



Fannie Mae-Freddie Mac Appraisal Agreement with OFHEO & Attorney General Cuomo

Fannie Mae and Freddie Mac reached a settlement on March 3, 2008 with New York State Attorney General Andrew Cuomo and the Office of Federal Housing Enterprise Oversight (OFHEO) establishing new appraisal requirements for mortgages the GSEs purchase. The settlement was a result of Cuomo's suit against First American (and its subsidiary, eAppraisalT) for allegedly inflating the appraised values of homes. The settlement is likely to have a significant impact on MBA members because it imposes several burdensome operational and reporting requirements on those doing business with the GSEs, and likely the housing finance industry at large.

Under the agreement, Fannie Mae and Freddie Mac agreed to adopt a "Home Valuation Protection Code." The code establishes requirements governing appraisal selection, solicitation, compensation, conflicts of interest and corporate independence. The GSEs will adopt the code immediately, and issue an update to their seller guides to reflect the code. MBA members should be aware of the following requirements that become effective on January 1, 2009:

1. The GSEs will require as part of their reps and warrants, and as a precondition of the sale of any mortgage to the GSEs, that lenders not rely on appraisals provided by brokers, either for purchase transactions or refinancing transactions. This would, in effect, require lenders to always secure their own appraisal of any property purchased through a broker.
2. The GSEs will also require as part of their reps and warrants, and as a precondition of the sale of any mortgage to the GSEs, that the lender or broker did not use an in-house appraiser to conduct the subject property appraisal. The lender or broker must also rep and warrant that it did not use an affiliate, subsidiary or other entity owned by the lender or broker to perform the appraisal.

Some exceptions apply to the in-house appraiser prohibition. For example, lenders may use in-house staff appraisers to develop or use internal automated valuation models, or prepare appraisals for transactions other than mortgage origination transactions (e.g. loan workouts).

Other significant elements of the code include:

- **Prohibited Communications:** The code prohibits anyone on the lender's loan production staff from selecting or communicating with an appraiser. The prohibition also applies to anyone who reports to any officer of the lender other than Chief Compliance Officer, General Counsel, or any officer who is not independent of the loan production staff.
- **Appraisal Hotline & Email:** Lenders must establish a telephone hotline and an email address to receive complaints from appraisers, individuals, or any other entities concerning improper influencing of appraisers or the appraisal process. The hotline and email address

must be staffed by someone in the office of the lender's General Counsel, Chief Compliance Officer or other independent officer.

- **Required Notices:** Lenders must provide a separate notice of the hotline and email to appraisers they use AND to borrowers, as part of a cover letter accompanying the provided appraisal.
- **Duty to Investigate:** A lender must begin a preliminary investigation within 72 hours of receiving an appraisal-related complaint. Upon completion of the investigation, the lender shall notify the Independent Valuation Protection Institute (see below) and any relevant regulatory bodies of any indication of improper conduct.
- **Duty to Test Quality:** Lenders must establish appraisal quality control procedures and report the results of the quality control testing to the Independent Valuation Protection Institute and any relevant regulatory bodies.
- **Duty to Report Violations:** A lender who has a reasonable basis to believe an appraiser is violating a law, or is engaging in unethical conduct has an affirmative duty to report the appraiser to the Independent Valuation Protection Institute and to any applicable state agency.
- **Independent Valuation Protection Institute:** The GSEs also agreed to provide \$12 million each over a 5-year period to fund an "Independent Valuation Protection Institute." A separate and independent organization, the institute would provide an appraisal complaint process, mediation of appraisal disputes, and mortgage fraud reporting.

The agreement terminates 28 months from the date of execution (i.e. July 2010). The GSEs and OFHEO are required to solicit input from industry participants regarding specific elements of the code. MBA staff are actively engaged in this issue and will provide comments regarding the code to the relevant regulatory agencies when the comment period opens.

For more information, please contact Corey Carlisle at (202) 557-2860 (ccarlisle@mortgagebankers.org) or Mike Carrier at (202) 557-2870 (mcarrier@mortgagebankers.org).