

New York State Attorney General Andrew M. Cuomo, Fannie Mae and Freddie Mac (government sponsored enterprises) reached an agreement on March 3, 2008, to change appraiser selection criteria that will help eliminate conflicts of interest on mortgage appraisals. The agreement has the support of the Office of Federal Housing Enterprise Oversight (OFHEO). There are three main components to the agreement:

- Establishment of the New Home Valuation Protection Code
- Banks will be required to adhere to the Code
- Formation of the Independent Valuation Protection Institute

The requirements will have a significant impact on appraisal practices by lenders as they will have to comply with the new requirements agreed-to by the government sponsored enterprises (GSE) if the lenders sell mortgages to the GSEs. The parties have agreed to get comment and concurrence from the federal banking regulators and HUD, as they move to implement the Agreement and the new Code of Conduct. The GSEs have agreed to implement the new Code beginning January 1, 2009. During 2008, the GSEs will get comments from market participants, and changes to the Code are possible.

## **Home Valuation Protection Code**

A Home Valuation Protection code will be implemented establishing standards on solicitation, selection, compensation, conflicts of interest and corporate independence. Mortgage brokers are prohibited from selecting appraisers. Lenders will not use "in house" staff appraisers to conduct initial appraisals and will not use appraisal companies owned or managed by the lender. The code entitles the borrower to one copy of an appraisal report, free of charge, within 3 days of the closing of the loan.

## **Banks Will Adhere to the Code**

Starting January 1, 2009, GSEs will no longer purchase mortgages from lenders that utilize internal appraisers for appraisal reports. Lenders will be required to represent and warrant that the appraisal report was obtained in a manner consistent with the New Home Valuation Protection Code.

## **Independent Valuation Protection Institute**

A clearinghouse of appraiser information will be created, with a separate board of directors, to monitor complaints from appraisers and consumers. All lenders will be required to provide post-purchase copies of appraisal documents to the clearinghouse. Lenders will establish a telephone hotline and E-mail address to receive complaints from appraisers and users of appraisal services on the improper influence or attempted improper influence of appraisers. The Institute will be headed by a Board of Directors with members having no financial connection with Fannie Mae, Freddie Mac, or lenders with whom the GSEs engage.

## **Frequently Asked Questions**

*Does this agreement concern only mortgages in New York State?*

No, this agreement applies to mortgages across the country. After January 1, 2009, the GSEs will not purchase single-family loans from mortgage originators in any state that do not agree to adopt the Home Valuation Protection Code.

*Does this agreement apply to all lenders?*

GSEs may exclude lenders that meet the definition of "small bank" according to 12 USC§ 2908 and which the GSE determines would suffer hardships from the provisions of paragraph VI, subsections 1-4 of the Home Valuation Protection Code. However, excluded lenders must otherwise comply with the other provisions of the Code and meet appropriate standards of appraiser independence.

*Who is responsible for applying the new Valuation Protection Code?*

The government sponsored enterprises will apply the new code to lenders selling mortgages on the secondary mortgage market.

*Will appraisers have to help fund the Independent Valuation Protection Institute?*

No, the institute will be funded by the GSEs. Fannie Mae and Freddie Mac will each contribute \$12 million over five years beginning in 2009.

*What does this agreement mean for the independent appraiser?*

Independent appraisers and appraisal companies not owned or managed by lenders or settlement companies must continue to meet appropriate standards of appraiser independence, including following Uniform Standards of Professional Appraisal Practice (USPAP) and maintaining relevant state certifications.

*What does this agreement mean for REALTORS® ?*

Individual REALTORS® cannot serve as a third party between a lender and appraiser. This includes selection, retention, and compensation of an appraiser.

Broker REALTORS® that offer services as a lender or affiliated lender and appraiser services must comply fully with the Home Valuation Protection Code if there is an expectation that their loans will be purchased by Fannie Mae or Freddie Mac after January 1, 2009.

*Is NAR going to provide comments and recommendations on the agreement?*

Yes, NAR will provide comments and recommendations to OFHEO on the Code and its implementation. NAR will comment on the creation of Independent Valuation Protection Institute; which should likely be affiliated with the Appraisal Foundation. Finally, NAR will comment on the impact this agreement will have on its members and the overall real estate industry.

*Can lenders continue to own appraisal management companies (AMC)?*

Yes, lenders can continue to own AMCs. According to the agreement, if a lender chooses to obtain appraisal reports from an AMC that is owned by the lender, or an affiliate of the lender, the lender must: 1) maintain 20 percent or less ownership in the AMC, 2) have no involvement of day-to-day business operations of the AMC, 3) the AMC is operated independently, and 4) the lender has no role in the selection of the appraiser.

*Is this agreement federal law?*

No. This is an agreement signed by two government-sponsored corporations, Fannie Mae and Freddie Mac, and the New York State Attorney General, Andrew Cuomo. The federal regulator of Fannie Mae and Freddie Mac, the Office of Federal Housing Enterprise Oversight (OFHEO) also signed the agreement. No legislation was passed or signed into law with respect to this agreement.

*Are real estate agents prohibited from communicating with appraisers?*

No. There is only one portion of the code that applies directly to real estate agents. Part III states that third parties, including real estate agents, cannot select the appraiser or compensate the appraiser. A third party, including real estate agents, can still ask appraisers for additional information, provide additional information to an appraiser, or ask for corrections of factual errors.

*Can lenders work only through appraisal management companies?*

No, lenders that utilize in-house appraisers can still order appraisals as long as they are independent of the loan production staff and do not ultimately report to an officer who manages loan production.