

TO: Legislative Regulation Review Committee
Capitol Building, Hartford, Connecticut

DATE: February 7, 2014

SUBJECT: Proposed Regulations Concerning Appraisal Management Companies

SUMMARY OF TESTIMONY

The Department held a properly noticed public hearing on December 4, 2012. The administrative record was held open for one week to allow additional written testimony.

IN SUPPORT OF ADOPTION:

1. "Appraisal Institute - Connecticut Chapter" (written comments by Mr. Ralph J. Biondi marked Exhibit "12");
2. Richard Maloney, the Director of the Trade Practices Division of the Department of Consumer Protection (verbal and written comments marked as Exhibit "14").

OPPOSED TO ADOPTION:

No verbal or written comments opposed the adoption of the proposed regulations.

SUGGESTING MODIFICATIONS TO THE TEXT:

1. "Real Estate Valuation Advocacy Association" (oral comments by Mr. Don Kelly);
2. "ClearCapital" (written comments marked Exhibit "4");
3. "Rels Valuation" (written comments marked Exhibit "5");
4. "Lender Processing Services" (written comments marked Exhibit "6");
5. "CoreLogic" (written comments marked Exhibit "7");
6. "DataQuick" and "National Association of Appraisal Management Companies" (oral comments by Mr. Frank O'Neill and written comments on behalf of "DataQuick" marked Exhibit "9");
7. Mr. Robert Clermont, a Certified Connecticut Real Estate Appraiser and the owner of "ValueQuest Appraisal" (oral comments and written comments marked Exhibit "10");



8. "ValueSearch AMC" (oral and written comments by Ms. Linda M. Sepso marked Exhibit "11");
9. "Connecticut Banker's Association" (oral and written comments by Mr. Todd S. Mongellow marked Exhibit "13").

The Department studied and considered all of the changes proposed by the individuals and entities above.

ADDITIONAL INFORMATION:

A copy of the official transcript of the public hearing is also being provided with this summary, together with copies of any written testimony. A letter detailing all of the substantive and technical changes resulting from the public comments will be sent to each of the speakers who testified during the public comment period. If the members of the Committee should have any questions, they may contact Attorney Jerry P. Padula at 860-713-6087 or via e-mail at Jerry.Padula@CT.gov.

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In Re: Appraisal Management Companies

Transcription

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REGULATION HEARING
APPRAISAL MANAGEMENT COMPANIES

DECEMBER 4, 2012

HEARING OFFICER: JERRY PADULA

TRANSCRIPTION PLUS, LLC

40 Acorn Lane, Bristol, Connecticut 06010/(860) 583-2818

1 MR. PADULA: Good morning everyone. I'm Attorney Jerry
2 Padula, and I'm an attorney with the Department of Consumer
3 Protection. And I've been designated by Commissioner William M.
4 Rubenstein to be the presiding officer for this morning's public
5 hearing on proposed regulations concerning Appraisal Management
6 Companies. Today is Tuesday, December 4. The time now is 10:05
7 a.m. We're in Room 117 of the State Office Building, which is
8 located at 165 Capitol Avenue here in the Capital City of
9 Hartford, Connecticut. The original notice stated the room as
10 119, but that room was unavailable this morning, so we have
11 signs outside directing everyone to the room next door, which is
12 117, where we are today.

13 On October 30, 2012, the Department of Consumer Protection
14 published a Notice of Intent to Amend Regulations in the
15 *Connecticut Law Journal*. These regulations are being proposed
16 in accordance with the authority granted in Connecticut General
17 Statutes §4-168a and 20-529e. And for the record, a copy of the
18 **Connecticut Law Journal Notice** that was published on October 30,
19 2012, will be entered as Exhibit #1.

20 The **Fiscal Note** prepared by the agency, which reflects no
21 fiscal impact on the agency, will be made part of the record as
22 Exhibit #2.

23 The Department performed a Small Business Impact Statement
24 Analysis and has notified the Department of Small Business
25 Affairs at the Department of Economic Development of our intent

1 to amend these regulations. And pursuant to Connecticut General
2 Statutes §4-168a, when drafting these proposed regulations, the
3 Department considered methods that would accomplish the
4 objectives of the applicable statutes while minimizing the
5 adverse impact on small businesses. And this agency has
6 specifically considered the five methods listed in subsection
7 (b) of Connecticut General Statutes §4-168a.

8 The **Small Business Impact Statement**, which is referred to
9 in the introduction section of the Law Journal publication, will
10 be marked as Exhibit #3.

11 And finally, we have received several submissions to date.
12 I will mark the ones that were received by mail at this time,
13 and I know that there's some people here that are going to be
14 testifying. What we'll do is collect those as the speakers are
15 coming up to testify. We did receive a couple of submissions to
16 date. The first was from ClearCapital, and that was dated
17 November 16, 2012. I'm gonna mark that Exhibit #4 for the
18 record. We received a second submission from Rels Valuation,
19 and that was dated November 20, 2012. That will be Exhibit #5.
20 And then the third submission that we received by mail was from
21 LPS, and that was dated November 30, 2012. That will be marked
22 Exhibit 6 for the record.

23 I will be marking additional exhibits as they are
24 presented to me during the course of the public hearing this
25 morning.

1 [?. . .]: [Inaudible 036].

2 Mr. PADULA: Ah, yes. Poor Logic. November 30. Okay.
3 We had another submission come in by electronic mail that was
4 from Poor Logic [037]. That was dated November 30, 2012. That
5 one will be marked Exhibit 7 for the record.

6 Okay. In addition, I will have the Commissioner's
7 Designation Letter, which allows me to become the hearing
8 officer for today's proceedings, I'll mark that into the record
9 now. And I'll mark that Exhibit #8.

10 Okay, now, at this point, we will have everyone who has
11 signed the speaker sign-up sheet come forward and give their
12 comments. Again, you can also leave written comments before me.
13 I think several of you have approached to provide written
14 comments. And I will, again, be marking those into the record
15 as the hearing proceeds. The first person on our speaker sign-
16 up sheet is Richard Maloney of the Department of Consumer
17 Protection's Trade Practices Division.

18 MR. MALONEY: Good morning, Attorney Padula. Thank
19 you [inaudible 047]. My name is Richard Maloney, and I am the
20 Director of Trade Practices at the Department of Consumer
21 Protection. The Division, with the guidance of appraiser and
22 real estate examiner Linda [inaudible 050] enforces the
23 Connecticut Real Estate Appraiser Regulatory Program. In
24 addition, the program has been given substance through
25 tremendous effort of Attorney Vicky [inaudible 052] staff

1 attorney. I wanna take this time just to thank Linda and Vicky
2 for all of their efforts. Thank you very much. The proposed
3 regulation supports the intent of Chapter 400g of the
4 Connecticut General Statutes concerning the registration of
5 appraisal management companies. The regulation gives
6 specificity to the statute and will aid the department in
7 enforcement, clarity per [056] industry, as they provide the
8 service necessary, and most importantly, protection for
9 consumers who become the ultimate beneficiary of the
10 resolutions. The intent of the regulation insures that real
11 estate appraisals are completed in a fair and unbiased manner,
12 preventing undue pressure regarding the final estimate of market
13 value. The proposal also insures that the appraisal is
14 completed on a property in Connecticut and review of that
15 appraisal is completed by competent, certified appraisers. It
16 insures transparency in compensation and sets standards for
17 those individuals engaging in the appraisal profession in
18 Connecticut. In addition, the intent is to provide supervision
19 through an appropriate level of enforcement with the appraisal
20 company rules. The Department supports the proposed
21 regulations. I would also ask the hearing officer to consider
22 keeping the record open to enable the Department to consider all
23 of the written and oral testimony presented today. And then we
24 can provide recommendations.

25 MR. PADULA: Yeah, I think that--Thank you, Director

1 Maloney. Yes, I will leave the record open for an additional
2 period of time after the hearing concludes so that additional
3 comments can come into the record. I'll take care of that in
4 the closing portion of the hearing.

5 Okay. The next person on the speaker sign-up sheet is Mr.
6 Don Kelly, and he represents REVAA, R-E-V-A-A. You can sit
7 right here.

8 MR. KELLY: Good morning ladies and gentleman. I
9 appreciate the opportunity to be here with you today. I don't
10 have an additional written statement, but as executive director
11 of REVAA, the Real Estate Valuation Advocacy Association, I
12 subscribe to the comments my members have already made. You
13 already [077] noted the comments that you got are indeed all
14 REVAA members. So I would like to highlight a couple of the
15 issues that they bring up there and then we can talk a little
16 bit about some of the specifics. I do wanna congratulate the
17 Commission and the staff for the effort on this. We have, there
18 are 32 states now that have AMC registration bills enacted, and
19 those states, of course, are going through the same process of
20 writing regs [083], and it is sometimes tedious, and it's an
21 [inaudible] process, and there are certainly issues there that
22 every state is looking at. And hopefully, one of our objectives
23 at REVAA is to have reasonable regulation through the
24 registration process and consistent from state to state as we
25 work in many jurisdictions having disparate requirements in

1 various states is problematic and inefficient often. But the
2 staff has done a terrific job with this in going through the
3 legislation and tracking it. There are a couple of issues that
4 I would like to highlight particularly. But I'm gonna comment
5 on the customary reasonable fee issue, which is in the document,
6 Removal of Appraisers section. The alternative valuation
7 product request to [inaudible 094] issue [inaudible]
8 registration and renewal and the verification of the appraiser
9 status. Now some of these are perhaps somewhat technical and
10 can be corrected fairly easily, but there's probably some, some
11 merit in having a little bit of a discussion about the rationale
12 as to why they're there and why we might disagree with them.
13 First of all, just for the record, AMCs have been around for,
14 literally for decades. In fact, LPS, I think, is one of the
15 earliest on record of some 25 or 26 years of experience in, in
16 the industry. AMCs are an active participant in the mortgage
17 settlement services industry. They're dedicated to preserving a
18 high level of public trust in the appraisal process and do,
19 indeed, support appraiser independent status. AMCs support the
20 appraisal process, including order and tracking, delivery, and
21 post delivery quality assurance. They act as an intermediary
22 between the client and the appraiser, assuring appraisal
23 independence to maintain a large client roster and a variety of
24 valuation products assuring an adequate workflow for appraisers
25 as well as guaranteed timely payment for services. AMCs act to

1 ensure the timely processing of quality appraisals and
2 expediting the mortgage loan process.

3 On the issue of qualifications for registration, there's
4 reference in 2529-1a(3) states that AMCs shall comply with the
5 Uniform Professional Appraisal Standards. As a technical
6 matter, appraisers, of course, are obligated to comply with
7 USPAP for professional standards. And as management companies,
8 we're not appraisers. We do manage the process. So to have the
9 non-appraiser company subscribe to USPAP is kind of a non
10 sequitur. I think it could be, it could be corrected by
11 requiring that the AMCs, or pardon me [117], the appraisals
12 coordinated by the appraisal management company comply with
13 USPAP. Some language like that could correct that.

14 Ownership of an AMC and a national registry, it looks like
15 there's some confusion over just who is required and what the
16 requirements of ownership are and who's gonna be accountable.
17 There's the 10 percent rule that anyone that owns 10 percent or
18 more cannot have criminal convictions and other things. But
19 then there's also, in this proposal, limitations on any owner.
20 And so that just seems rather broad, so some, some corrective
21 language on that, making sure that it's either the [125] 10
22 percent or the controlling partner with one of those entities
23 and not just any owner because some of these are corporations
24 that have ownership through stocks and other, other
25 arrangements.

1 Verification of appraisal status. It seems to be
2 duplicative here that we, of course, we do have a national
3 registry of all appraisers and their status and whatnot. And
4 that is ongoing and its required by the existing federal
5 legislation and that's been, that's been up and running for some
6 time. Connecticut also, through the Appraisal Commission, has
7 their list of verification for appraisers in Connecticut. A
8 reading of the proposal indicates that the AMC needs to verify
9 the appraiser's status by contacting [inaudible 133] in
10 Connecticut and utilize the National Registry. It just seems
11 redundant. I think that was either/or. I think that would be
12 sufficient. It just doesn't, it seems duplicative to have 2, 2
13 different agencies as a requirement for verification.

14 The selection of appraisers section requires that the, the
15 proposal requires that the AMC demonstrate that any person who
16 selects an appraiser for an AMC reviews the appraiser's work is
17 a certified appraiser in good standing. The way that not only
18 management companies work but many appraisal companies work is
19 that there's an ordering process and there's, there are
20 processes in place as far as maintaining and monitoring a roster
21 of appraisers that they use for, not only for their licensure
22 but their geographic competency, their local competency, and
23 other issues [inaudible 146] all of that need not be done by an
24 appraiser. I mean, it's an administrative sort of task. Say
25 okay who's, who's qualified to do this based on all the criteria

1 that's already been amassed in, in a particular file and
2 processed for the AMC. So we would recommend that a certified
3 appraiser is only required to manage the process for certifying
4 appraisers. Meaning, meaning that that person on staff for the
5 AMC would have an understanding of the appraisal process would
6 be a certified appraiser and would oversee the selection
7 process.

8 Requesting an alternative valuation product proposal
9 prohibits an AMC from requesting an alternative valuation
10 product that has not performed in compliance with the statutes,
11 including a Broker Price Opinion, or BPO. A BPO is a, is a
12 price estimate that's typically done by a real state agent or
13 broker for limited purposes. Typically on the servicing side of
14 a lending, of a lending institution where they are monitoring,
15 required to do due diligence and have a compliance [inaudible
16 160] to monitor the portfolio. And so it is a very practical
17 and efficient service that realtors provide for those, for those
18 clients. Often those are run through, through management
19 companies. Our companies do those types of alternative
20 valuation products. It's, it's an issue in other states. It
21 just would, how far can a BPO be used in any given assignment.
22 But in Connecticut, it seems clear that this is, this is
23 somewhat out of sync with the notion that, that an AMC is gonna
24 be registered as doing work for clients who have respective
25 [169] needs and then in your proposal it says that [inaudible

1 170] even if a client has a need or a BPO or a desktop appraisal
2 that might not meet these [inaudible 171] standards but they
3 have other, other types of needs that we can order for them. So
4 we would, we would suggest that that provision be removed from
5 this. It's come up in other states, and other states have
6 agreed that it's, it's awkward to have it as a condition of
7 conduct. It's in a misconduct area, which just doesn't have a
8 good feel about it. And so we would like to see that removed.
9 And Connecticut has looked at BPO legislation for a couple of
10 years and may have again look at it in the future. But I think
11 that's a separate issue that should pulled out of this
12 particular proposal.

13 Then finally the payment of customary and reasonable fees.
14 It's, it's no surprise to the people in this room and I'm sure
15 the Commission, that customary and reasonable fees has been
16 something of a bone of contention in many states and in many
17 venues, the issue being making sure that appraisers are fairly
18 and adequately compensated for the work that they do. It comes
19 out of the rather small section in the rather large Dodd-Frank
20 Bill that required that appraisers be paid customary and
21 reasonable fees without any great specificity beyond that. The
22 Dodd-Frank Bill did then go on to require that the bank
23 regulatory agencies write rules--just like you're writing rules--
24 -to implement that provision. What happened then was that the
25 Federal Reserve Board, along with other agencies, worked to

1 develop what is now called the Interim Final Rule which, in
2 Washington speak, that means it's pretty much the final rule.
3 But they've written a rule that says, okay, here's how you
4 comply with customary and reasonable. And they gave a couple of
5 presumptions for that, one presumption basically is it has to be
6 market rates based on similar types of products, similar
7 geographic area, and similar conditions, what, what has been,
8 what has been the fee for that sort of service. That's one
9 presumption, if you do that, pay the market rate, you're
10 presumed to have met customary and reasonable. The other
11 presumption is you can look at surveys, you can look at other
12 data, I think that you can list university studies and that sort
13 of thing, of fees excluding AMC fees, and you can base your,
14 your payment schedule on that. So those are the 2 presumptions.
15 The problem with what we have in Connecticut is that they, they
16 blur these presumptions. When they get the first one pretty
17 much right, that is based on market conditions, similar
18 properties, similar situations, you pay the market, market rate.
19 But the second, the second presumption rolled [205] into this
20 and it says that, let me see what it says here, that ...
21 proposed rule attempts to dictate how, dictate how AMCs pay
22 appraisers, though Connecticut Public Law 2010-77, Chapter 400V
23 [208], the statutes regulate when an appraiser, AMC must pay an
24 appraiser, the statutes do not impose a requirement of how. So
25 we believe that they've gone beyond their statutory authority in

1 drafting [212], rewriting if you will, those presumptions. And
2 we think that you ought to leave it to the rest of the TILA, the
3 Truth in Lending Act, and those federal enforcements for
4 customary and reasonable to do that work through the CFPB and
5 other federal agencies who are charged, through federal law,
6 with customary and reasonable fees.

7 So with that, I appreciate your time, your attention, and
8 I'd be glad to answer any questions if I can.

9 MR. PADULA: Well thank you for your testimony. There's
10 really not a back and forth for these types of hearings, but
11 ...

12 MR. KELLY: I understand.

13 MR. PADULA: Yes. Very good.

14 MR. KELLY: I'll be here in the audience if something
15 comes up.

16 MR. PADULA: Thank you, sir. Okay, the next person on our
17 list is Frank O'Neill who represents DataQuick and NAAMC.

18 MR. O'NEILL: Good morning.

19 MR. PADULA: Thank you, sir.

20 MR. O'NEILL: Frank O'Neill. As most of you know, I am
21 certified residential, or certified general appraiser of
22 Connecticut #2, former member of the Appraisal Commission and
23 now Chief Appraiser at DataQuick in, headquartered in Delaware.
24 And I'm also representing the National Association of Appraisal
25 Management Companies as an officer of that organization. And I

1 also thank you for the opportunity to offer some input. You
2 have my letter, which I left with you this morning. There's a
3 few things that I'll just kind of give you, go through a few of
4 the highlights. And I'll pick up first with Don Kelly's area of
5 concern with the customary and reasonable fees and obviously
6 this will be an area that you'll probably hear a lot about from
7 different sides. As an appraiser, I certainly support the idea
8 that appraisers need to be paid fairly for the work that they
9 do; however, the, the language as it's proposed I think does
10 some things that may not be intended. We have some unintended
11 consequences here. The fiscal impact statement indicates that
12 by advancing the goal of uniformity, Connecticut appraisal
13 management companies will less likely have to strive to meet
14 multiple state standards, but I'm not sure that the language
15 that you've got here actually accomplishes that. I think, in
16 fact, it goes the other way. I think the way it's written right
17 now you'd have a very significant expansion of the application
18 of the regulation well beyond what was intended in Dodd-Frank.
19 You'd have a significant impact on a broad range of small
20 businesses, and you would impose a significantly larger
21 regulatory burden on the Department on the implementation of the
22 regulation. Dodd-Frank Act amended the Truth in Lending Act, or
23 TILA, by adding Section 129e, which said that lenders and their
24 agents shall compensate fee appraisers at a rate that is
25 customary and reasonable for appraisal services performed in

1 that market. And then it also goes into a discussion that it
2 applies to single-family homes that are the primary residence of
3 the borrower. So customary and reasonable, as established in
4 Dodd-Frank, is very narrow. It's a single-family home that is
5 the primary residence of the borrower. But the way this is
6 written, it's all appraisals for all clients for all property
7 types. So if John Galvin does an appraisal of a hotel,
8 customary and reasonable needs to be dealt with. If I do an
9 appraisal of a 6-family, all of a sudden there's a, customary
10 and reasonable applies. There's no limitation. It doesn't say,
11 there's nothing there that, that brings them into line with
12 what's actually specified in the federal rule. The other thing
13 is that the federal rule is a lending regulation on the lenders
14 and their agents, who are the AMCs. And by doing it this way,
15 it's, it's aimed specifically at the AMCs, and as Don indicated,
16 it's probably better to aim, either to back out of this entirely
17 and not put anything in there, or if you want something in the
18 law that refers to customary and reasonable because there is
19 somehow some evidence that an appraisal management company is,
20 is not doing that and you want the ability to have some, some
21 enforcement action, then maybe keep it simple and just refer to
22 the rules in TILA and Reg Z where it, because this, whatever you
23 put in, if you put in something specific now, this is still
24 unfolding. Don said interim final. It may be final but you
25 know what? That was originally issued by the Federal Reserve.

1 and then reissued by the CFPB, but the CFPB hasn't had a chance
2 to put its 2 cents' worth in. So we may, and there's lots of
3 people who are interested in how this is worded and how it's
4 done rather than trying to get into doing surveys. Is that
5 something that the Department's gonna do? Surveys and how much
6 is that gonna cost and how do you get down to, what's the right
7 customary and reasonable fee for this kind of property with this
8 kind of turnaround time with this kind of complexities. It
9 would become just a, it really needs to be a process rather than
10 a single point value. So I obviously have a number of concerns
11 having to do with the customary and reasonable.

12 Section 2059a of the proposed regulation or of, of the
13 statute says that the management company shall disclose to a
14 client the dollar amount paid to the appraiser and the dollar
15 amount retained by the management fee [287], the management
16 company. But the proposed regulation says that the management
17 company is gonna disclose to the appraiser the amount the
18 management company will collect as well as how much they'll
19 retain. It, it seems to go beyond disclosure--can you think of
20 any other business that has to make that kind of disclosure to
21 someone that they're hiring? If I'm a contractor, do I have to
22 tell the plumber that I hire how much I'm getting for the entire
23 project and how much the plumber is getting? If I'm buying a
24 car do I have, you know, if I'm hiring a mechanic, do I have to
25 do that, you know, it doesn't seem to, to make a lot of sense to

1 have to do that. Appraisal management companies, it would raise
2 an awful lot of issues and really, people would have to then
3 think through because as a management, working in a management
4 company, I know that I hire an appraiser and we get through the
5 whole process and we have a fee established and agreed to by the
6 appraiser and then the client comes back and says hey we need a
7 change and we need to address this other thing, and the
8 appraiser gets upset and says no I will not do it. Absolutely
9 refuses. So we've paid the appraiser for the appraisal, but now
10 we can't get an appraisal that the lender can use for that loan
11 transaction. So we have to hire another appraiser to do that
12 same appraisal. So now we've paid twice. The lender doesn't
13 pay us twice. The management company pays for both. So there's
14 all kinds of complexities beyond just the regular overhead to
15 get involved in all that stuff. So that kind of a disclosure
16 just really doesn't seem to make a lot of sense.

17 The proposed Section 20-529 5c3 requires the AMC to
18 disclose their Connecticut registration number on all external
19 correspondence. I'm not sure if that's really what's intended.
20 It would need to be on all orders. If I place an order with an
21 appraiser, they would need to know what my license, my
22 registration number is. If I onboard them on to my panel that
23 this is a new appraiser working with us, they would need to know
24 that we're properly registered, but if I have already ordered an
25 appraisal with someone and now I'm following up with an e-mail

1 to say what's you're, you're supposed to have it in today, when
2 do you think you're gonna be done or hey you forgot to do this
3 or that or the other, can you make the correction. Is it really
4 necessary to have our Connecticut license registration number in
5 all of those correspondences? It would seem to add an awful lot
6 of complexity to our communication. If each had something like
7 that where Connecticut does and nobody else does, it just
8 doesn't seem to make a lot of sense. So it would, our
9 suggestion would be that it be limited to when you're ordering
10 an appraisal or when you're onboarding an appraisal, appraiser
11 to the panel.

12 Proposed regulation 2529 8c2 if an AMC intends to change
13 its compliance manager, it should submit an application for
14 approval of the new compliance manager at least 14 days before
15 the effective date of the change. If I'm the compliance manager
16 for the AMC and I get fired or I have a heart attack or I decide
17 I'm gonna leave, they may not have that kind of notice, and they
18 may not know who the person is that's gonna replace me. So 14
19 days in advance may not just be reasonably possible. There may
20 not be any way for them to do that, so I'd suggest that it be
21 revised to something like required timely notification ideally
22 in advance of the departure but in no case more than 30 days or
23 something of that sort. Just to recognize the reality of the
24 way that's gonna work. Because there will be employees.
25 There's some subsections there where there's some differences,

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1 and I'll just refer to page 6 of my letter, but in 1 place in
2 the document it asks for, requires records to be kept in the
3 name of the lender's name, but if this applies, the way it's
4 written right now, it would apply to everything, not just
5 lenders. So it really should, that would be better if it said
6 client because that would be more specific. And then it gets
7 into asking for the name of the person for whom the request was,
8 from whom the request was received. If I'm working in an
9 appraisal office and I get an order from a secretary at a legal
10 office, then I could write down the name, it was Sally Smith who
11 placed the order. But if I get an order from one of the major
12 banks, it's not, there's nobody calling me. There's an
13 electronic message, maybe a list of a thousand orders that's
14 coming through all at one time. There's no person to identify.
15 So I'm not sure how we would comply with the person. The only,
16 the only thing that I could see was that perhaps the intent
17 there was that there was an intermediary, like so it's Bank of
18 America placing or order through an owned AMC like LandSafe who
19 then turns around and orders it from DataQuick. So it's an
20 owned AMC to [360], and so maybe we would need to keep a record
21 of or be able to report, and we would be able to do that, but
22 when you get down to the level of an individual person, there's,
23 there's not gonna be able to do that because there just won't be
24 a person that's identifiable as part of that process.

25 Two proposed sections talk about, one of'm, the, the

1 information that's supposed to be kept on record, one asks for
2 the date of the assignments, and the other asks for the date of
3 receipt of the request for service. I'm assuming that that's
4 the same thing, but it might be better if they were both worded
5 the same way so that it would be clear. And then finally, the
6 section that says that if the management company has a belief
7 that a Connecticut appraiser has violated the law or USPAP, that
8 they should submit a complaint, and then it says a copy of the
9 complaint shall be forwarded to the respondent. And the
10 question is just one of clarification. I know that the
11 Commission does, in fact, if someone submits a, a complaint that
12 the Commission will, or the Department will issue a copy to the
13 appraiser who had the complaint against it. But the way this is
14 worded, it's unclear whether that's something that is just
15 putting us on notice that the Commission will do that or whether
16 that's something that then becomes the responsibility of the AMC
17 that when we submit a complaint different from everybody else,
18 we would also have to send a copy to the appraiser who was
19 complained against. So that was just a, one of compliance or
20 for clarification as to what the intent was. I think the
21 details are all in the letter. Thanks very much for the ability
22 to provide the input, and we'll be watching to see what the
23 final outcome is.

24 MR. PADULA: Thank you, Mr. O'Neill.

25 MR. O'NEILL: Thank you.

1 MR. PADULA: And for the record, your written comments
2 will be marked Exhibit #9 for the record.

3 MR. O'NEILL: Thank you.

4 MR. PADULA: Thank you. The next person on the speaker
5 sign-up list is Rob Clermont with the Connecticut Association of
6 Real Estate Appraisers.

7 MR. CLERMONT: Good morning. My name is Rob Clermont.
8 I'm a certified real estate appraiser here in Connecticut. Have
9 been for 14 years. I'm also a member of the Connecticut
10 Association of Real Estate Appraisers and the owner of
11 ValueQuest Appraisal here in Connecticut. Before I begin, I
12 just wanted to, I've submitted written testimony, but before I
13 begin to touch on that, I wanted to talk about a couple of
14 points that were made by the previous speakers. The first of
15 which is Mr. Kelly. He expressed concern over AMCs being
16 required to comply with USPAP. Moreover, he made an argument as
17 to why they shouldn't comply with USPAP, and I wanna tell you
18 why they should comply with USPAP. Because years ago we ran
19 into a problem when appraisers dealt primarily with mortgage
20 companies, but the problem we ran into was we were asked to do
21 all sorts of things that ethically we weren't able to do
22 according to USPAP. And you know, we would constantly go back
23 to those mortgage companies and say to them, you know, look, we
24 can't do that. We can't inflate that value. We can't, you
25 know, take that out of the report. And we said, you know, USPAP

1 prohibits us from doing that. And they, you know, their
2 response is well we're not obligated to comply with USPAP. So,
3 you know, they felt nothing wrong with that. And I'm gonna talk
4 a little bit about that in my testimony, but I think it's
5 important, even though the principal representative of the AMC
6 is an appraiser themselves and they're obligated to adhere to
7 USPAP, I think it's gonna create confusion if we were to take
8 out or, I'm sorry, not obligate them to, to adhere to USPAP
9 because you have a principal representative who's now an
10 appraiser who's gonna say well I'm an appraiser and I have to,
11 I'm obligated to adhere to USPAP here in my state, you know, but
12 I can ask for whatever I want in my appraisal request form to
13 the appraiser. And again, I'm gonna talk a little bit about
14 that and how that's already happening today when I go into my
15 testimony.

16 The second, the second, again, it's not incorporated into
17 the, into the proposed regulation, but again, Mr. Kelly talked
18 about the use of BPOs and possibly having them removed and
19 allowing BPOs for certain type of transactions. We, myself as
20 well as the Association of Real Estate Appraisers, would be
21 strongly opposed to that. You know, the statute is clear. I
22 mean, you know, if you're providing a value for a fee in
23 Connecticut, that's an appraisal. You know, this has gone
24 through the Banking Commission before, you know, up in the
25 Legislature, I mean, every legislature and senators have had a

1 chance to preview it, and they chose not to take it up. It
2 wasn't something that they wanted to do here in Connecticut.
3 And for that reason, I would strongly discourage the Department
4 of Consumer Protection from even looking at it, you know, in
5 that direction.

6 The third was also, again, Mr. Kelly and Frank O'Neill had
7 talked about reasonable and customary fees, and, you know, as
8 appraisers, I mean, there's a big concern over the cramdown of
9 fees. You know, basically what's happening is the management
10 companies are charging, you know, 400, 450, \$500 for a single-
11 family appraisal, and they're paying appraisers \$225, you know,
12 for that assignment. They're, most don't adhere to the
13 reasonable and customary fees, and I wanted to submit, in one of
14 your, part of the written testimony submitted I understand was
15 from Clear Capital, so I have an order here from Clear Capital,
16 and I'd just like to read into the record what they say with
17 respect to customary and reasonable fees. It says unless an
18 assignment has been designated as a purchase or refinance
19 assignment above, it is not a covered transaction; therefore, it
20 does not require that a customary and reasonable fee be paid
21 pursuant to TILA requirements. So somehow they found, you know,
22 some loophole not to be able to pay what a reasonable and
23 customary fee is. They go on to say Clear Capital standard
24 policies to pay a fee that we deem to be customary and
25 reasonable regardless of whether the assignment technically

1 qualifies as a covered transaction under TILA. The appraisal
2 fee has been calculated in a manner intended to establish a
3 customary and reasonable fee for this assignment. Please note,
4 however, that certain assignments may be found to be complex or
5 to require an increased scope of work due to unique property- or
6 assignment-specific characteristics. Please direct any
7 questions on our fee process to
8 DoddFrankfeedback@clearcapital.com. So the concern that you
9 have and a concern was raised over well why do we, why do we
10 want to disclose our fees to appraisers, why should we do that?
11 You know? And I'll tell ya, you know, years ago, management
12 companies weren't as large as they were. Today appraisers are,
13 really have no choice other than to work for management
14 companies. You know, management companies have an opportunity
15 to see our fees, but we don't have an opportunity to see their
16 fees so that we can set our prices accordingly. You know,
17 moreover the concern with the cramdown of fees and paying--in
18 this particular assignment, the fee was for a 1004, which most
19 appraisers understand what that is, and the fee is \$225, which
20 is absurd. You know, that's probably a 10-hour assignment to
21 12-hour assignment to complete. But the ultimate concern, I
22 think, to the Department here is if the cramdown of fees
23 currently stays on the same path that it's on, we're gonna
24 continue to destabilize this profession, you know, and to become
25 an appraiser in Connecticut takes roughly 4 years, you know,

1 from the day that you decide to become an appraiser, you're
2 gonna through a provisional training period, you're gonna have
3 to do an internship with, with another state certified
4 appraiser, and that's a 4-year period. So you know, if we have
5 700 and let's say 50 certified residential appraisers like
6 myself here in Connecticut, and if the fees continue down the
7 same path, and that number dropped to, let's say to 500, you
8 know, appraisers, one of two things is gonna happen. One is the
9 fees are gonna con--fees are gonna increase exponentially. So a
10 single-family appraisal won't be \$300 or 325. It's gonna go to
11 \$1000, which, you know, is bad for consumers, you know, at that
12 point. Or, you know, you're gonna have such an under supply of
13 appraisers that, you know, no one's gonna be able to get into
14 the business, you know, and you're gonna have a shortage of
15 appraisers and then what do you do? You know? You can change
16 the regulations but the new class of appraisers that's coming in
17 are gonna be inferior to the class of appraisers that are here
18 currently. So that's a big concern. I would personally, I
19 would just leave that, I would leave it alone. I think the
20 Department got that right when they, when they put that into the
21 regulations, and I would leave that alone.

22 But going into my testimony, again, there are 3 areas of
23 concern. One is the inclusion of data in appraisal reports.
24 The other is nonpayment of fees by AMCs. And the other is
25 technical reviews and estimates of value being performed by out-

1 of-state review appraisers. But first I wanted to talk, I'm
2 just gonna read right from my testimony. Appraisers are being
3 asked to set aside their judgment with respect to their own
4 comparable selection and rely on the comparable selection
5 parameters imposed by lenders and/or AMCs. Basically what's
6 happening is appraisers, when you receive an appraisal request
7 such as the one that I've attached to the testimony, appraisers
8 are being asked to do all sorts of things, you know, such as
9 appraiser must include, you know, 1 comparable or 2 comparables
10 within a mile. Appraiser must include similar-like type
11 property. Appraiser must include 1 property with similar GLA.
12 Appraiser must include, you know, 1 property on a lake if the
13 subject is a lake. And, you know, these types of requests
14 really, you know, really serve 1 purpose, which is to satisfy
15 either the AMCs own internal guidelines or to help advance the
16 cause of the lender. You know, the lender is the one that's
17 saying we want these particular comps to we want these
18 particular parameters in place so that, you know, when we go to
19 sell that loan it's palatable to, you know, whoever our investor
20 is. You know, and that's a big, that's a big concern of ours.
21 But moreover, going back to the USPAP testimony earlier,
22 compliance with the aforementioned request violates the
23 management/ethics section of USPAP is the appraiser is allowing
24 the AMC and/or the lender to play a role in the development of
25 the appraisal. Look, if you're, if you're asking an appraiser,

1 I don't want you to use that comp or I don't, I think you should
2 take Comp 6 out and replace it with, with this other data that,
3 that we found, you know, and the appraiser complies with that
4 request, they're violating, you know, the ethics section of
5 USPAP. They're also violating Item 7 of the certification
6 section of the appraisal that says--and this is in every single
7 appraisal out there--that says I, meaning the appraiser, has
8 selected and used comparable sales that are locationally,
9 physically, and functionally most similar to the subject
10 property. Moreover, Item 7 of the certification does not state
11 that the appraiser and the AMC has selected and used comparable
12 properties or the lender and the AMC has selected and used
13 comparable properties. It's the appraiser's job. They have to
14 exercise their discretion and choose which comparables, you
15 know, are the best comparables out there. That's what makes up
16 the appraisal. You know? And, you know, allowing someone to,
17 to, you know, play a role in the development, you know, again,
18 it violates USPAP as well as Item 7 of the certification. And
19 that, you know, is a great concern to us because we see that
20 every single day, you know, in this profession where appraisers
21 are asked to do this. But, you know, appraisers who act
22 ethically and choose not to comply with such requests are often
23 told by the AMCs that other appraisers don't have a problem
24 complying so what's the problem. You know? We have appraisers
25 all over the country, they do this; what's the problem?

1 Further, many AMCs have included language on their appraisal
2 request form that contractually obligates the appraiser to
3 comply with their appraisal revision request within a specific
4 timeframe. Basically, what happens is when an appraisal request
5 comes through, such as the one that I, I submitted into
6 testimony, there'll be language on there that says, you know,
7 the appraiser must comply, you know, with, you know, with any
8 revision request within 24 hours. Well revision requests can
9 mean anything. Does that, does that mean that I misspelled the
10 borrower's name or an appraiser missed, you know, mistyped a zip
11 code in? Or does that mean, you know, we don't think Comp 6 is,
12 is a good enough fit, so we want you to replace it with, with
13 this other data that we sent to you. You know, and that's,
14 that's a huge concern. You know, moreover, failure to comply
15 with any such requests within the specified timeframe may result
16 in the appraisal assignment being reassigned to another
17 appraiser, which, you know, Mr. O'Neill had talked about. Often
18 they have to reassign. An appraiser may [inaudible 578] hey
19 we're not gonna do that. You know? Now they're sunk. They've
20 gotta reassign it to another ... [Side A ends]

21 MR. MONGELLO: [Side B begins] ... 10 copies. And I'm
22 just gonna briefly go through some of the high points as I would
23 say. The Connecticut Banker's Association, since we're
24 relatively new to the DCP, we repre--we represent over 70
25 banking institutions in the State of Connecticut. Remember

1 banks represent over \$130 billion of assets, and many of those
2 assets are in the forms of 1 to 4-family mortgages. In the
3 process of originating those mortgages, our banks have to be
4 cognizant and compliant with complex regulatory framework out
5 there, including many rules surrounding the appraisal industry.
6 As such, several years ago we worked very closely with the
7 Appraisal Institute. A number of key stakeholders, many of
8 which are in this room today, to essentially craft what we felt
9 was a very balanced statutory framework overseeing appraisal
10 management companies here in the State of Connecticut. That
11 obviously passed unanimously and is in the form of Public Act
12 2010-77. So at any rate, with this testimony, we hope to
13 emphasize that appraisal management companies provide a very
14 important option and a compliance solution for our member banks.
15 Indeed, AMCs can, among other things, help a bank to manage that
16 appraisal process and provide an important degree of
17 independence, which is crucial for our banks in this, in this
18 environment in the appraisal selection and oversight process.
19 This is, once again, a critical compliance concern not only
20 under state law but also under federal law, particularly with
21 the new Dodd-Frank Law, which is, continues to evolve,
22 particularly on the Consumer Financial Protection Agency. We
23 certainly appreciate the Department's efforts to propose a
24 regulation to carry out the provisions of that Public Act 2010-
25 77. As you might expect, we have a very vested interest in

1 seeing a balanced and thoughtful approach to that regulation
2 governing the appraisal industry and also something that we have
3 to work within and also the appraisal management companies that
4 would come underneath it. We certainly support many, if not
5 most, of the concepts which were contained in the proposed
6 regulation; however, we do have concerns with several
7 provisions. I'm not gonna go into great detail because I think
8 Don and Frank, on the appraisal management company side, covered
9 many of those for us, and I don't want to essentially belabor
10 those, number one, and plus we've already been here for a few
11 hours already. At any rate, I just wanted to hit some of the
12 high points on that. Number one, on the payment of customary
13 and reasonable fees, we totally agree with Don with regards to
14 the concept that the Fed Reserve and the CFPB are basically, you
15 know, looking at this already, we've got the Interim Final Rule,
16 which is outstanding out there. And in our opinion, the way
17 that the regulation is promulgated right now, it is inconsistent
18 with the Truth in Lending and also with the IFR. As a result,
19 you know, there's no doubt in our mind that the legal counsels
20 representing the banks across the State of Connecticut would
21 think that it would be preempted by the Federal Truth in Lending
22 Act. So because of that, we would obviously urge that you
23 remove that particular section, actually 2 sections, the 59-11c
24 1 and 2, because it is inconsistent with federal law.

25 With regards to the removal of an appraiser from an

1 appraisal panel, we're concerned about this for a number of
2 reasons as you'll see detailed. We are concerned primarily
3 because it seems to be inconsistent with the Department's
4 discretionary enforcement authority over industries whose
5 registrations are not automatically rejected as a result of the
6 statutory or regulatory and [032] violation. In fact, we're not
7 aware of similar provisions as it applies to appraisers, and we
8 suggest that an appraiser might commit multiple inadvertent
9 violations of law or not lose his or her credentials. An AMC
10 that commits even a single inadvertent violation would lose its
11 registration. As I indicated, you'll find more details about
12 that, but obviously we're against that particular provision.

13 Verification of appraiser status I think is pretty much
14 covered in my testimony, so I'm not going to get into detail
15 about that, but you can find it there. I did wanna mention one
16 thing with regards to the Broker Price Opinion, or as the
17 regulation seeks to do, it seeks to essentially prevent any
18 alternative valuation products out there. BPOs are currently
19 being offered in 44 states around the country. I just have to
20 disagree with Ron as far as his statement that the entire, the
21 entire state of, or excuse me, the entire Legislature
22 essentially chose not to bring this up. This, this bill was
23 brought up 2 years in a row. The last year it was brought up to
24 enable broker price opinions to be offered here in the State of
25 Connecticut by real estate brokers, it did pass the Bank's

1 [043] Committee. It did go, it was referred over to the
2 Insurance Committee where it ultimately died. So it has not
3 been vetted by the entire Senate, by the entire Legislature.
4 Obviously this is a product which we feel, from a consumer
5 perspective, saves consumers, consumers a lot of money. And I
6 think the real key on this is it is not a replacement for an
7 appraisal. These are used only when an appraisal is
8 unnecessary. And that predominantly is being done in other
9 states with regards to foreclosures, with regards to
10 modifications where the bank is essentially going through that
11 process and it is a much more inexpensive way to essentially get
12 a valuation on that property so that the lender can make a
13 reasonable determination as to how to proceed down that path of
14 foreclosure or modification or whatever the case may be with
15 that particular property disposition if you will.

16 I guess that's all I have to say at this point, but I did
17 wanna, obviously, open it up to any questions you have. You
18 have that. I did have one question for the group here today.
19 You indicated that you'll be keeping this open for a certain
20 period of time I guess. Will there, will there be an
21 opportunity to provide supplemental comments based on testimony
22 that has been provided today?

23 MR. PADULA: Yes. You're free to submit any comments
24 during this period.

25 MR. MONGELLO: That's great. Well thank you very much.

1 [?. . .]: [Inaudible].

2 MR. PADULA: I'll get to that in the closing, sure. Thank
3 you, Mr. Mongello.

4 MR. MONGELLO: Thank you.

5 MR. PADULA: Your written testimony will be marked Exhibit
6 13 in the record. Okay. Is there any other comment from any
7 other person present today? The rest of you are just observing?
8 Okay. Okay, with that, we will hold the record open for a week
9 through the close of business next Wednesday, December 12, to
10 allow any interested parties an opportunity to provide any
11 further comments, including comments on the comments that we
12 received today, both written and oral. The Agency will be
13 reviewing all of the documents submitted into the record and the
14 written transcription of today's recording and will be
15 considering whether any revisions need to be made to the
16 regulation as it was originally proposed and promulgated through
17 the Law Journal. Pursuant to the Uniform Administrative
18 Procedures Act, we will then forward the proposed regulations
19 with any changes made to the Attorney General's office. The
20 Attorney General will review the regulations for legal
21 sufficiency. If they're approved by the Attorney General, the
22 regulations will then be forwarded to the Regulation Review
23 Committee of the General Assembly where they'll come up on the
24 calendar for a vote. And the regulations will be effective upon
25 their filing with the Secretary of State's Office.

1 Okay, with that, I note the time is now 11:25, and this
2 public hearing is now adjourned. Thank you all for attending
3 and for your comments.

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CERTIFICATE

I, Karen Johnson, do hereby certify that the foregoing transcription is a true and accurate record to the best of my ability of the Regulation Hearing on Appraisal Management Companies on Tuesday, December 4, 2012.

IN WITNESS WHEREOF, I sign my name this 7th day of January 2013.

Karen Johnson
Karen Johnson

January 7, 2013
January 7, 2013