

This document is an edited (digest) version of the original agreement between the New York Attorney General, Federal Housing Finance Authority, Fannie Mae and Freddie Mac. The original agreement can be found at: http://www.freddiemac.com/singlefamily/pdf/122308_valuationcodeofconduct.pdf

Text in italics are comments inserted by Alan Hummel, Chief Appraiser, Forsythe Appraisals LLC

Home Valuation Code of Conduct

- I. **Appraiser Independence Safeguards** *(What shouldn't happen to the appraiser)*
- B. No lender, or any party acting on behalf of the lender, shall influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner including but not limited to:
- (1) **the lender shall not** threaten to withhold payment for an appraisal report;
(Lenders have to pay for assignments properly completed)
 - (2) **the lender shall not** threaten to withhold future business;
 - (2) **the lender shall not** promise future business, or increased compensation for an appraiser;
(Shall not say "if you make this one work...")
 - (4) **the lender shall not** condition the ordering of an appraisal or the payment of an appraisal fee on the conclusion to be reached, or on a preliminary value estimate requested from an appraiser; *(Shall not say I'll order this if... or pay you if...)*
 - (5) **the lender shall not** request that an appraiser arrive at an estimated, predetermined, or desired valuation in an appraisal report prior to the completion of the appraisal report, or request that an appraiser provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal report;
(Shall not ask for "comp checks")
 - (6) **the lender shall not** provide 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;
(Shall not divulge any value expectations – can give copy of a purchase agreement)
 - (7) **the lender shall not** provide to an appraiser, appraisal company or appraisal management company stock or other financial or non-financial benefits;
(Shall not give anything of value other than appropriate fee for service provided)
 - (8) **the lender shall not** allow the removal of an appraiser from an approved list, or add to an exclusionary list, without prompt written notice to the appraiser, which shall

include written evidence of the appraiser's illegal conduct, a violation of the (USPAP) or state licensing standards, substandard performance, improper or unprofessional behavior or other substantive reason for removal (except that this prohibition will not preclude the management of appraiser lists for bona fide administrative reasons based on written, management-approved policies);

(Shall not remove an appraiser from an approved list without cause or notice – other than for legitimate administrative reasons)

(9) ***the lender shall not*** use another appraisal or (AVM) in connection with a mortgage financing transaction unless: (i) there is a basis to believe that the initial appraisal was flawed and basis for such is noted in the loan file, or (ii) unless such appraisal or AVM is done pursuant to pre-established quality control process or underwriting guidelines, and so long as the lender adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value; or
(Lender has to use the first appraisal they get unless proven (and documented in loan file) that it is flawed. If policy exists that certain loans require more than one appraisal, or if additional valuations are received as a matter of quality control, they shall not automatically rely on the highest appraisal.)

(10) ***the lender shall not*** commit any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality or violates law or regulation, including, but not limited to, the Truth in Lending Act (TILA) and Regulation Z, or the USPAP.

(A catch-all clause...)

C. Nothing in this section shall be construed as prohibiting 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.

(Appraisers are still responsible for producing credible appraisals, both in analysis and understandability of reporting. Lenders can ask for the appraiser to support their conclusions and to correct factual errors.)

II. **Borrower Receipt of Appraisal**

The lender shall ensure that the borrower is provided a copy of any appraisal report upon completion at no additional cost to the borrower, no less than three days prior to the closing of the loan. The borrower may waive this three-day requirement. The lender may require the borrower to reimburse the lender for the cost of the appraisal.

(Borrower has a right to receive a copy of the appraisal before closing.)

III. **Appraiser Engagement**

A. The lender or anyone specifically authorized by the lender (such as appraisal companies, 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.

(No Broker ordered appraisals can be used by the lender.)

The lender may accept an appraisal prepared by an appraiser for a different lender provided the lender: (1) obtains written assurances that such other lender follows this Code of Conduct in connection with the loan being originated; and (2) determines that such appraisal conforms to its requirements for appraisals and is otherwise acceptable.

(No change, an appraisal completed for one lender can be used by another lender.)

B. The lender's loan production staff, and anyone (i) who is compensated on a commission based upon the successful completion of a loan or (ii) who reports to anyone 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 an assignment or for inclusion on a list of approved appraisers or a do not use list; and
- (2) from having any substantive communications with an appraiser relating to or having an impact on valuation, including ordering or managing an appraisal assignment.

(No person in loan production and no person compensated based on loan production can be involved in the selection of the appraiser, in communicating with the appraiser about the valuation, ordering or management of the appraisal or on adding an appraiser to an approved list or putting them on a "do not use" list.)

If absolute lines of independence cannot be achieved as a result of the lender's small size 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.

(A "small lender" with limited staff must still have safeguards in place to ensure appraiser independence.)

C. Any employee or agent of the lender tasked with selecting appraisers for an approved panel must be (1) appropriately trained and qualified in the area of real estate appraisals, and (2) in the case of an employee of the lender, wholly independent of the loan production staff and process.

(Whoever is responsible for deciding who is on the approved appraiser list must be trained in appraisals and must be independent of loan production.)

IV. **Prevention of Improper Influences on Appraisers**

A. In underwriting a loan, the lender shall not utilize any appraisal report:

(1) prepared by an appraiser employed by:

- (a) the lender;
- (b) an affiliate of the lender;
- (c) an entity that is owned, in whole or in part, by the lender; or
- (d) an entity that owns, in whole or in part, the lender.

(2) prepared by an appraiser

- (a) employed,
- (b) engaged as an independent contractor, or
- (c) otherwise retained by any appraisal company or any appraisal management

company affiliated with, or that owns or is owned, in whole or in part by, the lender or an affiliate of the lender.

*("A." above states neither the lender's staff appraisers nor appraisers that are retained by an entity owned in any way by the lender can be used to prepare appraisals used in underwriting the loan **unless** the provisions that follow in section "B" are observed.)*

B. **Unless:**

(1) the appraiser or the company for which the appraiser works, reports to a function of the lender independent of sales or loan production; and

(2) employees in the sales or loan production functions of the lender have no involvements in the operations of the appraisal functions and play no role in selecting, retaining, recommending, or influencing the selection of any appraiser or for inclusion on an approved list or do not use list; and

(3) employees in the sales or loan production functions of the lender are not allowed to have any substantive communications with an appraiser, relating to or having an impact on valuation or to be provided information about which appraiser has been given a particular appraisal assignment before completion of that assignment; and

(4) the lender, or its agents, do not provide the appraiser any estimated or target value of the property or the loan amount applied for (except that a copy of the sales contract for purchase transactions may be provided); and

(5) the appraiser's compensation does not depend in any way on the value arrived at in any appraisal or upon the closing of the loan for which the appraisal was completed; and

(6) the lender or its agents has adopted written policies and procedures implementing this Code of Conduct, including, adequate training and disciplinary rules on appraiser independence and has mechanisms in place to report and discipline anyone who violates these policies and procedures; and

(7) the lender's appraisal functions are either annually audited by an external auditor or are subject to federal or state regulatory examination, and, the lender promptly provides to Fannie Mae or Freddie Mac the results of any adverse, negative, or irregular findings of such audits indicating non-compliance with any provision of this Code of Conduct; and

(8) the lender and any entity described in section IV.A. providing the appraisal to the lender recognize that, once the Independent Valuation Protection Institute is established, the Institute will receive complaints for review and referral regarding non-compliance with the Code of Conduct.

(Section "B" requires that if the lender or any entity related to the lender is providing the appraisal service, the lender must make certain all functions of the appraisal service are independent of sales and loan production, including: who the appraiser reports to; selection of or refusal to use any particular appraiser; communications with the appraiser; and, appraiser compensation. The lender must also ensure written policies are in place for auditing {by an external auditor}, training of these policies and procedures, and also reporting and disciplining when they are violated.)

C. In underwriting a loan, the lender shall not use an appraisal report prepared by an entity that is affiliated with, another entity that is engaged by the lender to provide other settlement services for the same transaction, unless the entity that provides the appraisal:

(1) has adopted policies and procedures implementing this Code of Conduct, including adequate training and disciplinary rules on appraiser independence and has mechanisms in place to report and discipline anyone who violates these policies and procedures;

(2) recognizes that, once the Independent Valuation Protection Institute is established, the Institute will receive complaints for review and referral regarding non-compliance with the Code of Conduct. Referrals and reports shall be made to Fannie Mae and/or Freddie Mac regarding such complaints.

(A lender that gets appraisals from a company that also provides other types of settlement services (title, flood...) to the lender must ensure that the engaged company has adopted policies and procedures, including training and disciplinary rules, consistent with the Code of Conduct and that any complaints against the engaged company will be referred to the Independent Valuation Protection Institute.)

D. Notwithstanding the requirements herein, the lender also may use in-house staff appraisers to (i) order appraisals, (ii) conduct appraisal reviews or other quality control, (iii) use internal automated valuation models, or (iv) prepare appraisals in connection with transactions other than mortgage origination transactions (e.g. loan workouts).

(There is no prohibition on lenders using staff appraisers to perform non-origination functions such as QC and loan workouts.)

E. The provisions of this section do not apply to institutions (including non-banking institutions) that meet the definition of a “small bank” and which Freddie Mae or Fannie Mae determines would suffer hardship due to the provisions, and which otherwise adhere to this Code of Conduct.

(Fannie and Freddie reserve the right to exempt certain “small lenders” from Section IV as long as they adhere to the remaining Sections.)

V. The Independent Valuation Protection Institute

An Independent Valuation Protection Institute (Institute) shall be created as approved by the parties. The lender will provide information to appraisers and borrowers regarding the availability of the Institute's services, which are expected to include: (1) a telephone hotline and email address to receive any complaints of Code of Conduct non-compliance, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, which the Institute will review and report; and (2) the publication and promotion of best practices for independent valuation. The lender shall not retaliate, in any manner or method, against the person or entity that makes a complaint to the Institute.

(More information concerning the IVPI is expected to be developed as it does not yet exist.)

VI. Appraisal Quality Control Testing

The lender shall quality control test a randomly selected 10 percent of the appraisals or valuations that are used by the lender, including the results of AVMs, BPOs, or “desktop” evaluations. The lender shall provide to Fannie Mae or Freddie Mac a report of any adverse, negative, or irregular findings of such quality control testing, and any findings indicating non-compliance with any provision of this Code of Conduct, with respect to loans sold to Fannie Mae and Freddie Mac. The Enterprise may enforce all applicable rights and remedies, including requiring the lender to repurchase mortgages or the Enterprise’s participation interest in mortgages.

(Lenders must QC 10%, report their findings and be prepared to buy back any loans that are found to be in conflict with their agreements with Fannie Mae and Freddie Mac.)

VII. Referrals of Appraisal Misconduct Reports

Any lender that has a reasonable basis to believe an appraiser or appraisal management company is violating applicable laws, or is otherwise engaging in unethical conduct, shall promptly refer the matter to the applicable State appraiser certifying and licensing agency or other relevant regulatory bodies.

(Lenders are required to report any appraiser they believe has violated applicable laws to the appraiser’s state regulator.)

VIII. Representations and Warranties

A lender shall certify, warrant, and represent that the appraisal report was obtained in a manner in compliance with this Code of Conduct. If the Enterprise determines, on its own or from a referral made by the Institute, that a lender is in breach of a material aspect of this Code of Conduct or in violation of a provision of the Code by a complaint referred from the Institute, the Enterprise will enforce all applicable rights and remedies, including suspension or termination of the lender’s eligibility to sell loans to the Enterprise, if the lender fails to remediate.

(Fannie Mae or Freddie Mac can enforce their remedies (buy back) if they find that a lender has used an appraisal that has not been engaged or completed in compliance with the Code of Conduct.)

IX. Scope of Code

Nothing in this Code of Conduct 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; (2) affect the acceptable scope of work for an appraiser in connection with a particular assignment; or (3) require the lender or any third party acting on behalf of the lender to take any action prohibited by federal or state law or regulation.