

The new document 2,577 words

The old document 1,576 words

New comments are **Bold**

Removed comments are ~~*linked-out-and-italicized*~~

1 Home Valuation Code of Conduct

2

3 I. Appraiser Independence Safeguards

4 **A. An “appraiser” must be, at a minimum, licensed or certified by the state in which the**
5 **property to be appraised is located.**

6

7 B. No employee, director, officer, or agent of the lender, or any other third party acting as joint
8 venture partner, independent contractor, **appraisal company**, appraisal management company,
9 or partner on behalf of the lender, shall influence or attempt to influence the development,
10 reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation,
11 ~~*instruction*~~, inducement, intimidation, bribery, or in any other manner including but not limited
12 to:

13

14 (1) withholding or threatening to withhold timely payment **or partial payment** for an
15 appraisal report;

16

17 (2) withholding or threatening to withhold future business for an appraiser, or demoting
18 or terminating or threatening to demote or terminate an appraiser;

19 ~~*(An “Appraiser” must be licensed or certified by the state in which the property to be appraised is located)*~~

20

21 (3) expressly or impliedly promising future business, promotions, or increased
22 compensation for an appraiser;

23

24 (4) conditioning the ordering of an appraisal report or the payment of an appraisal fee or
25 salary or bonus on the opinion, conclusion, or valuation to be reached, or on a
26 preliminary value estimate requested from an appraiser;

27

28 (5) requesting that an appraiser provide an estimated, predetermined, or desired valuation
29 in an appraisal report **prior to the completion of the appraisal report, or requesting**
30 **that an appraiser** provide estimated values or comparable sales at any time prior to the
31 appraiser’s completion of an appraisal report;

32

33 (6) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a
34 subject property or a proposed or target amount to be loaned to the borrower, except that
35 a copy of the sales contract for purchase transactions may be provided;

36

37 (7) providing to an appraiser, **appraisal company**, appraisal management company, or
38 any entity or person related to the appraiser, appraisal company, or appraisal management
39 company, stock or other financial or non-financial benefits;

40

41 (8) allowing the removal of an appraiser from a list of qualified appraisers, **or the**
42 **addition of an appraiser to an exclusionary list of disapproved appraisers**, used by
43 any entity, without **prompt** written notice to such appraiser, which notice shall include
44 written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards
45 of Professional Appraisal Practice (USPAP) or state licensing standards, substandard
46 performance, improper or unprofessional behavior **or other substantive reason for**
47 **removal (except that this prohibition will not preclude the management of appraiser**
48 **lists for bona fide administrative reasons based on written, management-approved**
49 **policies);**

50
51 (9) ordering, obtaining, using, or paying for a second or subsequent appraisal or
52 automated valuation model (AVM) in connection with a mortgage financing transaction
53 unless: (i) there is a reasonable basis to believe that the initial appraisal was flawed or
54 tainted and such basis is clearly and appropriately noted in the loan file, or (ii) unless
55 such appraisal or automated valuation model is done pursuant to written, pre-established
56 bona fide pre- or post-funding appraisal review or quality control process **or**
57 **underwriting guidelines, and so long as the lender adheres to a policy of selecting**
58 **the most reliable appraisal, rather than the appraisal that states the highest value;**
59 or

60
61 (10) any other act or practice that impairs or attempts to impair an appraiser's
62 independence, objectivity, or impartiality **or violates law or regulation, including, but**
63 **not limited to, the Truth in Lending Act (TILA) and Regulation Z, or the USPAP.**

64
65 C. Nothing in this section shall be construed as prohibiting the lender (or any third party acting
66 on behalf of the lender) from requesting that an appraiser (i) provide additional information or
67 explanation about the basis for a valuation, or (ii) correct objective factual errors in an appraisal
68 report.

69 70 II. Borrower Receipt of Appraisal

71 The lender shall ensure that the borrower is provided ~~free of charge~~ a copy of any appraisal
72 report concerning the borrower's subject property **promptly**~~immediately~~ upon completion at
73 no additional cost to the borrower, and in any event no less than three days prior to the closing of
74 the loan. The borrower may waive this three-day requirement. The lender may require the
75 borrower to reimburse the lender for the cost of the appraisal.

76 77 III. Appraiser Engagement

78 A. The lender or any third party specifically authorized by the lender (including, but not limited
79 to, **appraisal companies**, appraisal management companies, and correspondent lenders) shall be
80 responsible for selecting, retaining, and providing for payment of all compensation to the
81 appraiser. The lender will not accept any appraisal report completed by an appraiser selected,
82 retained, or compensated in any manner by any other third party (including mortgage brokers
83 and real estate agents). **The lender may accept an appraisal prepared by an appraiser for a**
84 **different lender, including where a mortgage broker has facilitated the mortgage**
85 **application (but not ordered the appraisal), provided the lender: (1) obtains written**
86 **assurances that such other lender follows this Code of Conduct in connection with the loan**

87 **being originated; and (2) determines that such appraisal conforms to its requirements for**
88 **appraisals and is otherwise acceptable.**
89

90 B. All members of the lender's loan production staff, as well as any person (i) who is
91 compensated on a commission basis upon the successful completion of a loan or (ii) who reports,
92 ultimately, to any officer of the lender ~~other than either the Chief Compliance Officer, General~~
93 ~~Counsel, or any officer who is~~ not independent of the loan production staff and process, shall be
94 forbidden from (1) selecting, retaining, recommending, or influencing the selection of any
95 appraiser for a particular appraisal assignment or for inclusion on a list or panel of appraisers
96 approved to perform appraisals for the lender **or forbidden from performing such work;** and
97 **(2) having any substantive communications with an appraiser or appraisal management**
98 **company relating to or having an impact on valuation,** including ordering or managing an
99 appraisal assignment. ~~[(3) working together in the same organizational unit, or being directly~~
100 ~~supervised by the same manager, as any person who is involved in the selection, retention,~~
101 ~~recommendation of, or communication with any appraiser.]~~ If absolute lines of independence
102 cannot be achieved as a result of the **lender's**~~originator's~~ small size and limited staff, the
103 lender must be able to clearly demonstrate that it has prudent safeguards to isolate its collateral
104 evaluation process from influence or interference from its loan production process.
105

106 C. Any employee of the lender (or if the lender retains an **appraisal company or** appraisal
107 management company, any employee of that company) tasked with selecting appraisers for an
108 approved panel or substantive appraisal review must be (1) appropriately trained and qualified in
109 the area of real estate appraisals, and (2) in the case of an employee of the lender, wholly
110 independent of the loan production staff and process.
111

112 IV. Prevention of Improper Influences on Appraisers

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

114 (1) prepared by an appraiser employed by:

- 115 (a) the lender;
 - 116 (b) an affiliate of the lender;
 - 117 (c) an entity that is owned, in whole or in part, by the lender; or
 - 118 (d) an entity that owns, in whole or in part, the lender.
- 119

120 **(2) prepared by an appraiser**

- 121 **(a) employed,**
 - 122 **(b) engaged as an independent contractor, or**
 - 123 **(c) otherwise retained by any appraisal company or any appraisal**
124 **management company affiliated with, or that owns or is owned, in whole or**
125 **in part by, the lender or an affiliate of the lender.**
- 126

127 ~~[The lender also shall not use any appraisal report obtained by or through an appraisal~~
128 ~~management company that is owned by the lender or an affiliate of the lender, provided that the~~
129 ~~foregoing prohibitions do not apply where the lender has an ownership interest in the appraisal~~
130 ~~management company of 20% or less and where (i) the lender has no involvement in the day-to-~~
131 ~~day business operations of the appraisal management company, (ii) the appraisal management~~
132 ~~company is operated independently, and (iii) the lender plays no role in the selection of~~

133 ~~individual appraisers or any panel of approved appraisers used by the appraisal management~~
134 ~~company.]~~

135

136 **B. Section IV.A. shall apply unless:**

137 (1) the appraiser or, if an affiliate, the company for which the appraiser works,
138 reports to a function of the lender independent of sales or loan production;

139

140 (2) employees in the sales or loan production functions of the lender have no
141 involvement in the operations of the appraisal functions and play no role in
142 selecting, retaining, recommending, or influencing the selection of any appraiser for
143 any particular appraisal assignment or for inclusion on a list or panel of appraisers
144 approved to perform appraisals for the lender or forbidden from performing such
145 work;

146

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

152

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

157

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

161

162 (6) the lender and any appraisal company or any appraisal management company
163 providing the appraisal to the lender has adopted written policies and procedures
164 implementing this Code of Conduct, including, but not limited to, adequate training
165 and disciplinary rules on appraiser independence (including the principles detailed
166 in Part I of this Code of Conduct) and has mechanisms in place to report and
167 discipline anyone who violates these policies and procedures;

168

169 (7) the lender's appraisal functions are either annually audited by an external
170 auditor or are subject to federal or state regulatory examination, and, unless
171 prohibited by law, the lender promptly provides to Fannie Mae or Freddie Mac the
172 results of any adverse, negative, or irregular findings of such audits and
173 examinations indicating non-compliance with any provision of this Code of
174 Conduct, whether or not the examination was conducted for the purpose of
175 determining compliance with this Code of Conduct; and

176

177 (8) the lender and any entity described in section IV.A. providing the appraisal to the
178 lender recognize that, once the Independent Valuation Protection Institute is established,

179 the Institute will receive complaints for review and referral regarding non-compliance with
180 the Code of Conduct. Referrals and reports shall be made to Fannie Mae and/or Freddie
181 Mac regarding such complaints and the Institute will provide information on the results of
182 complaint reviews to Fannie Mae and/or Freddie Mac and make them available to the
183 other parties to the Home Value Protection Program and Cooperation Agreement.
184

185 **C. In underwriting a loan, the lender shall not use an appraisal report prepared by an**
186 **entity that is affiliated with, or that owns or is owned, in whole or in part by, another entity**
187 **that is engaged by the lender to provide other settlement services, as that term is defined in**
188 **the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq., for the same**
189 **transaction, unless the entity that provides the appraisal:**

190
191 (1) has adopted written policies and procedures implementing this Code of Conduct,
192 including, but not limited to, adequate training and disciplinary rules on appraiser
193 independence (including the principles detailed in this Code of Conduct) and has
194 mechanisms in place to report and discipline anyone who violates these policies and
195 procedures;
196

197 (2) recognizes that, once the Independent Valuation Protection Institute is
198 established, the Institute will receive complaints for review and referral regarding
199 non-compliance with the Code of Conduct. Referrals and reports shall be made to
200 Fannie Mae and/or Freddie Mac regarding such complaints and the Institute will
201 provide information on the results of its review of such complaints to Fannie Mae
202 and/or Freddie Mac and make them available to the other parties to the Home
203 Value Protection Program and Cooperation Agreement.
204

205 ~~*[The lender will establish a telephone hotline and an email address to receive any complaints*~~
206 ~~*from appraisers, individuals, or any other entities concerning the improper influencing or*~~
207 ~~*attempted improper influencing of appraisers or the appraisal process, which hotline and email*~~
208 ~~*address shall be attended only by a member of the office of the General Counsel, Chief*~~
209 ~~*Compliance Officer or other independent officer. In addition: (1) each appraiser now or*~~
210 ~~*hereafter on any list of approved appraisers, or, upon retention by the lender, will be notified, in*~~
211 ~~*a separate document, of the hotline and email address and their purpose; and (2) each borrower,*~~
212 ~~*as part of a cover letter accompanying the provided appraisal, will be notified of the hotline and*~~
213 ~~*email address and their purpose. Within 72 hours of receiving any complaint, the lender will*~~
214 ~~*begin a preliminary investigation of the complaint and upon completing the inquiry (or, after a*~~
215 ~~*period not to exceed 60 days, whichever shall come first) shall notify the Independent Valuation*~~
216 ~~*Protection Institute and any relevant regulatory bodies of any indication of improper conduct.*~~
217 ~~*The name and any identifying information of the person or entity that has filed such a complaint*~~
218 ~~*shall be kept in strictest confidence by the office of the General Counsel, Chief Compliance*~~
219 ~~*Officer or other independent officer, except as required by law. The lender shall not retaliate, in*~~
220 ~~*any manner or method, against the person or entity which makes such a complaint.]*~~
221

222 D. Notwithstanding **the requirements herein**~~*[these prohibitions]*~~, the lender **also** may use in-
223 house staff appraisers to (i) order appraisals, (ii) conduct appraisal reviews or other quality
224 control, whether pre-funding or post-funding, (iii) develop, deploy, or use internal automated

225 valuation models, or (iv) prepare appraisals in connection with transactions other than mortgage
226 origination transactions (e.g. loan workouts), **if it complies with the terms of this Code of**
227 **Conduct.**

228
229 **E. The provisions of this section do not apply to institutions (including non-banking**
230 **institutions) that meet the definition of a “small bank” as set forth in 12 U.S.C. § 2908, and**
231 **which Freddie Mae or Fannie Mae determines would suffer hardship due to the provisions,**
232 **and which otherwise adhere to this Code of Conduct.**

233
234 **V. The Independent Valuation Protection Institute**
235 **An Independent Valuation Protection Institute (Institute) shall be created as approved by**
236 **the parties. Subject to section IX, when the Institute is established, the lender will provide**
237 **information to appraisers and borrowers regarding the availability of the Institute's**
238 **services, which are expected to include: (1) a telephone hotline and email address to receive**
239 **any complaints of Code of Conduct non-compliance, including complaints from appraisers,**
240 **individuals, or other entities concerning the improper influencing or attempted improper**
241 **influencing of appraisers or the appraisal process, which the Institute will review and**
242 **report as provided in IV.B(8) and IV.C(2) of this Code of Conduct; and (2) the publication**
243 **and promotion of best practices for independent valuation. The lender shall not retaliate, in**
244 **any manner or method, against the person or entity that makes a complaint to the Institute.**

245
246 **VI. Appraisal Quality Control Testing**
247 The lender agrees that it shall quality control test, by use of retroactive or additional appraisal
248 reports or other appropriate method, a randomly selected 10 percent (or other bona fide
249 statistically significant percentage) of the appraisals or valuations ~~that~~^{which} are used by the
250 lender, including the results of automated valuation models, broker's price opinions, or
251 “desktop” evaluations. The lender shall **provide to Fannie Mae or Freddie Mac a report of**
252 **any adverse, negative, or irregular findings of such quality control testing, and any findings**
253 **indicating non-compliance with any provision of this Code of Conduct, with respect to**
254 **loans sold to Fannie Mae and Freddie Mac respectively, and the Enterprise may enforce all**
255 **applicable rights and remedies, including requiring the lender to repurchase mortgages or**
256 **the Enterprise's participation interest in mortgages.** *[report the results of such quality control*
257 *testing to the Independent Valuation Protection Institute and any relevant regulatory bodies.]*

258
259 **VII. Referrals of Appraisal Misconduct Reports**
260 Any lender that has a reasonable basis to believe an appraiser **or appraisal management**
261 **company** is violating applicable laws, or is otherwise engaging in unethical conduct, shall
262 promptly refer the matter to the applicable State appraiser certifying and licensing agency **or**
263 **other relevant regulatory bodies.**

264
265 **VIII. Representations and Warranties**
266 A lender shall certify, warrant, and represent that the appraisal report was obtained in a manner
267 in compliance with this Code of Conduct. **If the Enterprise determines, on its own or from a**
268 **referral made by the Institute, that a lender is in breach of a material aspect of this Code of**
269 **Conduct or in violation of a provision of the Code by a complaint referred from the**
270 **Institute, the Enterprise will enforce all applicable rights and remedies, including**

271 **suspension or termination of the lender's eligibility to sell loans to the Enterprise, if the**
272 **lender fails to remediate.**

273

274 IX. Scope of Code

275 Nothing in this Code of Conduct shall be construed to establish new requirements or obligations
276 that: (1) require a lender to obtain a property valuation, or to use any particular method for
277 property valuation (such as an appraisal or automated valuation model) in connection with any
278 mortgage loan or mortgage financing transaction; (2) affect the acceptable scope of work for an
279 appraiser in connection with a particular assignment; **or (3) require the lender or any third**
280 **party acting on behalf of the lender to take any action prohibited by federal or state law or**
281 **regulation.**