

The Home Valuation Code of Conduct

New York State Attorney General Andrew M. Cuomo, Fannie Mae and Freddie Mac (government sponsored enterprises) announced the final agreement of the Home Valuation Code of Conduct (HVCC) on December 23, 2009, to change appraiser selection criteria that will help eliminate conflicts of interest on mortgage appraisals. The agreement has the support of the Federal Housing Finance Administration (FHFA).

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 GSEs have agreed to implement the HVCC beginning May 1, 2009. During 2008, the GSEs received comments from market participants.

The HVCC will be implemented establishing standards on solicitation, selection, compensation, conflicts of interest and appraiser independence. Mortgage brokers and real estate agents are prohibited from selecting appraisers. Lenders are permitted to use "in house" staff appraisers to conduct appraisals. However, the loan production staff is prohibited from (1) selecting, retaining, recommending, or influencing the selection of an appraiser for an appraisal assignment or for inclusion on an appraisal roster and (2) having any substantive conversation with an appraiser or appraisal management company regarding valuation, including ordering or managing an appraisal assignment. The code entitles the borrower to one copy of an appraisal report, free of charge, within 3 days of the closing of the loan.

The Independent Valuation Protection Institute (IVPI) 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 publish and promote best practices for independent valuation. Lenders are prohibited from retaliating against any person or entity that makes a complaint to the IVPI.

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?

Lenders that do not intend to sell their loans to Fannie Mae or Freddie Mac are not obligated to adhere to the HVCC.

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 provisions of the HVCC. 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 HVCC?

The GSEs will apply the new code to lenders selling mortgages on the secondary mortgage market.

What does this agreement mean for the independent appraiser?

Independent appraisers, appraisal companies, and appraisers 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 licenses or certifications.

What does this agreement mean for REALTORS® ?

Individual REALTORS® and licensed real estate agents 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 HVCC if there is an expectation that their loans will be purchased by Fannie Mae or Freddie Mac after May 1, 2009.

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. As mentioned above, Individual REALTORS® and licensed real estate agents cannot serve as a third party between a lender and appraiser. This includes selection, retention, and compensation of an appraiser. A third party, including REALTORS® and 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 may order appraisals directly from an individual appraiser. 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.

Appraiser misconduct action will be conducted by state licensing agencies. What is new?

The code is primarily directed at regulating banks and other mortgage lenders and promoting appraisal independence.

Does the HVCC apply to FHA loans?

No. As of January 15, 2009, only Fannie Mae and Freddie Mac have agreed to adopt the code. The HVCC does not apply to FHA loans and the Federal Home Loan Banks are not participating.

Are lenders prohibited from requesting a second appraisal?

No, lenders are only prohibited from ordering a second appraisal if attempting to influence the outcome of the first appraisal. Section I.B.(9) of the HVCC addresses the issue of second appraisals.

Does the HVCC prohibit borrowers from providing payment directly to appraisers?

Yes, only the lender or a third party authorized to select and retain the appraiser can provide compensation to the appraiser.

Are settlement service firms permitted to order appraisals?

Yes, settlement service firms may order appraisals assuming they comply with the HVCC.