April 30, 2008

Fannie Mae
Home Valuation Code of Conduct Response
3900 Wisconsin Avenue
Washington, DC 20016

Freddie Mac
Home Valuation Code of Conduct Response
1551 Park Run Drive, Mail Stop D2Z
McLean VA 22102-3110

To Whom It May Concern:

On behalf of the more than 30,000 members of our respective professional appraisal organizations, thank you for the opportunity to comment on the Agreement between your organizations and the New York State Attorney General and the Office of Federal Housing Enterprise Oversight ("the Parties") to establish a Home Valuation Code of Conduct (HVCC) and an Independent Valuation Protection Institute (IVPI). As you know, appraiser organizations long have expressed concern about appraisal independence, first raising the issue of appraiser coercion and breakdowns in appraisal independence in testimony before the Congress in 2001. The independence of the real estate appraisal process is critical to sound lending practices, protecting both lenders and consumers in residential mortgage transactions. We consistently have called for all parties involved in appraisal ordering and management to be subject to appraisal independence requirements, and we have sought greater oversight and enforcement of rules in this regard. This issue is a top priority for our organizations, and we look forward to working with you in the coming months to implement the Agreement.

Executive Summary

Overall, our organizations support the Parties' efforts to address breakdowns in appraisal independence. We applaud the Parties for addressing an issue of longstanding concern to the appraisal profession, and we see great benefit with many aspects of the new HVCC if executed correctly. This Agreement has forced all facets of the mortgage lending industry to examine their risk management activities and elevate the importance of collateral valuation issues. We strongly believe these issues did not receive due attention in recent years, and this Agreement does much to correct this glaring oversight and chart a new path for improved appraisal practices.

We do, however, have serious concerns about certain aspects of the Agreement that could be harmful to the delivery of residential appraisal services and, possibly, to the mortgage underwriting process itself. The HVCC, as written, could eliminate many of the strongest protectors of the process; namely, competent, unbiased real estate appraisers.

Specifically, our concerns center on five issues that have been identified by our memberships, as follows:

- Destroying well-established business relationships between honest appraisers and reputable mortgage professionals;
- Proliferation of Appraisal Management Companies;
- Unnecessarily banning appraisals prepared by appraisers working for federally regulated financial institutions and other lenders with independent appraisal operations (those reporting to risk management vs. loan production);

- Incentivizing substitution of appraisals with automated valuation models and so-called broker price opinions to avoid compliance concerns; and
- Inadequate attention to appraiser competency, appraisal quality and appraiser training.

We will outline these concerns in more detail below and, in the spirit of helping to fully implement the Agreement, we also will suggest potential solutions that address these concerns. In addition, we have identified several issues related to the Agreement to bring to your attention, as well as our views on the proposed Independent Valuation Protection Institute. Further, we will provide technical comments on the Agreement, as well as the HVCC attached to this letter, which includes suggested changes to the HVCC. We urge the Parties to consider the concerns outlined below and to implement our recommendations.

Background

For too long, real estate appraisers have faced mounting pressure from more dominant parties in real estate financing transactions. Often, appraisers have been given ultimatums and told to “play ball” and provide appraisals that facilitated transactions or face ostracism in the marketplace. Few rules are in place today to protect appraiser independence and, where they do exist, they are enforced sporadically by nearly all levels of oversight. There is absolutely no doubt that this issue must be addressed, as we believe that the Agreement is a productive first step in highlighting this issue and attempts to establish a framework for ensuring appraiser independence that protects all parties.

We believe that there is much good within the Agreement. We agree that there have been breakdowns in appraisal independence, and we agree with the goal of establishing independent appraisal processes. This is paramount to sound lending practices. We also agree that all parties in mortgage transactions that order and manage the appraisal process should play by the same rules. For too long, mortgage regulation has been fractured, treating parties differently, depending on their structure and mission. We strongly believe that with the privilege of ordering and managing the appraisal process comes the responsibility to adhere to some basic rules, including appraiser anti-coercion requirements and rules for managing the process fairly and transparently.

We also applaud the creation of a hotline managed by the proposed IVPI to handle complaints from appraisers and others on appraisal independence. Up until now, when appraisers faced coercion, they were forced to navigate a sea of federal and state agencies to locate the appropriate regulatory authority to deal with the party applying pressure. For instance, if a loan officer of a federally regulated institution coerced an appraiser, a complaint would need to be sent to one of the five federal financial institutions’ regulatory agencies. While an investigation might take place, often the results were not disclosed to the complaining party. This issue is complicated by the fact that non-bank mortgage lenders and mortgage brokers, who also have the ability to manage appraisal processes, are regulated at the state level and often that regulation is meek at best or practically nonexistent. While many state agencies have in place general complaint forms, we are not aware of any state with a program dedicated to informing the appraisal community of the process for filing complaints against regulated institutions on appraisal independence issues. Also, there is inadequate cooperation between state appraisal regulators and state financial institutions’ regulators to address this issue. The proposed hotline is an outstanding idea, and we fully support its implementation.

As professional appraisal associations, our organizations have diverse memberships, representing independent fee appraisers who perform appraisal services for financial institutions, staff appraisers for financial institutions of all sizes, appraisal management company employees, and even government agency officials at all levels of government. Needless to say, the Agreement has a significant impact on nearly all sectors of our memberships and, as such, we believe it is extremely important that we work together to avoid potential unintended consequences resulting from changes brought by the Agreement. Quite literally, the Agreement, if left unchanged, will cause the loss of thousands of jobs, altering business relationships for thousands of real estate appraisers in all facets of the business, which would result in losses to lenders, the general public and the government. Much of the future of the real estate appraisal industry is at stake, and we urge that implementation of the Agreement be done correctly to avoid major disruption to the residential appraisal profession, which would cause even greater damage to the security and competence of loans, lenders, insurers and the general public.

Following the announcement of the Agreement, we established working groups and committees representing all facets of the residential real estate appraisal process to identify potential concerns in the Agreement and the HVCC, and to develop solutions to address those potential problems. We conducted information sessions to help our members fully understand the Agreement and the HVCC, and also to provide them with outlets for communicating their ideas and concerns to us. We also surveyed our respective memberships to gauge particular areas of concern. Our comments below are a summary of those concerns and ideas.

Member Concerns and Potential Unintended Consequences

Concern 1: *Destroying well-established business relationships between appraisers and reputable mortgage professionals.*

Many of our members report that they have established longstanding relationships with mortgage professionals who are reputable and ethical. We are hopeful that changes focused on unethical behavior will not unnecessarily punish those who have upheld the highest standards in the past.

At the same time, we understand the reasoning behind the ban on mortgage broker-ordered appraisals. Mortgage brokers typically are paid by commission only when a loan closes. Competition has forced most brokers to eliminate the requirement for prepaid appraisal fees at application. Often appraisal issues can stand in the way of a loan closing. For example, granting any vested interest, such as the privilege of managing the appraisal process, can create certain conflicts of interest, including pressure for illegal contingency fee payments. As a result, mortgage brokers have been a prime culprit of appraiser coercion and intimidation for many years.

Historically, a major concern for appraisers always has been that mortgage broker regulation was suspect at best and sometimes nonexistent. Even today, many states only require *registration* of mortgage brokers, which is largely an undemanding process that typically involves passage of a background check and placing a name on a list. For the most part, mortgage brokers have been able to operate without meaningful *licensing* requirements (e.g., qualifying education, continuing education, and testing requirements on a range of issues, including appraisal theory, professional standards and processes) and any state enforcement on these issues.

However, in recent years, a few states have established meaningful *licensing* requirements, moving toward an established system of oversight and enforcement. Although less than a handful of states have done this, we do see this as a positive development. Further, legislation currently pending in the 110th Congress would impose mandatory minimum licensing requirements for mortgage brokers and others, along with appraiser anti-coercion requirements[1]. We support this legislation and call for its immediate enactment.

[1] H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act, was passed by the House of Representatives on November 15, 2007.

Most encouraging is the recent revision to Regulation Z, supported by our organizations, to prohibit any creditor or mortgage broker from coercing, influencing, or otherwise encouraging an appraiser to provide a misstated appraisal in connection with a mortgage loan. This proposed rule, soon to be final, implements a suggestion our organizations made last year during a public comment held by the Federal Reserve Board. Once finalized, it will permit public and private civil actions for violations of the appraiser independence provisions, and grant expanded authority to federal agencies to enforce these provisions over mortgage brokers.

Presently, our appraisal organizations are in discussions with mortgage industry groups to implement a "Best Practices" system that would establish the goal of mitigating problems associated with non-regulatory conflicts between appraisers and the mortgage lending community. Our organizations have promoted Best Practices agreements for a number of years and, had they been adopted when first presented, many of the mortgage industry's current problems might not have occurred.

We recognize that there still is the conflict wherein some mortgage brokers would find an appraisal that meets their needs before submitting it to the appropriate lender. This is what often leads mortgage brokers to order "comp checks" as a method of appraisal shopping and pressure. One way to address this concern is by requiring mortgage lenders to order a field review appraisal upon receipt of mortgage broker appraisals. We believe that this would help mitigate concerns about potential bias resulting from the vested interests of the mortgage broker, as well as partially fulfilling the need for the required 10 percent review called for elsewhere in the HVCC. We believe that implementation of this system properly should be addressed within technical changes to the HVCC.

Our Recommendation: *When coupled with meaningful appraisal independence or appraiser anti-coercion requirements, such as those contained in the HVCC, we see justification for retaining mortgage brokers in the appraisal ordering process, so long as appraisal independence procedures can be established. Based on the Regulation Z changes set to go into effect, proposed new licensing requirements for mortgage brokers at the state and national levels, and industry cooperation underway to effect Best Practices between mortgage brokers and appraisers, we urge the Parties to allow mortgage brokers to maintain a presence in appraisal procurement. Should the Parties accept this recommendation, we encourage the IVPI to monitor mortgage broker appraisal procurement and be prepared to make recommended adjustments to the HVCC, if needed.*

Concern 2: *Proliferation of Appraisal Management Companies*

Our members also are concerned about a likely consequence of eliminating mortgage brokers from ordering appraisals on loans sold to Fannie Mae and Freddie Mac. According to industry estimates, approximately 60 percent of all residential real estate appraisals currently are ordered by mortgage brokers, 20-25 percent currently are ordered through appraisal management companies, with the rest ordered directly by lenders themselves. We anticipate a vast restructuring within the residential appraisal profession as a direct result of this agreement. If mortgage brokers are prohibited from ordering appraisals for loans sold to Fannie/Freddie, at least two industry-altering results are likely: 1) Some lenders may opt to bring the function of ordering appraisals in-house, or 2) Lenders may decide to hire appraisal management companies to handle that responsibility for them.

In the past, the majority of appraisal management companies appear to have been focused entirely upon the factors of pricing and turnaround time. Appraiser credentials, experience and competency largely have been ignored by the typical AMC business model. This cannot be allowed to continue, and the issue of competency, as well as appraisal assignment complexity, must become the primary factors for all parties that order appraisals when hiring appraisers.

There is an additional, important concern regarding appraisal fees that the Parties to the Agreement must understand. Today, there is a disparity between who pays for AMC operations and who actually receives services from AMCs. The current AMC business model followed by many primarily serves the interests of lenders, relieving lenders of their own appraisal management staff. AMC services are meant to reduce lenders' overhead, touting significant savings in appraisal management costs. This is accomplished largely by shifting costs to appraisers without disclosure to borrowers that the appraisal fees shown on the HUD-1 statement comprise more than fees paid to the appraiser.

Further, in order to perform work for many AMCs, independent appraisers must accept significant reductions from their normal appraisal fees, sometimes as much as 60-70 percent of the normal fee in their market area, while doing the same amount of work per assignment. As a result, many qualified appraisers simply refuse to work for AMCs.

The appraisal profession is a highly competitive industry. Competition naturally drives costs to the lowest sustainable level, eliminating excess profit. This environment was prevalent in the appraisal industry prior to the arrival of AMCs. When faced with the egregiously lower fees offered by the typical AMC business model, many appraisers simply chose not to provide appraisal services to AMCs. In this environment, many lenders struggled with poor quality as the demand for lowest bidder was met by appraisers with less experience and those who had achieved only the minimum standards required for licensing and certification. We believe that the business model adopted by many AMCs potentially is one of the causal factors of the problems the HVCC seeks to resolve. In a climate where quality appraisal services were not highly regarded, this business model was too frequently tolerated, but we do not believe that the current economic conditions warrant its continued use.

We note that the New York Attorney General's pending complaint involves a national mortgage lender and an appraisal management company that allegedly conspired to coerce appraisers. Just as the complaint alleges, our members tell us that AMCs are capable of pressuring appraisers should they choose to do so.

Further, many of our members have expressed deep concern about the appraisal ordering process being controlled by another unregulated entity. Like mortgage brokers, following implementation of Title XI of FIRREA in the early 1990s, AMCs currently are not defined, nor regulated, at any level of government. This Agreement is a landmark event – one that we view is as important as implementation of appraiser licensing by Congress – but we are deeply concerned that the Agreement simply may shift current appraisal problems from one largely unregulated entity to another.

Our Recommendation: *We urge the parties to amend the HVCC and Seller Guides specifically to prohibit pricing and turnaround times from being the only criteria used when hiring an appraiser.*

We urge the parties to prohibit AMCs from allocating any portion of appraisal fees from those actually performing the appraisal. Instead, lenders should bear the cost for appraisal management by AMCs, as they did historically. At closing, disclosure should be made to the borrower, separating appraisal fees paid to the local appraisal firm from any management fees paid by the borrower.

Lastly, we urge that the parties require fees for outside services on both purchases and refinances to be paid at application or otherwise certified to be available for payment to the appraiser upon completion of the assignment. When the appraisal is ordered, the client should inform the appraiser that the funds either have been collected or are otherwise obligated for payment on a non-contingency basis

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Concern 3: *Unnecessarily banning appraisals prepared by appraisers working for financial institutions with independent appraisal operations (those reporting to risk management vs. loan production).*

We also are concerned about the ban against appraisals prepared by bank staff appraisers, particularly those employed by institutions overseen by federal bank regulatory agencies. Currently, there are thousands of in-house bank staff appraisers performing appraisal services for their institutions. All of them are licensed or certified and many carry designations from our professional appraisal organizations. We disagree with this decision, particularly since there virtually is no public record of abuse in this area.

We believe that structures can be established within institutions to protect appraisal independence. First, the appraisal functions must report to risk management, not loan production. Conflicts of interest are created whenever a party with a vested interest in the transaction is allowed to participate in the appraisal management process. However, no such incentives exist when the appraisal function is part of an institution's risk management functions. Second, appraisal independence requirements must be established and actively overseen and enforced. Bank examinations looking at issues of appraisal management operations are critical. Where there are no appraisal independence rules in place and no oversight, we see no justification for allowing these institutions to continue conducting in-house appraisal functions. However, where these controls are in place, we believe independent appraisal functions can exist and perform capably.

The five federal bank regulatory agencies should be given credit for highlighting the issue of appraisal independence in recent years. Although it took widespread breakdowns in appraisal independence for the agencies to act, they did so in 2003 when they reissued an interagency statement on appraisal independence.[2] Further, this issue has remained on their agenda, as evidenced by follow-up guidance in 2005 and 2006 that expressly highlights this issue and warns institutions about breakdowns in appraisal independence.[3]

We have no doubt that institutionally employed appraisers do come under pressure from the loan production side of the institution; however, since the HVCC provides for the appraisal process to be controlled by the credit side of the lending institution, we believe that the HVCC goes too far when it bans all use of in-house appraisal services. Our members report that appraisals performed by in-house appraisers are comparable to those performed by private practitioners, so long as proper controls and active oversight and enforcement are in place.

We can see justification for an in-house appraisal ban in institutions where there are no regulatory guidelines, oversight or enforcement, or where the appraisal functions are reporting to loan production functions within the institution. Unlike federally regulated financial institutions, we believe that many non-bank mortgage lenders typically are not subject to any examinations on appraisal independence issues, nor enforcement in this area. However, in light of the discussions on Regulation Z above, we believe that lenders not otherwise covered by federal bank regulations would face new scrutiny if in-house appraisal preparation continues to be controlled by the credit side of the institution.

Our Recommendation: *We urge the Parties to exempt federally regulated financial institutions from the in-house appraisal ban, so long as the appraisal function reports to risk management versus loan production. Assuming final adoption of Regulation Z, we also urge the Parties to allow in-house appraisal functions in non-regulated financial institutions so long as the appraisal function reports to the risk management division.*

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[2] Independent Appraisal and Evaluation Functions. (2003, October 23). Available at http://www.occ.treas.gov/ftp/advisory/2003-9a.pdf

[3] Since 2003, the five federal bank regulatory agencies have issued four separate guidance statements on appraisal independence issues.

Concern 4: *The HVCC creates incentives for lenders to utilize less reliable automated valuation models (AVMs) and broker price opinions (BPOs), rather than certified appraisals, in order to avoid compliance requirements when making loans below the de minimis.*

Title XI of FIRREA provides that appraisals are not required on transactions under $250,000. Most of the subprime problems fall under that *de minimis*. We are deeply concerned that the HVCC will be rendered meaningless if lenders see it as an opportunity, tool and excuse to eliminate appraisals from loan underwriting.

As presently written, the HVCC could encourage mortgage lenders to abandon appraisals by practitioners in favor of the much less reliable and non-regulated AVMs and BPOs. Specifically, Item XI of the HVCC – which states that it does not establish new obligations relative to the use or non-use of appraisals by lenders – can be read as actually encouraging the substitution of AVMs and BPOs for appraisals. Looking back, the wording in FIRREA, which stated that membership in a professional appraisal organization could not be the sole basis for selecting appraisers, may have had the unintended consequence of effectively lowering the bar for appraisal quality. We believe an outcome of increased use of abbreviated valuation products, such as non-regulated AVMs and BPOs, seriously would undermine the central purpose of the Code and the Agreement – the enhancement of the reliability of market value determinations for loans purchased by Fannie Mae and Freddie Mac.

AVMs and BPOs are not subject to any standards or ethical obligations. They do not provide any certification of impartiality or other FIRREA certifications. State appraisal regulatory agencies are frustrated over improper application of AVM and BPO use in lending decisions and the perception by consumers that an appraisal has been performed.

The HVCC establishes clear and comprehensive prohibitions against any attempt to pressure, coerce or improperly influence appraisers, or to otherwise impede the independence of the appraisal process. While these prohibitions are key to protecting the integrity of collateralized secondary market mortgage securities, they clearly impose obligations that some affected parties might wish to avoid. Under the Agreement, as drafted, such parties could do so by substituting AVMs or even BPOs for authentic appraisals. This is a consequence that must be avoided if the Agreement is to serve its intended purpose.

***Our Recommendation*:** *We urge the Parties to amend the HVCC and Seller Guides to encourage the use of appraisals – as opposed to BPOs and AVMs – to ensure adequate collateralization.*

Concern 5: *Inadequate attention to appraiser competency, appraisal quality and appraiser training*

We believe that all of the concerns above can be addressed in part, but very succinctly, by elevating issues of appraiser competency, appraisal quality and appraiser training in the Selling Guides and the HVCC. Establishing independent appraisal processes is critical to raising appraisal quality, but if clients are not required or encouraged to seek out competent appraisers and quality appraisal services, appraisal independence rules will be of little consequence. This is because appraisal independence carries responsibilities for both the client of the appraiser and the independent fee appraiser. While clients should not coerce appraisers, reputable appraisers must say no to pressure and refuse to buckle to coercion. Reputable appraisers take pride in honoring the appraisal profession and adhering to industry ethics requirements and codes of conduct imposed by professional appraisal organizations. However, the seller guides fail to address this issue adequately, choosing instead to require only minimum qualifications criteria, while failing to encourage seeking quality and competent appraisal services.

Specifically, the GSEs' intent for the use of competent appraisers is subject to misinterpretation as a result of language used in the Seller Guides. For example, in Section XI, 101.02, "Knowledge and Experience **Requirements**," where Fannie Mae says, "We ***expect*** a lender to use an appraiser who not only has the knowledge and experience that is required to perform a professional quality appraisal…," it should state, "We ***require*** a lender to use an appraiser who not only has the knowledge and experience that is required to perform a professional quality and credible appraisal….," to be consistent with the title of the subheading. There are several examples of this found throughout the Seller Guides. Further, the only overtly stated lender requirement in Section XI in the Fannie Mae Seller Guide is for the use of state licensed or certified appraisers.[4]

A narrow reading of the Seller Guide might lead a lender to believe that the only competency requirement for Fannie Mae is the use of state certified or licensed appraisers, when state licensing and certification always were intended by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (which established the existing appraisal regulatory structure) to be a minimum requirement, not the only one. The intent of the appraisal regulations always has been that licensure or certification was a necessary prerequisite for appraiser competency, but not sufficient.[5] This is a glaring omission in the Seller Guides, and we strongly believe the Seller Guides should impose actual requirements regarding appraiser competency and appraisal complexity.

The federal bank regulatory agencies have reinforced the importance of competency in recent guidance statements, specifically requiring institutions to consider an appraiser's competency for a given appraisal assignment.[6] Further, regulated institutions have been reminded not to allow lower cost or reduced delivery time to compromise the determination of an appropriate scope of work for appraisals supporting federally related transactions. We believe that the HVCC and the Fannie Mae and Freddie Mac Seller Guides should do the same.

Our Recommendation**:** *The HVCC should be modified to encourage Fannie Mae and Freddie Mac to use the most experienced, educated and highly trained appraisers – those with designations from nationally recognized professional appraisal organizations – in situations where properties are complex and where real estate markets are in rapid transition. Although state certified and licensed appraisers are competent to value typical residential properties, a higher standard is justified in special circumstances.*

[4] Fannie Mae Selling Guide, Section XI, 101.01.

[5] Federal appraisal regulations state – *"Professional association membership; Competency. All staff and fee appraisers performing appraisals in connection with federally related transactions must be State certified or licensed, as appropriate. However, a state certified or licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered*." *Federal Register*, volume 55, number 165,
Friday, August 24, 1990/Rules and Regulations, p. #34698.

[6] *2006 Revisions to Uniform Standards of Professional Appraisal Practice*. (2006, June 22). Office of the Comptroller of the Currency, et al. Available at http://www.occ.treas.gov/ftp/bulletin/2006-27a.pdf

We urge the Parties to amend the HVCC and Seller Guides to make clear explicitly that state licensing and certification are minimum requirements for real estate appraiser,s and require lenders to use appraisers with the knowledge and experience required to perform a professional quality and credible appraisal. We also urge the Parties to introduce a complexity/competency component for each assignment that would require more complex assignments (those with higher loan-to-value ratios, unique properties, rural locations, etc.) to be ordered from appraisers who meet higher competency requirements (e.g. those who have earned professional appraisal designations or have demonstrated expertise through the attainment of credentials).

Independent Valuation Protection Institute

Before we conclude our remarks, we want to speak to the proposed Independent Valuation Protection Institute (IVPI). The Agreement establishes the IVPI to maintain a hotline for real estate appraisers and consumers to submit complaints about appraisal independence issues. The IVPI is envisioned to collect complaints and process them via a potential mediation program and/or refer them to the appropriate regulatory agencies for potential enforcement actions. The IVPI also may conduct mediation between parties and conduct research in the area of appraisal independence.

These activities are similar to existing programs within our professional appraisal organizations, not only with regard to our respective memberships, but also with complaints issued against non-appraiser clients. All of our organizations maintain codes of conduct and ethics to which our members must adhere, and each has a process for accepting complaints and for reviewing and adjudicating those complaints. Sanctions against our members can range from requiring additional education to revoking their professional designation.

In addition, our organizations have maintained action centers for several years, which link appraisers with the appropriate regulatory agencies for federally regulated institutions, non-bank mortgage lenders, mortgage brokers, realty agents and appraisers. We believe that the hotline to be maintained by the IVPI is an enhanced version of such operations.

Though it is a small point, we would ask that the Parties consider a change in the IVPI name to substitute the word, “Clearinghouse,” for the word, “Institute,” to avoid possible name confusion.

We recognize that Fannie Mae and Freddie Mac will not be involved in the operational decisions regarding the IVPI, but they will play an extremely important role in terms of funding the new entity. Since the IVPI is intended to benefit the appraisal community, we recommend that the Parties provide adequate representation for professional appraisal organizations in the IVPI leadership, emphasizing the importance of professional appraisers. Further, we urge that the IVPI not become a forum for frivolous complaints, but be respectful of and consistent with the role of federal and state regulatory authorities.

Lastly, we feel confident that one or more of our organizations is capable of housing the IVPI with minimal infrastructure adjustments. As such, we are prepared to commit the full resources of our organizations to accomplish successfully the mission of the IVPI, and we offer our services to the Attorney General of New York and the Office of Federal Housing Enterprise Oversight in this endeavor.

Related Concerns

Concern: *The need to improve the appraiser regulatory structure remains.*

We recognize that this issue is outside the scope of the Agreement; however, we feel compelled to bring this issue to your attention, as it relates to some components of the Agreement. The existing appraisal regulatory structure enacted by Congress in 1989 contains many deficiencies and currently is not working at an optimum level. Too often, complaints against appraisers languish in state appraisal board administrative hearings, thereby allowing poorly performing appraisers to continue to do business. In addition, the federal appraisal regulator – the Appraisal Subcommittee – is ill-equipped to conduct oversight and enforcement activities of state appraisal boards. The only weapon the Appraisal Subcommittee has at its disposal – decertification of state appraisal boards – is impractical.

Fortunately, legislation to address these issues and make long-overdue improvements to the appraisal regulatory structure was passed by the House last year and currently is pending in the Senate. H.R. 3915 would provide resources to state appraisal boards to conduct enforcement activities and grant enhanced enforcement powers to the Appraisal Subcommittee, among other things.

We see the Agreement potentially resulting in more complaints against appraisers to state appraisal boards, based on referrals from the IVPI. It is imperative that H.R. 3915 be enacted if those complaints are to be processed expeditiously.

Our Recommendation: *We urge the Parties to support enactment of appraisal regulatory reform in Congress, specifically, the appraisal reform provisions in H.R. 3915.*

Concern: *Industry-wide education and best practices*

We strongly believe that it is incumbent on industry groups for all parties involved in the real estate appraisal process to educate their respective members about appraisal issues and to work together to promote improvements in the quality of appraisal services. Specifically, our organizations are in the process of discussing with mortgage lending organizations a signed Statement on Best Practices regarding Mortgage Lending and Real Estate Appraisals, wherein our organizations would agree to work cooperatively to educate our members about important best practices in appraisal ordering, management and performance.

Our Recommendation: *We hope that other industry groups for banking, mortgage lending, appraisal management, and others involved in appraisal issues will join us in this effort, and we will be approaching them to this effect. We hope that the Parties will encourage cooperation of this sort, particularly as it relates to education and promotion of best practices in the area of appraisal independence.*

Concern: *RESPA Reform*

We strongly believe that all charges assessed to consumers should be disclosed to the consumer. In the case of appraisal fees, the appraisal fee – or the fee paid to the appraiser conducting the appraisal for the lender – should be separated from any management fee that is paid, as well. Disclosure of these fees to the borrower would help avoid instances of inappropriate “up charges” of appraisal services, and properly inform the consumer who has performed services in the processing of the mortgage.

The Department of Housing and Urban Development has issued a proposed RESPA reform initiative, whereby the agency proposes to create a revised Good Faith Estimate and HUD-1 statement. The proposed Good Faith Estimate does not adequately inform the borrower of estimated appraisal costs; instead, it lumps these fees with other settlement service charges. Further, the proposed HUD-1 does not distinguish between appraisal management costs and appraisal preparation costs.

Our Recommendation: *We urge HUD to properly inform borrowers of estimated appraisal and appraisal management costs in the Good Faith Estimate and separate all actual charges for appraisal and any management costs on the revised HUD-1.*

Concluding Remarks

The importance of this agreement cannot be understated, as it has the potential to chart a new course for the residential real estate appraisal profession for years, if not decades, to come. This Agreement also could have spill-over effects on the non-residential appraisal venue. Because of this, it is critical that the Parties get it right the first time to avoid unintended consequences that negatively will impact appraisal quality and create new opportunities for loopholes to influence the appraisal process adversely to the detriment of financial institutions and consumers alike.

Our members support the efforts of the Parties in addressing appraisal issues, but we do see some aspects of the Agreement that can be further improved. We urge the Parties to consider the concerns and suggestions above, and we stand committed to working with you to implement this landmark agreement.

We are providing suggested revisions and technical comments to the HVCC in a separate attached document. If you have any questions or need additional assistance, please contact Bill Garber, Director of Government and External Relations, Appraisal Institute, at 202-298-5586 or bgarber@appraisalinstitute.org; Peter Barash, Government Relations Consultant, American Society of Appraisers, 202-466-2221, peter@barashassociates.com; David GaNun, Government Relations Committee Chair, American Society of Farm Managers and Rural Appraisers at 800-787-3276 Ext. 31, david.ganun@firstpioneer.com; or Ann Susko, Government Liaison Committee Chair, National Association of Independent Fee Appraisers, at 602-993-5077, asusko@cox.net.

Sincerely,

Appraisal Institute
American Society of Appraisers
American Society of Farm Managers and Rural Appraisers
National Association of Independent Fee Appraisers

Cc: The Honorable Andrew Cuomo, Attorney General of the State of New York
The Office of Federal Housing Enterprise Oversight

Attachment

Technical Comments on the Home Valuation Code of Conduct
Please note: Suggested word changes within the text of the HVCC with comments to the right

Home Valuation
Code of Conduct

I. No employee, director, officer, or agent of the lender, or any other third party acting as joint venture partner, independent contractor, appraisal management company, or partner on behalf of the lender, shall influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner including but not limited to:

1) withholding or threatening to withhold timely payment for an appraisal report;

2) withholding or threatening to withhold future business for an appraiser, or demoting or terminating or threatening to demote or terminate an appraiser[1];

3) expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;

4) conditioning the ordering of an appraisal report or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or value opinion requested from an appraiser;

5) requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal report;

6) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;

7) providing to an appraiser, appraisal management company, or any entity or person related to the appraiser or appraisal management company, stock or other financial or non-financial benefits;

8) allowing the removal of an appraiser from a list of qualified appraisers or inclusion of the appraiser on an exclusionary list used by any entity, without

[1] An "Appraiser" must be, at a minimum, licensed or certified by the state in which the property to be appraised is located.

Comment [A1]: This definition does not fully define an appraiser. Licensing and certification have always been viewed as a **minimum** qualification requirement, not the only one. We assert that the footnote merely restates the legacy requirement in the Selling Guides that licensing is the **only** requirement for competency. We strongly believe that there are additional competency requirements.

We believe the Selling Guides should be strengthened to require more consideration of competency than licensing or certification as the level of assignment complexity increases.

See suggestion on an "Appraiser" below.

Comment [A2]: This is to avoid a gap – prospective clients seek ways to demand what is a value by using various alternative words.

Comment [A3]: The point needs to clarify that such financial or non-financial benefits are improper IF used as an inducement to obtain a certain value. Needs to clarify that an appraiser can, of his/her own volition, acquire and own stock in the company.

Comment [A4]: There is at least one national exclusionary list presently available to the mortgage industry which excludes appraisers without notice.

prior written notice to such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice

(USPAP) or state licensing standards, substandard performance, or otherwise improper or unprofessional behavior and without allowing the opportunity to respond and defend against said notice;

9) ordering, obtaining, using, or paying for a second or subsequent appraisal or automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process; or

10) any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

Nothing in this section shall be construed as prohibiting the lender (or any third party acting on behalf of the lender) from requesting that an appraiser (i) provide additional information or explanation about the basis for a valuation, or (ii) correct objective factual errors in an appraisal report.

II. The lender shall ensure that the borrower is provided, free of charge, a copy of any valuation product used in making the lending decision ~~of any all or the final appraisal report valuation product c~~ concerning the borrower's subject property prior to the closing of the loan. The lender shall provide immediately upon completion, and in any event no less than three days prior to the closing of the loan an indication of the final market value contained in the valuation product. This does not constitute the borrower as an "intended user" of an appraisal as defined in USPAP. The borrower may waive this three-day requirement. The lender may require the borrower to reimburse the lender for the cost of the appraisal.

III. III. The lender or any third-party specifically authorized by the lender (including, but not limited to, appraisal management companies and correspondent lenders) shall be responsible for selecting, retaining, and providing for payment of all compensation to the appraiser. The lender will not accept any appraisal report completed by an appraiser selected, retained, or compensated in any manner by any other third-party (including mortgage brokers and real estate agents). The lender shall consider an appraiser's competency for a given appraisal assignment. Further, the lender should not allow lower cost or reduced delivery time to compromise the determination of an appropriate scope of work for appraisals.

Comment [A5]: Appraisers should have the right to defend themselves against such actions. Without that ability appraiser identity theft could become harder to detect.

Comment [A6]: Using the term appraisal could lead lenders to use alternative products more often.

Comment [A7]: We are not insensitive to the benefits that could be achieved by the borrower having access to the market value prior to closing.

However, this provision, as written, will likely cause a lot of logistical problems and complications in the settlement of loan transactions.

Logistically, it might be more prudent to provide the borrower with an indication of the market value immediately upon completion and the complete report prior to closing.

Further, an unintended consequence might be the borrower believing they are an intended user or the actual client thereby causing an unintended extension of privity.

Comment [A8]: We believe the intent of the authors is to place all control of the appraisal process outside of the mortgage broker or real estate agent. Section III does not clearly eliminate some areas of appraisal procurement, such as the direction of the ordering process by mortgage brokers and real estate agents. We would urge that a clarification be made in this section.

Comment [A9]: Similar language is provided in guidance provided by the federal bank regulatory agencies, specifically, "The 2006 Revisions to the Uniform Standards of Professional Appraisal Practice," published June 22, 2006.

~~II.~~IV. IV. All members of the lender's loan production staff, as well as any person (i) who is compensated on a commission basis upon the successful completion of a loan or

V. (ii) who reports, ultimately, to any officer of the lender other than either the Chief Compliance Officer, General Counsel, or any officer who is not independent of the loan production staff and process, shall be forbidden from: (1) selecting, retaining, recommending, or influencing the selection of any appraiser for a particular appraisal assignment or for inclusion on a list or panel of appraisers approved to perform appraisals for the lender; (2) any communications with an appraiser, including ordering or managing an appraisal assignment; and (3) working together in the same organizational unit, or being directly supervised by the same manager, as any person who is involved in the selection, retention, recommendation of, or communication with any appraiser. If absolute lines of independence cannot be achieved as a result of the originator's small size and limited staff, the lender must be able to clearly demonstrate that it has prudent safeguards to isolate its collateral evaluation process from influence or interference from its loan production process.

VI. Any employee of the lender (or if the lender retains an appraisal management company, any employee of that company) tasked with selecting appraisers for an approved panel or substantive appraisal review must be (1) appropriately trained and qualified in the area of real estate and appraisals, and (2) in the case of an employee of the lender, wholly independent of the loan production staff and process.

VI. ~~VI.~~ In underwriting a loan, except as provided under "Exception" below, the lender shall not utilize any appraisal report prepared by an appraiser employed by:

(1) the lender;
(2) an affiliate of the lender;
(3) an entity that is owned, in whole or in part, by the lender;
(4) an entity that owns, in whole or in part, the lender
(5) a real estate "settlement services" provider, as that term is defined in the Real Estate Settlement Procedures Act, 12 U.S.C.§ 2601 et seq.;
(6) an entity that is owned, in whole or in part, by a "settlement services" provider.

Exception

A. A lender may use an appraisal obtained from an appraiser employed or contracted by the lender or a party representing the lender to provide the appraisal when:

1) The lender is subject to regulation under Title XI of FIRREA and certifies that the loan was originated in compliance with regulations pursuant to Title XI of FIRREA and with the Federal Reserve Board's Regulation Z, or
2) A lender not subject to regulation under Title XI of FIRREA certifies that the procurement of the appraisal was by an individual or business unit that

Comment [A10]: Our organizations stand ready to provide educational offerings and outlines of criteria in clarification of this section.

Comment [A11]: This requested edit is to establish the "conditions"under which a lender could use an appraisal obtained from an employee or contractor.

Comment [A12]: Staff appraisers employed by federally regulated institutions with an appropriate reporting structure should be exempt from this requirement. An unintended consequence is the loss of some of the most independent appraisers in the system.

Comment [A13]: Item #3 and the statement below regarding ownership of less than 20% contradict each other.

Comment [A14]: This needs to be clarified as appraisers are included in this definition. This implies that no one can perform appraisals.

Comment [A15]: This requested edit follows from the Comment Letter, seeking (conditionally) the ability of a lender to directly employ or contract for appraisals.

is not involved with or compensated as a result of loan production or marketing, and that the procurement and appraisal complies with the Federal Reserve Board's Regulation Z.

B. A lender may use in-house staff appraisers to (i) order appraisals, (ii) conduct appraisal reviews or other quality control, whether pre-funding or post-funding, (iii) develop, deploy, or use other internal risk analyses tools, or (iv) prepare appraisals in connection with transactions other than mortgage origination transactions (e.g. loan workouts).

The lender also shall not use any appraisal report obtained by or through an appraisal management company that is owned by the lender or an affiliate of the lender, provided that the foregoing prohibitions do not apply where the lender has an ownership interest in the appraisal management company of 20% or less and where (i) the lender has no involvement in the day-to-day business operations of the appraisal management company, (ii) the appraisal management company is operated independently, and (iii) the lender plays no role in the selection of individual appraisers or any panel of approved appraisers used by the appraisal management company.

~~Notwithstanding these prohibitions, the lender may use in-house staff appraisers to (i) order appraisals, (ii) conduct appraisal reviews or other quality control, whether pre-funding or post-funding, (iii) develop, deploy, or use internal automated valuation models, or (iv) prepare appraisals in connection with transactions other than mortgage origination transactions (e.g. loan workouts).~~

VII. The ~~lender~~ Independent Valuation Protection Institute will establish a telephone hotline and an email address to receive any recorded or written complaints from appraisers, individuals, or any other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, which hotline and email address shall be attended only by a member of the office of the General Counsel, Chief Compliance Officer or other independent officer. In addition: (1) each appraiser now or hereafter on any list of approved appraisers, or, upon retention by the lender, will be notified, in a separate document, of the hotline and email address and their purpose; and (2) each borrower, as part of a cover letter accompanying the provided appraisal, will be notified of the hotline and email address and their purpose. Within 72 hours of receiving any complaint, the ~~lender~~ IVPI will direct the lender to begin a preliminary investigation of the complaint and upon completing the inquiry (or, after a period not to exceed 60 days, whichever shall come first) shall notify the Independent Valuation Protection Institute and any relevant regulatory bodies of any indication of improper conduct. The name and any identifying information of the person or entity that has filed such a complaint shall be kept in strictest confidence by the office of the General Counsel, Chief Compliance Officer or other independent officer, except as required by law. The lender shall not retaliate, in any manner or method, against the person or entity which makes such a complaint. A lender found to have violated this provision shall be immediately and permanently disqualified from selling a loan to an entity subject

Comment [A16]: Consistent with the Exception above.

Comment [A17]: We suggest a change to "Clearinghouse" to avoid name confusion

Comment [A18]: We believe the hotline should be housed solely at the IVPI since lenders could hide the calls.

Complaints should be required to be in writing or the calls have to be recorded for proper record retention. Otherwise you have an undocumented process.

to the jurisdiction of OFHEO.

VIII. The lender agrees that it shall quality control test, by use of retroactive or additional appraisal reports or other appropriate method, of a randomly-selected 10 percent (or other bona fide statistically significant percentage) of the appraisals or valuations which are used by the lender, including the results of automated valuation models, broker's price opinions or "desktop" evaluations. The lender shall report the results of such quality control testing to the Independent Valuation Protection Institute and any relevant regulatory bodies.

~~VII.~~IX. IX. Any lender who has a reasonable basis to believe an appraiser is violating applicable laws, or is otherwise engaging in unethical conduct directly related to performance of the appraisal or in procurement of the appraisal assignment,, shall promptly refer the matter to the Independent Valuation Protection Institute and to the applicable State appraiser certifying and licensing agency.

~~VIII.~~X. X. The lender shall certify, warrant and represent that the appraisal report was obtained in a manner consistent with this Code of Conduct.

XI. Nothing in this Code shall be construed to establish new requirements or obligations that (1) require a lender to obtain a property valuation, or to use any particular method for property valuation (such as an appraisal or automated valuation model) in connection with any mortgage loan or mortgage financing transaction, or (2) affect the acceptable scope of work for an appraiser in connection with a particular assignment.

Comment [A19]: We suggest this change to enhance enforcement of this section of the HVCC.

Comment [A20]: The quality control test needs to be at least at the level of the tested product for any decision making regarding the propriety of the original product. In other words, a test of an AVM might be an appraisal, but a test of an appraisal should not be a BPO.

Comment [A21]: This requested edit is to focus the basis for a complaint and avoid overloading the IVPC and state boards with baseless or unrelated complaints.

Comment [A22]: It may be more productive to refer the matter to the IVPI for possible resolution prior to referral to the applicable state regulatory board. The parties should also note that federal bank regulations might already require referral to applicable state regulatory boards.

Comment [A23]: Additionally the following definitions need to be provided:
⇒Originator
⇒Lender
⇒Appraisal management company

Comment [A24]: We also encourage the parties to write a specific provision in the HVCC to the effect that, "Appraisal fees paid by the consumer should include only the appraisal fee paid to the local appraiser."