NABPOP
National Association of BPO Professionals
6619 North Scottsdale Road
Scottsdale, Arizona 85250

December 2, 2008

The Honorable Sheila Bair
Chairwoman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Re: FDIC Loss Sharing Proposal – use of BPOs

Dear Ms. Bair:

I am writing in response to a November 19, 2008 letter (the "Response Letter") submitted to you by the Appraisal Institute, the American Society of Appraisers, the American Society of Farm Managers and Rural Appraisers and the National Association of Independent Fee Appraisers (collectively, the "Appraiser Organizations"). In the letter, the Appraiser Organizations raised their concerns over certain aspects of the FDIC's Loss Sharing Proposal to Promote Affordable Loan Modifications, namely the provision of the Proposal allowing for the use of broker price opinions, or BPOs, in the loan modification process. The National Association of BPO Professionals - NABPOP supports the FDIC's Loss Sharing Proposal to include the use of BPOs. To that extent, I would like to address some of the points, made by the Appraiser Organizations, that appraisal products should be substituted for BPOs in this process.

Background

Unfortunately, the debate over the use of broker price opinions vs. appraisals is often framed as a turf battle between real estate sales agents/brokers and appraisers. Our group holds appraisers in high regard, as the majority of our members often work side by side with appraisers and our membership includes appraisers and organizations representing appraisers. Through our standards of practice and code of ethics, our goal is to build an attitude of respect among all parties involved in the real estate valuation community. We firmly believe and maintain that the entire industry is best served by a wide arrangement of valuation products to include BPOs as well as appraisal products. We will never argue that it should be one or the other across the board. We feel it is important to make determinations as to what valuation products are best-suited for the FDIC's Loss Sharing Proposal based on a complete and unbiased understanding of the nature and benefits of BPOs.

Loan servicers have depended on BPOs to make sound and adequately supported loan decisions for many years. A BPO allows a loan servicer to know what the expected listing and sale price would be in an REO sale, and therefore influences any decisions made with respect to the foreclosure or short sale process for a specific property. It provides the servicer with the information necessary to make an informed decision as to whether a loan modification or a foreclosure/short sale would be more cost-effective in a given instance, one of the key aspects of the FDIC's loan modification analysis. An integral part of FDIC guidance on estimating the cost of foreclosure (either at the outset of the process or due to a subsequent re-default

under a modified loan) is the expected REO disposition price of the underlying property; this is information that a real estate sales professional is perfectly suited to provide in the form of a BPO.

Distressed properties may ultimately be placed on the market for sale, with the potential for the real estate professional performing the BPO to obtain the listing. In many cases, a sales agent/broker's primary motivation to perform BPOs is to secure a short sale or REO listing.

Performance of BPOs in Certain States

The Response Letter alleges that it is illegal in certain listed states for BPOs to be used for the purposes proposed by the FDIC. While the laws of each state may vary based on specific facts and circumstances, we dispute this generalization.

The Loss Sharing Proposal is predicated on consistency and simplicity, and envisions servicers making a comparison of the costs of modifying a loan to the strategy of foreclosing. In order to ascertain a reliable estimate of the costs of foreclosing and any resulting REO sale, the most accurate, timely and cost-effective tool available to servicers is the BPO, as it establishes an opinion as to the potential listing and sales price of the property. Likewise, in determining the cost of loan modification, a servicer would need to consider the potential impact of re-defaults under the modified loan and any resulting REO disposition prices, another reason why a BPO is ideally suited for the FDIC's proposed program.

The Response Letter concedes that BPOs are generally permissible in the listed states to establish the sales or purchase price of a property, which is precisely what servicers would need to do under the Loss Sharing Proposal to estimate the potential cost of foreclosure as well as loan modification.

In effect, the Response Letter is advocating that servicers would need to prepare two separate opinions, one (a BPO) to establish the estimated sales price in a foreclosure/REO situation, and another (an appraisal) to determine a loan-to-value ratio. The FDIC's goals of consistency and simplicity are not met where servicers are required to obtain, pay for, and compare two different opinions as part of the loan modification process.

Finally, NABPOP has an Advocacy Division which was established specifically to address the issues that either block or restrict the use of BPOs within the industry, on a state level, and/or on the federal level. NABPOP actively petitions states to make legislative changes to the state's statutes regarding BPOs.

Federal Bank Regulations/ Interagency Guidance

The Response Letter establishes that the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and the FDIC Interagency Appraisal and Evaluation Guidelines would not preclude the use of BPOs as part of the Loss Sharing Proposal. Further, for the reasons described elsewhere in this letter, a BPO would not be a "lower quality valuation product" in this context, but would actually provide servicers and the government a more meaningful comparison of the alternatives between loan modification and foreclosure.

Quality of BPOs

The Response Letter alleges that BPO preparers have "virtually no training requirements or standards" and that BPOs are "far less reliable" than "competently" prepared appraisals. We counter that a BPO prepared by a licensed and experienced real estate professional, familiar with the subject property's location, gives the servicer as well as the government an accurate and up-to-date picture of the potential sales/listing price a property would achieve if put into the foreclosure process. This, in turn, aids in making an informed decision on whether foreclosure or loan modification is more cost-effective.

NABPOP provides a robust BPO education program and a stringent BPO Certification process that ensures the proper level of training, knowledge, and skills for all member BPO practitioners. NABPOP's BPO Education and BPO Certification process is predicated on ongoing improvement and we consistently receive feedback from service provider companies to improve the BPO Education and the BPO Certification process. The BPO Education and BPO Certification process combined with NABPOP code of ethics and standards of practice ensures that a BPO submission from a NABPOP BPO Certified practitioner is consistent and of the highest possible quality.

Further, BPOs have been used for an extended period of time, and the industry has developed a self-policing mechanism that ensures quality. Servicers realize the importance of basing their loan-level decisions on reliable information prepared in a professional and thorough manner. They require that BPOs meet stringent quality assurance metrics before they are accepted. Finally, we believe that the reliability of any valuation product, whether it is a BPO, appraisal or other product, is subject to variation based upon the diligence of the provider and the quality assurance efforts that are applied to the end product. Advocating one product over another oversimplifies the point.

Price vs. Value

The Response Letter suggests that appraisals are the only appropriate product for use in conjunction with the Loss Sharing Proposal as an appraisal establishes a property's "value," whereas a broker price opinion is more appropriate to determine a probable sales price such as in an REO scenario. However, as discussed above, the potential disposition price of a property is an integral part of the analysis required under the Loss Sharing Proposal, as it is necessary to make an informed comparison of the foreclosure and loan modification options.

Alleged "Loosening" of Valuation Requirements

Loan servicers are experienced and sophisticated financial institutions, and the due diligence they conduct in making loan-level decisions is vital to their continuing operations. They are informed as to the available valuation products and have numerous incentives to choose the appropriate product for their intended use. When comparing the cost of foreclosure to a loan modification, a BPO is the appropriate tool. Rather than a "loosening" of valuation requirements, the Loss Sharing Proposal, in its current form, accurately matches the product to the need.

Development of New Appraisal Tools

After touting the robust nature of appraisals as compared to BPOs, the Response Letter suggests more flexible appraisal products are being developed with a reduced scope of work that should be considered by the FDIC to improve timeliness and cost-savings over traditional appraisal products. Further, the Response Letter offers that the Appraiser Organizations are currently working to create appropriate tools and educate appraisers about their use.

However, BPOs already offer the advantages of low cost and quick turn-times and their use has been established in the industry over a significant period of time. Given current economic conditions and the need for immediate action, we recommend that established and proven products such as BPOs are necessary to foster the consistency and simplicity sought by the government.

Alternative Valuation Methods

The Response Letter characterizes other available products, such as automated valuation models and comparative market analyses, as lower quality valuation tools that are not appropriate for use as part of the Loss Sharing Proposal. While these products were not discussed in the Loss Sharing Proposal, we would not argue with a finding that these products, as well as appraisals, may be relevant for consideration by a servicer as a part of their overall due diligence efforts in comparing available loan options. After all, isn't the availability of more information in making these critical decisions a good thing for servicers, the government and ultimately the consumer?

Conclusion

In closing, we support the FDIC's Loss Sharing Proposal and its attempt to introduce a systemic and sustainable process to provide loan modifications. We believe that the long-standing embrace of BPOs by the loan servicing industry speaks to their quality, reliability, efficiency and suitability for making important decisions related to the treatment of distressed loans. This established track record is vitally important in today's current economic client. We urge that the FDIC pick the right product for the job, and not be swayed by biased allegations to the contrary.

Thank You.

Sincerely,

Michael Ramer

President
NABPOP
National Association of
Broker Price Opinion Professionals