



## CALIFORNIA ASSOCIATION OF REALTORS®

April 30, 2008

Fannie Mae  
39900 Wisconsin Avenue, NW  
Washington, DC 20016

Re: Home Valuation Code of Conduct Response

2008 OFFICERS

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*President*

JAMES LIPTAK  
*President-Elect*

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*Treasurer*

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*Executive Vice President/  
State Secretary*

Dear Fannie Mae:

As the President of the California Association of REALTORS® (C.A.R.), which represents over 170,000 real estate professionals, I am pleased to submit the following comments to the Office of Federal Housing Enterprise Oversight (OFHEO) on the proposed Home Valuation Code of Conduct (Code). C.A.R. has long supported efforts at the local, state and federal level to protect consumers and prevent deceptive and fraudulent practices throughout the real estate industry. C.A.R.'s membership includes not only real estate agents and brokers, but also property managers, mortgage brokers and appraisers. This broad array of real estate professionals provides a rich and insightful knowledge base that gives C.A.R. a unique perspective of how new laws and regulations will impact California's real estate market. C.A.R. and the real estate professionals it represents wish to express our concerns over the practical application of the Code in California. We believe the Code will have a negative and costly impact on home buyers and will effectively preempt California's existing law. Additionally, C.A.R. is troubled with the manner by which this Code was developed.

### **Mortgage brokers should be allowed to contract appraisers in the same manner as lenders in order to better assist home buyers in shopping for the best loan products.**

It is C.A.R.'s position that both lenders and mortgage brokers should be able to contract with an appraiser. Section III of the Code states, "the lender will not accept any appraisal report completed by an appraiser selected, retained, or compensated in any manner by any other third-party (including mortgage brokers and real estate agents)." This part of the code would completely transform the landscape of residential lending in California. Over 70 percent of California's home buyers utilize mortgage brokers to shop for loans. Mortgage brokers shop loans to lenders by submitting packages that include a completed appraisal. This allows for an affordable and expedient home buying process for the majority of California's homeowners. If mortgage brokers are forced to submit loan packages without appraisals, lenders could not guarantee an interest rate or even the loan itself. The home buying process would be delayed by having to wait for the appraisal to be completed and turned into the lender. In an era of potentially fluctuating interest rates, this delay may substantially prejudice a homebuyer.

We believe the intent of the Code can be maintained by allowing both lenders and mortgage brokers to be able to contract with an appraiser and both be held to the same standards of the Code that prevent improper influence. The Home Value Protection Program and



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Cooperation Agreement (Agreement) says, “Historically, there have been times when turmoil in the real estate market has been caused when the valuation mechanisms, and the appraisal process specifically, have been corrupted by pressure from **lenders and brokers** (emphasis added).” The Agreement is clear that both lenders and brokers have at times improperly influenced appraisers. Nowhere in the agreement is it explained or justified as to why lenders would be allowed to contract with appraisers under the new Code while brokers would be barred. It does stand to reason that because mortgage brokers are responsible for 70 to 80 percent of loan originations that they should be empowered to facilitate a transaction in the same way as other lenders. C.A.R. hopes this fact was taken into consideration when the Code was crafted.

**C.A.R. is concerned that a buyer, seller and/or real estate agent will not be able to ask for a correction of errors in the appraisal.**

The Agreement states, “the appraisal also provides important information for consumers to consider in determining their best financial interest.” Under the new Code homebuyers would be forced to choose a lender minus this “important information.”

Often times when an appraisal is in error, it is the home owner, home owner’s agent or buyer that is able to detect and identify the error. Section I of the Code would appear to give only lenders the ability to order, obtain, use or pay for a second or subsequent appraisal. There needs to be more flexibility in the code for buyers, sellers and agents.

Under the proposed Code, when an appraisal comes back with errors that only sellers, buyers or agents might catch the entire home buying process would be unnecessarily delayed with the likelihood of additional costs involved to the consumer. Home buyers, agents and sellers would have to work through the lenders to get another appraisal completed. Lenders have reported to Congress and the public that the current foreclosure crisis has severely impacted their ability to process loan requests in a timely fashion. Forcing second appraisals to go through the bureaucracy and multiple departments of lending institutions could jeopardize the transaction and will only harm the consumer.

**The Agreement and Code won’t impact the majority of loans that are at highest risk of fraud.**

The Agreement and Code only pertain to loans that are purchased by Fannie Mae and Freddie Mac. These two companies play a minor role in the subprime and Alt-A mortgage market where the majority of mortgage fraud takes place. In addition, lenders may easily sidestep the Code by holding loans in portfolio or packaging the loans to sell to private investors.

A more appropriate route would be to coordinate with Congress or the regulators of federally chartered lending institutions. By focusing solely on Fannie Mae and Freddie Mac, the most preyed upon segment of homebuyers—those utilizing subprime and Alt-A—will not be sufficiently protected. Even worse, the increased costs of the proposal will fall on the conforming loans going to the GSEs.

**We oppose the preemption of California's laws by the Code. If a state like California has already acted to preserve appraisal integrity, then its approach to its own unique market concerns should be preserved.**

The Agreement says "state governments have regulatory roles in ensuring the integrity of the appraisal process." However, the Code effectively preempts all state laws and rules that may conflict with the Code. In 2007, California updated its existing appraisal laws to prohibit improper or attempted improper influencing of the appraisal process. Additionally, California's new law prohibits licensed appraisers from performing appraisals where their compensation is affected by that appraisal. This is just one example to show that applying the Code to all states is not necessary when actions have been taken to ensure the quality, validity, and independence of appraisals. Proactive reforms by the individual states should be respected, so long as they are a bona fide approach to reach substantially the same goals as the Agreement.

**Finally, C.A.R. is concerned that one state induced Fannie Mae and Freddie Mac, two companies who will purchase up to 70 percent of the home loans in California, to craft what amounts to new regulations that will impact all 50 states and U.S. territories.**

We respectfully suggest that Fannie Mae, Freddie Mac, OFHEO, and the Attorney General of New York should have utilized the standard regulatory process and/or brought this issue before Congress. C.A.R. is deeply concerned that, while knowing the national implications that this code would have, the participating parties failed to include California and the other states in these discussions. There would appear to have been no consideration or concern of the impact the Code will have on other individual states. Indeed, even the legislature of New York did not make the decision that will bind the rest of the states – the decision is entirely imposed at the regulatory or prosecutorial level.

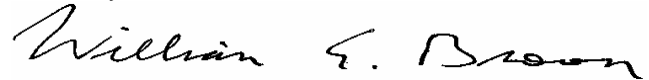
C.A.R. takes issue with the argument that this is a business decision decided by two private companies. In actual fact, a decision has been made by two government sponsored enterprises that were chartered by Congress to bring liquidity, stability and homeownership opportunities to every state. Their decision will inescapably bind every state.

While it has been argued that lenders are under no obligation to sell their loans to Fannie and Freddie; the reality is that during the current credit crisis both lenders and the government are looking to Fannie and Freddie to play a larger role in stabilizing the market. This Agreement, which may be appropriate for New York has become a "de facto" federal rule that fails to cover the loans most at risk of fraud.

C.A.R. supports and applauds the efforts of New York to protect their consumers from fraud. However, by forcing Fannie and Freddie to adopt a rule applicable everywhere they will have unintentionally hindered the real estate process in other states, increased costs to consumers and made the ability of appraisers to do their job more difficult.

Thank you for your consideration of C.A.R.'s comments on the Home Valuation Code of Conduct. We would welcome the opportunity to discuss these issues in greater detail. If you have any further questions please contact Matt Roberts, Federal Government Affairs Manager, at 213-739-8284 or by email at matthewr@car.org.

Sincerely,

A handwritten signature in black ink that reads "William E. Brown". The signature is written in a cursive style with a large, stylized "W" and "B".

William E. Brown  
President, California Association of REALTORS®

Cc.

Andrew Cuomo, New York Attorney General  
Office of Federal Housing Enterprise Oversight