



April 29, 2008

Office of Federal Housing Enterprise Oversight  
1700 G Street, NW, 4th Floor  
Washington, DC 20552

Re: Comments to the Home Valuation Code of Conduct

Dear Sir or Madam,

In connection with your open invitation for comments on the draft Home Valuation Code of Conduct (“HVCC”), we are pleased to enclose herewith our response for your consideration. While we support Attorney General Cuomo’s initiative and the cooperation of Fannie Mae, Freddie Mac and the Office of Federal Housing Enterprise Oversight (“OFHEO”), we believe that certain refinements to the HVCC are necessary to establish an effective regulatory framework capable of safeguarding consumers and creating a level playing field consistent with meaningful appraiser independence.

a la mode, inc. is an industry leader in real estate transaction technology, developing and implementing computer software, workflow management systems and e-commerce technology for a wide range of participants in the residential real estate sales and mortgage lending arenas. Thus, it is very knowledgeable about the appraisal industry and how that industry serves as the sole independent party in the residential real estate mortgage transaction. a la mode is in regular contact with over 30,000 residential real estate appraisers and uniquely situated to comment on the HVCC.

In its current form, the HVCC discriminates against appraisers by (a) effectively requiring lenders to engage appraisers through appraisal management companies, which retain approximately 40% - 50% of the fees paid by lenders, reduce competition as a result of industry consolidation, and deteriorate appraisal quality by forcing veteran appraisers from the workforce, and (b) creating an artificial preference for automated valuation models, which will result in fewer appraisals, reduced market transparency and the danger of increased in-house lender abuses. The HVCC will deprive consumers of their right to obtain independent, quality appraisals.

In addition to providing the enclosed comments, we would like to be provided with access to copies of all comments submitted to the New York Attorney General, Fannie Mae, Freddie Mac or OFHEO, together with any summaries of, or responses to, those comments. Additionally, we would like the opportunity to participate in any meetings held to discuss the HVCC and we would like the chance to comment on any proposed revisions to the current draft of the HVCC. We hereby reserve all our rights under the Administrative Procedures Act (5 U.S.C. §500 *et seq*).

As you are certainly aware, Congress is actively considering various housing initiatives and we are hopeful that the finalized HVCC will be consistent with this legislation, as well as any regulations or guidelines promulgated by the Federal Financial Institutions Examination Council.

We appreciate your review and consideration of the enclosed materials and look forward to working with your office on this matter. Please feel free to contact my counsel, Michael Chanin of Powell Goldstein LLP at 202.624.7235, or me should you have any questions.

Sincerely,



David P. Biggers  
Chairman

a la mode, inc.  
3705 W. Memorial Road, Building 402  
Oklahoma City, OK 73134  
(800) 900-4945

Also, feel free to contact our general counsel:

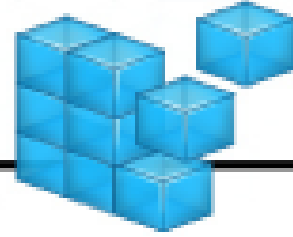
Jennifer L. Sides, Esq.  
700 12<sup>th</sup> Street, N.W., Suite 700  
Washington, DC 20005  
(202) 250-3490

cc: Fannie Mae  
Home Valuation Code of Conduct Response  
3900 Wisconsin Avenue, NW  
Washington, DC 20016

Freddie Mac  
Home Valuation Code of Conduct Response  
1551 Park Run Drive, Mail Stop D2Z  
McLean, VA 22101-3110  
Attn: Senior Vice President, Credit Risk Oversight

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# **COMMENTS TO THE HOME VALUATION CODE OF CONDUCT**

**APRIL 29, 2008**

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## I. EXECUTIVE SUMMARY

a la mode<sup>1</sup> supports the efforts of the New York State Attorney General (“AG”), the Office of Federal Housing Enterprise Oversight (“OFHEO”), Fannie Mae and Freddie Mac to foster independence in the appraisal industry through their Home Valuation Code of Conduct (“HVCC”) and Home Value Protection Program and Cooperation Agreements. Pressure exerted upon appraisers by certain elements of the mortgage industry to artificially inflate real estate valuations has contributed to the current financial markets crisis. However, despite the progress evidenced by the HVCC, further adjustments are necessary to establish an effective regulatory framework capable of safeguarding consumers and creating a level playing field consistent with meaningful appraiser independence. Specifically, we are concerned that the HVCC (a) consolidates and reduces competition in the appraisal industry by creating unprotected dependence upon appraisal management companies (“AMCs”), ultimately reducing the number of appraisers and reducing the overall quality of valuations, and (b) leaves valuations derived from automated valuation models (“AVMs”) and other non-appraisal valuation alternatives outside the institutional protections that will apply to traditional appraisals, thereby creating an artificial preference for AVMs but without the requisite safeguards. To resolve these shortcomings, we respectfully suggest that the HVCC be amended to (x) provide that all lender personnel managing any type of valuation product or engagement, including AMC relationships, be consistently trained and segregated from the lender’s loan production staff, (y) provide that AVM values and processes be subject to the same standards and conditions as valuations performed by appraisers, and (z) address certain technical clarifications set forth in Section III hereof.

## II. COMMENTS

### A. The HVCC forces a consolidation of the appraisal industry into AMCs, thereby deteriorating valuation quality.

Because the HVCC requires originating lenders to certify to Fannie Mae and/or Freddie Mac that those lenders have complied with certain internal protocols establishing “absolute lines of independence,” and because of the grave potential liability associated with failure to comply with those protocols, it is inevitable that lenders will gravitate towards the less burdensome AVMs and AMCs in an effort to demonstrate compliance with the HVCC. However, although the HVCC sets forth a conceptually praiseworthy independence standard, its promotion of AVMs and AMCs (both as a foreseeable consequence of the certification requirement and as an inadvertent byproduct of its failure to include AVMs within the independence framework, as further discussed

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<sup>1</sup> Founded in 1985, a la mode, inc. has become the industry leader in real estate transaction technology by developing and implementing computer software, workflow management systems and e-commerce technology for a wide range of participants in the residential real estate sales and mortgage lending arenas. Privately held, a la mode, inc. is headquartered in Oklahoma City, Oklahoma, with offices in Salt Lake City, Orlando and Washington D.C.

below) is not supported by any discernable rationale and ultimately undermines the HVCC's stated objectives. Furthermore, notwithstanding the prominence of AMCs in the HVCC, there are no criteria to define AMCs within the HVCC. AMCs should be judiciously conceived and regulated if they are to be relied upon as critical components of the post-HVCC appraisal regime.

1. The transfer of market share to AMCs will deteriorate the appraisal profession and, therefore, valuation quality.<sup>2</sup>

Currently, approximately 12% of licensed appraisers in the United States contract with AMCs for all or a significant portion of their work. AMCs typically retain from 40% - 50% of the payment received from the lenders, and are regularly criticized for giving preference to appraisers who will work quickly and cheaply, and report an appraisal value suggested by the AMC.<sup>3</sup> The proliferation of AMCs under the HVCC's proposed regime will result in a shift of market share from appraisers to AMCs.<sup>4</sup> It is inevitable that the number of independent appraisers will shrink dramatically as a consequence of the HVCC's preference for AVMs.<sup>5</sup> The goal should be to retain the most qualified appraisers (based upon appropriate criteria such as experience and skill) to strengthen and restore the appraisal industry. Unfortunately, the HVCC will cause a "race to the bottom" among appraisers as appraisal fees decline and a once autonomous industry becomes little more than a collection of captive subcontractors. Consequently, the most experienced appraisers will withdraw from the industry and the "quick and cheap" appraisers remaining will be relied upon to generate a significant share of the appraisals supporting new mortgage loans. It is difficult to believe that "quick and cheap" should ever be the criteria used to evaluate something that adds real value to the process, and is as much art as science.<sup>6</sup> The widespread criticism of the relationship

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<sup>2</sup> Note that Comptroller of the Currency John Dugan recognized that outsourcing the appraisal function pursuant to the HVCC will not eliminate flawed appraisals and may burden lenders. He stated that he doesn't "think you can address all the issues with a blanket prohibition like that." Patrick Rucker and Karey Wutkowski, Reuters, Regulator Knocks Fannie, Freddie Appraisal Deal (Apr. 16, 2008), <http://www.reuters.com/articlePrint?articleId=USN1636229120080416>.

<sup>3</sup> Note, for example, New York Attorney General Cuomo's suit against First American's subsidiary, eAppraiseIT, alleging collusion with Washington Mutual to inflate appraisal values. Press Release, Office of N.Y. State Att'y Gen. Andrew M. Cuomo, NY Attorney General Sues First American and Its Subsidiary for Conspiring with Washington Mutual to Inflate Real Estate Appraisals (Nov. 1, 2007), available at [http://www.oag.state.ny.us/press/2007/nov/nov1a\\_07.html](http://www.oag.state.ny.us/press/2007/nov/nov1a_07.html) [hereinafter Cuomo Press Release].

<sup>4</sup> In fact, AMCs could capture more than \$2 billion in management fees if they are able to control the appraisal market. More concerning, however, is the reality that 80,000 hardworking appraisers could be forced to relinquish up to half of their pay as a consequence of the HVCC.

<sup>5</sup> Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs, 73 Fed. Reg. 14,030, 14,123 (Mar. 14, 2008). OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., REGULATORY IMPACT ANALYSIS & INITIAL REGULATORY FLEXIBILITY ANALYSIS: FR-5180-P-01 ch. 5, at 102 [hereinafter REGULATORY ANALYSIS].

<sup>6</sup> Don Kelley of the Appraisal Institute has supported the need for local expertise in the appraisal market, noting that "it's hard to calibrate local variations. This is obvious because no one is doing nationwide models with great success." REGULATORY ANALYSIS, *supra* note 5, at ch. 5, at 102.

among lenders, AMCs and their contractors does not support a new protocol predicated upon AMCs acting as the primary liaisons between the appraisal and lending industries.

2. AMCs are an ineffective buffer between lenders and appraisers.

Currently, most appraisers receive regular assignments directly from sources other than AMCs. As such, although appraisers may perceive pressure from individual lenders (e.g., relating to turnaround time or valuation conclusions),<sup>7</sup> such appraisers have comparatively diverse employment or referral sources and are less likely to succumb to individual pressures. By contrast, appraisers that receive all or a significant portion of their engagements from an AMC will be more susceptible to the influences of the AMCs because the AMCs are these appraisers' sole or primary sources of business. The HVCC attempts to sever the control conduit between lenders, on the one hand, and appraisers, on the other, by encouraging the use of AMCs and limiting a lender's ownership and/or control of the AMCs that provides that lender with appraisal management services. Unfortunately, this effort is deficient in two respects. First, it fails to mandate that the lender's employee managing the AMC relationship must be independent of the lender's production staff. Second, it is naïve to predict that simply limiting the lender's ownership of an AMC will eliminate the deference owed to such lender by the AMC.<sup>8</sup> Even if the HVCC were to prohibit *any* affiliation between lenders and AMCs, and if the lender's employee tasked with managing the AMC relationship was quarantined from the loan production staff, lenders, as bulk consumers of appraisal services, will have the ability to exert influence or control over unaffiliated AMCs (*consider that New York Attorney General Cuomo's suit against First American alleged that its AMC subsidiary, eAppraiseIT, conspired with Washington Mutual, an unaffiliated lender, to inflate valuations*).<sup>9</sup> In fact, if AMCs are installed as the primary liaisons to appraisers pursuant to the HVCC, a greater percentage of appraisers will work for AMCs, thus (a) reducing the total number of unique parties contracting for appraisals and, thereby, reducing market competition, (b) further reducing the autonomy of the appraisers and, most importantly, (c) providing the lenders a vehicle to leverage their influence over the AMCs and enhance and exacerbate their control over the appraisers. Consequently, although the HVCC is successful in removing certain potentially corrupting influences (e.g., brokers) from the equation, it creates a categorical

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<sup>7</sup> A 2006 survey by October Research Corp. revealed that 90% of appraisers said they "had been pressured to raise property valuations" to allow deals to go through. A similar survey in 2003 reported that only 55% of appraisers reported attempted influence and 45% reported such pressure "never" happened. Harry Terris, American Banker, MBA Appraisal Report Presaged Cuomo-GSE Pact (Mar. 28, 2008), <http://www.americanbanker.com/printthis.html?id=20080327PN2GQKZP>. Leslie Albergo & Thomas Warrack, Standard & Poor's, S&P Focuses on Appraisals For Residential Properties And Encourages Use of Automated Valuation Methods (Jan. 23, 2008), <http://www2.standardandpoors.com/portal/site/sp/en/us/page.article/4,5,5,1,1148450907238.html>.

<sup>8</sup> Note that Fidelity National Information Services Inc. seeks to spin off its lender processing unit in response to the HVCC. Corey Dade, *Fidelity National Sees New Regulatory Risks*, WALL ST. J., Mar. 28, 2008, at C5.

<sup>9</sup> Cuomo Press Release, *supra* note 3.

monopsony (to the extent that lenders as a class will be the controlling consumers of appraisal services) and actually streamlines the lenders' route through the marketplace by positioning AMCs as lenders' deputies to control and exploit a captive labor force.

B. AVMs should be subject to the same regulations as appraisers.

Further reducing appraisers' market share, and therefore valuation quality, is the foreseeable proliferation of AVMs under the HVCC. In a significant number of instances lenders will rely upon an AVM instead of a traditional appraisal simply because the HVCC encourages the use of an unregulated, in-house AVM as an efficient alternative to an appraisal, which will be accompanied by the HVCC's costly and complicated procedural requirements. Nevertheless, despite consistent admonitions from the mortgage industry the HVCC will incentivize lenders to favor AVMs imprudently.

Although the mortgage industry has accepted AVMs for use as a "second opinion on the collateral value"<sup>10</sup> when coupled with an appraisal,<sup>11</sup> and has acknowledged that the "use of AVMs is becoming prevalent in the origination process in lieu of a full appraisal,"<sup>12</sup> "developing economic models and expanding databases used for AVMs is an ongoing process and may not have reached the point where AVMs are universally trusted."<sup>13</sup> Certain government agencies have recognized that the increased use of AVMs as a trend that warrants scrutiny.<sup>14</sup> The Mortgage Bankers Association noted that "there is little standardization in the AVM industry...[and] many lenders believe that AVMs entail a greater risk of inaccuracies."<sup>15</sup> Fitch Ratings cautioned that AVMs can result in overvaluation through the use of "multiple cascades that allow a lender to shop for a value."<sup>16</sup> Considering the mortgage industry's cautious approach to utilizing AVMs, and open acknowledgement that AVMs are an attractive alternative to appraisals primarily because they are relatively inexpensive, it seems imprudent to allow the HVCC to introduce a further financial incentive that favors AVMs in the mortgage loan origination process.

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<sup>10</sup> Albergo & Warrack, *supra* note 7.

<sup>11</sup> MORTGAGE BANKERS ASS'N, ISSUE PAPER, AUTOMATED VALUATION MODELS 2-3 (2006) [hereinafter MBA ISSUE PAPER]. FREDDIE MAC, BULL. NO. 2006-4, SINGLE-FAMILY SELLER/SERVICER GUIDE BULLETIN 3 (2006).

<sup>12</sup> MISTRETTA ET AL., *supra* note 21, at 2.

<sup>13</sup> REGULATORY ANALYSIS, *supra* note 5, at ch. 5, at 98. Also, note that HR 3915 and S 2860 in many cases require a traditional appraisal to be conducted in a consumer credit transaction secured by the consumer's principal dwelling. H.R. Res. 3915, 110th Cong. § 701 (2007) (enacted). S. 2860, 110th Cong. § 2 (2008).

<sup>14</sup> NAT'L CREDIT UNION ADMIN., CREDIT RISK MANAGEMENT GUIDANCE FOR HOME EQUITY LENDING 1 (2005).

<sup>15</sup> MBA ISSUE PAPER, *supra* note 11, at 1.

<sup>16</sup> MISTRETTA ET AL., *supra* note 21, at 3. Also, note that Section I.9. of the HVCC prohibits a lender from utilizing a "second or subsequent appraisal or automated valuation model" unless the original is "flawed or tainted." The intent of this section is laudable but the verbiage should be refined to ensure that a loophole is not created permitting lenders to structure or "cascade" their AVMs to create a menu of valuation alternatives in constructive violation of the HVCC.

1. AVMs reduce valuation quality *per se* and *per accidens*, contributing to the overall decline of the appraisal industry.

According to Fannie Mae “the use of AVMs for loan origination purposes creates unique credit risks.”<sup>17</sup> “AVMs have generally not evolved sufficiently to fully replace traditional appraisals and human judgment for the origination of first lien mortgages.”<sup>18</sup> Although AVMs are appropriate in certain circumstances the arbitrary cost incentive imposed by the HVCC, causing lenders to replace a meaningful number of appraisal orders with AVMs, will exacerbate the downsizing of the appraisal industry (as discussed in Section II.A.1 above) resulting in the deterioration of appraisal quality.

2. The HVCC requires multiple valuations to facilitate competing loan proposals, thereby increasing the cost differential between appraisals and AVMs.

Unlike the current system, which permits a mortgage broker (among others) to order an appraisal and use that appraisal to solicit competitive loan transaction terms from a variety of prospective lenders, under the HVCC the appraisal must be ordered by the lender or an AMC under contract with such lender (the latter being more likely considering the independence requirements set forth in Section IV of the HVCC).<sup>19</sup> Unless the HVCC were amended to include a provision requiring lenders to order appraisals promptly upon receipt of a loan application, and requiring competing lenders to utilize the first appraisal ordered for the property (notwithstanding the identity of the lender placing the order),<sup>20</sup> securing a competitive loan package under the HVCC will require multiple valuations, thereby increasing the cost differential between using an

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<sup>17</sup> Interview with Mark T. Simpson, Director of Property Valuation Standards and Practices, Single-Family Credit Administration, Fannie Mae, APPRAISAL BUZZ NEWSL. (apprAZe.com, Mesa, Ariz.), Nov. 20, 2003, available at <http://www.appraze.com/FNMAAVMs>.

<sup>18</sup> eFannieMae.com, Automated Valuation Models (AVMs), <https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/avms/> (last visited Apr. 2, 2008). U.S. DEP’T OF HOUS. & URBAN DEV., MORTGAGEE LETTER 2006-25 REGARDING HOME EQUITY CONVERSION MORTGAGE PROGRAM 3 (2006). Also, consider that the HVCC’s encouragement of AVMs is at odds with the appraisal requirements set forth in HR 3915 and S 2860. H.R. Res. 3915, 110th Cong. § 701 (2007) (enacted). S. 2860, 110th Cong. § 2 (2008).

<sup>19</sup> Compare this restriction to the provisions of the Real Estate Settlement Procedures Act (RESPA), which do not limit the appraiser’s communication with any of the parties to the transaction. 12 U.S.C. § 2601 *et seq.*

<sup>20</sup> Note that certain government agencies have approved the use of a single appraisal by multiple lenders even when the appraisal is transmitted via the borrower. OFFICE OF THE COMPTROLLER OF THE CURRENCY, BD. OF GOVERNORS OF THE FED. RESERVE SYS., FED. DEPOSIT INS. CORP., OFFICE OF THRIFT SUPERVISION, & NAT’L CREDIT UNION ADMIN., FREQUENTLY ASKED QUESTIONS ON THE APPRAISAL REGULATIONS AND THE INTERAGENCY STATEMENT ON INDEPENDENT APPRAISAL AND EVALUATION FUNCTIONS 3,4,5 (2005). FED. DEPOSIT INS. CORP., FINANCIAL INSTITUTION LETTER 74-1994: INTERAGENCY APPRAISAL AND EVALUATION GUIDELINES (1994), available at <http://www.fdic.gov/news/news/financial/2003/fi10384b.html>.

AVM and a traditional appraisal (to the extent the disparity is multiplied by the number of valuations obtained) and increasing transaction costs borne by consumers (as further discussed in Section II.C.1 below). Although Fitch Ratings notes that “full appraisals are the industry benchmark for property valuations because they encompass a comprehensive internal and external inspection of the property, a comparison to similar properties in the vicinity, and insight as to current local market economics”<sup>21</sup> the likely consequence of this new protocol will be lenders’ increased preference for AVMs.<sup>22</sup>

3. The HVCC creates lender liability for engaging appraisers directly but not for using AVMs (and other valuation alternatives).

Although the HVCC expressly permits lenders to use in-house staff appraisers to “develop, deploy, or use internal automated valuation models,” it fails to include these processes within the Section IV safeguards designed to insulate appraisers from coercion by the lender’s loan production staff (including independence certifications to Fannie Mae and/or Freddie Mac).<sup>23</sup> Surely, if the drafters of the HVCC recognize that a loan production officer has the power to coerce a remotely-located independent appraiser, then the HVCC should also address the likelihood that the same loan production officer is capable of influencing his in-house colleague. Accordingly, the AVM process should be subject to Section IV<sup>24</sup> of the HVCC in order to further safeguard independence and eliminate an artificial preference for AVMs inadvertently created by the HVCC. Additionally, the lender’s employee who is tasked with managing an AMC relationship should be similarly insulated from the lender’s loan production staff in order to reduce the likelihood of undue pressure being exerted upon the AMCs.

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<sup>21</sup> SUZANNE MISTRETTA, ALLA SIROTIĆ & MARGARET SWEENEY, FITCH RATINGS, RESIDENTIAL MORTGAGE CRITERIA REPORT: NEW TREATMENT OF AVMS IN U.S. RMBS 2 (2006).

<sup>22</sup> Additionally, the National Association of Mortgage Brokers anticipates increased costs to the consumer. Press Release, Nat’l Ass’n of Mortgage Brokers, NAMB Issues Statement on Mortgage Appraisal Agreement (Mar. 3, 2008), available at <http://www.namb.org/namb/NewsBot.asp?MODE=VIEW&ID=233&SnID=2145034737>.

<sup>23</sup> Although we note that Section VI of the HVCC does not promote the use of AVMs as the sole valuation for a mortgage origination, neither does the HVCC explicitly prohibit the use of AVMs for origination nor does it contemplate internal independence when AVMs are utilized in such a capacity. Consider that the Office of the Comptroller of the Currency has clearly reinforced the requirement that “banks are required to separate their collateral valuation function from their loan production process.” *OCC’s Watson Reaffirms Importance of Appraiser Independence*, THE FEDERAL LINE (Appraisal Institute, Chicago, Ill.), Dec. 2003, at 1.

<sup>24</sup> Section IV of the HVCC generally forbids the lender’s loan production staff, and certain other individuals not sufficiently insulated therefrom, from selecting or communicating with appraisers.

4. Applying identical training and qualification standards to individuals ordering appraisals, contracting with AMCs and managing AVMs will reduce the artificial cost preference for AVMs.

Section V of the HVCC requires the lender's (or AMC's) employee who is tasked with selecting appraisers to be "appropriately trained and qualified"<sup>25</sup> and, with respect to a lender's employee only, independent from the loan production staff. By contrast, the in-house staff appraisers managing AVMs for the lenders are not subject to such requirements. This dichotomy creates a cost and liability preference for AVMs and should be reconciled in order to ensure independence and eliminate an artificial preference for AVMs inadvertently created by the HVCC. Additionally, the lender's employee tasked with managing an AMC relationship should be similarly trained to eliminate any undue preference for favoring the AMC engagement simply because the lender can utilize cheaper, untrained staff to manage such relationship.

C. The HVCC raises consumer issues.

The HVCC as drafted may increase consumer costs, reduce market transparency and limit independent oversight.

1. The HVCC reduces competition among lenders and increases transactions costs borne by consumers.

As discussed in Section II.B.2 above the HVCC's requirement that appraisals must be ordered by the lender or its agent will deny a borrower the opportunity to use one appraisal to solicit competing loan terms from various lenders, thereby forcing a borrower to choose between two equally unpalatable options: (a) paying for a new appraisal in connection with each loan application,<sup>26</sup> or (b) accepting the loan terms from the first lender approached by the borrower (in order to avoid the cost of multiple valuations), effectively eliminating competition among lenders. Furthermore, it is likely that a rational lender will recognize the borrower's incentive under the HVCC to accept the first loan package offered and respond by incrementally increasing fees paid by the borrower up to a level just shy of causing the borrower to approach a competing lender.

2. AMCs and AVMs reduce market transparency.

Currently, in most instances, the borrower is able to obtain a copy of the appraisal at the outset of the loan application process (because the appraisal

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<sup>25</sup> This definition is exceedingly vague and we believe that more precise training and qualification standards should be set forth or referenced in this provision.

<sup>26</sup> Requiring multiple appraisals is in direct opposition to RESPA's purpose of reducing real estate closing costs. 12 U.S.C. § 2601 *et seq.*

commonly is ordered by the borrower or his/her agent). Under the HVCC, which requires the lender or its agent (e.g., an AMC) to order the appraisal, the borrower is not entitled to a copy of the appraisal until three days prior to the loan closing<sup>27</sup> and the borrower is effectively denied meaningful access to the appraiser to discuss the valuation.<sup>28</sup> Further, when the lender utilizes an AVM the borrower *never* has the benefit of reviewing the materials supporting the valuation and never knows if the lender relied upon multiple cascades or repetitive valuations, or if the lender deemed its initial valuations “flawed or tainted.” Unless borrowers are provided with copies of all valuations from all sources,<sup>29</sup> as suggested by S 2860,<sup>30</sup> the categorical shift in favor of AVMs will minimize disclosure to borrowers and reduce transparency in the marketplace,<sup>31</sup> further insulating lenders from outside scrutiny and sidestepping even the limited reporting requirements promulgated in connection with the creation of the Independent Valuation Protection Institute (“IVPI”), as further discussed below. The irony, of course, is that unsophisticated borrowers likely will interpret the HVCC (in its current form) as safeguarding the accuracy of the valuations supporting their loans when in fact the likely consequence is that these same borrowers will be hindered by reduced access to supporting documentation and ultimate reliance upon an inferior valuation product.

3. Providing direct IVPI access to all transaction parties would enhance IVPI’s independent oversight effectiveness.

Under the HVCC, lenders are required to maintain telephone hotlines to accept complaints from borrowers, appraisers, and other individuals concerning improper influence on the appraisal process. Upon receipt of a complaint, a lender has sixty days to investigate the allegations before notifying IVPI of its findings. Although in theory IVPI is supposed to be “independent,” in reality it must rely upon

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<sup>27</sup> Although the HVCC does entitle the borrower to a copy of the appraisal “immediately upon completion, and in any event no more than three days prior to the closing of the loan” it does not require the appraisal to be ordered in time for the borrower to use the appraisal to solicit competing loan terms from another lender, and it specifically permits borrowers to waive the delivery requirement (which waiver certainly will become boilerplate text in loan documents).

<sup>28</sup> Note that the privilege of asking the appraiser questions is explicitly granted to the lender (or its agent) in Section I of the HVCC.

<sup>29</sup> Consider that early delivery of such valuations to the borrower as they are generated would (a) offer the borrower the opportunity to present a valuation to other lenders, thereby reducing the cost of obtaining competitive loan proposals and fostering marketplace competition, and (b) provide the transaction parties the opportunity to conference with the valuation provider to refine the valuation, as supported by H.R. Res. 3915, 110th Cong. § 702(a) (2007) (enacted).

<sup>30</sup> S. 2860, 110th Cong. § 2 (2008).

<sup>31</sup> Compare this consequence to HR 3915 which, among other things, requires appraisals in certain circumstances and explicitly permits all parties to the loan transaction to ask the appraiser to “consider additional, appropriate property information.” Although the HVCC mirrors HR 3915 in terms of defining coercion and identifying permitted interactions between lenders and appraisers, the HVCC effectively removes this critical interaction among transaction parties. H.R. Res. 3915, 110th Cong. § 702(a) (2007) (enacted).



analysis and communication from the lenders.<sup>32</sup> In order for IVPI to be truly independent it would be sensible for aggrieved appraisers, or any other transaction party, suffering coercion or undue influence to be able to report such abuses directly to IVPI.<sup>33</sup> Further, in the event a complaint is reported to a lender, that lender should be required to report the alleged violation of the HVCC to IVPI within three days (the amount of time the HVCC provides a lender to initiate its investigation following receipt of a complaint), whether or not the lender believes an investigation is warranted. These adjustments to the IVPI reporting procedures are especially critical because the HVCC's inherent preference for AVMs removes a large volume of valuations from the purview of IVPI's oversight.

### III. PROPOSALS

A. All valuation methods (including but not limited to appraisals, AVMs, and broker price opinions) should be subject to similar restrictions and safeguards as set forth in Section VI of the HVCC.

B. All lender employees (including but not limited to in-house appraisers, personnel developing and managing AVMs, personnel contracting with third-party appraisers, and personnel contracting with AMCs) should be subject to similar restrictions and safeguards as set forth in Section IV and V of the HVCC.

C. All lender employees (including but not limited to in-house appraisers, personnel developing and managing AVMs, personnel contracting with third-party appraisers, and personnel contracting with AMCs) should be required to achieve and maintain similar levels of training and qualification.

D. Borrowers should be provided with copies of every valuation performed on the subject property as such valuations are generated, including any valuations that were discarded as "flawed or tainted" together with an explanation as to why such valuations were discarded. Lenders should be prohibited from intentionally delaying ordering a valuation or delivering its results to a prospective borrower.

E. IVPI should maintain a direct hotline and accept reports from any transaction party. In general, IVPI should be more comprehensively conceived.

F. The HVCC should adequately define AMCs.

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<sup>32</sup> The HVCC protocol installing the lenders as gatekeepers is particularly ironic considering that the New York Attorney General's original lawsuit targeted eAppraiseIT for succumbing to pressure from Washington Mutual to inflate appraisal values. Cuomo Press Release, *supra* note 3.

<sup>33</sup> A direct hotline to IVPI would also serve as a resource for a lender's employee to anonymously report in-house wrongdoing.

G. Sections VI(5) and VI(6) of the HVCC should be refined to reflect the fact that RESPA's definition of a "settlement services provider" includes a single-person appraisal company (e.g., state that a lender may not rely upon an appraisal prepared by "a multi-discipline real estate settlement services provider").