

APPRAISAL TODAY

How appraisers get into trouble using email, social media, online postings, face-to-face conversations, etc.

Is there any communication that is private?

Remember what it was like before email, web browsers and search engines? Can you imagine going back to not having Google? Email is much, much easier than phone calls, faxes and postal mail.

But, the price we pay is lack of privacy in our communications. When we used land lines and faxes, our communications could not be easily accessed. Phone conversations were private by law and required a court order to record them. Voice mail recorded messages. Some of us recorded phone conversations secretly.

The recent controversy over Hillary Clinton's email use dramatically shows what should not be done. I suspect she did not know, or follow, the Primary Rule below.

I did not fully understand the lack of communication privacy, including the U.S. Postal Service, until I wrote this article. This article discusses both privacy and practical tips for appraisers to minimize mistakes in Internet communication.

To help you better understand the privacy issues, I have included information on privacy, including the Fourth Amendment to the U.S.

Constitution, changes due to terrorist activities, and other legal sources of restrictions.

I also included a very brief history of email and the Internet. Hard to believe what has changed since the first widely available web browser, Mosaic in 1994!!

This article focuses on email, which all appraisers use. There is some risk posting on email discussion groups, such as Yahoo groups.

However, the greatest risk is posting on web sites.

THE PRIMARY RULE FOR EMAIL AND THE WEB = ASSUME THAT WHAT YOU WRITE WILL BE PUBLISHED ONLINE AND EVERYONE IN THE WORLD CAN READ IT!!

My first email experience - in 1980

I first used email when I worked in a corporate real estate job from 1980 to 1985. We had intra-company email. A senior vice president sent a very negative email out and accidentally sent it to everyone in the company. She was fired within a week. I learned early about the primary rule of email. I never forgot this lesson.

I next used email in the late 1980s, before the first Internet browsers, on AOL and Compuserve, back when Bill Gates saw the Internet as a threat. The emails could not be sent out on the Internet, but could be sent to everyone within the online service.

After the first widely accepted web browser started in 1994, plus Internet email, the various services such as AOL and Compuserve connected to the Internet and emails could be easily sent all over the world.

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What about not using any communication for business except telephone and paper?

I recently appraised two 26-unit apartment buildings for an estate. The income and expense statements were very hard to figure out as they were not done using standard property management categories.

The bookkeeper did not use email or fax to communicate. I was annoyed, but then realized that it was for client confidentiality purposes. The trustee had to go to her office to pick up the financial reports I needed. Of course, they could be scanned an emails.

Most Important email tips for staying out of trouble

Do Not Hit Send until you wait for awhile. Unless it is a quick no or yes reply, I almost always wait. Sometimes I save it and let it sit overnight, particularly when it is a long email that could be controversial. Often, I change it or delete the entire email. There is software to get it back within 5-10 seconds, but it is much easier to get in the habit of waiting to send it. Yes, sometimes I do hit reply and want to take it back...

Do Not Hit Reply All, unless you really mean it. See my above example from 1980. Often, people are annoyed to get another irrelevant email.

Privacy - the Fourth Amendment to the U.S. Constitution

"[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The ultimate goal of this provision is to protect people's right to privacy

and freedom from arbitrary governmental intrusions. Private intrusions not acting in the color of governmental authority are exempted from the Fourth Amendment.

Emails - the Electronic Communications Privacy Act and the Patriot Act

Unfortunately, given the open nature of email mentioned below (passing through several computers and stored at multiple locations), the expectation of privacy may be less for email than for other forms of communication.

Emails are also governed by the Electronic Communications Privacy Act (ECPA) and the Patriot Act. Although the ECPA originally set up protections (such as a warrant requirement) to protect email, those protections have been weakened in many instances by the Patriot Act. Even where the protections remain under the ECPA, emails lose their status as a protected communication in 180 days, which means a warrant is no longer necessary and your emails can be accessed by a simple subpoena.

"The Obama administration is asking Congress to amend the Electronic Communications Privacy Act (ECPA) to give the Federal Bureau of Investigation (FBI) greater access to e-mails and web browsing information. The proposed change would enlarge the scope of information that communications providers must turn over to the FBI without a warrant. Under the current law, communications companies must give the FBI a customer's name, address, length of service and toll billing records if the FBI says the information is needed for a terrorism or intelligence investigation. The proposed amendment would require the release of e-mail addresses to which messages were sent, the times and dates e-mail was sent and received, and maybe even a user's browser history."

Source: <http://communications-media.lawyers.com/>

Why is email privacy so difficult to obtain?

In contrast with postal mail, which is only transferred around within the postal system, emails go all over the internet.

Check out one of your emails to see where it goes. Click on View/Message source in your email software. You will see many lines of messages showing how it bounced around the Internet.

Emails are stored at multiple locations: on your computer(s), your ISP's (or Google, Yahoo, etc.) server, and on the receiver's computer. Deleting an email from your inbox doesn't mean there aren't multiple copies still out there.

Even after you've deleted your emails, they will be available for years from other sources.

Emails are also vastly easier for law enforcement to access than phone records. Finally, due to their digital nature, they can be stored for very long periods of time.

What about using web-based software, such Gmail, Yahoo mail, etc.

I started using Gmail two years ago so I could see emails on all my computers. Previously I used my ISP. Whenever I downloaded my email, it was deleted from my ISP's servers after a length of time that I specified. To see my emails, my computer had to be accessed.

This was done because email took up a lot of storage space. Now, storage is cheap.

I love being able to access my email anywhere, any time. Plus save and search all my emails. But, there is less privacy.

How to keep your email private - use encryption

When I first starting using Internet email, encryption was popular. But, because of speed and convenience issues, few people today use encryption and most email remains unencrypted and unsecured.

The two most popular forms of email encryption are OpenPGP and S/MIME. Encryption scrambles your email into something unintelligible that only someone who has the correct digital "key" can read.

Be careful with email discussions

I have been very surprised that the Clinton emails included multiple person discussions of the same topics. You tend to be more "free" when doing back and forth emails about a topic, even with one other person. Also, it often would have taken less time, and been more productive to do phone calls.

What about disclaimers at the bottom of emails?

These are not very useful for appraisers, but may discourage someone from forwarding the email. I mostly see them from attorneys.

What does email privacy mean for appraisers?

I don't think very many appraisers are involved in a big government fraud case, for example. In your personal life, it is unlikely the FBI will get a court order to obtain your emails, but it is possible.

But, understanding that email is not very private is important for you.

Very critical in litigation - all types of senders and receivers. The attorney for the opposing party wants to get emails sent by you that will help their case.

I was testifying in court on a divorce case in 2003. After the lunch break, the opposing attorney asked me about my broken ankle making it difficult to get around houses. How

did she find out? I had mentioned it in my free email newsletter. I doubt if she subscribed to it, so she must have contacted a local appraiser about me.

You send a nasty email reply to a client and do not wait to send it. You are marked as a "do not use" and get no more work. Also, lenders share their do not use lists with each other and with the AMCs they use. They could also forward the nasty email to others.

I have seen derogatory emails posted on appraiser Facebook groups, mostly written by AMC employees. Your email could appear as an example of what to write to an AMC.

Plus, many times we hit send too early and send out an embarrassing email to someone. That we cannot get back.

Text messaging and appraisers

Texting is being increasingly used. I like texting, but don't use it much for business as none of my clients use it. I have used it for confirming appointments or to let someone know that I will be late. Emails can be hassle and phone calls are time consuming.

Since they are saved on your cell phone and the receiver's cell phone, they are a written communication record. See below for cell phone privacy.

Cell phone privacy

Government agencies can access your cell phone records (including call logs and text records) with a subpoena if you're part of or connected to a criminal investigation or a civil lawsuit. Your cell phone company is required by law to comply with subpoenas that request the records.

The Federal Bureau of Investigation (FBI) and the National Security Agency (NSA) can subpoena the cell phone company for phone records without a prior warrant as a result of the 2001 Patriot Act in order

help prevent acts of terrorism. They can also wiretap, that is, listen and record your cell phone conversations. Moreover, the Patriot Act makes it illegal for the cell phone company that has delivered your records to the FBI or NSA to make it publicly known or even discuss the fact that your phone records have been investigated.

You may have a legitimate expectation of privacy of the information stored in your cell phone, and so a search warrant may be needed before a police officer can look at your phone's data. However, an officer has the authority to search a cell phone when the search is "incident to an arrest." The search is deemed similar to a police officer that searches a car when noticing something suspicious, such as an open container of an alcoholic beverage.

Source: <http://communications-media.lawyers.com/privacy-law>

A BRIEF HISTORY OF EMAIL AND THE WEB

The history of email

Email is much older than ARPANet or the Internet. It was never invented; it evolved from very simple beginnings.

Early email was just a small advance on what we know these days as a file directory - it just put a message in another user's directory in a spot where they could see it when they logged in. Simple as that. Just like leaving a note on someone's desk.

Before internetworking began, therefore, email could only be used to send messages to various users of the same computer. Once computers began to talk to each other over networks, however, the problem became a little more complex - We needed to be able to put a message in an envelope and address it. To do this, we needed a means to indicate to whom letters should go that the electronic

posters understood - just like the postal system, we needed a way to indicate an address.

This is why Ray Tomlinson is credited with inventing email in 1972. He picked the @ symbol from the computer keyboard to denote sending messages from one computer to another.

By 1976 email had really taken off, and commercial packages began to appear. Within a couple of years, 75% of all ARPANET traffic was email.

One of the first good commercial systems was Eudora, developed by Steve Dorner in 1988. Not long after Pegasus mail appeared. (Editor's note: I used Eudora for many years.)

With the World Wide Web, email started to be made available with friendly web interfaces by providers such as Yahoo and Hotmail. Usually this was without charge. Now that email was affordable, everyone wanted at least one email address, and the medium was adopted by not just millions, but hundreds of millions of people.

Source: www.nethistory.info

Mosaic, the first widely used web browser in 1994 changed everything

It is almost unbelievable how much has changed since 1994, only 22 years ago and two years after I started this newsletter.

Of course, the Internet had been around for many decades, mostly for government and academic users.

Another appraiser helped me get on this internet. I tried using the pre-browser internet, but it was too hard to find the files you needed. I tried Internet Relay Chat (live chat), but it was too much hassle for me. News groups were also active and continued to be active after browsers became available.

What changed everything was web browsers which allowed anyone to find and retrieve information. Tim Berners-Lee wrote a proposal in

March 1989 for "a large hypertext database with typed links". He considered several names, including Information Mesh, The Information Mine or Mine of Information, but settled on World Wide Web. Several web browsers were developed after that with limited use.

The Web was first popularized by Mosaic, a graphical browser launched in 1993 by Marc Andreessen's team at the National Center for Supercomputing Applications (NCSA) at the University of Illinois at Urbana-Champaign (UIUC).

After graduation from UIUC, Andreessen and James H. Clark, former CEO of Silicon Graphics, met and formed Mosaic Communications Corporation in April 1994, to develop the Mosaic Netscape browser commercially. The company later changed its name to Netscape, and the browser was developed further as Netscape Navigator.

FACE TO FACE AND PHONE CONVERSATIONS

Be careful what you say in face to face and phone conversations

This is he said/she said as there is no documentation. I can't imagine that the FBI would get a court order to listen to your conversations about appraisal issues. Of course, be careful what you say about personal topics.

When someone else repeats what you say, you have no control over what they say. Remember when you did a test, usually when you were young, of one person saying something and then passing it along to others in the room. What the final person heard was often very different than what the first person said.

We all know the "classic" story of not telling an owner what his house is worth at a party.

Remember the comp check days? These were often verbal appraisals. They were risky as the client and the property owner sometimes got upset

when your final value was another number.

Be careful what you say to other appraisers

Be sure you do not reveal anything confidential, such as the sales price on a pending sale, where you did not get permission from the agent to reveal the price.

Be very careful about commercial appraisals. Don't reveal confidential information about a new development, leases, etc. Also, if you are getting information from another appraiser, be sure to check to see if it is confidential.

When I get the sales price on a pending sale, in my appraisal I say it was "close to" or significantly above" the listing price, for example.

When getting commercial property information that could be confidential, I do not identify the property. In my appraisal report, if I mention the information, I say that the specific property address is confidential and talk about the situation in general terms.

WEB SITE POSTINGS - YOUR BIGGEST RISK

Attorney "Perry Masons" Googling is the biggest risk for appraisers

I love this term, sent to me by Doug Smith in Montana.

For most appraisers, the risk is from attorneys finding out information about you online, if you are involved in a court case as an expert witness or not.

Of course, this applies to any legal issue you are involved in.

Your personal posts also will show up. For example, an appraiser I know was in a very serious accident where he almost died. In court, the opposing attorney found a post where he had discussed his accident. Not good.

I'm sure they regret that the two

most active forums on www.appraisersforum.com are not searchable now.

Web site postings - your biggest risk

Getting email sent to you is not easy. You have to join email discussion groups.

Web browsers are totally different. Almost all web pages are indexed by search engines.

You can't get back your email messages. You can delete posts on email discussion groups. Also, you can remove web posts that you made.

The Primary Rule applies to all web postings.

Where do appraisers show up on the web?

There are many sites:

- Comments you post on a blog or web site.
- Posts you make
- You are mentioned in a blog, web page, online article, in a downloadable PDF, etc
- You post something on your web page
- Someone reposts an email comment or something from another web site. Or uses excerpts of what you have written.

How to test where you show up on the web

Do you Google people you know, have heard of, or just met? Almost all of us do.

Google your name, add additional search terms as appraiser, state or city. What comes up?

Is it from something you posted or did someone just mention your name?

How can you keep your online posts private?

Several appraiser Facebook groups have tried to keep the groups private or secret, after finding out that AMC and lenders are reading the posts. Before admitting someone to the group, the moderator verifies that the person is a licensed appraiser.

However, many clients employ licensed appraisers. Some only allow new members that are referred by a current member. Appraisers have had problems when clients saw their negative comments about them.

You can set up your own web pages as "do not search" by including special html coding. I have done this on my web site since I started it in 1998. Then I could post files, etc. that only specified persons could access by sending them the special link. I also have a special page for links, etc. that we use in my office for internal use. Some "unethical" search engines could bypass the special coding I suppose.

The most active, and one of the longest running, online discussion boards is www.appraisersforum.com. Its posts used to come up regularly when I did Google searches on appraisal topics. Awhile ago, its posts almost stopped showing up on searches. I emailed the owner, Wayne McErley. The web site has many forums. Only "Improving the Profession" and "Clients, Good, Bad, and Ugly", the most active forums, are blocked from search engines. The other forums are searchable.

How to remove your web posts or if you are mentioned in someone else's post

All web based discussion groups, such as facebook and appraisersforum.com allow you to remove your own posts.

Getting rid of what someone else posts can be tricky. It can be a hassle to do it and they don't want to take the time, etc.

Email discussion groups

I belong to many Yahoo discussion groups, both appraisal and personal. Google and LinkedIn also have discussion groups.

Some of these are open and some are closed. They are not as active as the Facebook and appraisersfourum.com as they are only viewed as emails. There is a web interface to read and reply to the emails. Most active members have been on the group for quite a while.

The Yahoo and LinkedIn groups tend to be more "professional" without a lot of negative emails.

However, remember the Primary Rule above. You have no control over emails from the group being forwarded to someone who may not like what you say.

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POSTAL MAIL PRIVACY

Your postal mail has not been private since the 1800s because of the "mail cover" program

"The mail cover has been in use, in some form, since the 1800s," Chief Postal Inspector Guy J. Cottrell told Congress in November. The program targets a range of criminal activity including fraud, pornography, and terrorism, but, he said, "today, the most common use of this tool is related to investigations to rid the mail of illegal drugs and illegal drug proceeds."

"The obscure program, run by the USPS's law enforcement division, the Postal Inspection Service, lets state or federal law enforcement agencies request what's called a 'mail cover', giving them access to address information from envelopes and packages sent or received by people targeted in criminal investigations, without a search warrant. Because a mail cover involves reading only information on the outside of the envelope or package that could be seen by any observer, courts have not ruled it a violation of the Fourth Amendment. But that has-

n't stilled concerns about privacy and abuse."

"The revelations by Edward Snowden, and the 2013 acknowledgement that the U.S. Postal Service photographs the front and back of all mail sent through the U.S., ostensibly for sorting purposes, has brought new scrutiny to the mail cover program."

Source:

<https://www.fastcompany.com/3045337/postal-service-surveillance-privacy-snail-mail>

... "a longtime surveillance system called mail covers, (is) a forerunner of a vastly more expansive effort, the Mail Isolation Control and Tracking program, in which Postal Service computers photograph the exterior of every piece of paper mail that is processed in the United States - about 160 billion pieces last year. It is not known how long the government saves the images."

"The Mail Isolation Control and Tracking program was created after the anthrax attacks in late 2001 that killed five people, including two postal workers. Highly secret, it seeped into public view last month when the F.B.I. cited it in its investigation of ricin-laced letters sent to President Obama and Mayor Michael R. Bloomberg. It enables the Postal Service to retrace the path of mail at the request of law enforcement. No one disputes that it is sweeping."

This is a interesting story focusing on a man who saw a hand written note, delivered by mistake to him, accidentally dropped by his postal mail delivery person, with instructions for postal workers to pay special attention to the letters and packages sent to his home address.

Source:

www.nytimes.com/2013/07/04/us/monitoring-of-snail-mail.html

No warrant is required to get this information. Of course, opening and reading the contents requires a court order.

There is concern about the use of the metadata from the outside of envelopes for use in databases.

This would not likely affect appraisers, when acting as appraisers, but I always assumed that postal mail was private. Mistake. Innocent people have been caught in communications with "suspect groups", such as requests for information, for example.

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CLIENT PRIVACY REQUIREMENTS

Read your lender/AMC agreements about privacy

All institutional mortgage lenders, such as banks, have lots of privacy requirements. Many come from Gramm-Leach-Bliley Act, also known as the Financial Modernization Act of 1999, which is a federal law enacted in the United States to control the ways that financial institutions deal with the private information of individuals.

Vendors, such as appraisers, have requirements for consumer privacy records, such as establishing protocols for protecting consumer privacy. For appraisers, this could include the appraisal reports, including photos. Also could include perimeter security measures.

Read your client agreements. What privacy requirements are included?

Is any communication completely private?

I'm sure you have seen crime and spy television shows and movies that show how communications can be obtained by law enforcement agencies. They can obtain postal mail, landline and cell phone calls, emails, etc. with a court order.

Personal, face to face communication outdoors, can be obtained sometimes with special recording equipment, but can be easily stopped by turning on a loud radio or speaking softly.

For appraisers, THE PRIMARY RULE FOR EMAIL AND THE WEB = ASSUME THAT WHAT YOU WRITE WILL BE PUBLISHED ONLINE AND EVERYONE IN THE WORLD CAN READ IT!!

This also applies in your personal life.

For most appraisers, the risk is losing a client because of negative email and web comments. Being embarrassed by what you write also can happen.

It is very unlikely that an appraiser, acting as an appraiser, would be involved as a defendant in a court case, such as fraud. But, I am sure it has happened to some appraisers.

State Appraisal Boards: Appraiser Discipline and E&O Insurance

by Peter Christensen

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Editor's comments: Per Liability Insurance Administrators, about 45% of their inquiries from appraisers are about state board complaints. Check to see what your E&O provider offers. Some offer a free consultation and/or \$2,500 (or more) to help with attorney costs. Few complaints are from lenders, except for RELS. A slight majority are from homeowners, with about 50% about low values. The number of complaints varies widely among the states, primarily depending on the state regulator. For more information, see the June 2016 issue of Appraisal Today.

In Arizona, there is no legal requirement for real estate appraisers to carry errors and omissions insurance (E&O). Only one state, in fact, requires appraisers to be insured - Colorado. Nevertheless, most Arizona appraisers who perform fee work for clients, like most appraisers across the country, currently maintain E&O. Appraisers generally carry it for two reasons: either they want the legal defense and financial protection provided by E&O in the event of a professional liability claim, or they just buy it because their clients or AMCs require it.

Whatever the reason for having E&O, when a state disciplinary matter occurs, appraisers understandably worry about the impact that the disci-

plinary matter may have on their insurance. Common fears are that their insurer will not renew their policy or that the insurer will increase their premium. These fears do have a rational basis but they are sometimes excessive. The imposition of serious discipline against an appraiser - such as a license suspension based on significant violations of USPAP or intentional wrongdoing - almost certainly will result in an insurer's decision to not renew the appraiser's policy or a substantial rate increase. The insurer's reasoning is usually that, based on statistical experience, an appraiser with serious discipline is more likely to have a legal claim against them down the road and is a more risky financial bet on average for the insurer.

At the other end of the spectrum, the underwriting rules for a few appraiser E&O programs have resulted in the non-renewal of E&O (or denial of a new policy) even when no discipline is imposed after the filing of a complaint to the state. Under the rules that apply in these programs, the insurance carrier may non-renew a policy or deny new insurance coverage when only a complaint has been filed and no actual discipline has occurred. It's important to understand, however, that underwriting rules vary widely among E&O programs. One insurance carrier's reaction regarding a disciplinary matter may be different than another carrier's - it all depends on the underwriting rules that each carrier creates for a particular E&O program.

"Should I report the filing of a complaint against me with the state to my E&O insurance provider?"

This question arises because of the fear that reporting the complaint will result in non-renewal or a higher premium. Regardless of those fears, however, and regardless of whether non-renewal or a higher premium may actually result, the safest course for an appraiser is always to report the filing of a complaint to his or her E&O carrier promptly upon receipt of first notice of the complaint. There are two main reasons for this.

The first reason is simply to secure the assistance and policy benefits that the appraiser may have under his or her E&O. Most E&O policies have some type of coverage for assistance in connection with defending a disciplinary complaint. Your policy may cover the cost of an attorney if legal assistance is needed in responding to the complaint or at a hearing. Some E&O programs also maintain legal departments that can help you informally by reviewing your correspondence with the state before you submit anything. This can be valuable assistance because it may come from legal counsel who have seen hundreds of other disciplinary matters and who have the experience to evaluate an appropriate response.

To be eligible for such coverage benefits, an appraiser generally must report the disciplinary matter to the E&O provider within a certain time-frame. This deadline will vary from policy to policy, but it generally will be within 30 or 60 days of when the appraiser receives first notice of the complaint. While a majority of disciplinary investigations opened against appraisers probably do not require any attorney assistance and can be handled by the appraiser directly, it is

still important to report every matter upon receipt of first notice to preserve the availability of coverage. A complaint that doesn't seem serious at the beginning might escalate into something worse down the road.

The second reason to report a complaint to your E&O provider is critical to understand. Virtually all applications for new E&O or for renewal of E&O have variations of two questions. One question addresses the existence of past or pending disciplinary investigations and asks something like this: "Have you been disciplined or investigated by any state licensing, administrative or regulatory board as a result of appraisal activities?" The other question addresses existing or potential legal claims and asks something like: "Are there any pending facts or circumstances which could result in a claim being made against you?"

If an appraiser fails to answer these questions accurately by omitting the mention of a disciplinary complaint to the state, and then receives a policy based on that application, the appraiser is jeopardizing the potential coverage under the policy not only for the omitted disciplinary matter (and any legal claim for damages in court that might be filed later) but is also potentially jeopardizing his or her coverage for any future claim.

This is because the omission of the information from the application may give the insurer the right to rescind the policy if the omission is discovered later. As an attorney, I have seen heartbreaking instances (I'm not speaking about any claims handled in the E&O program for which I am general counsel) in which appraisers failed to report disciplinary matters on their applications and were later sued in serious lawsuits. When the appraisers reported the lawsuits for coverage and the E&O carriers discovered the omissions, the E&O carriers were within their legal rights to rescind the policies and deny cover-

age for the lawsuits. This is the reason why it's always safest for an appraiser to report a disciplinary matter to his or her E&O and include mention of it on the application - regardless of the potential impact on renewal or premium. Failing to do this creates the risk of having no coverage at all. It's important also to understand that this means reporting a complaint or investigation - regardless of whether it actually results in discipline or admonishment (whether public or private).

"What if my E&O provider non-renews me or raises my rate?" This is not the inevitable result of reporting a complaint to an E&O provider. Even when an E&O application asks for information regarding disciplinary matters or disclosure of circumstances that may lead to a claim, the insurance carrier's response is not necessarily going to be non-renewal or a premium increase. As mentioned above, the underwriting rules vary in different programs, and some carriers actually look at the seriousness of the matter to evaluate whether it is something that should affect the issuance of E&O or the premium that is charged. A complaint filed by a borrower over a claimed "low value" or a complaint resulting in no sanctions or in a minor warning, for example, may have little or no consequence in some E&O programs. There is also no "blacklist" for insurance purposes - each determination legally must be made under an insurance carrier's own underwriting rules.

When an insurance carrier decides to non-renew a policy or quotes a much higher renewal premium, however, an appraiser can shop for alternatives with other E&O providers. The suggestion that I would have for appraisers in this circumstance is to start the shopping process early (at least 30 days before the end of the appraiser's current policy) and to

engage in actual person-to-person discussions with E&O providers to get feedback on the application process and different options, rather than trying to handle it via on-line applications. Only the most severe disciplinary punishments will make an appraiser truly uninsurable or push the E&O premium beyond a realistic range.

About the Arizona Appraisal Board

It is part of the Arizona Department of Financial Institutions, Real Estate Appraisal Division.

For more information, go to <https://boa.az.gov/>, including the full newsletter.

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Want to do appraisals for lenders but not for AMCs? Private money lending - no UAD or CU, computer "reviewers", and being treated like you know nothing!!

Many appraisers don't want to do non-lender work such as divorces. It is hard to get started and you may have to testify in court. There is another lender option - hard money lenders. I know only a few appraisers who work for them. I don't know why, especially since AMCs, who are not good clients, took over conventional lender appraisals.

Since 2008, getting a mortgage loan from a conventional lender has become much more difficult for almost everyone.

Private money lenders are the lenders who can close deals in a few days and count on the real estate equity as collateral. They have always been around, mostly for short term financing and borrowers with poor credit or no credit history.

On the minus side, for borrowers rates and fees are high. Because of the continuing credit squeeze, more high income borrowers are using hard money lenders for temporary loans until the credit market eases up, particularly for self employed persons.

Many appraisers don't want to work for them as the appraisers see them as "sleazy." But, in the recent subprime fiasco, there were many, many conventional lenders who made sleazy deals through mortgage brokers. Compared with them, hard money lenders are often much better.

They look for appraisers who are very familiar with the market and can provide accurate values. They want to know if there are problems with the property.

They are risking their own money and/or small investors' money, such

as your grandmother. Of course, there are some like the old mortgage brokers who want "the value" with no disclosures. Don't work for them. It is not worth the risk. One of the stories in my family is how we lost lots of money during the Great Depression because of investments in second deeds of trust when the market crashed.

Remember the client relationships in the mortgage broker days?

It is the same with hard money lenders, except the horrible pressures on value and not disclosing defects are gone.

They knew you personally and had relatively few appraisers they worked with. They did not make lots of calls to find someone who would do an appraisal for \$25 less. Appraisers did not compete on fee. No broadcast orders to hundreds of appraisers looking for the lowest fee.

When they found an appraiser they could work with, they became loyal clients.

This is what most lender clients were like before AMCs took over.

Remember what your appraisal reports were like in the mortgage broker days?

I do those types of reports in my non-lending estate business. Not a lot of complicated and confusing information in the reports. No long addenda full of boilerplate to satisfy all the AMC's many lender clients.

No computer software looking to see how close you come to a conforming tract home. No comparing with the "model" and other appraisers.

You spend your time doing

appraisals, including what is relevant to the subject. You are providing lots and lots of sales to "bracket" everything, for example.

What will you do when the mortgage market crashes, as it always does?

Private money lending is much steadier than the very volatile conventional mortgage market.

AMCs don't know you and have no loyalty. All appraisers are the same. The only difference is the fee. Private money lenders remember who helped them during the busy times.

Who are "hard money" lenders?

They typically match investors with loans, sometimes investing their own money.

Hard money lenders may serve a regional market or may offer loans nationwide. Some hard money lenders are represented by brokers who may take a percentage of the loan (points) in exchange for preparing and submitting the loan documentation (as well as finding a direct lender). Other hard money lenders deal directly with applicants.

This business is very fragmented, from local companies with no advertising to large companies operating in multiple states.

I know of two local appraisers who are doing very well in their private investor lending businesses. They know the value and marketability of the collateral, which is very important.

Individuals and small groups of investors don't advertise. Small firms typically get their money from investors wanting to get a good return on their money and pool that money.

Where did the term "hard money" come from?

"It is difficult to find an answer to this question. I've heard plenty of speculation. Some people say that it's because the money is used for "hard to do" loans. Others say it is because the loans are "hard to get" or "hard to pay." It is my belief that it is called hard money because traditionally it has been 'real money' in the sense that it is not borrowed. Institutions loan borrowed money, and in this sense they loan 'soft money.' However, I must point out that things have changed a bit over the years, and these days a good deal of hard money is in fact borrowed. (I would guess as much as 50%.)"

Source: Fairfield Financial Services web site.

Commercial vs. residential

Many hard money loans are made on commercial properties, but more are being made on residential due to the current restrictive lending market.

Commercial hard money lending is often used for interim financing, such as for builders. They are much faster to close than conventional commercial loans.

Since they are not regulated and may not require certified general licensing, you may be able to get started in apartment appraising with them, particularly 5 to 15 units. I do both 2-4 units and larger apartment properties. The larger properties are much easier than the 2-4s as the value is based on income. No owner occupants, inlaw units, etc.

What types of properties need appraisals?

I recently appraised two 26-unit properties for an estate. Their total value was \$9,000,000. They also have a house and a triplex. With the two additional properties the estate was over \$11,000,000. The federal estate tax is 40% of the value over \$5.24 million. They will owe millions of dollars. The trust does not have the

money to pay the taxes and will use "bridge" financing until they sell one or more of the properties, probably from a hard money lender or possibly a conventional lender if they are lucky.

In today's market more hard money refinance loans are being made on homes because of the difficulty in obtaining conventional loans.

Many hard money loans are made for short term financing on commercial and apartment properties, when conventional lenders take too long to fund.

Land is another popular type, as conventional financing can be difficult to obtain.

Residential property loans are often made for bridge loans, construction, and remodeling.

Many homes that don't "fit" conventional lending, such as rural, large amounts of land, unusual construction, lack of some utilities, etc. need to get private financing.

Who gets private mortgages?

The most common borrower for a private mortgage/hard money loan is an individual who has one of three issues that requires them to obtain this type of loan. The issues are usually because of credit, income, or property type/condition.

- Currently behind on your mortgage payments.
- Currently facing foreclosure or have a notice of default filed against you.
- Have tried to refinance, but have been turned down because of credit or income.
- Need a mortgage loan immediately and are willing to pay more to have it close quickly.
- Trying to finish a construction loan project.
- Financing land, commercial property, hotels, motels, investment property.

The loans are typically for a short period of time, such as 6 to 24 months, until the issues can be

resolved.

Changes in hard money licensing and regulations since 2008

Prior to 2008, the Home Ownership and Equity Protection Act of 1994 (HOEPA) regulated hard money loans. "The law addresses certain deceptive and unfair practices in home equity lending. It amends the Truth in Lending Act (TILA) and establishes requirements for certain loans with high rates and/or high fees. The rules for these loans are contained in Section 32 of Regulation Z, which implements the TILA, so the loans also are called 'Section 32 Mortgages'."

Hard money lenders are regulated now and must be licensed. Reporting requirements have greatly increased. This has been a significant factor for hard money lenders, which tend to be small. I have an appraiser friend who works for a family business that started, in the 1940s, doing real estate sales and lending. He had to learn about the requirements, get licensed as a mortgage broker, and outsource the complicated reporting requirements.

You may want to learn more about these regulatory changes so you can understand them better before you start marketing to them. Google "hard money lenders new requirements".

TRID and hard money lenders

"In a pre-TRID world, hard money lenders simply required a note and a deed of trust. Other documentation requirements varied but generally included a personal guarantee from the borrower, personal financial statements - such as past tax returns and proof of income - and assurance that the borrower had the funds to rejuvenate and maintain the property. The burden of proof rested largely on the borrower."

Under TRID, which took effect this past October, lenders have to engender trust by showing their calculations

to clients.

Source: Scotsman Guide
www.scotsmanguide.com. There are also other requirements.

What about fees?

Little, if any, competing bids. I am getting high fees for my non-lender work, about 15% more than what direct lenders are paying locally. I am on the mid to low range for fees for my local market. Also, a fast turn time is usually required, justifying an increased fee.

Call around to hard money lenders, posing as a customer, and ask what the appraisal fee will cost.

What about appraisal requirements?

No 1004 MCs, no UADs are required. No Fannie Mae guidelines, only USPAP.

Many loans are done without appraisals as the investors are considered to be knowledgeable and the lender knows local property values.

However, sometimes investors require independent appraisals.

Be sure to ask if there are any special requirements. They don't sell to Freddie or Fannie, but may want you to use their requirements.

You can use whatever report format you want. Fannie Mae forms are okay.

Turnaround times are typically quick as they are short term loans with quick closes.

They prefer conservative appraisals, not high appraisals.

Scope of work - very different from conventional lending

Appraisals for hard money lenders are very different than conventional appraisals. You really need to know how to appraise accurately and be very good at market analysis.

Hard money lenders want to know what the property is worth. Their primary focus is on the current market. Just putting three comps on a page is not acceptable.

You need to know the market the same way a local real estate agent does. What's pending, what's active, how easy will it be to sell the home, etc.

Remember, a high percent of the loans go into foreclosure. You are risking private individuals' money.

They often want fast turn times

Because of today's appraiser shortage, try asking for a higher fee than you get for lender appraisals.

Real estate investors choose to use hard money for many different reasons. The main reason is the ability of the hard money lender to fund the loan quickly. In most situations, hard money loans can be funded within a week.

Compare that to the 30 - 45 days+ it takes to get a bank loan funded. The application process for a hard money loan generally takes a day or two and in some cases, a loan can be approved the same day.

What are the borrower's costs?

Interest rates are generally in the low teens and fees can be as high as 10% of the loan amount. Rates and fees vary widely, depending on location and competition.

What are appraisers' liability risks?

Be very, very careful to disclose and not overvalue. Hard money lenders rely on the borrower's collateral, not credit. Typically a minimum of 30% equity is required.

They are lending individual investor money, not pooling loans and selling them to Wall Street.

Think of them as loans your mother is making. You don't want her to lose her money.

You want to be sure the investors know exactly what kind of collateral they are lending on.

Delinquency and foreclosures tend to be much higher than conventional loans, as borrower credit is weak, so the value of the collateral is very important.

What about lender pressure?

Your risks for lawsuits are much higher from individual investors. See above. If you have a lender who pressures you to not disclose defects or overvalue, don't take any more orders from that lender.

To keep their clients, hard money lenders need to be sure their clients invest in properties that are accurately valued and described in the appraisals.

Where to find contact information for hard money lenders

There are many different ways to find a reputable hard money lender. One easy way to find a local hard money lender is to search Google for [your area] + "hard money lenders". There will be individual companies in the search results as well as lists of hard money lenders compiled by others. This will provide a good amount of lenders to begin contacting and evaluating.

Another way to find a hard money lender is by attending your local real estate investor club meeting. These club meetings exist in most cities and are usually well-attended by hard money lenders looking to network with potential borrowers. If no hard money lenders are present at the meeting, ask other real estate investors if they have a hard money lender they can recommend. Real estate brokers, conventional mortgage brokers and other real estate professionals may be able to refer an experienced hard money lender. Leverage your existing network and see who is most recommended.

The Scotsman Guide (www.scotsmanguide.com) has many hard money lenders listed, particularly those working in wider geographic areas.

Local hard money lenders can be difficult to find. Most operate only within limited geographic areas because they like to see the properties

they're lending against personally and know the area around them.

A good way is to contact local mortgage brokers and ask about the local hard money lenders. Yes, a few survived the 2008 crash. I called the broker who I used to regularly use and she gave me contact information for the hard money lender she provides to borrowers with significant credit problems.

Hard money lending is a very small world. If you're a good, conservative appraiser who provides good service, your name will be passed around.

Should you work for hard money lenders?

What is your plan for when the mortgage market dies, as it always does and AMC fees drop way down? Working for hard money lenders can make a big difference. They lend during both weak and strong mortgage markets.

It is an excellent nonAMC option, similar to working for mortgage brokers, but without pressures on value and disclosing defects.

You will need to go beyond "form filling", CU and Fannie Mae guidelines. You are providing an accurate value for the subject.

You will need to turn down AMC work, but you probably already do that.

Fast turn times are usually required, for an additional fee, of course.

There is more potential liability because private individuals provide the money for the loans, such as retirees. Rates and returns are much better than money market funds or savings accounts.

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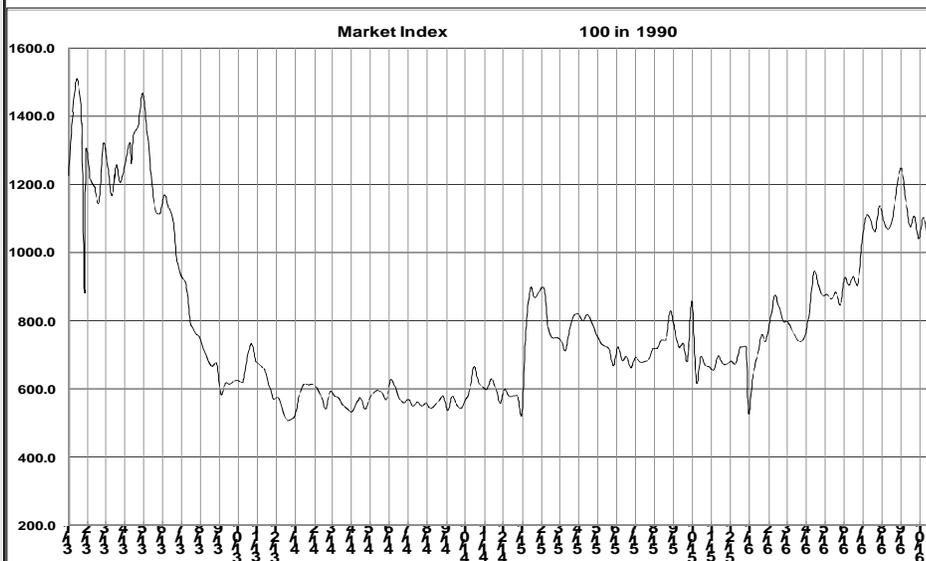
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MBA Loan Volume Application Index – 1/13 to 10/16



Fannie's Property Inspection Waiver (no appraisal) available December 10, 2016. What does it mean for you?

Editor's comments: The Fannie notices were dated October 24, 2016, so I did not have time to find out more information on how many loans this would be used on, effect on appraisers and AMCs, etc. More info will be in the December issue.

The primary restrictions are that an appraisal on the property must be in CU and the borrowers on that appraisal must be on the new loan application. PIW can only be used for refis on single family homes and condos.

I have always known that this is what Fannie wanted to do with UAD and CU. AVMs are notoriously unreliable because of poor data - public records and MLS. All appraisers know about this, as does Fannie. Now Fannie has good data from appraisals and can get the most accurate AVMs plus analysis of risk factors relating to the property.

I have been waiting for a long time for Fannie to get data so the easy to appraise tract homes would not have to be appraised, particularly on subsequent refis.

In the past, I made lots of money doing tract homes in nearby cities. When interest rates were going down, I often appraised the same home multiple times.

But, I always thought it was a waste of the borrower's money for additional appraisal fees.

What is the Property Inspection Waiver (PIU)

Per Fannie, "Property inspection waiver (PIW) is an offer to waive the appraisal for certain refinance transactions. PIW offers are issued through Desktop Underwriter® (DU®) using Fannie Mae's database of more than 20 million appraisal reports in combination with proprietary analytics from Collateral Underwriter® (CU™) to determine the minimum level of property valuation required for loans delivered to us."

How it is done through Desktop Underwriter (DU)

Per Fannie, "When a DU loan casefile receives a PIW offer and it is exercised by the lender, Fannie Mae accepts the value estimate submitted by the lender as the market value for the subject property and provides relief from enforcement of representations and warranties on the value, condition, and marketability of the property. The lender is required to represent and warrant that the data (other than the value estimate) submitted to DU is complete and accurate, and lenders must order an appraisal if they have reason to believe that the property's current market value should be confirmed."

What does it cost?

Fannie has a \$75 fee. Much cheaper and faster than an appraisal. Also, Fannie waives reps and warranties (see below) to encourage lenders to use it. It is very, very easy to use it in Desktop Underwriter.

Fannie requires that the lender provide market value

I assume that most (or all) lenders will be use AVMs. One online 2015 lender document referenced using Chase's Home Value Estimator. AVMs are inexpensive, especially if purchased in bulk.

Fannie can use the previous appraisal and do a time adjustment, or an AVM, to see how it compares with the lender market value.

When Fannie starts allowing purchases on PIWs, I assume that the purchase price will be provided by the lender.

Fannie requires that a previous appraisal be in their CU database

(Source: DU release notes - 10.0 Updated, dated 10/24/16)

"In order for a PIW to be considered, a prior appraisal must be found for the subject property in Fannie Mae's Collateral Underwriter® (CU™) data, and that appraisal must be associated with one of the borrowers on the loan casefile.

"DU will compare the address for the subject property to the property addresses found in CU."

"When a property address match is found, DU will then compare both the first and last names of the borrowers on the loan casefile to the borrowers associated with the prior appraisal. When a borrower name

match is found, DU will then use the information from the prior appraisal to determine if the loan casefile is eligible for the PIW."

"In some cases, the prior appraisal may not be acceptable. For example, if a CU "Overvaluation Flag" was issued on the prior appraisal, or the appraisal could not be scored, that prior appraisal will not be used and a PIW will not be offered on the new loan casefile."

State requirements that affect PIWs

Some states do not allow PIWs. Other states have loan restrictions that may affect PIW eligibility.

What properties are not eligible for PIW?

Per Fannie, "Purchase transactions and the majority of refinance transactions will not receive a PIW offer, which means they will require an appraisal by a qualified residential appraiser to establish the market value."

Eligible and ineligible transactions (effective December 10, 2016)

Eligible Transactions

The PIW offer will be considered on the transactions below.

- Principal residence, second home, and investment property transactions
- One-unit properties, including condominiums
- Limited cash-out refinance transactions up to a 90% LTV/CLTV for principal residences and second homes; up to 75% LTV/CLTV for investment properties
- Cash-out refinance transactions up to a 70% LTV/CLTV for principal residences; up to a 60% LTV/CLTV for second homes and investment properties
- Loan casefiles that receive an Approve/Eligible recommendation

The transactions below are not eligible for a PIW.

- Properties located in a disaster impacted area
- Purchase, construction, and construction-to-permanent loans
- Two- to four-unit properties
- Loan casefiles where the value of the subject property provided to DU is \$1,000,000 or greater
- HomeStyle® Renovation mortgage loans
- DU Refi Plus™ loan casefiles (will continue to be eligible for the DU Refi Plus Property Fieldwork Waiver)
- Leasehold properties
- Loan casefiles using the Affordable LTV feature
- Cooperative units and manufactured homes
- DU loan casefiles that receive an ineligible recommendation

Reps and warranties are not required with PIV

This is a significant plus, as this is how Fannie has been requiring loan buy backs, which has made lenders much more paranoid about appraisals. This is the primary reason for the significant scope creep since 2008.

What about Risk Ratings?

Lenders get upfront acceptance of appraised value at submission with a CU risk score of 2.5 or lower.

Since Fannie will only use PIVs for properties where they have an existing appraisal in DU, the Risk Rating will be easy to determine.

Although many appraisers think that Risk Ratings are only for the appraisal itself, they also include such factors as declining values, foreclosures, non-conforming use, etc.

How long has Fannie had this option for some lenders?

I don't know when it started, but I found an article, written by Kenneth Harney, published in the Los Angeles Times in January 6, 2002.

Per Harney, "With no public fanfare

or announcement, Fannie has been permitting some lenders to dispense with appraisals on home purchases and refinancings, in exchange for a \$50 fee.

"Known as the "property inspection waiver," the pilot program is being offered around the country by a select group of mortgage companies who sell loans to Fannie... It also allows them to dispense with their customary contractual warranties to Fannie regarding the mortgaged property's condition and value. Those warranties open lenders to financial penalties should a home's stated value later turn out to be bogus."

"Fannie Mae, for its part, said it is not eliminating appraisals by any means, but instead is allowing some lenders to dispense with them when there is sufficient electronic valuation data available on a given house. A Fannie Mae official said that about three-quarters of the home-purchase mortgage applications it now receives through its automated underwriting system-Desktop Underwriter-do not require full, traditional appraisals."

The fee at that time was \$50, much cheaper than the \$300 to \$350 appraisal fees.

Fannie sent out PIW Bulletins or Addendums in 2006, 2008 and 2009. In 4/2015 and 2/2016 two more addendums were sent, per the Fannie Mae PIW page on their web site.

What lenders have been using the PIW in 2015 and 2016?

Fannie has been testing it with lenders, including correspondent lenders, in 2015 and 2016. Their names were not released, but I found documents online from correspondent lenders Platinum Mortgage, Premier and STM Partners.

Limited-participation and enhanced PIW comparison	
Limited-Participation Enhanced PIW (before 12.10.2016)	Enhanced PIW(effective 12.10.2016)
Some purchase and some limited cash-out refi transactions	Some limited cash-out and some cash-out refinance transactions depending on LTV ratio (no purchase)
Single-family detached properties only (no condos)	Single-family residences and condos
High-balance loans not eligible	High-balance loans eligible
DU logic tied to credit assessment; the appraisal waiver offer may be lost if the loan application is revised due to factors unrelated to collateral	<ul style="list-style-type: none"> - Logic tied to prior appraisal (Fannie Mae's database of 20 million+ appraisals) and Collateral Underwriter® analytics - Waiver offer once issued will not be retracted unless the borrower value estimate or LTV ratio inputs are changed
Limited participation	Available to all lenders in DU; no registration
<p>What changes on December 10, 2016?</p> <p>As you can see above, the requirements have been significantly decreased for PIVs.</p> <p>Because of Fannie's CU data and analysis, and data from a previous appraisal, they can determine a much more reliable value to compare with the lenders' market values.</p> <p>Market conditions adjustments can easily be made from previous appraisals.</p>	<p>If a lender receives a PIW offer on a loan casefile, are there situations in which the lender would still need to obtain an appraisal? (Source: PIW FAQs)</p> <p>“Yes. There may be certain situations in which a lender needs to obtain an appraisal, even though a PIW was offered on the loan casefile</p> <p>Examples of when an appraisal would need to be obtained include the following:</p> <ul style="list-style-type: none"> • The lender has reason to believe that fieldwork is warranted based on subsequent events such as a hurricane or other natural disaster. • The lender is required by law to obtain an appraisal. • The loan is a HomeStyle® Energy mortgage. (DU doesn't capture HomeStyle® Energy intent so it may issue an invalid PIW.) • The mortgage insurance provider

requires an appraisal.

When an appraisal is obtained, the PIW may not be exercised and the loan cannot be delivered with Special Feature Code 801”.

Increased LTV Ratios - when Fannie owns the existing mortgage

“The maximum allowable LTV, CLTV, and HCLTV ratios will be increased from 95% to 97% for one-unit limited cash-out refinance transactions when the mortgage being refinanced is owned by Fannie Mae (in alignment with standard DU eligibility). The requirement that the existing mortgage being refinanced be owned by Fannie Mae does not apply when the LTV is 95% or less, or when the CLTV only exceeds 95% due to a Community Seconds® loan.”

“Lenders must inform DU that Fannie Mae owns the existing mortgage by indicating "Fannie Mae" in the Owner of Existing Mortgage field on the online loan application. In the DO/DU User Interface, this field is located on the Additional Data screen in the Full 1003. Because this indication will be used by DU to determine eligibility of the loan for delivery to Fannie Mae when the LTV, CLTV, or HCLTV exceed 95%, the lender will be required to document that the loan being refinanced is currently owned by Fannie Mae (documentation requirements are specified in the Selling Guide).”

Why is this finally happening?

I have been writing about using AVMs since the early 1990s. Their weakness is lack of good data. Everyone has always considered appraisals to be the "Holy Grail" of data, but they were not available in a nationally standardized data format until UAD.

MLS and public records are not standardized and vary widely in different areas.

Fannie's UAD changed everything. Specific fields were coded and data specifications were set up. CU uses this data for their own AVM, by far the most reliable AVM because of appraisal data.

What will happen in the future?

Fannie is conservative and moves very slowly. They started testing PIVs in 2002, long before UAD and CU. For now, Fannie is only using PIVs on loans where they have an appraisal in their database.

In the future, I expect that Fannie will start allowing PIVs to be used on low risk conforming tract homes without an appraisal in their database. They will use MLS and public records to determine what is there. They may also use form 2075 (exterior inspection with no value) or inspections by insurance estimators.

After that, they may start allowing PIVs for more complex properties. They are doing AVMs on all the loan application properties. Over time, their analysis will become more sophisticated in identifying properties that will require a full appraisals.

What about FHA, VA, and Freddie

The key to using something similar to PIWs is access to Fannie's CU and UAD data. I have no idea if, or when, it will start for VA and FHA. Also, FHA is considered higher risk loans.

I expect that Freddie will start using something similar to CU, if they can get access to UAD data.

What about AMCs?

Keep a close watch on your billings. Be sure they don't get over 30 days. Many AMCs will be going out of business when PIWs take off and their appraisal volume slows.

What does this mean for you?

A significant factor is property values. If you are in a high priced area, many loans will be over the Fannie limit.

For now, if you work in an area with tract homes lots of serial refis, your business will decline.

Over time, more properties will be eligible for PIWs.

If you work in a rural area with limited data, you probably will not be affected, or it will take a very long time.

There is always non-lender work as an option, but this requires marketing and going way beyond form filling for lenders. An article in this newsletter discusses private money lending. Marketing to them is similar to marketing to mortgage brokers.