



## Interim Guidance on the NAR Settlement and the Valuation Process

July 10, 2024

**The NAR Settlement regarding MLS commission disclosures will not be final until the end of this year. This means what we know now may change.**

Based on what we know now, the NAR Settlement in its current form will require appraisers to perform additional research pertaining to both market practice and the individual circumstances of each comparable transaction as well as any pending subject property transaction. The Settlement may or may not affect prices/values, but it does affect the valuation process: particularly the collection and confirmation of market data and the adjustment of comparable sales. And it may affect who pays/benefits from the presence or absence of transaction costs.

As it stands now, the Settlement applies to 1-4 unit residential properties, and apparently does not capture land/sites or other categories of improved real estate. The following points highlight areas potentially affected by the NAR Settlement that appraisers need to consider in the valuation process.

- MLSs may not disclose the commission information at all. As part of the normal verification process, appraisers must confirm what factors influenced the sale price of the property, such as a concession or a commission.
- It has been customary for the seller to pay the broker commission that may be split between the seller's broker and the buyer's broker. The commission was a part of the sales price. The Settlement changes this historical pattern of home sales and commissions. Appraisers must continue to remain knowledgeable about what is customary and typical in their market.
- Some incorrectly use the term "concession" as synonymous with "commission."

A commission is always something paid to a broker.

However, a concession MAY be many things such as closing costs assistance, money towards repairs, or help with a buyer broker commission.

Interested party contributions (IPCs) are costs that are normally the responsibility of the property purchaser that are paid directly or indirectly by someone else who has a financial interest in, or can influence the terms and the sale or transfer of, the subject property or a property used as a comparable.

IPCs are either financing concessions or sales concessions. Fannie Mae considers the following to be IPCs:

- funds that are paid directly from the interested party to the borrower.
- funds that flow from an interested party through a third-party organization, including nonprofit entities, to the borrower.
- funds that flow to the transaction on the borrower's behalf from an interested party, including a third-party organization or nonprofit agency; and
- funds that are donated to a third party, which then provide the money to pay some or all the closing costs for a specific transaction.

A lender credit derived from premium pricing is not considered an IPC even if the lender is an interested party to the transaction.<sup>1</sup>

A commission paid to a listing broker or buyer broker by any party does not benefit just the buyer.

A sales commission has not been considered a concession by the GSEs.

- If a seller offers to assist the buyer in paying a commission, is this a concession that requires an adjustment to a comparable sale price? The seller's payment of a buyer broker commission is the same as it has typically been for many years; therefore, it is highly likely not a concession.
- Appraisers must be aware that the public record showing a sale price may not capture the commission, just as the public record showing the sale price likely does not factor in the concession(s). Comments on the sale price recorded and the price used in the appraisal report will be necessary to avoid review or underwriting concerns.
- The change in how commissions are paid will no longer be transparent in public records or MLSs. The good news for valuation professionals is that the market data may materially affect the use of AVMs and grow the need for an appraisal. Residential appraisers should recognize that this is a VALUE ADD for them. True analysis of a sale can only be done by a valuation professional, not a computer program.
- Brokers are now required to have a signed Buyer Compensation Agreement (BCA) with their client at the initial stage of working with that client. This agreement sets out what the client will pay the buyer's broker.

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<sup>1</sup> Fannie Mae Selling Guide, B3-4.1-02, Interested Party Contributions (IPCs) (09/06/2023)  
Freddie Mac Selling Guide, 5501.5, Interested Party Contributions (IPCs) (06/05/2024)

- Associations and MLSs are currently revising their listing and purchase agreements to comply with these new requirements, so appraisers are urged to stay up to date with the changes in their local MLS or association. Appraisers are encouraged to stay involved in their local MLS or association discussions on the changes. Some purchase agreements will now have an amount paid to the buyer's broker, which will be helpful. The amount paid to the seller will be unknown unless an appraiser receives a copy of the Settlement statement. However, the Settlement does permit the posting of commission amounts on the individual firm or broker social media or website, including offers of compensation to buyer brokers.
  - When appraisers get copies of sale contracts, the buyer's broker contract should also be included which will certainly help the appraiser with the analysis.
  - It is a BEST PRACTICE to state specifically what the appraiser reviewed in the written analysis of the sale contract. For example, *"I have reviewed pages 1-14 of the XXX sale contract which included three addenda pages (list the names of the addenda pages).*
    - All financing data and sales concessions for the subject property that will be or have been granted by anyone associated with the transaction must be disclosed to the appraiser, as appropriate. Typically, this information is provided in the sale contract. Therefore, the lender must provide, or ensure that the appraiser is provided with, a copy of the complete ratified sale contract, and all addenda for the property that is to be appraised.<sup>2</sup>
  - If there is an addendum that is 'outside' of the contract (that happens very often!) then the appraiser is not liable for knowing about it.
- One item for brokers especially to be concerned with is the fair housing aspect - are they treating all buyer brokers fairly and not making deals with certain brokers or for certain properties? This will be a difficult aspect to monitor but several groups are genuinely concerned that this may be unfair to clients who do not have funds to pay a buyer's broker.
- Buyers may pay the commission. In this case, the appraiser must consider the sale price paid and determine if the price was affected by the buyer paying the commission. For instance, the price is \$300,000 with the buyer paying the commission of \$18,000. How much did the buyer pay for the house? \$300,000 or \$318,000?
- **Disclaimer:** This document is intended to help appraisers consider the potential impacts of the not yet finalized NAR settlement on valuation practice based on our current knowledge and understandings. The content is subject to change as further information

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<sup>2</sup> Fannie Mae, B4-1.1-05, Disclosure of Information to Appraisers (12/06/2016), June 5, 2024

becomes available and the settlement is finalized and implemented. The content does not constitute legal, accounting or other professional advice.