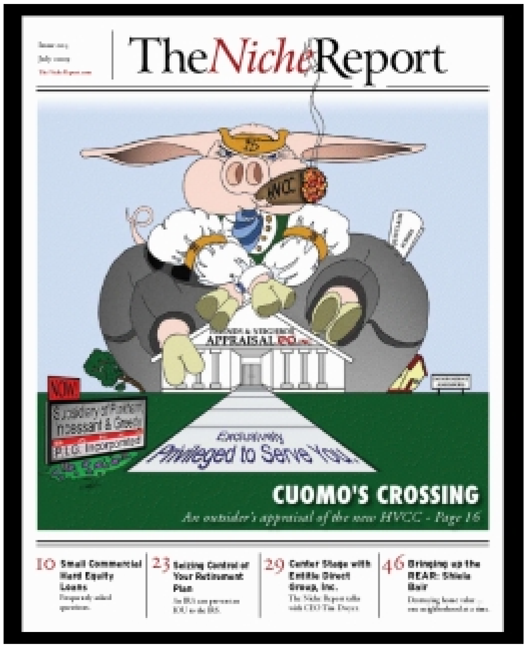

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CUOMO'S CROSSING: An Outsider's Appraisal of the New HVCC Rules

by Martin Andelman

"What's HVCC?" I believe those were the exact words I used in response to being asked by the editor of this magazine to write a July cover story on the Home Valuation Code of Conduct.

"But I don't know anything about appraisals, much less the appraisal industry." Those were my next words. "All I know about appraisals is that my mortgage broker orders them, and someone has to wait at home for the appraiser to arrive, a job that has historically fallen to my wife." We've purchased three homes and the truth is that I'm not even sure I've ever actually met an appraiser.

"Perfect," was my editor's response, "That's exactly why we want you to write it. You're going to be outraged, and readers love it when you're outraged."

"What if I'm not outraged?" I thought to myself. I wasn't at all sure that I cared enough about appraisals to be outraged by a new rule affecting them. I do, however, care about writing cover stories, so I said yes and within days went to work reading about appraisers and the appraisal industry… which was kind of boring at first, to be entirely candid.

Uh oh," I thought. "Where's the outrage in this new rule, assuming you're not an appraiser, of course?" HVCC does put a real crimp in an appraiser's future by reducing his or her compensation as a result of being forced to join an Appraisal Management Company, that much was immediately apparent, but that alone seemed like something less than what would naturally cause me to be outraged. Maybe I could get by on just being miffed, or possibly peeved.

Then I saw who was behind the new HVCC ruling, and I started to feel apprehensive. To begin with, New York's Attorney General Andrew Cuomo, who has said some of the most uninformed things I've ever tried to ignore in my entire adult life, is no stranger to the banking industry, or its exceedingly powerful lobbyists at the Mortgage Bankers Association, or MBA for short, who are known as the most influential real estate finance lobby in Washington. I may not know much about appraisals, but I'm no dummy and these days, if it lies like a bank, and it steals like a bank, and it lobbys like a bank… then it's a bank.

In fact, Countrywide's now infamous CEO, Angelo Mozilo, who was once the MBA's president, was on the association's executive board from 1997 to 2001, the whole time Mr. Cuomo was bungling things at HUD. And Mozillo, along with many of his questionable colleagues later became contributors to Cuomo's campaigns.

Okay, I was becoming irritated.

The fact is, Andrew Cuomo had essentially no experience in finance or real estate when he assumed regulatory control over Fannie Mae and Freddie Mac, the titans of home finance that many would say are at the center of today's foreclosure crisis, when he became the youngest HUD Secretary in history back in 1997. And here, I had always thought those jobs were traditionally reserved for people who knew something about… oh, I don't know… mortgages perhaps. Had I known, I might have considered applying for the job. Live and learn, I suppose.

It might therefore come as little surprise that it was Cuomo's decisions as HUD Secretary that drove Fannie and Freddie into the world of sub-prime lending. He also decided that Fannie and Freddie didn't need any reporting systems that would allow them to monitor the increased risk associated with sub-prime lending. We all know how well that worked out, so bang up job so far Andrew.

Also during Cuomo's tenure at HUD, FHA kicked off its no money down programs, so it seems that Cuomo thought that it only made sense to simultaneously increase the amounts the agency was willing to loan with no money down. I mean, why bother doing zero down loans, if you're not going to blow through the limits and loan out as much as possible, right? It's scary, but I'm starting to understand how these people think.

Cuomo also made possible what a federal judge would later describe as being "kickbacks" to mortgage brokers that some say were a big motivator related to the proliferation of loans that were destined to default. Some, apparently, aren't sure whether providing kickbacks for selling expensive and unsustainable loans tends to drive brokers to sell more of them, so perhaps the government should commission a study. I know an 6th grade class that would be happy to take the project on, and I'm confident that they'd reach a solid conclusion quickly, like before recess.

According to The Center for Responsible Lending, 2.4 million Americans may face foreclosure in 2009, and 8.1 million may fall into this tragic group over the next four years. To be diplomatic, there's little doubt that New York's Attorney General Andrew Cuomo is at least partially responsible for their plight. In somewhat less diplomatic terms, he's the boob that left the door to the vault open at Fannie and Freddie.

I was fast becoming incensed.

Of course, today Attorney General Cuomo has crossed over to the other side and is looking to play a very different role in the foreclosure crisis. Today, he's going after mortgage brokers, rating agencies, loan modification firms, Fannie, Freddie… and… drum roll please… Appraisers, with his Home Valuation Code of Conduct ("HVCC"), which went live on May 1, 2009 over a cacophony of objections from the National Association of Mortgage Brokers ("NAMB") among others.

If you read the Andy's press releases, he says he's also going after banks, but what he means by "going after banks," isn't what I mean when I say someone's going after something, so I left banks out of the sentence above. When Mr. Cuomo says he's going after banks, he mostly means he's coddling them and giving them whatever they want.

The latest egregious example of Cuomo's Crossing is HVCC, a new rule governing how appraisals are to be handled in these United States, which was passed into law by the United States Congress and signed by the president on… no, no… now wait a minute… that's not at all what happened here, now is it?

If you remember your eighth grade civics class… the one about how our government works and how bills become laws, you won't remember anything like this:

The new HVCC rule, which will affect millions of Americans, began with an investigation by Attorney General Cuomo into the GOEs, or Government Owned Enterprise. A GOE is called a GSE, or Government Sponsored Enterprise, before Andrew Cuomo runs it.

With me so far? Good.

Okay, so then Attorney General Cuomo threatens to subpoena the personal records of the CEOs of the two GOEs, which causes the investigation to stop, at which point the GOEs agree to write a $24 million check to fund an Independent Valuation Protection Institute, a new organization to help implement and monitor the new rule. Of course it's all completely transparent, in a totally opaque sort of way.

I'm not going too fast for anyone I hope.

Then the Attorney General drafts the new rule with an undisclosed group of industry participants, which is a euphemism for "the banks," who get to influence the new rule's language so that it favors banks at everyone else's expense. Following in the rich tradition established by Cuomo while he was still at HUD, what leads to the agreement is not made public, and the Attorney General is never required to provide any details of what occurred. I can't seem to remember that right in the Bill of Rights, but fair enough.

And that boys and girls, is how our country makes important and costly rules these days. It's so much more efficient than that whole checks and balances nonsense that held us back for so many years. Plus, the new way completely circumvents the public having any say in the new rule whatsoever, so that saves time right there.

You see, when I started to do the research for this article, I had no idea I'd also get a lesson in how new rules that affect enormous segments of our population can come to pass in this country. It was quite the shocker because I had thought previously that I had that process down pat. Go figure.

Alright, that's enough of that… I'm plenty outraged.

What the heck is going on around here? Since when do we have a process like the one that gave us HVCC? Are there any other rules that were developed in such a way? Why don't we just cut the fat out of this process and just let the banks draw up whatever they'd like in the way of rules and we'll just go with whatever they come up with? We don't need all the investigative foreplay, do we?

HVCC is one of those codes that starts out talking about its purpose to right wrongs and protect the people, before it proceeds to favor the financial institutions and cost everyone else an arm and a leg. Think: bankruptcy or credit card reform without all the riveting media attention.

In February 2009, Marc Savitt, President of the National Association of Mortgage Brokers (NAMB) filed a lawsuit against the Federal Housing Finance Administration (FHFA) to block implementation of HVCC on the grounds that it would "inhibit competition among mortgage originators and increase the cost of mortgages to consumers".

According to NAMB, "the HVCC constituted a "de facto" rulemaking that did not comply with the requirements of the Administrative Procedures Act (APA), which sets out the procedures a federal agency must follow when issuing a regulation." NAMB's press release said: "NAMB strongly opposes FHFA's position that it does not need to comply with the APA and other laws."

And isn't that a relief? At least that says that the procedures used in formulating the new HVCC rules were not the norm. So, NAMB wins this one fore sure, right? This one's a lock. Article over. The end.

Well, no. Not exactly. Actually not at all. NAMB had to drop its lawsuit, strategically, according to NAMB's press release in order to assess how to respond to FHFA's claim, which was clearly pulled out of someone's hindquarters, that "no court may review their decisions while the GSE's are in conservatorship". See… and that's why regular people don't like lawyers, right there. NAMB withdrew the suit without prejudice, however, so they may be back.

Mr. Savitt explained that he's had several meetings with Cuomo's office where he's pointed out that HVCC is costing American consumers $2.8 billion. "We've met with his staff, but Mr. Cuomo has never had the time to meet with us personally," Savitt told me. "And his people say the $2.8 billion cost is acceptable."

Oh, do they now? Well, that's something. I happen to know quite a few American consumers. I'll have to remember to ask them whether they find that $2.8 billion cost "acceptable," because I was about to use a different word.

NAMB's president, Marc Savitt, didn't say this specifically, but you know he's got to be more than irked that NY's AG never seems to have time to meet with him. I mean, we're talking the President of NAMB here… he represents hundreds of thousands of mortgage brokers in all 50 states, and while NAMB may not have the clout on Capitol Hill that the bankers do, they're far from being without influence. Marc is a classy guy, and I liked him a lot. He did imply that he doesn't exactly have a great of respect for the HVCC, or the process from whence it came. And it's obvious that there's no love lost between himself and Mr. Cuomo.

"HVCC doesn't do anything to prevent fraud," Savitt told me. "It's a bit like catching someone robbing the bank and then making them a bank guard. Many of the same people who defrauded the system are now running the show." He didn't say who "defrauded the system," or who has been made into a "bank guard," so the reader shouldn't read anything specific into that statement, but I think I have an idea who he was talking about.

Why do our government officials keep doing things like this? I'm convinced that had Enron's Ken Lay not kicked the proverbial bucket, the government would have made him Energy Secretary.

My appraisal of Andrew Cuomo is that he's had quite a few difficulties with appraisals over the years. According to the U.S. House of Representatives, Subcommittee on Oversight and Investigations, Committee on Financial Services, from September 10, 2001:

Then-Secretary Cuomo knew this problem existed, yet allowed it to balloon into a $130 million defrauding of the American taxpayer. Because of this scam, dozens of coconspirators, crooked investors, phony non-profits, willing appraisers and greedy attorneys have already been arrested and there is more to come.

And after a paragraph like that one it makes complete sense that there was only one job the State of New York wanted him for: Attorney General, which turned my Ken Lay joke above into a straight line.

So, Cuomo as New York's Attorney General, presumably as a result of having learned from past mistakes, starts investigating Fannie and Freddie, where he knows from personal experience that a problem exists, and when he threatens to subpoena the CEO's records, the two giants of home finance give in and decide to settle. In the settlement agreement, the parties agree to address the issues of appraisal coercion and appraisal independence by adopting the HVCC as the standard of conduct in exchange for the Attorney General terminating his investigation. And that's funny all by itself, we should all realize, but I'm not going to make another joke about it here.

The agreement also states that a newly formed Independent Valuation Protection Institute ("IVPI") would oversee the HVCC and that Fannie and Freddie would fund the institute for a period of 28 months to the tune of $24 mil.

Now, at this point I had to take a moment to ask the question: Who was attempting to improperly influence appraisals, and I asked both Marc Savitt and Steve Gillan, who has been a New York State Certified Appraiser for 27 years and has personally completed 17,000 appraisals.

Savitt told me of a study that was conducted a few years back that asked appraisers the question and the results were that everybody in the process had done so to one degree or another, so when Gillan confirmed this, it came as no surprise.

As a homeowner, that made me feel all warm and fuzzy inside, but it did explain why I hadn't seen the problems with the HVCC right out of the box. The HVCC opens by talking about the need for accurate appraisals that are free from undue influence or coercion on the part of the lender or anyone else for that matter, and that sounds like solid thinking to me. But, as is so often the case with government documents, it's the large print that giveth and the small print that taketh away.

In the case of HVCC, it seems that the small print has not only taken away roughly half of the income of essentially every appraiser in the country, but it has created a misleading, costly, and even dangerous situation for borrowers… me, in other words.

Here's how I see the HVCC:

1. To begin with, the HVCC essentially mandates that all appraisals must be done by an Appraisal Management Company, or AMC, which cuts the appraiser's pay in half, while it increases my cost as the borrower by twofold. That means going forward there will only be a handful of AMCs, which explains the efficiencies that cut pay in half while doubling cost. Fabulous so far, right?

The even bigger problem that I see here, however, is that this won't do anything to curtail coercion, it will just change somewhat who will be allowed to coerce. Cuomo should know this too. His original suit was filed against an AMC by the name of eAppriasalIT, and in that suit he accused the company of inflating appraisals to satisfy demands made by Washington Mutual.

If you'd like to take a moment to stretch… breathe… or put your head through a plate glass window, I'd understand.

2. I readily admit that some of the HVCC provisions were hard for me to understand, but this one wasn't. Appraisals under HVCC aren't portable… they're tied to the lender. This protects borrowers like me from shopping my loan at different

banks where I might have gotten a better deal, so thank you Mr. Attorney General… and please don't protect me anymore. I've decided that I'd like a little more danger in my life.

3. HVCC says that banks can't own more than 20% of an AMC, and what a surprise… many of the "big banks" (and when I use the term "big" I mean "insolvent-but-propped-up-by-Treasury"), have already bought up the maximum allowable interest in most, if not all AMCs. I'm sure that's just a coincidence.

But it also says that lenders can own 100% of an AVM, BPO, or other TLA ("three-letter acronym") for an alternative valuation provider. The language says that lenders are expressly allowed to "develop, deploy, and use internal automated valuation models," and there are no restrictions on who controls the ordering or modeling of an AVM, and no requirements for disclosure to borrowers that an AVM report is solely controlled by the lender.

Transparency like that brings a tear to your eye, doesn't it? God bless this country. And that's all I have to say about that.

4. The HVCC has a "don't ask, don't tell, don't talk, don't know" type of provision that I found to read like something a 5th grade teacher might use to keep his or her class under control. It bars appraisers from interacting at all with agents, mortgage brokers, loan officers, and others. So, that means if your brother-in-law is an appraiser, and you're a real estate agent, you won't be seeing him at Thanksgiving anymore, and I think that's sad. Families don't get to see enough of each other these days and, well… it chokes me up just to think about it.

Besides that… it's stupid. No other party to a real estate transaction has to follow this type of rule under RESPA, and in fact RESPA encourages competition and interaction among the other parties, as long as proper disclosures are made.

RESPA's anti-coercion measures, assuming they are properly applied to all valuations, already protect homeowners. If all parties to a real estate transaction are licensed and governed, then the problem of coercion is much more efficiently addressed, and the independent appraiser is still allowed to operate in a competitive free market, while being protected from coercion, collusion, and whatever else we've seen on The Sopranos.

5. It seems to me that the HVCC, instead of strengthening appraisals, will have exactly the opposite effect. Why? Because experienced appraisers, like Steve Gillan, are already leaving the profession. Steve told me that he's already left the business, not only because he can make more money asking people if they'd like to see that in a pump or a loafer, but also because HVCC has rendered his business relationships, which took decades to develop, worthless.

According to Gillan: "HVCC knocked experienced guys like me right out of the business, so now you've got inexperienced people doing appraisals. They don't know the business, they don't know the neighborhoods, their being forced to work twice as hard for half the pay, and why… appraisals weren't responsible for the increase in home values… that's ridiculous. There were many factors, but if you want to point at any one thing, it was the advent of seller's concessions."

That caused me to pause. Mostly because I had no idea what a "seller's concession" was. Steve explained: "First we had 80% financing, then 90%, then 100%, then with seller's concessions we went to 106% financing. As an appraiser, you look at recent comparable sales in the area. So, if a house that was appraised for $100,000 actually got recorded at $106,000, no one can tell that the $6,000 was a seller's concession. So, do the math. The next time it sold, and during the bubble some houses sold three times in one year, and it was sold with the plus 6% seller's concession again, the next appraiser had the same problem. Over a couple of years the seller's concession factor could add 50% or more to the home's appraised price."

For the record, I love it when 5th grade math is to blame for a national catastrophe. Someone should make Andy Cuomo stay after school, because he's obviously a remedial learner. I'd be happy to tutor him, but I'm pretty sure there'd be a line from New York City to L.A. were that position to become available.

So, Where Do We Go From Here…

Unquestionably, HVCC has many other problems that have been identified by thousands of professional appraisers across the country, but frankly many of them are over my head. And Mr. Cuomo, while preaching transparency, has refused to disclose anything about the process through which the agreement between Fannie and Freddie and his office was reached, or even who was involved in drafting the final language of the new rules. That, of course, stinks to high heaven, but hey… why quit on a winner, I suppose. It seems to me that Cuomo's made an entire career out of saying things like "I don't recall," and in general, not disclosing much of anything, so who am I to say he should change now?

Actually, I'm a homeowner and a taxpayer and a voter… and an outraged American citizen, that's who I am. And I can absolutely promise Mr. Andrew Cuomo that I'm going to be reading up on everything he touches for the remainder of my days, and at 48 years old, let's hope that's quite some time.

There are two very positive developments that I learned about as this assignment came to a close.

One was finding the National Valuation Service, a national AMC that's been formed as a cooperative. According to Randall Marquis, Senior Editor of ML-Implode, "It's essentially the only 'not-for-profit' Appraisal Management Company out there. It's governed by its appraiser members, and it's those members that decide what they get paid. It may just be the only way to find a happy appraiser these days, and I think it's safe to assume that a happy appraiser does a better job."

Already, the National Valuation Service has attracted something like 4,000 appraisers to its membership, so clearly, it's an idea that's got merit. (And by "merit" I mean that it can't be owned by a bank.)

The other development occurred literally as this story was going to press and thankfully my editor and publisher is beyond understanding. Apparently, congress may step in just in the nick of time. AQccording to NAMB, Representatives Childers (D-MS) and Miller (R-CA) have introduced legislation that calls for an 18-month moratorium on HVCC. And from the sounds of NAMB's press release, they think it's going to pass. Here's what NAMB released on June 26th:

"The National Association of Mortgage Brokers (NAMB) applauds the introduction of H.R. 3044. NAMB would like to thank Representative Childers (D-MS) and Representative Miller (R-CA) for their continued efforts and leadership on this issue. The introduction of this legislation is a victory for consumers and members of the industry alike," said NAMB President Marc Savitt, CRMS. "We thank Congress for recognizing the need to address the issue of appraiser coercion without causing undue harm to borrowers or diminishing competition in the marketplace."

"NAMB has taken an active stance against the HVCC since its introduction in March of 2008. "We urge Congress to pass H.R. 3044 as soon as possible to ensure that more borrowers will not be negatively impacted by this de facto rule," stated Savitt. "In the period of time since its implementation, the HVCC has increased costs to consumers and decreased the quality of appraisals and has provided a level of uncertainty in an ailing housing market. Tens of thousands of consumers have already been robbed of their opportunity to enjoy historically low rates by Attorney General Andrew Cuomo's rule."

"NAMB looks forward to working with Members of Congress as this legislation progresses."

I don't know about the rest of you, but I'd say Marc Savitt may have been forced to drop NAMB's lawsuit, but I could tell from talking with him that he was still intent on terminating HVCC… so I'd say "he's back".

Oh, and Mr. Cuomo… next time the President of a National Association that represent hundreds of thousands of professionals travels to your office, perhaps you might consider taking a few moments out of your obviously very busy schedule to poke your head in to say hello.

Of course, that's just my appraisal of the situation. Just thinking out loud over here.

Martin Andelman

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