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<sup>1</sup> Press Release, Freddie Mac, Freddie Mac Seeks Mortgage Industry Comments on New Appraisal Code of Conduct (Mar. 14, 2008), *available at* [http://www.freddiemac.com/news/archives/corporate/2008/20080314\\_appraisal-comment.html](http://www.freddiemac.com/news/archives/corporate/2008/20080314_appraisal-comment.html). The Code of Conduct is available at [http://www.freddiemac.com/singlefamily/docs/030308\\_valuationcodeofconduct.pdf](http://www.freddiemac.com/singlefamily/docs/030308_valuationcodeofconduct.pdf).

These comments represent the views of the staff of the Office of Policy Planni

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15 U.S.C. §§ 1601-1666j (requiring disclosures an

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Colo. 2004); *FTC v. Chase Fin. Funding, Inc.*, No. 04-549 (C.D. Cal. 2004); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortgage Co.*, No. 02-5079 (N.D. Ill. 2002); *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. 2001); *FTC v. First Alliance Mortgage Co.*, No. 00-964 (C.D. Cal. 2000); *United States v. Action Loan Co.*, No. 00-511 (W.D. Ky. 2000); *FTC v. NuWest, Inc.*, No. 00-1197 (W.D. Wash. 2000); *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *FTC v. Cooper Props.ro*

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<sup>9</sup> See Fannie Mae Single-Family MBS Prospectus, Exhibit B, n.23 (Apr. 1, 2008), available at [http://www.efanniemae.com/syndicated/documents/mbs/mbspros/SF\\_April\\_1\\_2008.pdf](http://www.efanniemae.com/syndicated/documents/mbs/mbspros/SF_April_1_2008.pdf) (defining “retail,” “correspondent,” and “broker”).

<sup>10</sup> Lew Sichelman, *Loan Brokers Lose Share, But Still Rule the Market*, REALTY TIMES, July 18, 2007, [http://realtytimes.com/rtpages/20070718\\_losesshare.htm](http://realtytimes.com/rtpages/20070718_losesshare.htm); Press Release, Wholesale Access, New Research About Mortgage Brokers Published (July 28, 2005), available at [http://www.wholesaleaccess.com/7\\_28\\_mbkr.shtml](http://www.wholesaleaccess.com/7_28_mbkr.shtml).

<sup>11</sup> This comment does not address automated valuation models.

<sup>12</sup> See 12 C.F.R. §§ 34.42(a), 225.62(a), 323.2(a), 564.2(a), 722.2(a); Uniform Standards of  
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<sup>15</sup> The Home Value Protection Program and Cooperation Agreement among the NY AG, Freddie Mac, and OFHEO (“Freddie Mac Settlement Agreement”) is available at [http://www.freddiemac.com/singlefamily/docs/030308\\_freddieagree.pdf](http://www.freddiemac.com/singlefamily/docs/030308_freddieagree.pdf), while the Home Value Protection Program and Cooperation Agreement among the NY AG, Fannie Mae, and OFHEO (“Fannie Mae Settlement Agreement”) is available at [http://www.fanniemae.com/media/pdf/030308\\_agreement.pdf](http://www.fanniemae.com/media/pdf/030308_agreement.pdf).

<sup>16</sup> Freddie Mac Settlement Agreement ¶ 1; Fannie Mae Settlement Agreement ¶ 1.

<sup>17</sup> Code of Conduct § I. The Code of Conduct specifically allows the lender or any third party acting on behalf of the lender to request that an appraiser “(i) provide additional information or explanation about the basis for a valuation, or (ii) correct objective factual errors in5.4000 0.0000 TD(d)Tj5.5200 0.0000 TD

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comments recently filed with the Federal Reserve Board (“Board”), the FTC staff supported the Board’s proposed rule to protect appraiser independence, noting that pressuring an appraiser to misrepresent the value of a property distorts the lending process and harms consumers.<sup>23</sup> Section I of the Code of Conduct would provide similar protections for appraiser independence.

Prohibiting specific conduct that may undermine the independence of the appraisal process – as Section I of the Code of Conduct would do – is the most direct means of protecting such independence. In contrast, limiting the way in which participants in the mortgage lending industry can contract with each other and thus imposing potentially significant changes in the structure and functioning of that industry – as Sections III and VI of the Code of Conduct apparently would do<sup>24</sup> – is a much more indirect means of protecting appraiser independence. The use of such indirect means also creates concerns that, notwithstanding the laudable goal of appraiser independence animating the requirements and prohibitions in the proposed Code of Conduct, such provisions may have unintended adverse consequences for competition and consumers in the mortgage lending area, including, for example, higher prices for consumers without sufficient protections or other benefits to offset such costs.

Based on its experience, the FTC staff recognizes the need to consider all of the implications – including both the benefits and costs to consumers – of imposing restrictions in the mortgage lending area because of the potential for such restrictions to impair consumers’ access to mortgage credit. Thus, in considering the impact on competition and consumers of the proposed Code of Conduct’s efforts to insulate appraisers from undue influence and thereby protect the integrity of the lending process, it is important to assess whether the restrictions contained therein would impede unduly individuals’ access to mortgage credit by, for example, raising the price

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<sup>23</sup> FTC STAFF, COMMENTS TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ON PROPOSED RULE RESTRICTING CERTAIN MORTGAGE PRACTICES 9 (Apr. 8, 2008), *available at* <http://www.ftc.gov/os/2008/04/V080008frb.pdf>.

<sup>24</sup> Given the significant roles that Freddie Mac and Fannie Mae serve in the secondary mortgage market, it seems likely that the Code of Conduct will have a significant impact on the structure and functioning of the primary mortgage lending industry.

<sup>25</sup> The Code of Conduct’s provisions regarding the prohibition of the mortgage broker from receiving or attempting to receive any fee, commission, or other consideration from the consumer at the time of the appraisal are particularly concerning because they may have the effect of reducing the number of appraisers in the market, which could lead to higher prices for consumers.

results in it being more difficult or expensive to use mortgage brokers than lenders to obtain a mortgage, then consumers may lose some of the benefits brokers may provide as a significant mortgage distribution channel. The FTC staff thus recommends that Freddie Mac and the other parties to the settlement agreements fully consider the potential impact on the lending market and, ultimately, consumers of the prohibition on mortgage brokers directly ordering appraisals.

Another potential competitive concern relates to the ability of AMCs and other settlement services providers to offer a package of appraisal and one or more other real estate closing-related services, such as title insurance, flood reports, and settlement services. Section VI of the Code of Conduct would prohibit lenders desiring to sell loans to Freddie Mac or Fannie Mae from utilizing appraisals conducted by *employees* of real estate settlement services providers.<sup>25</sup> There does not appear to be any language in the Code of Conduct that would prohibit the use of appraisals done by independently contracted appraisers on behalf of (non-lender-affiliated or otherwise qualifying) AMCs. In fact, Section III of the Code of Conduct explicitly provides for the ability of lenders to authorize AMCs to select, retain, and compensate appraisers.<sup>26</sup>

Freddie Mac, however, has publicized an interpretation of the Code of Conduct that would prohibit lenders from utilizing appraisals done or perhaps even ordered by an entity that offers any services other than appraisals. In a March 3, 2008, email advisory to its sellers and servicers, Freddie Mac stated: “A lender will no longer be allowed to sell Freddie Mac a loan if the appraisal was done by an in-house appraiser, a subsidiary or affiliate of the lender (except under certain conditions . . .), ordered by a mortgage broker, or *an entity that offers any other services other than appraisals.*”<sup>27</sup> It is the FTC staff’s understanding that a significant number of AMCs – particularly those operating on a regional or national basis – offer services other than appraisals. Under one reading of Freddie Mac’s stated interpretation of the Code of Conduct,<sup>28</sup> such companies would have to choose between offering either appraisal or non-appraisal services; they could not offer lenders – and, ultimately, consumers – both. To the extent that consumers benefit from the packaging of appraisal and non-appraisal services by AMCs and

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<sup>25</sup> Code of Conduct § VI(5). Section VI(6) extends this prohibition to any entity owned in whole or in part by a settlement services provider. *Id.* § VI(6).

<sup>26</sup> *Id.* § III. *See also id.* § V (requiring certain training for lender employees or, if the lender retains an AMC, employees of the AMC responsible for selecting appraisers).

<sup>27</sup> Advisory Email Message to Seller/Servicers, Freddie Mac, Important Information about Home Valuation Code of Conduct (Mar. 3, 2008) (emphasis added), *available at* [http://www.freddiemac.com/singlefamily/20080303\\_advisory.html](http://www.freddiemac.com/singlefamily/20080303_advisory.html).

<sup>28</sup> It is unclear from the language of the email advisory whether prohibited appraisals include those “done” or “ordered” by “an entity that offers any other services other than appraisals” – or both.



other settlement services providers,<sup>29</sup> Freddie Mac's interpretation of the Code of Conduct could have adverse implications for competition and consumers. The FTC staff therefore recommends that Freddie Mac clarify and, more importantly, consider the competitive implications of, its interpretation of those provisions in the Code of Conduct relating to settlement services providers.

## **V. Conclusion**

The FTC staff supports initiatives to improve the mortgage lending process for consumers, including those designed to protect appraiser independence. These initiatives are particularly important in light of current problems that mortgage borrowers are experiencing. FTC staff hopes that this comment is useful to Freddie Mac, Fannie Mae, OFHEO, and the NY AG in their assessment of the impact on competition and consumers of the proposed Code of Conduct.

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<sup>29</sup> See, e.g., FTC STAFF, COMMENTS TO THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ON PROPOSED RESPA AMENDMENTS 12 (Oct. 28, 2002), *available at* <http://www.ftc.gov/be/v030001.pdf> (noting that the packaging of various loan and settlement services "should lead to lower prices in the market for settlement services, increase efficiency, and simplify the process for borrowers").

Respectfully submitted,

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Maureen K. Ohlhausen, Director  
Gregory P. Luib, Assistant Director  
Office of Policy Planning

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Michael R. Baye, Director  
David Meyer  
Janis K. Pappalardo  
Bureau of Economics

cc: Fannie Mae  
OFHEO  
NY AG