

NEW HOME VALUATION CODE OF CONDUCT

Who Will Pay the Price

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The purpose of this article is to provide TNR readers with a summary of the NEW Home Valuation Code of Conduct that has been proposed by FNMA and FHLMC. It is scheduled to become effective January 1, 2009 for loans sold to or guaranteed by these two GSE's. I will address the impact of the new code on the mortgage industry as well as whom, when, and how appraisals must be ordered. Note, the information here is based on current information and these new rules may change prior to the mandatory implementation date.

CODE OF CONDUCT OVERVIEW

In an agreement between New York Attorney General and FNMA and FHLMC, the New York AG announced that it has terminated its inquiry of the GSE's that began in November 2007 as part of the Attorney General's complaint against First American Corporation regarding that company's appraisal practices. As part of the agreement, to be discussed here, FNMA will take steps to assist the regulators in their efforts to enhance the quality and independence of the appraisal process; thus, the creation of the Home Valuation Code of Conduct.

Under this code, requirements will be established to govern the appraisal selection process, as well as the solicitation, compensation, conflicts of interest, and corporate independence of appraisers, among other requirements. This means that any loan being sold or guaranteed by a GSE starting January 1, 2009 will require the lender represent and warrant that the appraisals are compliant with the Code.

CODES IMPACT ON THE MORTGAGE BROKER

The mortgage broker will no longer be allowed to select, retain or compensate an appraiser. This function will now be performed by the lender or an independent

appraisal management company.

Who will this new code hurt most? I suggest that it would hurt the consumer most because it will increase the cost to the consumer for a couple of reasons. First, if an appraisal management company is being utilized, there is this additional third party cost. Second, if the lender orders the appraisal and the lender denies the loan, changes guidelines, or another lender has a better program, the original lender may not forward and re-assign the appraisal to the new lender without a fee. Worst yet, the consumer may be forced to pay for a new appraisal with the new lender.

IMPACT ON THE LENDER

With new appraisal requirements being imposed on lenders, will these new requirements translate into additional costs that will be passed onto the consumer?

A lender will be:

1. Responsible for selecting, retaining, and providing payment of all compensation to the appraiser. This function can also be done by an independent appraisal management company.
2. Required to make sure that the selection, retainer, and payments paid to the appraiser will be done by staff employee(s) who are independent of the lender's loan production staff whose compensation is not directly related to loan closings. Additionally, these employees are to be appropriately trained and qualified in the area of real estate and appraisals.
3. Able to use in-house staff appraisers to order appraisals, conduct appraisal reviews, provide quality control functions, and valuations on loan workouts.
4. Prohibited from "bullying" the appraisers. They will not be able to coerce, intimidate, bribe, or withhold payment to an appraiser in an attempt to influence or

compromise the appraiser's independence.

5. Required to represent, warrant, and certify that appraisals were obtained in strict conformity with the new standards.
6. Required to randomly QC review 10% of all appraisals and AVMs.
7. Required not to employ staff appraisers to produce appraisal reports, but may use staff appraisers for QC review purposes.
8. Not be able to obtain appraisals from title insurers and other bundled settlement service providers.
9. Required to establish a telephone hotline, disclose the number to consumers, and provide a free copy of the appraisal.
10. Required to provide a copy of any appraisal report free of charge within 3 days of the closing of the loan. However, the borrower may be required to reimburse the lender for the cost of the appraisal.

THE ULTIMATE IMPACT OF THE CODE WILL BE ON THE CONSUMER

It is my opinion that something should be done to protect the consumer and lender from appraisal fraud. The Home Valuation Code of Conduct is not the way

to accomplish it. The bottom line is this: The ultimate price will be passed onto the consumer. The consumer will have higher costs related to obtaining the loan, either through an appraisal management company or by having to get multiple appraisals for the same transaction because the initial lender, who ordered and paid for the appraisal may not re-assign the appraisal to another lender. If the appraisal was to be reassigned there would be an additional cost for the re-assignment. Also, the consumer cannot have their loan shopped to multiple lenders for the best deal because, as stated above, the use of an appraisal may be restricted to the ordering lender. Unfortunately, in any case, the consumer pays the price. *George H. Marentis is President/CEO of Compliance Made Simple, LLC, a company that provides licensing services and other compliance related services to the mortgage lending industry nationwide. For more information see www.compliancemade-simple.org or call them at 303.859.8550. Mr. Marentis has a Juris Doctorate and over 15 years of mortgage lending experience ranging from frontline operations, origination to regulatory and legislative compliance. Information provided in this article is not intended to be considered legal advice, seek advice from in-house counsel or outside attorney.*