

Key →

New Phrase	Changed Terms
<i>[Omitted HVCC Language]</i>	universally changed::
<i>commentary</i>	<ul style="list-style-type: none"> <li>• lender → seller</li> <li>• loan → mortgage</li> </ul>

## What's Changed? AIR compared to HVCC.

### I. Appraiser Independence Safeguards

- A. **An "appraiser" must be, at a minimum, licensed or certified by the State in which the property to be appraised is located.**
- B. No employee, director, officer, or agent of the *seller*, or any other third party acting as joint venture partner, independent contractor, **appraisal company**, appraisal management company, or partner on behalf of the *seller*, shall influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, *[instruction,]* inducement, intimidation, bribery, or in any other manner including but not limited to:
- (1) Withholding or threatening to withhold timely payment **or partial payment** for an appraisal report;
  - (2) Withholding or threatening to withhold future business for an appraiser, or demoting or terminating or threatening to demote or terminate an appraiser;
  - (3) Expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;
  - (4) Conditioning the ordering of an appraisal report or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary value estimate requested from an appraiser;
  - (5) Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report **prior to the completion of the appraisal report**, or requesting that an appraiser provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal report;
  - (6) Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the Borrower, except that a copy of the sales contract for purchase transactions may be provided;
  - (7) Providing to an appraiser, **appraisal company**, appraisal management company, or any entity or person related to the appraiser, **appraisal company**, or appraisal management company, stock or other financial or non-financial benefits;
  - (8) *[Allowing the]* Removing an appraiser from a list of qualified appraisers *[used by any entity, without prior written notice to such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a violation of USPAP or state licensing standards, substandard performance, or otherwise improper or unprofessional behavior;], or adding an appraiser to an exclusionary list of disapproved appraisers, in connection with the influencing or attempting to influence an appraisal as described in Paragraph B above (this prohibition does not preclude the management of appraiser lists for bona fide administrative or quality-control reasons based on written policy);* and
  - (9) Any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality **or violates law or regulation, including, but not limited to, the Truth in Lending Act (TILA) and Regulation Z, or the Uniform Standards of Professional Appraisal Practice (USPAP).**

Found in different area of AIR and is supported in Dodd Frank, TILA, and the IFR.

*[Nothing in this section shall be construed as prohibiting the lender (or any third party acting on behalf of the lender) from requesting that an appraiser (i) provide additional information or explanation about the basis for a valuation, or (ii) correct objective factual errors in an appraisal report.]*

## II. Acceptability of Subsequent Appraisals

A Seller must not order, obtain, use, or pay for a second or subsequent appraisal in connection with a Mortgage financing transaction unless: (i) there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the Mortgage file, or (ii) such appraisal is done pursuant to written, pre-established bona fide pre- or post-funding appraisal review or quality control processes or underwriting guidelines, and so long as the Seller adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value, or (iii) a second appraisal is required by law.

## III. Borrower Receipt of Appraisal

The seller shall ensure that the Borrower is provided *was "immediately" in HVCC* [ , free of charge, ] a copy of any appraisal report concerning the Borrower's subject property promptly upon completion **at no additional cost to the Borrower**, and in any event no less than three days prior to the closing of the mortgage.

The Borrower may waive this three-day requirement if such waiver is obtained at least three days prior to the closing of the Mortgage. The Seller may provide the Borrower at closing, a revised copy of an appraisal and information as to the nature of any revisions, so long as the revisions had no impact on value.

The seller may require the Borrower to reimburse the seller for the cost of the appraisal.

## IV. Appraiser Engagement

A. The seller or any third party specifically authorized by the seller (including, but not limited to, appraisal companies, appraisal management companies, and Correspondent lenders) shall be responsible for selecting, retaining, and providing for payment of all compensation to the appraiser. The seller 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).

B. **There must be separation of a Seller's sales or Mortgage production functions and appraisal functions. An employee of the Seller in the sales or Mortgage production function shall have no involvement in the operations of the appraisal function.**

*[ IV. 3) working together in the same organizational unit, or being directly supervised by the same manager, as any person who is involved in the selection, retention, recommendation of, or communication with any appraiser.]*

### (1) Certain parties are prohibited from:

- (a) Selecting, retaining, recommending, or influencing the selection of any appraiser for a particular appraisal assignment or for inclusion on a list or panel of

This phrasing is the inverse to the first part of section IV. 3) in HVCC

- appraisers approved or **forbidden** to perform appraisals for the *seller*; and
- (b) **Having any substantive communications with an appraiser or appraisal management company relating to or having an impact on valuation, including ordering or managing an appraisal assignment.**

These parties are:

- (i) All members of the *seller's mortgage* production staff;
- (ii) Any person who is compensated on a commission basis upon the successful completion of a *Mortgage*; and
- (iii) **Any person whose immediate supervisor is not independent of the Mortgage production staff and process.**

*[who reports, ultimately, to any officer of the lender other than either the Chief Compliance Officer, General Counsel, or any officer who is not independent of the loan production staff and process.]*

**Seller personnel not described in Section IV.B.(1)(i) through (iii) above are not subject to the restrictions described above, and may engage in communications with an appraiser. In addition, any party, including the parties described in Section IV.B.(1)(i) through (iii) above, may request that an appraiser provide additional information or explanation about the basis for a valuation, or correct objective factual errors in an appraisal report.**

*This is the second part of section IV. 3). It is just in a different place.*

- (2) If absolute lines of independence cannot be achieved as a result of the *seller*'s small size and limited staff, the *seller* must be able to clearly demonstrate that it has prudent safeguards to isolate its collateral evaluation process from influence or interference from its *Mortgage* production process.
- C. Any employee of the *seller* (or if the *seller* retains an **appraisal company or** appraisal management company, any employee of that company) tasked with selecting appraisers for an approved panel or substantive appraisal review must be:
- (1) Appropriately trained and qualified in the area of real estate appraisals; and
- (2) In the case of an employee of the *seller*, wholly independent of the *Mortgage* production staff and process.

## V. Use of Appraisal Reports by In-House Appraisers or Affiliated Appraisers

- A. In underwriting a *Mortgage*, the *seller* *[shall not utilize]* **may use** an appraisal report:
- (1) Prepared by an appraiser employed by:

- (a) The **seller**;
- (b) An affiliate of the **seller**;
- (c) An entity that is owned, in whole or in part, by the **seller**; or
- (d) An entity that owns, in whole or in part, the **seller**.

*[5] a real estate “settlement services” provider, as that term is defined in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq.;*

*6) an entity that is owned, in whole or in part, by a “settlement services” provider.]*

- (2) *[The lender also shall not use any appraisal report obtained by or through an appraisal management company ]* Prepared by an appraiser employed, engaged as an independent contractor, or otherwise retained by an appraisal company or any appraisal management company affiliated with, or that owns or is owned, in whole or in part, by the **seller** or an affiliate of the **seller**, **provided that the Seller complies with the provisions of these Appraiser Independence Requirements.**

*[provided that the foregoing prohibitions do not apply where the lender has an ownership interest in the appraisal management company of 20% or less and where (i) the lender has no involvement in the day-to-day business operations of the appraisal management company, (ii) the appraisal management company is operated independently, and (iii) the lender plays no role in the selection of individual appraisers or any panel of approved appraisers used by the appraisal management company.]*

B. *[Notwithstanding these prohibitions,]* The **seller** also may use in-house staff appraisers to:

- (1) Order appraisals;
- (2) Conduct appraisal reviews or other quality control, whether pre-funding or post-funding;
- (3) Develop, deploy, or use internal Automated Valuation Models; or
- (4) Prepare appraisals in connection with transactions other than Mortgage origination transactions (e.g., Mortgage workouts), **if the Seller complies with the provisions of these Appraiser Independence Requirements.**

*[VII. The lender will establish a telephone hotline and an 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, which hotline and email address shall be attended only by a member of the office of the General Counsel, Chief Compliance Officer or other independent officer. In addition:*

*1) each appraiser now or hereafter on any list of approved appraisers, or, upon retention by the lender, will be notified, in a separate document, of the hotline*

*and email address and their purpose; and*

*2) each borrower, as part of a cover letter accompanying the provided appraisal, will be notified of the hotline and email address and their purpose. Within 72 hours of receiving any complaint, the lender will begin a preliminary investigation of the complaint and upon completing the inquiry (or, after a period not to exceed 60 days, whichever shall come first) shall notify the Independent Valuation Protection Institute and any relevant regulatory bodies of any indication of improper conduct. The name and any identifying information of the person or entity that has filed such a complaint shall be kept in strictest confidence by the office of the General Counsel, Chief Compliance Officer or other independent officer, except as required by law. The lender shall not retaliate, in any manner or method, against the person or entity which makes such a complaint.*

*VIII. The lender agrees that it shall quality control test, by use of retroactive or additional appraisal reports or other appropriate method, of a randomly-selected 10 percent (or other bona fide statistically significant percentage) of the appraisals or valuations which are used by the lender, including the results of automated valuation models, broker's price opinions or "desktop" evaluations. The lender shall report the results of such quality control testing to the Independent Valuation Protection Institute and any relevant regulatory bodies. ]*

## **VI. Transfer of Appraisals**

**A Seller may deliver to Freddie Mac a conventional Mortgage with an appraisal prepared by an appraiser selected by another lender, including where a Mortgage Broker has facilitated the Mortgage application (but not ordered the appraisal). The Seller delivering the loan to Freddie Mac makes all representations and warranties to Freddie Mac regarding the appraisal set forth in the Seller's Purchase Documents, including the representation that the appraisal is obtained in a manner consistent with these Appraiser Independence Requirements.**

## **VII. Referrals of Appraisal Misconduct Reports**

Any **seller** that has a reasonable basis to believe an appraiser or appraisal management company is violating applicable laws, or is otherwise engaging in unethical conduct, shall promptly refer the matter to *[Independent Valuation Protection Institute and to]* the applicable State appraiser certifying and licensing agency **or other relevant regulatory bodies.**

## **VIII. Compliance**

**Sellers must adopt written policies and procedures implementing these Appraiser Independence Requirements, including, but not limited to, adequate training and disciplinary rules on appraiser independence, including the principles detailed in Section I. Additionally, Sellers must ensure that any third parties, such as appraisal management companies or Correspondent lenders, used in conjunction with the sale and delivery of a Mortgage to Freddie Mac are also in compliance with these Appraiser Independence Requirements.**

*[X. The lender shall certify, warrant and represent that the appraisal report was obtained in a manner consistent with this Code of Conduct.*

*XI. Nothing in this Code shall be construed to establish new requirements or obligations that*

*1) require a lender to obtain a property valuation, or to use any particular method for property valuation (such as an appraisal or automated valuation model) in connection with any mortgage loan or mortgage financing transaction, or*

*2) affect the acceptable scope of work for an appraiser in connection with a particular assignment.]*