



## Broker Price Opinions No Longer Exempt as Evaluations

By Keith Wolf, SRA

**A**ppraisal industry headlines broadcast “BPOs are not Evaluations” as appraisers across the country do high-fives in their offices and state appraisal licensing officials salivate at the opportunity to finally shut this segment of the industry down.

As a result of the Savings and Loan bailout, Congress passed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). At the same time, appraiser licensing by all states was well underway and the Uniform Standards of Professional Appraisal Practice (USPAP) was identified as the mandatory regulatory industry standard for completion of appraisals. For the next twelve months, every appraisal Credit Policy Officer in the country, including myself, tried to decipher the impact on the valuation industry and to develop policies, procedures and underwriting guidelines to comply.

The following are some of the issues addressed in FIRREA:

- FIRREA created the concept of an Evaluation in lieu of an Appraisal.
- FIRREA gave the banking agencies and the GSEs (Fannie Mae, Freddie

Mac, FHA, VA) regulatory oversight authority to determine when an Appraisal is required or when an Evaluation can be used in lieu of an Appraisal.

- Appraisals were required for any transaction deemed to be a federally-regulated transaction unless exempt by regulation. Some exemptions include:
  - Where the loan was originated to be sold to a GSE.
  - Where the loan did not require an extension of credit; in other words, no money was extended to the borrower. Loan modifications would be exempt if there was no additional advance of funds.
- If the loan amount was over \$250,000 then an Appraisal was required.
- If the loan amount was under \$250,000 then an Evaluation was required.

FIRREA in effect created a new industry, “The Evaluation Industry.” Evaluations were loosely defined in the bank regulations, not rigidly enforced by banking agencies, with the following minimum requirements:

- Identification of the property
- Identification of the property rights
- Written
- Signed by the preparer

Most notably, Evaluations could be completed by anyone with a real estate background, including the loan officer, if the property was in a rural location. The Tax Assessors’ Valuation (Statistical Valuation Models i.e., TAV or AVM) could also be used as an Evaluation. The Broker Price Opinion (BPO) was the best fit product to satisfy the financial services industries’ appetite for an Evaluation product.

BPO companies, including Market Intelligence, understood that FIRREA opened the doors for a new valuation industry: BPOs for home equity lines of credit (HELOC) loans. It was such a profitable enterprise that Fidelity National Financial subsequently acquired Market Intelligence. Thanks to USPAP and state appraiser licensing laws, appraisers were effectively regulated out of this new industry.

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All of a sudden, Realtors™ across the country were being solicited by BPO companies to complete drive-by BPOs for the issuance of HELOC loans. As a result:

- Appraisers lost business.
- Appraisals were being over-regulated and Evaluations were being under-regulated.
- State appraisal licensing boards had their hands tied. FIRREA did not give the states any authority to regulate Evaluations, exempt from state licensing and USPAP.

Interestingly, the Office of Thrift Supervision completed a study and determined that 70% of all foreclosures had a HELOC or other second mortgage concurrent (piggyback) or other junior loan product with 80/20 LTV to obviate the need for mortgage insurance coverage.

Flash forward to the current foreclosure crisis. On November 19, 2008 the banking agencies issued an interagency rule exposure draft for Appraisals and Evaluations. After two years of industry comments, the banking agencies released the final interagency rule, which is subject to further interpretation upon full implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act).

The new regulation:

- A. Clarifies transactions exempt from appraisal regulations.
- B. Addresses the use of analytical methods or technological tools in the development of an Evaluation (TAV/AVM).
- C. Clarifies minimum Appraisal standards for appropriate deductions and discounts in Appraisals for residential tracts.

The interagency statement has provided the following guidance and clarification:

- Automated Valuation Models (TAV or AVM) do not meet minimum Appraisal standards even if signed by an appraiser and/or are not an

alternative to an Evaluation when one is required.

- Appraisal Management Companies (AMCs) are defined to include third party providers of Evaluations or other real property valuation related services.
- BPOs are not consistent with banking agency minimum supervisory expectations for Evaluations.
- Under the Dodd-Frank Act, BPOs may not be used in purchase transactions as the primary basis to determine property value.
- Persons completing Evaluations should possess the appropriate appraisal or collateral valuation education, expertise and experience for the property type being evaluated.
- BPOs only including list price or sale price cannot be used as Evaluations because they do not provide market value estimates.
- BPOs and Comparative Market Analysis do not contain sufficient information on local housing and market trends and therefore would not be acceptable as Evaluations.
- Guidelines for completion of an Evaluation are more defined and require substantial back-up documentation to prove compliance.
- If a third party valuation provider is used, they must provide the evaluator or appraiser with the intended use of the Evaluation or Appraisal, such as loan workout, foreclosure sale, REO, or refinance.
- AVMs can be used for loan modifications if the modification involves limited changes to the terms of the note or loan agreement.
- Loan Workouts
  - No new monies advanced: *Evaluations are acceptable.*
  - New monies advanced: *Evaluations are acceptable as long as market or property conditions have not changed.*
  - Appraisal is required when: *there is an advancement of new monies and*

*market or property conditions have changed.*

As with FIRREA, there remains more to be deciphered in this new interagency rule. Several potential issues include:

- The door is wide open to allow state regulatory agencies to regulate third party valuation management companies.
- Evaluation guidelines are more clearly defined, with some BPOs possibly not meeting the definition as they are currently prepared today.
- As BPOs migrate to meet Evaluation requirements they will look more like Appraisals. This should start to impact BPO fees and fuel the fire for state-sponsored evaluator license laws.
- Considering depressed market conditions and this new regulation for loan workouts, the appraisal industry may see an increase in Appraisal orders. GSEs are exempt.
- BPOs are still exempt for foreclosure, REO, portfolio loan monitoring, mortgage-backed security sales and HELOC loans if the BPO meets the new requirements of an Evaluation.
- State Appraisal regulators still do not have the authority to regulate an Evaluation, unless the state enacts an AMC license law and/or evaluator licensing requirements. ☹

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Keith Wolf, SRA is a State Certified Residential Appraiser with an SRA Designation from the Appraisal Institute. Mr. Wolf is currently the Broker Owner of Winfield Realty and Consulting Inc. that specializes in the management, valuation and liquidation of distressed assets. Mr. Wolf has thirty years of Valuation Management experience, twelve years of which included appraisal credit policy development, management, and underwriting for conventional, subprime, loss mitigation, portfolio acquisitions and Automated Valuation Modeling for Ocwen Financial Services, Market Intelligence and Household Mortgage/Bank/Finance.