



THE APPRAISAL FOUNDATION

*Authorized by Congress as the Source of Appraisal  
Standards and Appraiser Qualifications*

COPY

April 29, 2008

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:

The Appraisal Foundation sincerely appreciates the opportunity to comment on the proposed agreements involving Fannie Mae, Freddie Mac, OFHEO, and the New York Attorney General's Office.

As background, The Appraisal Foundation is authorized by Congress as the source of appraisal standards and appraiser qualifications in the United States. It is important to note that The Appraisal Foundation is an educational organization and not a trade association; in addition, over 110 organizations with an interest in the valuation profession are affiliated with us. These entities include professional appraiser associations, governmental agencies, major financial institutions, for-profit and not-for-profit companies, appraisal education providers, and others (including Fannie Mae and Freddie Mac).

The Appraisal Foundation fulfills its congressional charge through the actions of our two independent boards, the Appraisal Standards Board (ASB) and the Appraiser Qualifications Board (AQB). The ASB develops and promulgates the Uniform Standards of Professional Appraisal Practice (USPAP), which are the established national standards for appraiser ethics and are specifically referenced in the Home Valuation Code of Conduct.

An absolutely fundamental aspect of USPAP is an appraiser's obligation to be independent, impartial, objective, and to perform assignments without bias. Appraiser independence represents the very essence of an appraiser's ethical behavior, and an appraiser's obligations are identified prominently in the Ethics Rule in USPAP. In addition, the ASB has offered practical guidance to appraisers pertaining to appraiser independence issues in the form of Advisory Opinion 19, *Unacceptable Assignment Conditions in Real Property Appraisal Assignments*.

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Given the criticality of appraiser independence as it relates to USPAP, The Appraisal Foundation strongly supports any measures designed to bolster appraiser independence. Therefore, we applaud the concept of the proposed agreements. With that in mind, we offer the following comments pertaining to specific areas of the proposed agreements.

The following comments pertain specifically to the proposed Home Valuation Code of Conduct (HVCC):

**Item I.8**

This provision makes reference to the Uniform Standards of Professional Appraisal Practice (USPAP). For absolute clarity, we recommend citing the source of USPAP. Suggested rewording (proposed new text is underlined) is as follows:

*...allowing the removal of an appraiser from a list of qualified appraisers used by any entity, without prior written notice to such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice (USPAP) (as promulgated by the Appraisal Standards Board of The Appraisal Foundation) or state licensing standards, substandard performance, or otherwise improper or unprofessional behavior.*

**Item I.9**

This provision would permit lenders to obtain a second or subsequent appraisal if they had "a reasonable basis to believe that the initial appraisal was flawed or tainted." The "reasonable basis" language is problematic as a lender could simply conclude that an initial appraisal was "flawed" because the appraised value was below the owner's estimated value or the value needed to facilitate the loan. A suggested rewording (proposed new text is underlined) is as follows:

*...ordering, obtaining, using, or paying for a second or subsequent appraisal or automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted. The basis for a second or subsequent appraisal cannot simply be due to the appraiser's opinion of value being less than anticipated in order to facilitate the loan transaction, and such basis must be clearly and appropriately noted in the loan file, unless such appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process.*

## *Item II*

This provision would require the lender to provide the borrower with a copy of an appraisal report "immediately upon completion, and in any event no less than three days prior to the closing of the loan." There are two concerns with this provision. The first involves the terminology "immediately upon completion," which is different than when the lender actually *receives* the appraisal report from the appraiser.

The second concern has to do with the borrower's expectations when receiving a copy of the appraisal. Uninformed borrowers may believe the copy of the appraisal report they receive will allow them a certain standing with the appraiser that they do not possess. The borrower may also fail to understand that the appraisal report was designed for the appraiser's client and intended users, and as such, may not be understandable to them. Suggested rewording (proposed new text is underlined and proposed deleted text is shown as strikethrough) is as follows:

*The lender shall ensure that the borrower is provided, free of charge, a copy of any appraisal report concerning the borrower's subject property ~~immediately upon completion~~ receipt by the lender, and in any event 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. The lender shall attach a prominent notice to the copy of the appraisal report, notifying the borrower that they are not an intended user of the appraisal report and as such, may not fully understand its contents. The notice shall also inform the borrower that the appraiser may have limited or no liability to the borrower, and that the copy of the appraisal report is for informational purposes and may not be used for other intended uses.*

## *Item V*

This provision would require those employees of a lender or appraisal management company tasked with selecting appraisers for an approved panel or substantive appraisal review to be "appropriately trained and qualified in the area of real estate and appraisals." However, there are no established qualifications or criteria to accomplish such training. The Appraiser Qualifications Board (AQB) of The Appraisal Foundation is authorized by Congress to set the minimum education, experience and examination criteria for state certification of real estate appraisers. As such, the AQB should be considered a resource to develop such qualifications for the stated purpose.

*Item VI*

This provision would prohibit certain parties, including a staff appraiser working directly for a lender, from performing an initial appraisal. We are unaware of any evidence suggesting that an appraiser working directly for a lender is any less independent than a fee appraiser. In fact, from a historical perspective, appraisers working directly for lenders have had a stigma that they are more "conservative" than fee appraisers. It is our belief that a staff appraiser working directly for a lender that maintains proper controls and firewalls, is entirely capable of remaining independent, impartial, and objective, and performing assignments without bias. Such controls could include ensuring that staff appraisers report to the lender's risk management personnel, as opposed to loan production personnel. Suggested rewording (proposed new text is underlined) is as follows:

*In underwriting a loan, unless appropriate controls are in place to ensure appraiser independence, the lender shall not utilize any appraisal report prepared by an appraiser employed by:*

- (1) the lender;*
- (2) an affiliate of the lender;*
- (3) an entity that is owned, in whole or in part, by the lender;*
- (4) an entity that owns, in whole or in part, the lender*
- (5) a real estate "settlement services" provider, as that term is defined in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq.;*
- (6) an entity that is owned, in whole or in part, by a "settlement services" provider.*

*The lender also shall not use any appraisal report obtained by or through an appraisal management company that is owned by the lender or an affiliate of the lender, provided that the foregoing prohibitions do not apply where the lender has an ownership interest in the appraisal management company of 20% or less and where (i) the lender has no involvement in the day-to-day business operations of the appraisal management company, (ii) the appraisal management company is operated independently, and (iii) the lender plays no role in the selection of individual appraisers or any panel of approved appraisers used by the appraisal management company.*

*Notwithstanding these prohibitions, the lender may use in-house staff appraisers to (i) order appraisals, (ii) conduct appraisal reviews or other quality control, whether pre-funding or post-funding, (iii) develop, deploy, or use internal automated valuation models, or (iv) prepare appraisals in connection with transactions other than mortgage origination transactions (e.g. loan workouts).*

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### *Item VII*

This provision would require lenders to report the results of their quality control testing to the IVPI and "any relevant regulatory bodies." The language is problematic due to a lack of specified frequency of reporting, as well as identifying applicable regulatory agencies. Suggested rewording (proposed new text is underlined and proposed deleted text is shown as strikethrough) is as follows:

*The lender agrees that it shall quality control test, by use of retroactive or additional appraisal reports or other appropriate method, of a randomly-selected 10 percent (or other bona fide statistically significant percentage) of the appraisals or valuations which are used by the lender, including the results of automated valuation models, broker's price opinions or "desktop" evaluations. This testing shall occur no less frequently than quarterly, and ~~The lender shall report the results of such quality control testing to the Independent Valuation Protection Institute and any relevant regulatory bodies~~ all of the lender's applicable financial regulatory agencies. The quality testing should be concluded no later than 90 days after the close of a quarterly test period. Therefore, the results of testing are required 120 days after the close of a quarterly test period."*

### *Item IX*

This provision would require a lender who has a reasonable basis to believe an appraiser is violating applicable laws, or is otherwise engaging in unethical conduct, to "promptly refer the matter to the Independent Valuation Protection Institute and to the applicable State appraiser certifying and licensing agency."

While The Appraisal Foundation philosophically agrees with placing this obligation on the lender, we believe we would be remiss if we did not convey our opinion pertaining to the lack of consistent and appropriate enforcement by state appraiser regulatory agencies. While it may be true that some states are doing an acceptable job of enforcement, the fact is that the majority are not. In fact, there are some states whose enforcement record is woefully inadequate.

As a result, it is our opinion that any meaningful change cannot be accomplished without addressing state appraiser regulatory agencies. We believe that additional resources are needed in many states. In addition, we believe there needs to be consistent oversight and monitoring of the individual state appraiser regulatory agencies by the Appraisal Subcommittee.

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We recommend enabling the Appraisal Subcommittee with additional authority to provide grants and/or funding to the states. We also suggest empowering the Appraisal Subcommittee with additional authority to fine or otherwise penalize states that are deemed to be out of compliance.

The following comments pertain specifically to the proposed *Independent Valuation Protection Institute (IVPI)*:

#### *Board of Directors*

In order to ensure the public trust as well as diversity and objectivity in decision making by the board, the board member selection process should be an open and transparent one. The prohibition against allowing board members to have any financial connection whatsoever with Fannie Mae, Freddie Mac or any loan originators with whom Fannie Mae and Freddie Mac engage, appears to be too severe. The board would be well served to have some members with that type of background, but the number of those members should be limited to a minority of the board.

#### *Primary Functions of the IVPI*

The primary functions of the IVPI appear to be: (1) perform studies of the valuation regulatory environment, market practices and standards, (2) establish complaint hot lines for consumers and appraisers, (3) perform complaint mediation, and (4) compilation of quality control data from financial institutions.

There is a serious lack of statistical information regarding the valuation regulatory environment, market practices and standards. The only significant study that we are aware of is a 2003 study performed by the Government Accountability Office (GAO). The Appraisal Subcommittee issues an annual report to Congress on its reviews of the state appraiser regulatory agencies, but it does not contain analyses. The IVPI, with a combination of financial wherewithal and access to data from the general public and financial institutions, could be in a unique position to fill this void.

In addition to fielding complaints from the general public, the consumer hotline can perform two other important functions: consumer education and the compilation of complaint data. A series of consumer education brochures could be developed, based in part by the types of inquiries and complaints being received, that could either be mailed to interested parties or accessed via a website. In addition, the tracking of complaints that are forwarded to state and federal regulators (including such information as the nature of the complaint, time it took to adjudicate and the final disposition of the complaint) could provide useful data for the studies referenced above.

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Regarding mediation of complaints, IVPI could be well-served to look at the operations of the Financial Industry Regulatory Authority (FINRA). Created in July 2007, this private organization has established a comprehensive dispute resolution mechanism, many components of which could apply to the IVPI.

### *Housing of the IVPI*

The agreement states that: *"the institute may be affiliated with an existing academic, professional association and/or industry organization."* Much like the selection process for the Board of Directors, we believe that the decision on where to house the institute should be an open and transparent process. A selection process using a Request for Proposals (RFP) or Request for Information (RFI) format would be preferred. Given the short time frame to create and commence operations of the IVPI, aligning it with an existing organization appears to make sense.

### *Funding of the IVPI*

The funding mechanism contained in the agreement is for a period of only five years. It is unclear how or if the IVPI will be able to obtain funding to operate beyond this time frame. A provision added to the agreement which would provide the authority for the IVPI, if it so chose, to establish a fee structure for sustainability in the future would be beneficial and alleviate concerns in future years.

In closing, The Appraisal Foundation again wishes to express its sincere appreciation for the opportunity to comment on the proposed agreements. It would be our pleasure to be considered as a resource to assist in the further development and implementation of these agreements.

If you have any questions or need additional information, please feel free to contact me by calling (202) 624-3040, or via e-mail at [david@appraisalfoundation.org](mailto:david@appraisalfoundation.org).

Sincerely,



David S. Bunton  
President