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April 30, 2008

Fannie Mae  
3900 Wisconsin Avenue, NW  
Washington, DC 20016-2892

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

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)<sup>1</sup> welcomes the opportunity to comment on the Home Valuation Code of Conduct. The Code of Conduct comes from an agreement reached with the New York State Attorney General, Fannie Mae, Freddie Mac and the Office of Federal Housing Enterprise Oversight to strengthen the independence of the appraisal process. The Code of Conduct would impact mortgages that Fannie Mae and Freddie Mac buy or guarantee.

ICBA sees significant flaws in the Code of Conduct that make it unworkable and overly burdensome for community banks for reasons described below. The Code of Conduct conflicts with appraisal independence guidelines and requirements already addressed in laws and regulations governing insured depositories, without observable benefits to institutional safety and soundness. This letter, which reflects the views of ICBA members on specific elements of the Code of Conduct, supplements a letter sent to James B. Lockhart III, Director of the Office of Federal Housing Enterprise Oversight, dated April 30, 2008 and signed jointly by ICBA and other financial trade associations.

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<sup>1</sup> *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States, and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

*With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 268,000 Americans, ICBA members hold more than \$908 billion in assets \$726 billion in deposits, and more than \$619 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).*

**Background**

Many community banks sell loans to Fannie Mae or Freddie Mac directly or indirectly. Appraisals are important tools to ensure that a loan is sound and that the financial institution extending the credit will be able to recoup its funds in the event of a default. Thus, lenders have a strong interest in ensuring the accuracy of appraisals. Appraiser independence is a key factor in ensuring that accuracy.

As insured depositories, community banks are subject to laws and regulations that require appraisals for many real estate transactions. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Section 323.1 of FDIC rules and regulations) provides protection for federal financial and public policy interests in real estate related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

The Code of Conduct would apply to all mortgages purchased or guaranteed by Fannie Mae or Freddie Mac, yet Section 323.3 provides an exception from the appraisal requirements for transactions valued at \$250,000 or less. Instead, recognizing that the services of an appraiser is not necessary in order to protect federal financial and public policy interests, regulations specify that a less costly evaluation may be substituted for an appraisal in these smaller transactions.

Section 323.5 of FDIC regulations lays out requirements for appraiser independence: If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investments, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the regulated institution, the regulated institution shall take appropriate steps to ensure that the appraisers exercise independent judgment and that the appraisal is adequate. Such steps include, but are not limited to, prohibiting an individual from performing appraisals in connection with federally related transactions in which the appraiser is otherwise involved and prohibiting directors and officers from participating in any vote or approval involving assets on which they performed an appraisal.

Banking regulators already have and use strong powers to enforce these provisions on institutions and institution-affiliated parties, including staff appraisers and fee appraisers. Regulators can remove staff, impose prohibition orders and /or cease and desist orders and impose civil money penalties against individuals and institutions that do not comply with these provisions.

**Code of Conduct**

ICBA has some specific comments on sections of the code of conduct:

Section 1.8 of the Code of Conduct specifies that an appraiser can not be removed from a list of qualified appraisers without prior written notice to such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice or state licensing standards, substandard performance, or otherwise improper or unprofessional behavior. ICBA is

concerned that this limitation on removal could limit the ability of a lender to stop doing business with an appraiser for matters unrelated to bad conduct, such as when a bank expands its geographic service area and finds that an appraiser on its list does not have sufficient knowledge about the new area.

We see the prohibition against ordering, obtaining, using, or paying for a second or subsequent appraisal or automated valuation model according to Section I.9 of the Code as a disservice to the consumer who may for whatever reason not agree with an appraisal and asks for another. This provision would also be problematic when a consumer brings in one appraisal to the lender but the lender finds that market conditions may have changed or there are other factors that necessitate the lender obtaining a second or subsequent appraisal for safety and soundness reasons.

We see inconsistency in the language of Section II, which says in the first sentence that the lender shall ensure that the borrower is provided, free of charge a copy of the appraisal, and yet provides in the final sentence of that section that the lender may require the borrower to reimburse the lender for the cost of the appraisal. Further, in Section III, the lender or any third-party specifically authorized by the lender shall be responsible for, among other things, “providing for payment of all compensation to the appraiser.” If ultimately the lender is responsible for paying the costs of the appraisal, this is a significant departure from current practice where the borrower pays for the appraisal. We do not see that changing this practice would impact the independence of appraisals.

ICBA views aspects of Sections IV and V as overly restrictive and difficult for small community banks to comply with. These institutions may have very small branch staffs, in some instances, perhaps only 4 or 5 people who are responsible for multiple functions. Forbidding them from being involved in the selection of appraisers or having any communication with the appraiser is overly burdensome and will result in significantly increased mortgage costs for consumers or it will force that branch to stop offering mortgages, again hurting consumers.

Section VI states: In underwriting a loan, the lender shall not utilize any appraisal report prepared by an appraiser employed by:

- (1) the lender;
- (2) an affiliate of the lender;
- (3) an entity that is owned, in whole or in part, by the lender;
- (4) an entity that owns in whole or in part, the lender;
- (5) a real estate “settlement services” provider, as that term is defined in the Real Estate Settlement Procedures Act, 12 U.S.C, Section 2601 et seq.<sup>2</sup>
- (6) an entity that is owned, in whole or in part, by a “settlement services” provider.

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<sup>2</sup> (3) the term “Settlement services” includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement;

By prohibiting the use of any appraisal report prepared by an appraiser employed by the lender, the Code of Conduct is in direct conflict with FDIC regulations that permit the use of evaluations on some mortgage transactions as discussed above. Further, the Real Estate Settlement Procedures Act includes appraisals in its definition of a settlement service, therefore an appraisal company, even if it is completely independent in the transaction, can not provide an appraisal. If a lender can not use an appraisal from a settlement service provider or any of the other listed sources, what is to be the source of appraisals?

Section VII of the Code of Conduct requires that a lender establish a telephone hotline and email address to receive any complaints from appraisers, individuals, or any other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process. The hotline and email address are to be attended only by a member of the office of General Counsel, Chief Compliance Officer or other independent officer of the lender. ICBA believes that this requirement along with other aspects of its implementation and the monitoring provisions of this section are overly burdensome, particularly for small community banks that have very limited staffs and/or may only sell a relatively few loans to Fannie Mae or Freddie Mac. The costs of the hotline would far out weight the benefits obtained in the unlikely event that a complaint would be registered. Further, we believe that this requirement is highly redundant since the Home Value Protection Program and Cooperation Agreement signed by Fannie Mae and Freddie Mac calls for the establishment of the Valuation Protection Institute which is required to establish a consumer hotline for generally the same purposes.

In our view, the reporting of quality control testing of appraisal reports (Section VII) to the Independent Valuation Protection Institute unnecessarily creates an additional oversight organization for institutions that already are subject to regulation and close supervision and examination by state and/or federal banking regulators. We do not see a need for the creation of an additional layer of regulator oversight.

### **Summary**

ICBA believes that the Code of Conduct is seriously flawed and does not recognize the existing laws and regulations created by Congress to ensure independence in appraisals. The Code of Conduct would impose significant additional regulatory burdens on community banks unnecessarily increasing the cost of mortgages. In addition, the Code of Conduct contains elements that are confusing and simply not workable.

We appreciate the opportunity to comment. If you have any questions about our concerns, please contact me by phone at 202-569-8111 or by email at [ann.grochala@icba.org](mailto:ann.grochala@icba.org).

Sincerely,



Ann M. Grochala  
Director, Lending and Accounting Policy