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**AMCs:  
OVERCOME THE CHALLENGE OF NEW  
STATE REGULATIONS**

*FNC, Inc. Web Conference  
February 18, 2010*

# PROGRAM

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AMCs & State Legislation Update

Status

Practical Experiences

Q&As

# FNC SPEAKERS

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- **Neil Olson**
  - Chief Legal Officer
  
- **Shawn Telford**
  - Director, Product Management
  
- **Ann Spitzley**
  - Director, Education & Training

# QUESTIONS

- [education@fncinc.com](mailto:education@fncinc.com)
- “Chat” box submission



# DOWNLOADS – LANDING PAGE

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- [http://www.fncinc.com/ClientAccess/WebConf\\_AMC.aspx](http://www.fncinc.com/ClientAccess/WebConf_AMC.aspx)
  - Today's PowerPoint
  - Audio

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*Neil Olson*  
*Chief Legal Officer*

# Top Issues

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- Where are we now with AMC legislation?
- 2009 recap
- 2010 legislative issues
- Top issues in the 2010 legislative proposals
- Current experiences from two AMCs
- Practical responses
- Questions and answers / contract information

# Taking Stock

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- 2009 was the year of legislation to regulate AMCs.
- Six states passed legislation in 2009.
- FNC has a recap of that legislation in the updated version of its presentation on AMC legislation—available on the FNC website.
- 2010 is the year when many states have jumped into the fray with their own legislation

- **Six states passed AMC legislation in 2009:**
  - Arkansas (effective Jan. 1, 2010)
  - California (effective Jan. 1, 2010)
  - Louisiana (effective Jan. 1, 2010)
  - Nevada (effective Jan. 1, 2010)
  - New Mexico (effective June 19, 2009)
  - Utah (effective May 12, 2009)
- Not all of these states actually have mechanisms by which AMCs can “register.”
- AMCs are actively attempting to comply with these new laws. (We will hear about some of their experiences later.)

- 2010 has seen a blizzard of AMC-proposed legislation as many states jump into the fray.
- The nature of the legislation introduced in 2010 is much different from that in 2009.
- The legislation is much more prescriptive and burdensome on appraisal management companies.
- We have identified at least 15 states with active legislation. (There may be others.)

# Some States Where Bills Have Been Introduced

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- Arizona
- Colorado
- Florida
- Georgia
- Hawaii
- Indiana
- Kentucky
- Minnesota
- Mississippi
- Missouri
- Nebraska
- New Mexico (again)
- North Carolina
- Oregon
- Washington

# FHA Mortgagee Letter 2009-28

## Appraisal and Appraisal Management Company Third-Party Organization Fees

- FHA does not require the use of AMCs or other third-party organizations for appraisal ordering, but recognizes that some lenders use AMCs and/or other third-party organizations to help ensure appraiser independence. To address several questions that have already been raised regarding compensation, this mortgagee letter corrects and expands existing fee requirements set forth in Mortgagee Letter 1997-46.
- FHA-approved lenders must ensure that:
  - FHA appraisers are not prohibited by the lender, AMC, or other third party, from recording the fee the appraiser was paid for the performance of the appraisal in the appraisal report.
  - FHA Roster appraisers are compensated at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.
  - The fee for the actual completion of an FHA appraisal may not include a fee for management of the appraisal process or any activity other than the performance of the appraisal.
  - Any management fees charged by an AMC or other third party must be for actual services related to ordering, processing, or reviewing of appraisals performed for FHA financing.
  - AMC and other third party fees must not exceed what is customary and reasonable for such services provided in the market area of the property being appraised.

# Policy Issues Raised in 2009 Legislation

- 2009 legislation evoked two sets of requirements:
  1. General conditions:
    - System in place to verify that any appraiser is licensed or certified
    - System in place to periodically review the work of all independent appraisers
    - Detailed record kept of each request for appraisal services
  2. Special provisions:
    - Requirement of a surety bond in one state
    - Disclosure of fees in the appraisal
    - Regulation of process of removing an appraiser from the AMC's panel

# Special Issues from 2010 Legislation

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- Legislation seems to shift the burden of ethical conduct from the appraiser to the appraisal management company.

For example:

- AMC obligated to assure that appraisals comply with USPAP
- AMC obligated to assure appraiser has geographic competence and is “paid enough” to do competent work

# Focus on 2010 Legislative Requirements

- Who fits the definition of an appraisal management company?
  - Much more expansive definitions in some states, for example, Florida
    - 475.6235 Registration of appraisal management companies required; exemptions.--*
    - (1)(a) Except as provided in paragraph (b), a person may not engage in appraisal management services for compensation in this state, advertise or represent herself or himself as an appraisal management company, or use the titles "appraisal management company," "appraiser cooperative," "appraiser portal," or "mortgage technology company," or any abbreviation or words to that effect, unless the person is registered with the department as an appraisal management company under this section. However, an employee of an appraisal management company is not required to obtain a separate registration.
    - Need to pay attention to the definitions, since they do not always follow the traditional notion of an appraisal management company
- By the way, has anyone dealt with the issue of federal preemption?

# Employee Requirements

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- Employee requirements

- Utah currently has this requirement

## **R162-150-2. Employee Qualifications.**

(1) An appraisal management company seeking registration shall demonstrate to the Division that each person who selects an appraiser or reviews an appraiser's work for the appraisal management company:

(a) Is a licensed or certified appraiser in good standing; or

(b) Has taken and passed, within 6 months after initial registration, the 15 hour national Uniform Standards of Professional Appraisal Practice (USPAP) course.

# Employee Requirements

The provisions are more burdensome, for example, in the Hawaii bill HB 1577

**-F Employees; requirements; limitations.**

- (a) Any employee of an appraisal management company, or any person working on behalf of the appraisal management company, who is responsible for selecting independent appraisers to perform residential real estate appraisal services or for reviewing completed appraisals shall be appropriately trained and qualified in the performance of residential real estate appraisals as determined by the commission.
- (b) Any employee of the appraisal management company who is responsible for reviewing the work of independent appraisers shall have demonstrated knowledge of the Uniform Standards of Professional Appraisal Practice, as determined by the commission.

# Employee Requirements

- Employee requirements

Or in Washington State:

- (3) Any employee of the appraisal management company, or any contractor working in any capacity on behalf of the appraisal management company, that has any involvement in the actual performance of appraisal services, or review and analysis of completed appraisals must be a state licensed or state certified appraiser in the state in which the property is located, and must have geographic and product competence according to uniform standards of professional appraisal practice. Employees completing appraisal reviews must have a minimum of five years' appraisal experience.

# Employee Requirements

- More on what is a review and who can review
- Indiana does not appear to permit what we would call an administrative or compliance review
  - Sec. 13. (a) As used in this section, "appraisal review" means the process of developing and communicating an opinion about the quality of a real estate appraiser's work that is performed as part of an appraisal assignment made by an appraisal management company. However, the term does not include an examination of an appraisal solely for grammatical errors, typographical errors, or similar errors.
  - (b) An individual who performs an appraisal review must hold a license or certificate under IC 25-34.1-3-8.

# Removing Appraisers from a List

- Most of the states are proposing an “adjudication” system whereby an appraiser may not be removed from an appraiser list without notice and the potential for an adjudication by the appraiser board. The standards can be fairly steep, as in Arizona:
  - An appraisal management company may not remove from the panel or remove from receiving assignments an appraiser for uniform standards of professional appraisal practice or quality issues, unless the appraisal management company has first obtained a uniform standards of professional appraisal practice compliant review performed by an appraiser and the review clearly states the uniform standards of professional appraisal practice violation that significantly undermines the credibility of the appraisal or its opinion of value.

# Removing Appraisers from a List

- Some states do not appear to permit simple administrative removals from a list. For example, Kentucky:
  - *(e) Remove an appraiser from an appraiser panel without prior written notice to the appraiser. An appraiser may only be removed from an appraiser panel with written notice for:*
    1. *A violation of the minimum USPAP standards or other applicable statutes or administrative regulations resulting in a suspension or revocation of the appraiser's license in Kentucky; or*
    2. *Such other substandard or otherwise improper performance as may be determined by administrative regulations promulgated by the board;*

# Surety Bonds

- On a policy level, what is the purpose of the surety bond? Query what other licensed activities in each of these states require a surety bond? For example, do beauticians, accountants, appraisers, lawyers, real estate brokers maintain surety bonds?
- Some current proposals for surety bonds:
  - Arizona: \$50,000
  - Georgia: unknown
  - Kentucky: unknown, but can be up to \$500,000
  - Missouri, \$250,000
  - Washington (at least \$25,000, based on volume of appraisal orders in the state)

# Disclosure of Appraisal Fees

- Disclosure of appraisal fees
- Kentucky proposes:
- (6) The registrant shall disclose, on all invoices, purchase orders, or other documents establishing work to be performed for or compensation due from its clients, itemized actual fees paid to any third party for services performed, including appraisal services, for the client through contract with or arrangement through the registrant. Such disclosure shall include:
  - (a) The name of the third party performing the service, including a licensed appraiser performing appraisal services;
  - (b) The nature of the service and itemized fees paid to the third party for appraisal services or any other services performed; and
  - (c) Itemized fees or charges received by the registrant for appraisal management services.
- If such disclosure becomes inaccurate because of changes to services requested or performed, a revised or amended disclosure shall be provided by the end of the next business day after the change to services has been performed, and the revised or amended disclosure shall be clearly marked as revised or amended and contain sufficient information for the client to identify the original disclosure referenced.

# Appraisal Fee Schedules

- For example, Hawaii proposes (as does Minnesota). Nebraska has similar.
- **§ -H Appraiser fee schedule.**
  - (a) An appraisal management company in the State that utilizes an appraiser fee schedule shall develop the appraiser fee schedule or schedules through one or more surveys of the market rates paid to independent fee appraisers in the State for the performance of real estate appraisal services.
  - (b) The surveys performed pursuant to subsection (a) shall use statistically valid methodologies and techniques, and reliable data sources including representative samples of independent fee appraisers.
  - (c) Every appraisal management company that uses or has developed an appraiser fee schedule shall disclose that information to the commission at the time of initial registration or ninety days before the schedule is adopted by the appraisal management company, whichever is sooner. The commission may review any appraiser fee schedule developed or utilized by an appraisal management company in the State, along with the methodologies, techniques, and data sources used in its development, to ensure that it complies with this section.
  - (d) Following a review of any fee schedule conducted pursuant to subsection (c), the commission shall make the substantive results of the review available to the public.
- Nebraska has a similar provision, but permits making the schedule public.

# More About Fees and Assignment Conditions

- **Colorado, for example**
  - (X) Compensating an appraiser in a manner that the person should reasonably have known would result in the appraiser not conducting an appraisal in a manner consistent with applicable appraisal standards;
  - (XII) Imposing work assignment conditions that would preclude the average appraiser from completing the assignment in a competent manner.
- **Washington**
  - (k) Knowingly requiring an appraiser to prepare an appraisal report, engaging an appraiser to perform an appraisal, or accepting an appraisal from an appraiser who does not have either the geographic competence or necessary expertise to complete the appraisal;
  - (l) Knowingly requiring an appraiser to prepare an appraisal report under such a limited time frame when the appraiser, in the appraiser's own professional judgment, has informed the appraisal management company that it does not afford the appraiser the ability to meet all relevant legal and professional obligations or provide a credible opinion of value for the property being appraised;

# Verifying the Appraiser Licensed or Certified

- Similar requirements to those already enacted. But note the breadth, for example in Colorado
  - (b) Employs or enters into any independent contractor arrangement for the performance of work for which an appraisal license or certificate is required pursuant to this part 7 with any person who has had a license or certificate to act as an appraiser in **this state or in any other state** refused, denied, relinquished, canceled, revoked, or surrendered in lieu of a pending revocation;

# Payments to Appraisers

- Similar to the 2009 provision for New Mexico
- Payment by
  - 30 days (Arizona)
  - 60 days (Colorado)
  - 60 days (Hawaii)
  - 60 days (Minnesota)
  - 60 days (Mississippi)
  - 30 days (Missouri)
  - 60 days (Nebraska)
  - 30 days (North Carolina—client pays the appraiser directly?)
  - 60 days (Oregon)
  - 30 days (Washington), even if AMC has not been (or is never) paid

# Alteration of Appraisals/Signatures

- We're seeing prohibition against the alteration of appraisals, often coupled with provisions about the signature. For example, Florida:
  - (2) The board shall adopt rules specifying the means by which an appraiser's signature may be affixed to an appraisal report or other work performed by the appraiser. The rules shall include requirements for protecting the security of an appraiser's signature and prohibiting practices that may discredit the use of an appraiser's signature to authenticate the work performed by the appraiser.

# More on Alteration and Signatures

- **Washington state has special provisions in its bill:**
  - (f) Altering, modifying, or otherwise changing a completed appraisal report submitted by an appraiser;
  - (g) Copying and using the appraiser's signature for any purpose or in any other report;
  - (h) Extracting, copying, or using only a portion of the appraisal report without reference to the entire report;
  - (i) Prohibiting or attempting to prohibit the inclusion of the signature on an appraisal report of a state-registered appraisal trainee if the report is also signed by the supervisory appraiser;

# Maintaining Records Including Copies of Appraisals

- The 2009 requirement to maintain detailed records has been expanded, in some cases, to a requirement to maintain copies of the actual appraisals, such as in Washington:
  - **Sec. 14. RECORDKEEPING.** An appraisal management company must certify to the department on initial application and upon renewal, that it maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal for the appraisal management company. This statement must also certify that the appraisal management company maintains **a complete copy of the completed appraisal report**, for a minimum period of not less than five years after the appraisal is completed, nor for a period of not less than two years after final disposition of a judicial proceeding in which testimony relating to the records was given, whichever period expires later.
- Query whether the AMC has the authority to do this?

# Indemnification

- Several states now would forbid indemnification provisions
- New Mexico
  - B. An appraisal management company shall not include a hold harmless provision in the contract with a client or require the appraiser to indemnify the appraisal management company against liability. The appraisal management company and the appraiser shall be jointly and severally liable to the client.
- Nebraska
  - (j) Using or compelling an appraiser to sign or accept a hold harmless agreement or indemnification agreement;
- Oregon
  - (d) Require an independent contractor appraiser to indemnify the appraisal management company in order to be included on the company's appraiser panel

# Civil Penalties Can Be High for Noncompliance

- Civil penalties can be quite high
  - Arizona, up to \$25,000
  - Colorado, up to \$2,500
  - Florida, up to \$25,000
  - Indiana, up to \$10,000
  - Minnesota, up to \$25,000
  - Mississippi up to \$25,000
  - Missouri up to \$25,000
  - Nebraska up to \$25,000
  - North Carolina up to \$10,000 or up to \$25,000
  - Oregon up to \$25,000

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*Shawn Telford*  
*Director, Product Management*

# Some Reports from the Field

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- **Francois Madath**
  - President of ARC
  
- **Hank Pruett**
  - SVP Operations JVI

# Francois Madath

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- Utah
- Washington
- Oregon

# Hank Pruett

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- Multiple Steps
- Additional Expenditures

# Some Practical Assistance

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- **Who moved my cheese?**
  - Unprecedented demand for AMC services
  - Opportunities abound
- **Pay attention to what's going on**
- **Get involved**
  - Shape the legislation and enforcement
- **Plan ahead...Be prepared**
- **Old models don't apply**
  - World is changing so fast, there is no textbook or pattern to follow

# Leverage Technology

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- There is always a cost to compliance
  - Either to comply or risk noncompliance
- Technology adds value, not expense
  - Typical firm spends 3-5% of revenue on technology infrastructure
- Technology will help make your operation scalable without adding FTE expenses
- Invest in infrastructure to support your business model

# Technology = Compliance

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- Technology solves several requirements placed on AMCs
  - Record keeping
  - Appraisal copy retention
  - Timely payment to appraisers (automation)
  - Objective compliance reviews—consistently
  - Receive the appraisal in a format that reduces costs and allows flexibility to meet clients' needs—no conversions

# Supporting Our Clients

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- **FNC systems are built to comply**
  - We have been helping the nation's largest lenders comply
  - By their very nature, FNC systems provide a great deal of compliance options
- **We have updated platforms as needed to help our AMC clients comply**
  - Very few changes needed or anticipated
- **We are following the legislative environment for you**

# Summary

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- The AMC regulation is in play now
- Likely to continue
- This is the new reality
- Be aware...Be prepared
- Leverage technology
- Reduce or eliminate uncertainty

# Questions

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- Today's Questions
  - Chat Function
  - [education@fncinc.com](mailto:education@fncinc.com)
  - [sales@fncinc.com](mailto:sales@fncinc.com)
- CollateralVision.com
  - On-going discussion (blog)

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# Contact Information

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# Thank You

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- Questionnaire