

# Mandatory Reporting



**CRN QUARTERLY MEETING  
JANUARY 2013  
FT. LAUDERDALE**

## Dodd Frank ~ July 21, 2010



“(e) MANDATORY REPORTING—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, **or any other person** involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, **shall** refer the matter to the applicable State appraiser certifying and licensing agency.

# Interim Final Rule ~ October 28, 2010



The interim final rule:

- Provides that a creditor or settlement service provider involved in the transaction who has a reasonable basis to believe that an appraiser has not complied with ethical or professional requirements for appraisers under applicable federal or state law, or the Uniform Standards of Appraisal Practice (USPAP) must report the failure to comply to the appropriate state licensing agency.
- Limits the duty to report compliance failures to those that are **likely to affect the value** assigned to the property.

And...

- Provides that a person has a “reasonable basis” to believe an appraiser has not complied with the law or applicable standards, only if the person has knowledge or evidence that would lead a reasonable person under the circumstances to believe that a **material failure** to comply has occurred.

# Why Mandatory Reporting?



- **Return to Professionalism**
- **Integrity and Confidence in the Appraisal Profession**
- **Protect the Public**

# Examples of Material Failure



- **Mischaracterizing** the value of a consumer's principal dwelling in violation of **226.42(c)(2)(i)**.
- Performing an assignment in a **grossly negligent** manner, in violation of a rule under USPAP.
- Accepting an appraisal assignment on the condition that the appraiser will report a value equal to or greater than the purchase price for the consumer's principal dwelling, in violation of a rule under USPAP.

# Who May File a Complaint?

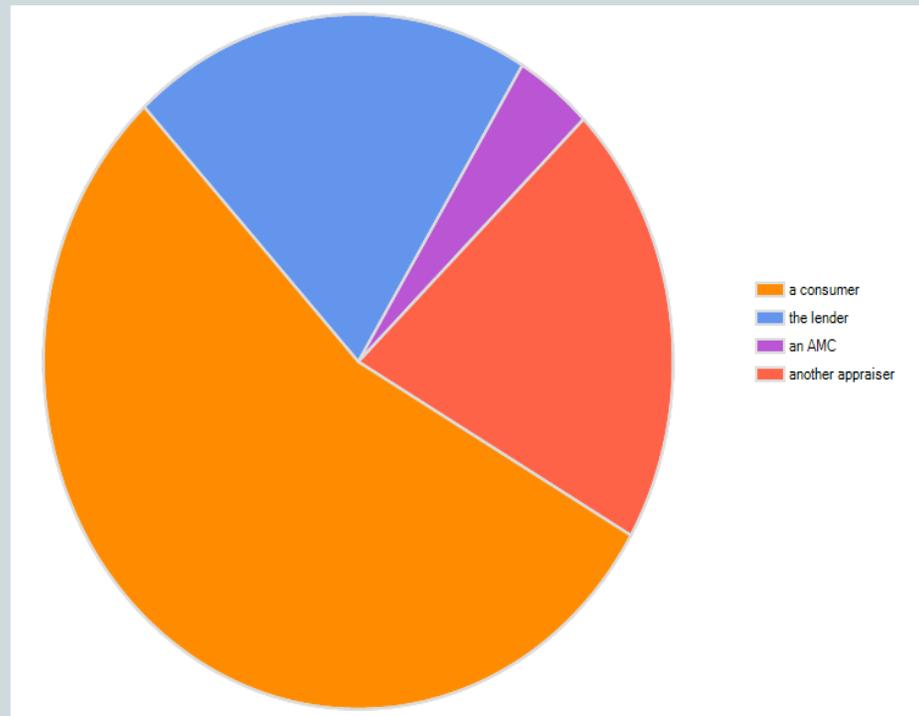


- **Mortgage Lender**
- **Mortgage Broker**
- **Mortgage Banker**
- **Real Estate Broker**
- **AMC.**
- **Employee of an AMC.**
- **Any other person involved in a real estate transaction involving an appraisal.**

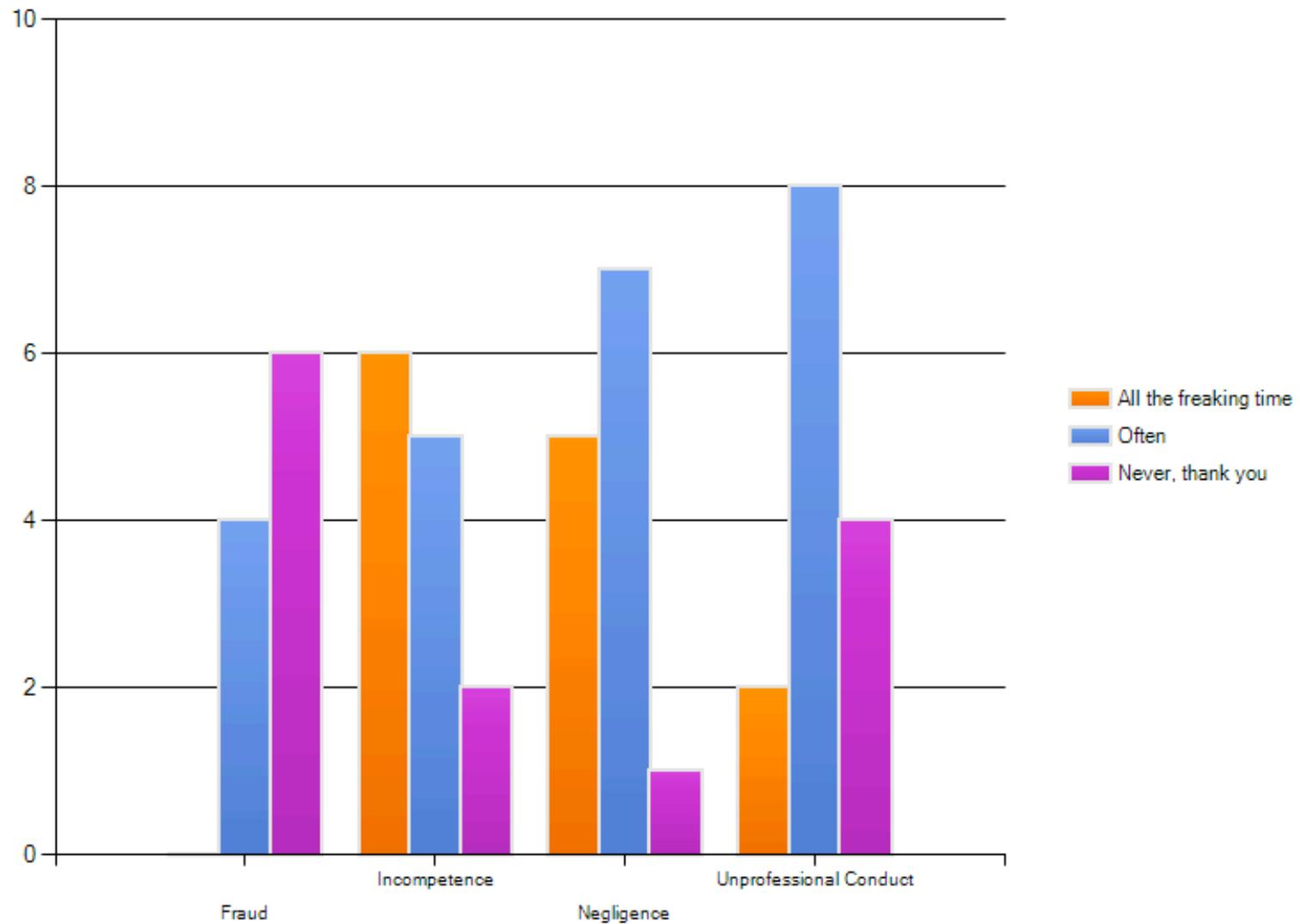
# Who is filing complaints?



- **AMCs**
- **Homeowners**
- **Lenders**
- **Appraisers**



# Most common complaint



# Internal Review Process



- **Administrative Observation by Staff Appraiser, Chief Appraiser, QC Audit Process or Client recognizes an issue.**
- **Internal Staff Appraiser review followed by a Field Review by a local appraiser.**
- **Appraiser's internal status changed based on magnitude of issue noted to "ineligible", "suspended", or "watch". This is done to stop a licensee from creating additional potential problems to create a "safety net" to allow Appraisal Review to monitor incoming reports to verify credibility of appraiser's work product.**

# Internal Review Process



- **If an appraiser is placed on “Ineligible” or “Suspended” status they are notified of the reason(s) in writing and provided the opportunity to respond to the issue.**
- **If it is noted that the appraiser has produced a misleading/deceptive report (i.e. USPAP violation) a complaint to the appraiser’s state board is produced immediately.**
- **If the issue is less defined the appraiser’s response is provided to a Staff Appraiser who reviews the original appraisal, review and the rebuttal, and reconciles the documents to determine the next appropriate steps.**

# Points to Consider



- **Does that mean we don't have to file a complaint if there is a USPAP violation in the appraisal process on a 2<sup>nd</sup> home or an investment property?**
- **Are all participants required to identify which part of USPAP or applicable law the appraiser is violating before they file the complaint?**

# Process for Filing Complaints



- **Each state has their own process for filing complaints.**
- **Neither the processes nor the forms are consistent from state to state**
- **All states require the complaint be filed in writing and supporting documentation be attached.**
- **Several states will not process anonymous complaints**
- **Disciplinary action that is taken is administrative in nature, e.g. reprimand, fine, restriction of practice, remedial education, administrative cost, probation, license suspension or license revocation. Boards will not represent in civil matters to recover fees paid or seek remedies for injuries.**
- **A turn-time for completion of the investigation on the compliant is not provided.**

# AMC Requirements to File Complaints



- **Individual state regulations are making it a requirement for AMCs to report appraisers**
- **All states with active AMC regulations require the AMC to provide to the state written notification with evidence that supports the basis of fact that the appraiser has violated the Uniform Standards of Professional Appraisal Practice, that specific state's general statutes, or other applicable appraisal regulations or evidence which demonstrates substandard performance, improper or unprofessional behavior, or other substantive deficiencies.**

# State Examples



- **Alabama:**

- If an AMC has a good faith belief that an appraiser licensed in Alabama has violated applicable law or the Uniform Standards of Professional Appraisal Practice, engaged in unethical conduct, and the violation has had a material impact on the valuation, the company shall file a complaint with the Board.

- **Montana:**

- An AMC that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board.

- **Kansas:**

- If the appraiser is being removed from the panel for illegal conduct, violation of the USPAP, or a violation of this act or the regulations adopted thereunder, providing notice to the appraiser and to the board detailing allegations of fact and alleged violations of USPAP, regulations or laws.

# Removal from AMC Panel



- **Except** within 30 days after an appraiser is **first added** to the appraiser panel of an AMC, an AMC **may not** remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an appraiser without:
  - Notifying the appraiser in writing of the reasons why they are being removed from the panel.
  - Identifying the illegal conduct, violation of USPAP, violation of state licensing standards, or **substandard performance or violations of contractual terms between the appraiser and the AMC** that the AMC has a reasonable basis to believe that the appraiser has engaged in.
  - However.....The appraiser **must be given** an opportunity to respond to the written notification either personally or through legal counsel.

# Removal from AMC Panel



- Again if the AMC has a reasonable basis to believe the appraiser has engaged in illegal conduct, violated USPAP or state licensing standards, the **AMC is obligated** to turn them into the state.
- The appraiser may file a counter complaint with the Board.
- If the Board determines the Appraiser did not commit a violation of law, a violation of USPAP, or a violation of state licensing standards, the Board shall order that such appraiser be added to the appraiser panel of the AMC. If the Board determines the AMC acted improperly in removing the appraiser from the appraiser panel, an AMC may not refuse to make assignments to the appraiser or reduce the number of assignments, or otherwise penalize the appraiser.