Comment on Implementation and Deployment of the Home Valuation Protection Code

24 April, 2008

CMPS Institute commends Fannie Mae, Freddie Mac, OFHEO and the New York attorney general's office in their efforts to enhance the integrity of the home appraisal process. The Home Valuation Protection Code and the Independent Valuation Protection Institute are initiatives that we hope will do much good. Nevertheless, we appreciate the opportunity to share our comments regarding certain provisions contained in the Code that we believe should be modified.

Section 1, point 6

Prohibits the practice of "providing to an appraiser 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."

This provision is harmful and impractical, especially in refinance situations. Specifically, this provision will increase consumer costs and unnecessarily drag out the appraisal timelines/process.

The provision seems to indicate that appraisers should not be given old appraisals, helpful data, or any other estimate of what a home is anticipated to be worth at the time the appraisal is ordered or at any other time prior to the completion of the appraisal. Granted, a home should be appraised at its current value and old appraisals may very well be irrelevant in this analysis. Nevertheless, homes are all very unique and often require a lot of analysis to estimate their value. If a lender or broker had any prior dealings with the consumer or the home being appraised, the consumer likely paid a previous appraiser, contractor, broker, or other participant to analyze or estimate the value of the home or a certain aspect of a home's value. This provision seems to prohibit lenders and brokers from sharing such important data with new appraisers.

Furthermore, consumers often rely on their brokers and lenders in determining which unique items are worth pointing out to the appraiser as consumers have little or no education on such matters. Short of restructuring the entire educational system in the US, brokers and lenders will still be the most qualified sources of this type of information. Not giving appraisers the old appraisal report or an indication of how a unique home was appraised in the past would increase consumer costs as each subsequent appraiser will need to engage in a redundant analysis of elements that may have already been analyzed by previous appraisers or participants.

Additionally, this provision, along with *Section 1, point 5*, also seems to prohibit all forms of professional communication or collaboration between brokers, lenders and appraisers prior to the completion of the appraisal report. Such a prohibition will frustrate consumers and all other participants in the process, drive up consumer costs and unnecessarily drag out the appraisal process. This would especially be true under the following circumstances:

- New construction or home improvement where consumers have not yet completed the project and are desiring to know the effect of their decisions on the prospective value of their home – e.g., where consumers seek to change midstream their selection on flooring types and styles, square footage expansions, landscaping, etc.
- Unique properties where brokers or lenders may have valuable information based on prior dealings with the consumer or subject property
- Properties with limited or no recent comparable sales data
- Properties with limited or no *publicly available* comparable sales data

Section 1, points 5 and 6 **should be eliminated and/or modified to allow for certain safe harbors as outlined above.**

Section 1, point 9

This provision prohibits a lender from "ordering, obtaining, using or paying for a second or subsequent appraisal…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…"

This provision puts the "burden of proof" squarely on the shoulders of lenders when ordering or utilizing an appraisal that is different than the one initially submitted to them. This provision erroneously assumes that appraisers are somehow more ethical or professionally competent than lenders and brokers. This is not the case. Simply put, an appraisal is one individual's opinion on what a certain home is worth based on comparing it with other similar homes that have recently sold. Unfortunately, appraisers sometimes do a poor job and take short-cuts in their research and analysis. Unlike securities ratings issued by credit rating agencies, home appraisals are not black and white affairs and often involve subjective opinions of appraisers who may or may not be correct in their opinions.

Lenders, brokers, and more importantly, *consumers* should be free to request that another appraisal be performed on the property without requiring them to state their reasons. In other words, the "burden of proof" should not reside with lenders, brokers or consumers to somehow prove they had a "reasonable basis to believe that the initial appraisal was flawed or tainted." This would drive up consumer costs by practically forcing them to pay for an appraisal and being stuck with the results even though another appraiser may have an equally qualified, but different opinion of value. Additionally, the initial appraiser may have taken short-cuts in their analysis that are hard to prove. In these cases, the consumers' only remedy would be to go to another lender and pay for yet another appraisal report as many lenders will likely take the easy way out and not attempt to prove their "reasonable basis" for rejecting the original appraisal.

Section 1, point 9 **should be entirely removed.**

Sections 3 and 4

Prohibit anyone other than the lender from "selecting" or "communicating" with an appraiser. Further, anyone on the lender's staff whose compensation is tied to the successful completion of the loan would also be prohibited from selecting or communicating with an appraiser.

Processors, mortgage brokers, real estate agents, loan officers and others whose compensation is tied to the completion of the loan are often the ones most familiar with the consumer, subject property and/or local real estate market conditions. **Prohibiting these participants from communicating with appraisers or otherwise being involved in the process is very harmful and impractical for the reasons outlined throughout this document.**

A better proposal would be to:

- **Completely eliminate sections 3 and 4**
- **At the very least, eliminate *Section 4, point 2* and outline a safe harbor to these provisions that would adequately address the real and practical concerns we have voiced throughout this document**

General comments:

In addition to the concerns we have outlined above, much of the language in the Code is vague, ambiguous, and subjective. Specifically, the first paragraph of *Section 1* states, "or in any other manner including but not limited to:" and also the entire *Section 1, point 10*. If such broad language is used, confusion will abound, and industry participants will be left with daunting compliance costs. Even when industry participants establish compliance procedures, they will still be left with uncertainty regarding whether these procedures are adequate.

A better approach would be to establish safe harbors that are clearly delineated. Specifically, we recommend that you give the industry a more detailed outline of how compliance procedures could be set up in a way that would adequately address the practical concerns we have outlined above. We strongly urge Fannie Mae, Freddie Mac, OFHEO and the New York attorney general's office to reconsider certain elements of the proposed Code in light of our comments.

Respectfully submitted,

CMPS Institute

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