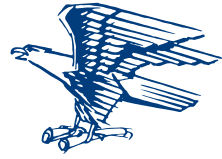


April 29, 2008



VIA Regular Mail

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

Re: Comments on Proposed Home Valuation Code of Conduct

To whom it may concern:

On March 3, 2008, Freddie Mac and Fannie Mae (collectively, the “GSEs”) entered into Cooperation Agreements with the Office of Federal Housing Enterprise Oversight (“OFHEO”) and New York Attorney General (“NYAG”) Andrew M. Cuomo. The Cooperation Agreements prohibit the GSEs, beginning January 1, 2009, from purchasing any mortgage loans from lenders that fail to certify compliance with a new Home Valuation Code of Conduct (“Code”) for appraisals. They also require the GSEs to provide an opportunity for comments from market participants on the Code’s implementation and deployment. Please accept this correspondence as the American Land Title Association’s comments on the current proposed draft of the Code.

The American Land Title Association (“ALTA”), headquartered in Washington, DC and founded in 1907, is a national trade association representing more than 3,000 title insurance companies, title agents, independent abstracters, title searchers, and attorneys. With more than 8,000 offices throughout the United States, ALTA members provide services including title searches, examinations, and insurance protecting real property owners and mortgage lenders against losses from defects in titles. ALTA member companies, which range from small entities that operate locally to large national title insurers that operate both domestically and internationally, employ well over 100,000 individuals and operate in every county in the country.

ALTA’s primary responsibility is lobbying Congress and the federal government on behalf of its members. It routinely consults with Congress, the GSEs, and federal and state agencies on legislative and regulatory matters, and it works with the National Association of Insurance Commissioners and state title associations on various regulatory matters as appropriate. ALTA also, among other things:

acts as a liaison with appropriate national organizations; works to improve land title records; monitors legislative and judicial developments; conducts research; and publishes and produces magazines, newsletters, and other types of literature that offer industry information and updates. Finally, ALTA provides its membership with networking opportunities and educational programming, and it encourages participation in grassroots political efforts.

ALTA's members understand and appreciate the importance of appraiser independence and share the GSEs' and others' concerns that undue influence on appraisers risks the issuance of faulty property valuations and thus undermines the integrity of mortgage transactions. ALTA therefore admires the efforts of the GSEs, OFHEO, and the NYAG to address this problem and take affirmative steps to lessen its impact. A number of ALTA's members, however, are involved in appraisal management, primarily through ownership affiliations with a vendor management or appraisal management company ("AMC"). Accordingly, we are concerned with the potential impact of the Code on these entities. As explained below, it appears that the Code, as currently drafted and interpreted by Freddie Mac, will prohibit lenders from obtaining appraisals through AMCs owned in whole or in part by other settlement service providers, which includes title insurance companies. Such a prohibition will have a significant negative impact on many of ALTA's members and ultimately cause greater injury to both consumers and the GSEs.

Below we: (I) summarize the Code's applicability to AMCs affiliated with other settlement service providers; (II) discuss the potential consequences of forbidding such entities' participation in the appraisal business; and (III) make certain drafting recommendations that we believe would further the Code's purposes without forcing AMCs to choose between relinquishing their appraisal business or divesting themselves of their current owners. ALTA thanks you for this opportunity to comment on the Code, and we hope that you will seriously consider our comments and recommendations.

1. Vendor management companies are entities that manage and control networks of third-party vendors that supply goods and/or services to the companies' clients. They generally operate from large regional or national processing centers and maintain networks of independent contractors who offer settlement services necessary to close a mortgage loan such as title search/abstract, appraisal, flood reporting, credit reporting, and closing/settlement services. In any given transaction, a lender places an order for a particular service or product, such as an appraisal, with the vendor management company, which in turn selects an appraiser from its network of third-party appraisers with whom it has contracted, places the order on the lender's behalf, monitors the appraisal process while acting as an intermediary between the lender and appraiser by handling all communications between them, and performs a quality control review of the transaction. Vendor managers identify, qualify, and supervise their networks, as well as provide electronic order processing, management, document delivery and retention, monitoring, and quality control, all of which streamline the process while driving down costs and shortening the period between loan application and closing for consumers. An AMC is a vendor management company that offers appraisals.

I. THE CODE'S APPLICABILITY TO AMCs AFFILIATED WITH OTHER SETTLEMENT SERVICE PROVIDERS

The Code sets forth a number of new requirements respecting, among other things: communications with appraisers; provision of appraisal reports to borrowers; training and qualification requirements; quality control and reporting; and the creation of an Independent Valuation Protection Institute. It also prohibits mortgage brokers and real estate agents from selecting, retaining, or compensating appraisers, and prohibits lenders from using in-house staff appraisers to conduct initial appraisals or loan production staff and certain other employees to select, retain, recommend, or influence the selection of or otherwise communicate with appraisers. Of most relevance to ALTA, however, are the prohibitions set forth in Paragraphs VI(5) and VI(6) of the Code.

Paragraphs VI(5) and VI(6) prohibit a lender from utilizing any appraisal report prepared by an appraiser who is "employed by" a settlement service provider or by an entity that is owned in whole or in part by a settlement service provider, as that term is defined in the federal Real Estate Settlement Procedures Act of 1974 ("RESPA"), 12 U.S.C. §§ 2601 et seq. Because a title insurer is a settlement service provider under RESPA, the question arises as to whether Paragraphs VI(5) and VI(6) prohibit lenders from obtaining appraisal reports from an AMC that is owned in whole or in part by a title insurer or that otherwise is affiliated with a title insurer through common ownership.

Because AMCs do not employ appraisers, but instead manage the appraisal process through the maintenance of networks of independent contractor appraisers, the provisions of Paragraph VI do not appear to apply to AMCs, even if they are owned by or affiliated with title insurers. The express language of the Code applies only to entities that employ appraisers. Freddie Mac, however, seems to have adopted a contrary view. On March 5, 2008, Freddie Mac issued an e-mail bulletin to its seller-servicers in which it stated that, based on the Code's requirement "that the appraisal process be independent from the lender in all respects . . . : a lender will no longer be allowed to sell Freddie Mac a loan if the appraisal was . . . ordered by a mortgage broker, or an entity that offers any other services other than appraisals" (emphasis added). This statement effectively prohibits a lender from ordering appraisals through AMCs that are owned by or affiliated with title insurers both because the AMCs themselves may offer other services in addition to appraisals (such as title or closing services) or because they are owned by companies that offer such additional services.

For the reasons set forth below, such a broad exclusion as that suggested by Freddie Mac will be a grave mistake. It will punish innocent businesses without any evidence whatsoever of wrongdoing or other factual basis for depriving them of their livelihoods. It also will punish consumers by heightening the risk of faulty property valuations, increasing the cost of appraisals, and delaying closings.

II. THE POTENTIAL CONSEQUENCES OF EXCLUDING AFFILIATED AMCs

Any interpretation of the Code that goes so far as to exclude AMCs that are owned in whole or in part by, or otherwise affiliated with, other settlement service providers such as title insurers is contrary to the express language in Paragraph VI of the Code. It also will have a significant adverse impact on countless businesses, as well as ultimately cause injury to consumers and the already struggling mortgage market.

As stated in the Cooperation Agreements, the purpose of the Code is to resolve concerns regarding property valuations that the NYAG believes are central to the current crisis in the mortgage industry and play a vital role in determining the security of the mortgage loans and basis for evaluation of mortgage pools in the secondary market. The Cooperation Agreements specifically state that the Code is being implemented “[t]o ensure appraisal independence and valuation protection[.]”

While the goals underlying the Code are laudable, the Cooperation Agreements fail to identify how excluding AMCs from the appraisal business merely because they are affiliated with other non-lender settlement service providers will address the appraiser independence concern. There is no statistical evidence or other factual basis on which to rely for such a broad exclusion, and recent studies confirm that affiliated AMCs indeed do not exert pressure on appraisers to inflate property values. The 2007 October Research National Appraisal Survey verified appraisers’ position that AMCs generally do not exert pressure on appraisers to inflate property values. See 2007 October Research National Appraisal Survey, A Snapshot of the Real Estate Valuation Industry, Volume II – Customer Relationships with Appraisers. Notably, appraisers identified AMCs such as Lender Service Inc., which are owned by or otherwise affiliated with other settlement service providers, as among their favorite AMCs because they do not exert valuation pressure. See id. The October Research Survey confirms that valuation pressure is not of much concern when it comes to AMCs and further calls into question the basis on which the NYAG, in conjunction with OFHEO and the GSEs, now seeks to force such entities to forego their livelihoods and terminate thousands of employees or divest themselves of their current owners. Freddie Mac acknowledged in its March 5th bulletin that the Code requires “that the appraisal process be independent from the lender in all respects.” If the concern is appraiser independence from the lender, any rationale for excluding an AMC based solely on its affiliation with another type of settlement service provider (e.g., a title insurer) is dubious. If the focus is on eradicating lender pressure, why is it that the Code allows for a lender to own up to 20% of an AMC provided certain other requirements are met, but outright prohibits any ownership by another type of settlement services company that actually would offer an additional layer of protection against lender pressure and undue influence?

Any prohibition against a lender’s utilization of appraisal reports obtained through AMCs affiliated with other non-lender settlement service providers will have significant and adverse unintended consequences for consumers and the mortgage industry. The following are just a few of the potential ramifications.

(1) Lender pressure to inflate property values will increase. AMCs are less susceptible to lender pressure to inflate property values than other types of appraisal providers. They have large vendor networks and client diversity, both of which enable them to better withstand any lender efforts to influence appraisals. They also typically receive flat fees in return for administrative services so that their payments are not tied to loan closings. Accordingly, they have less motivation to seek inflated appraisals than loan officers, branch managers and others whose salaries are tied to loan closing and/or loan volume. In fact, AMCs actually mitigate lender pressure on appraisers by acting as intermediaries between lenders and appraisers and handling all communications with appraisers throughout the loan transaction. The mere fact that an AMC is owned in whole or in part by, or otherwise is affiliated with, another settlement service provider such as a title insurance company does not suggest an increase in the potential for undue influence. AMCs generally offer appraisals through divisions that are entirely separate and distinct from their other departments, such as title or closing departments, and the business of the various departments often does not overlap. Moreover, as explained above, research data confirms that appraisers often prefer to work with AMCs over others because AMCs do not exert pressure. Eliminating AMCs as a viable source of appraisal business will only expand the appraiser independence problem by disposing of an unbiased outlet for the work.

(2) Inapt appraisal assignments will escalate. AMCs are in a unique position to ensure that individual appraisal orders are assigned to appraisers with the knowledge and experience necessary to handle the particular transactions. They maintain large networks of appraisers and strive to ensure the assignment of any given order to an appraiser who has knowledge and experience in the particular geographic region where the order originates and with the particular type of property at issue. Their investment in and use of sophisticated technologies and automated processes assist AMCs in these endeavors. Smaller appraisal firms do not have the luxury of such a widespread selection of vendors and therefore cannot ensure the same likelihood of appropriate assignments. Excluding AMCs from the process therefore is likely to result in a greater percentage of appraisals being assigned to appraisers who lack the experience to handle the particular assignment.

(3) The appraisal process will become less transparent and more difficult to monitor. Over the past decade, AMCs have invested many millions of dollars in procuring advanced technologies that have enabled them to automate the appraisal process and monitor appraisal activity. AMCs use these technologies to, among other things, record communications between appraisers and lenders and others, create permanent records of transactions, and memorialize the results of monitoring and quality control reviews. To our knowledge, smaller appraisal firms have not invested nearly the same amounts of funds in technology and recordkeeping processes and thus cannot monitor appraisal activity with as much efficiency and precision as AMCs. The exclusion of AMCs from the appraisal business therefore will result in less transparency.

(4) Quality control will deteriorate. Not only are AMCs in a better position than other providers of appraisals to resist lender pressure, make appropriate appraisal assignments, and create transparency in the appraisal process, but they are in a better position to ensure stringent and unbiased

quality control of appraisals. They typically operate on a large scale and therefore are intimately familiar with the complex web of federal and state laws and regulations that govern appraisals, which puts them in an excellent position to ensure appraisers' compliance with applicable rules. They also have a strong incentive to ensure that their network appraisers act professionally and generate accurate property valuations for fear of risking their reputations and losing clientele. Accordingly, AMCs usually perform both pre- and post-closing quality control reviews of appraisals – made easier by the advanced technologies they have procured – and routinely terminate vendor contracts with network appraisers who fail to live up to the AMCs' expectations. Smaller firms may be unable to achieve the same level of objectivity and thoroughness. A prohibition against lenders' use of appraisals from AMCs will deny the market a vital defense against lender pressure and undue influence on property valuations.

(5) Market demands will go unsatisfied and costs to consumers will rise. AMCs' reliance on vast appraiser networks and investments in technologies that have yielded automated processes have enabled AMCs to shorten the time frame for delivering appraisals and thus allowed consumers to close loans more timely while assuring quality products and services at reasonable prices. These results have taken decades and millions of dollars to achieve. If lenders are prohibited from utilizing this channel for appraisals, all of the efficiencies that have come to bear in the appraisal industry will be destroyed and a less organized appraisal process that relies on manual rather than automated processes and staff appraisers rather than independent contractor networks will ensue and yield less timely and lower quality work product at higher prices. In addition, smaller appraisal firms likely will be unable to assume the workload that will result from the annihilation of AMCs – a workload that consists of many millions of appraisals per year. Smaller firms lack the staff, funds, and technology necessary to manage such a caseload, and at the very least will be forced to raise their prices significantly to meet market demands and cover their own increased costs. Moreover, lenders will be forced to manage the appraisal process in-house rather than subcontracting out this function to AMCs as they have done for so long. Lenders will have to hire and train additional employees devoted to appraisal management and therefore increase their prices to consumers to cover the additional expense.

(6) Appraisal quality will diminish, which will threaten the financial integrity of the GSEs. For all of the foregoing reasons, the exclusion of AMCs from the appraisal business will decrease the overall quality of appraisals and thus lessen the value of loans sold to Freddie Mac and Fannie Mae. The broad interpretation suggested by Freddie Mac and others therefore ultimately will jeopardize, rather than secure, the financial safety and soundness of the GSEs.

III. DRAFTING RECOMMENDATIONS

ALTA recommends that, whenever the GSEs ultimately implement the Code, they allow for AMCs' continued participation in the appraisal industry, regardless of whether the AMCs are owned in whole or in part by, or otherwise are affiliated with, non-lender settlement service providers such as title insurers. To this end, we make the following four drafting recommendations

(1) Define and clarify various terms used throughout the Code. Many of the terms in the Code are ambiguous and subject to differing interpretations. Such terms include, among others: influence; instruction; correspondent lender; affiliate; appraisal management company; and employed by. It is imperative that the Code's drafters define and clarify these terms to ensure a uniform understanding and consistent application of the Code throughout the various real estate related industries. Of most concern to ALTA's members are definitions of "appraisal management company" and "employed by." Thus, ALTA recommends the following definitions of each of these terms:

- Appraisal Management Company – A vendor management company (i.e., an entity that manages independent, licensed and certified third-party service providers that offer one or more types of products and services necessary to close a mortgage loan to mortgage lending institutions) that manages independent, licensed and certified third-party appraisers, and that may or may not offer other settlement services besides appraisals.
- Employed By – Subject to an employer-employee contract where, consistent with both general legal principles (see, e.g., 53 Am. Jur. 2d, Master and Servant, § 2) and the Internal Revenue Service description of an employee versus an independent contractor (see IRS Revenue Ruling 87-41, 1987-1 C.B. 296), the "employer" has the right to select and engage the appraiser, pay his or her wages, and terminate his or her employment and the appraiser, among other things: is subject to the employer's supervision and control, maintains a presence at the entity's office, uses the entity's office supplies and equipment, attends staff meetings, and receives pay checks and W-2 forms with appropriate withholdings from wages for income and FICA taxes.

(2) Add language to Paragraph VI clarifying that the term "employed by" does not include independent contractors. Such clarification is imperative to ensure that the Code is not interpreted so broadly as to obliterate AMCs as they currently exist.

(3) Retract Paragraph VI(5). Paragraph VI(5) prohibits a lender from utilizing an appraisal report prepared by an appraiser employed by a real estate settlement service provider as that term is defined under RESPA. RESPA, however, defines the rendering of appraisal reports as a settlement service. See 12 U.S.C. § 2602(3); 24 C.F.R. § 3500.2(b). Thus, every entity that provides appraisals is a settlement service provider and Paragraph VI(5) will have the clearly unintended result of prohibiting every provider of appraisers from engaging in the appraisal business, effectively leaving financial institutions with absolutely no means of obtaining an appraisal report.

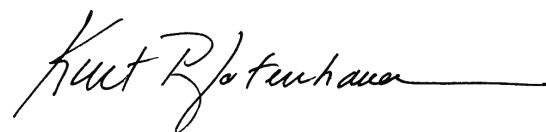
(4) Retract Paragraph VI(6). Paragraph VI(6) prohibits a lender from utilizing an appraisal report prepared by an appraiser employed by an entity that is owned, in whole or in part, by a settlement services provider. As explained above, if the Code is interpreted to mean that the term “employed by” covers independent contractors, then this provision excludes AMCs owned by title insurers and other non-lender settlement service providers from the appraisal business. Freddie Mac’s expansion of the Code to cover entities that offer any services other than appraisals has the same effect. Given that there is no evidence or any reason to believe that the potential for lender pressure or other undue influence on property valuations is higher when an AMC is owned in whole or in part by another non-lender settlement service provider or offers other services besides appraisals, there is no rationale for the maintenance of Paragraph VI(6). At the very least, the drafters should revise the exception for 20% lender ownership to extend to other settlement service providers besides lenders, for there is no reason to allow a lender to own 20% of an AMC but to deny the same right to other settlement service providers that actually lessen the risk of pressure on appraisers.

* * *

In sum, the Code will have a profound effect on the delivery of appraisals throughout the United States and compel the modification of business practices and corporate reorganization by countless businesses. The imposition of such change may be necessary given the current state of affairs in the mortgage industry. As currently drafted and interpreted by Freddie Mac, however, the Code goes farther than is necessary to meet its goals and actually will hinder rather than promote the results it was designed to achieve if it ultimately excludes AMCs as they currently exist from the appraisal business. We therefore hope that the GSEs, as well as OFHEO and the NYAG, will seriously consider our comments and recommendations and revise the Code in such a way as to permit AMCs’ continued engagement in appraisal activities.

ALTA appreciates this opportunity to comment on the Code and offer recommendations on behalf of its members. If you have any questions or would like to discuss this matter further, I may be reached by telephone at (202) 296-2930 or by e-mail at kurt_pfotenhauer@alta.org. Thank you for your kind consideration.

Sincerely,



CEO , ALTA

cc: Fannie Mae