Lenders Compliance Group

Tuesday, March 8, 2011

Appraiser Independence Requirements - AIRs on April 1, 2011

On April 1, 2011, a new industry acronym will be officially born: AIR -which stands for Appraiser Independence Requirements. AIR replaces the Home Valuation Code of Conduct (HVCC), which will have no further force or effect.

The term "AIR" actually has been around for some time, used by Fannie and Freddie in their development of HVCC. Its requirements pertain to all loans sold to Fannie Mae and Freddie Mac originated for the acquisition or refinancing of 1-4 unit, primary residential properties.

The FRB issued an interim final rule on AIR, effective December 27, 2010. However, compliance was optional until April 1, 2011. Furthermore, the FRB has removed the 2008 Appraisal Independence Rules [12 CFR 226.36(b)] effective April 1, 2011. Section 1472 of Dodd-Frank essentially codifies the 2008 Appraisal Independence Rules and expands on the protections that they provide.

As part of Dodd-Frank, the GSEs are required to review rules of appraiser independence. That is, implementation of AIR is specifically required by Dodd-Frank. Both Fannie and Freddie will continue to issue future rules about AIR, such as those relating to conflicts of interest and fee disclosure by appraisal management companies (AMCs).

In an effort to provide greater protection to the consumer, as well as prevent the "over-appraisals" alleged to have contributed to the recent mortgage meltdown, Dodd-Frank and the FRB's regulatory mandates may seem to be overreaching. But the structure of AIR is really just a more precise version of HVCC.

AIR is here to stay, so let's get more familiar with it!

Who Is Subject To AIR

Financial institutions that have been subject to the HVCC will incur minimal changes. The requirements have the biggest impact on banks and credit unions that have not implemented HVCC and now must implement the AIR procedures.

In-house appraisal departments and AMCs must determine how they will be in compliance with the appraiser compensation requirements.

Appraiser Independence

- Prohibition on coercion and other similar actions are designed to cause appraisers to base the appraised value of properties on factors other than their independent judgment.
- Prohibition on appraisers and appraisal management companies hired by lenders from having financial or other interests in the properties or the credit transactions.
- Prohibition on creditors from extending credit based on appraisals if they know beforehand of violations involving appraiser coercion or conflicts of interest, unless the creditors determine that the values of the properties are not materially misstated.
- Requirement that creditors or settlement service providers, who have information about appraiser misconduct, file reports with the appropriate state licensing authorities.
- Requirement of customary and reasonable compensation to appraisers who are not employees of the creditors or of the appraisal management companies hired by the creditors (i.e., "customary and reasonable compensation" for appraisal services performed in the market area of the property being appraised).

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Appraiser Coercion

No creditor or mortgage broker (or their affiliates) may directly or indirectly "coerce" - or otherwise encourage - an appraiser to misstate or misrepresent the value of a principal dwelling.

Examples

- Implying to an appraiser that current or future retention of the appraiser depends on the amount at which the appraiser values a consumer's principal dwelling.
- Excluding an appraiser from consideration for future engagement because the appraiser reports a value of a consumer's principal dwelling that does not meet or exceed a minimum threshold.
- Telling an appraiser a minimum reported value of a consumer's principal dwelling that is needed to approve the loan.
- Failing to compensate an appraiser because the appraiser does not value a consumer's principal dwelling at or above a certain amount.
- Conditioning an appraiser's compensation on loan consummation.

Appraiser Non-Coercion

Examples

- Asking an appraiser to consider additional information about a consumer's principal dwelling or about comparable properties.
- Requesting an appraiser to provide additional information about the basis for a valuation.
- Requesting that an appraiser correct factual errors in a valuation.
- Obtaining multiple appraisals of a consumer's principal dwelling, so long as the creditor adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value.
- Withholding compensation from an appraiser for breach of contract or substandard performance of services as provided by contract.
- Taking action permitted or required by applicable federal or state statute, regulation, or agency guidance.

Material Misstatement Voids Transaction

If a creditor who knows - at or before loan consummation - of a violation of misrepresentation in connection with an appraisal, the creditor is prohibited from extending credit based on such appraisal, unless the creditor documents that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of the dwelling.

A misstatement or misrepresentation is not material if it does not affect the credit decision or the terms on which credit is extended.

Nuances

- AMCs are regulated just as individual appraisers are regulated.
- HELOCs and portfolio loan origination procedures must comply with appraiser independence practices, such as prohibiting individuals involved in loan production from various forms of contact to the appraisal process.
- In-house appraisal staff compensation and fee arrangements must be evaluated for compliance.
- Small institutions with assets of $250M or less must separate appraisal and loan production staff.
- Appraisers and AMCs may only receive customary and reasonable compensation, using at least a 3-part test:

1. the fee must be reasonably related to recent rates paid for appraisals in a relevant geographical market;

RECOMMENDED WEBSITES

ABA Banking Journal

Bank Law Prof Blog

Bank Lawyer's Blog

Bank Rate

Bank Think

Bankruptcy Litigation

Bloomberg

Business Insider

Calculated Risk

Consumer Finance (CFPB)

Default Servicing News

Financial 24

Housing Wire

HSH Associates

Jurist

Law.Com

Lexology

Loan Workout

Mortgage Fraud Blog

Mortgage Fraud Reporter

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2. the fee is commensurate with the property type and scope of work; and, if applicable

3. the fee is established by third party requirements, not including fees paid by an AMC (i.e., such as a fee survey).

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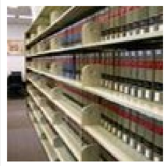

Appraisal Activities, Dodd-Frank
Title XIV - Mortgage Reform and Anti-Predatory Lending Act
Subtitle F - July 21, 2010

Labels: AIR, Appraisal Guidelines, Appraisal Independence, Appraiser Independence Requirements, Dodd-Frank Act, Fannie Mae, FRB, Freddie Mac, Home Valuation Code of Conduct, HVCC

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