



## **NORTH CAROLINA APPRAISAL BOARD**

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Home Valuation Code of Conduct Response  
Attn: Senior Vice President, Credit Risk Oversight  
Freddie Mac  
1551 Park Run Drive, Mail Stop D2Z  
McLean, VA 22102-3110

Dear Sir or Madam:

As you know, the New York Attorney General, Fannie Mae, Freddie Mac and the Office of Federal Housing Enterprise Oversight (OFHEO) have entered into an agreement to resolve some issues in an ongoing investigation by the State of New York into the lending and valuation practices of Fannie Mae and Freddie Mac. OFHEO is an independent agency in the U.S. Department of Housing and Urban Development that oversees Fannie Mae and Freddie Mac. This particular agreement came about partly due to pressure from lenders and mortgage brokers for appraisers to hit a number, resulting in massive loan defaults and foreclosures. The agreement creates the Home Valuation Protection Code that establishes requirements for appraisal selection, solicitation, and compensation among other things. It also establishes the Independent Valuation Protection Institute to monitor and study the issue of valuation processes as well as market practices and standards. The motivation for this agreement is to protect consumers harmed by mortgage fraud.

The agreement adopts a Home Valuation Code of Conduct (HVCC). This code states that lenders and mortgage brokers cannot attempt to influence value by any of several methods, such as withholding timely payment of an appraisal fee, withholding from or promising future business to an appraiser, requesting that appraiser provide a desired valuation in report, requiring the appraiser to do an estimate of value before the appraisal is ordered or completed, and removing an appraiser from a list of qualified appraisers without written prior notice. In addition,

lenders must provide the borrower with a copy of the appraisal no less than 3 days before closing.

The efforts of the New York Attorney General are, for the most part, laudable and long overdue. Many items in HVCC are welcome and will protect appraisers as well as consumers. There are, however, some areas that are troubling, particularly in light of NC law.

There are several bills currently pending in Congress that would address the issue of mortgage fraud and how it has led to the downturn in the housing market. This agreement may be a way for Fannie/Freddie to try to undermine efforts in Congress. By touting this agreement, they may be attempting to divert attention from their part in the mortgage crisis. This crisis was caused by poor lending practices. Appraisers are not responsible for this crisis, and should not be the ones to pay for it.

Another area of concern is that the HVCC allows lenders to use broker price opinions, which are illegal in NC. The agreement allows lenders to do quality control checks by use of additional appraisals, automated valuation models (AVMs) and broker price opinions (BPOs). AVMs are essentially computer programs that utilize public data to estimate value. They are generally run in the office of the lender by an employee who is not an appraiser, and are not a major issue in North Carolina. A bigger problem is use of broker price opinions. BPOs are considered appraisals in North Carolina, and pursuant to N.C.G.S. 93E-1-3(c), cannot be performed for compensation unless they are part of a brokerage agreement to assist the seller or buyer of real estate. Real estate agents should value property only when determining the price of a property for their clients. Only appraisers may determine the value of real property in North Carolina for lending decisions.

The major concern is that the agreement stated that the lender or a third party authorized by the lender must order the appraisal. Mortgage brokers and real estate agents cannot order the appraisal. This agreement will result in the dramatic rise of the use of appraisal management companies (AMCs).

AMCs are not licensed in North Carolina or by any federal entity. A lender contracts with AMC, who then contracts with appraiser to do the appraisal. The AMC gets the full appraisal fee and pays a percentage to the appraiser who actually performs the appraisal. Most experienced and well-qualified appraisers will not work for AMCs due to the low fees they pay. The result is that less-experienced and less qualified appraisers perform appraisals for AMCs, which results in a poorer quality of appraisals and a less reliable value conclusion. There are no state or federal laws prohibiting lenders from pressuring the AMC to make sure the appraisal comes in at the desired value. Likewise, there are no state or federal laws prohibiting AMCs from pressuring appraisers to hit a number. Placing an unregulated entity in the middle of the appraisal ordering process defeats the entire purpose of the HVCC and does nothing to protect the public interest.

In 1991, pursuant to FIRREA, states began licensing and regulating appraisers. Since that time, state regulatory agencies have had direct experience with receiving and processing complaints from consumers, lenders, governmental agencies and others. The proposed Independent Valuation Protection Institute is supposed to mediate complaints or forward

complaints to federal or state agencies. Since state regulation already exists for appraisers and, in many states, for lenders and mortgage brokers, this is a duplication of effort that is not necessary. The massive amount of funding to be spent on the Institute is a total waste of money for a program that will not serve consumers in any meaningful way.

Another troubling part of the agreement is the prohibition of all lenders from using staff appraisers to assist in making underwriting decisions. Most banks and major financial institutions have done an excellent job in utilizing staff appraisers. A salaried appraiser is generally under no pressure to hit a number, as the staff appraiser's sole interest is ascertaining the value of the collateral to protect the bank's assets. Staff appraisers for mortgage companies, on the other hand, have been under pressure by the loan originator to make the loan work, as the originator often is compensated only if the loan closes. This type of lender should have restrictions on the ordering of appraisals in order to separate the loan originator from unduly influencing the staff appraiser.

The North Carolina Appraisal Board urges you to reconsider portions of the agreement as outlined above. Although it contains some items that are of benefit to the consumer and the appraiser, ultimately it may lead to further damage to the valuation process and to consumers who rely on this process to make one of the largest investments they will ever make.

Very truly yours,

Henry E. Faircloth  
Board Chairman

Philip W. Humphries  
Executive Director

cc: Fannie Mae  
Roy Cooper, Esq, Attorney General for the State of North Carolina