



## Contact your U.S. Senators and Representative TODAY

April 17, 2009

Dear CAMB Members and Non-Members:

**This is a Call to Action!** Please contact your Senators and Representatives TODAY and urge them to STOP or DELAY (for at least 12 months) the implementation of the Home Valuation Code of Conduct ("HVCC") which is de facto regulation, forced on Freddie Mac and Fannie Mae by New York Attorney General Cuomo.

Below is a list of key talking points to bring to the attention of your legislators. **Please contact your legislators today at their in-district offices, as Congress is currently in recess.** You can access the contact information for your legislator [here](#). We encourage you to keep trying to contact them if you are not initially successful. It is vital to the overall effectiveness of this call. Please forward this email to your mortgage broker and appraiser contacts.

### **Talking Points:**

#### **Its impact on Consumers:**

- A. The HVCC negatively affects consumers by increasing the costs to consumers for an appraisal, reducing consumer choice and adversely impacting a consumer's ability to obtain a reliable and quality appraisal.
- B. The HVCC creates a heightened risk for consumers by requiring the use of unregulated Appraisal Management Companies (AMCs) for appraisals. The original investigation that prompted the HVCC's creation was of an AMC and Washington Mutual Bank alleging that they engaged in

practices of pressuring appraisers on behalf of Washington Mutual.

C. It increases the time to fund loans for consumers which necessitates longer rate locks or extensions of existing locks thereby increasing costs to consumers. In the case that a new lender or broker is chosen, a new appraisal will be necessitated, increasing the time to fund.

D. It restricts the portability of an appraisal since each lender, in effect, will require a new appraisal.

**Its impact on Small Business:**

E. The HVCC squeezes out small business professionals that are striving to survive and have been working with consumers in the very neighborhoods where they are looking to purchase homes.

F. The HVCC affects small business appraisers, mortgage brokers, Realtors and lenders in all 50 states without having been reviewed by ANY state or federal legislature or agency.

G. Small business professionals who have in-depth knowledge of local market conditions are being sacrificed for large AMCs who operate on a national scale to distribute orders through a primary processing hub or hubs which can be located up to thousands of miles away from the property being appraised.

**Its failure to comply with procedural law:**

H. Although the HVCC is broad regulation having a significant impact on small businesses and consumers, it did not go through the Administrative Procedures Act ("APA"), the Regulatory Flexibility Act or other procedural laws as required by any regulation issued by a federal agency.

I. FHFA claims that as Conservator of the GSEs, its actions are not "agency actions" under the APA and that its actions are "expressly precluded from judicial review" as a result of the Housing and Economic Recovery Act.

**Appraisal standards exist:**

J. The Federal Reserve issued appraisal independence standards through

Regulation Z being implemented this October which applies to every industry participant.

K. The banking regulators issued interagency guidance on appraisal standards which are expected to become final by September 2009.

**Background:**

**1) The HVCC negatively affects consumers and the already fragile economy.**

As it stands today, the HVCC will take effect on May 1, 2009, and this rule states that GSEs will no longer purchase loans from lenders "accepting appraisal reports completed by an appraiser selected, retained, or compensated in any manner by any third party." It overwhelmingly impacts small lending institutions and independent appraisers to the detriment of consumers.

a) Consumers will have to pay more for their appraisals to have them completed by AMCs.

b) The exclusive use of AMCs limits competition in the marketplace, leaving the consumer and independent appraisers at a disadvantage.

c) The AMC model is flawed and will produce poor quality work that will create a continuation of the declining housing market.

**2) The manner in which lenders will collect fees in compliance with the HVCC is a potential violation of RESPA.**

a) Lenders may be in direct violation of section 8(b) of RESPA due to possible up-charging and fee-splitting. Every lender will be at risk of HUD action on every brokered loan they underwrite.

b) Lenders will not utilize brokers for fear of potential RESPA violations. In addition, those lenders who only do brokered loans will go out of business all together, and competition within the marketplace will cease to exist. Again, at the detriment of consumers.

**3) There already exists pervasive federal regulation of the mortgage**

## **lending industry's acquisition of real estate appraisals.**

a) FIRREA - In 1989, following the savings and loan crisis, Congress passed the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA"), which established a multi-faceted real estate appraisal regulatory system involving the federal government, the states, and The Appraisal Foundation. Since 1989, the federal agencies responsible for regulating financial institutions have promulgated regulations under FIRREA that set forth "generally acceptable appraisal standards," and have issued guidance relating to real estate appraisals, which, among other things, set forth standards for selecting qualified appraisers. These regulations and appraisal guidelines both prohibit improper influence on appraisers and work to ensure appraisal independence.

b) FRB Final Rule - In July 2008, the Federal Reserve Board ("Board") issued a final rule prohibiting all mortgage brokers, mortgage lenders and their affiliates "from coercing, influencing, or otherwise encouraging appraisers to misstate or misrepresent the value of a consumer's principal dwelling." In issuing this final rule, the Board concluded that "[no] particular procedure for ordering an appraisal necessarily promotes" fraudulent appraisals. Rather, the Board determined that the "coercion of appraisers," whether by lenders or mortgage brokers, "is an unfair practice" and the final rule should apply to lenders and mortgage brokers alike. NAMB fully supported the Board's final rule because it targets problematic practices, rather than business relationships that present no inherent problems.

c) FFIEC Interagency Guidance - On November 19, 2008, the FFIEC regulatory agencies issued proposed revisions to the "Appraisal and Evaluation Guidelines," and requests for comment. The FFIEC regulatory agencies are currently reviewing the submitted comments and plan to issue a final rule this year.

d) H.R. 1728 - "The Mortgage and Anti-Predatory Lending Act of 2009" was introduced on March 26, 2009. TITLE VI of the bill -APPRAISAL ACTIVITIES - deals with every facet of the appraisal process that will ensure true appraisal independence and protect consumers.

4) **The HVCC fails to comply with the Administrative Procedures Act.**

The HVCC is a substantive rule that created *de facto* regulation of the entire mortgage industry in violation of the Administrative Procedure Act ("APA").

a) The FHFA is an agency and the HVCC falls within the definition of a rule under the APA. As such, the FHFA was required to utilize notice and comment rulemaking proceedings under the APA, but the agency failed to do so.

b) Because this rule regulates the entire mortgage industry and the FHFA failed to follow proper rulemaking procedures, we believe the HVCC is void, invalid, and unenforceable.