Letter 2022-XX: Borrower Request for Review of Appraisal Results. Should you have questions or wish to discuss this issue further, please contact Darnell Peterson at dpeterson@mba.org or Hanna Pitz at hpitz@mba.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is fluid and cursive, with a large initial "P" and "M".

Pete Mills
Senior Vice President
Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association