SERVICELINK
A BLACK KNIGHT COMPANY

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RE: Minimum Requirements for Appraisal Management Companies

Dear Ladies and Gentlemen:

am writing to provide comments on the Minimum Requirements for Appraisal Management Companies proposed rules, as published in the Federal Register in Vol. 79, No. 68, Wednesday, April 9, 2014. am responsible for Valuations Regulatory Oversight for ServiceLink Valuation Solutions, LLC (ServiceLink), based in Pittsburgh, PA. ServiceLink is one of the oldest Appraisal Management Companies (AMC) operating in the United States.

ServiceLink has been an active market participant in the mortgage settlement services industry for decades. We are dedicated to preserving a high level of public trust in the appraisal process and support appraiser independence standards. Reputable AMCs such as ServiceLink provide invaluable services to clients, lenders, appraisers and consumers as follows:

- Full support of the appraisal process including ordering, tracking, pre- and post-delivery quality assurance and secure delivery options
- Function as an intermediary between the client and appraiser assuring appraiser independence
- Maintain a large client roster and a variety of valuation products, assuring an adequate workflow for appraisers as well as guaranteed, timely payment for services
- Timely processing of quality appraisals, thereby expediting the mortgage loan process on behalf of the consumer

Given recent market events, ServiceLink appreciates the fundamental principles compelling regulation and maintains the opinion that responsible legislation and rule writing can benefit both consumers and market participants in the mortgage lending industry. We appreciate the opportunity to offer comments regarding the Minimum Requirements for Appraisal Management Companies proposed rules. have reviewed the proposed rules and would offer the following comments for your consideration:

General Comments:

The Agencies request comments on all aspects of this proposed rule.

The Agencies have requested comments on all aspects of the proposed rules. The background section of the proposed rules sets forth the following:

> Section 1124 does not compel a State to establish an AMC registration and supervision program, nor is there a penalty imposed on a State that does not establish a regulatory structure for AMCs within 36 months of issuance of the final AMC rule. However, in such a State, unless and until it establishes such a regulatory structure, AMCs are barred by section 1124 from providing appraisal management services for Federally related transactions.

This voluntary language is also seen in Section 1117 of FIRREA which states that a state *may* establish a state appraiser certifying and licensing agency to assure the availability and effective supervision of appraisers; however, the end result of not establishing a program for the licensing and supervision of appraisers is the appraiser's inability to provide appraisal services for federally related transactions in that state. The Appraisal Subcommittee currently reports that out of 50 states, all states have established a state appraiser certifying and licensing program and only six states are listed as having state statutes that do not require the use of certified/licensed appraisers for appraisal assignments; however, if these appraisers wish to perform appraisals for federally related transactions, they can choose to become certified or licensed and submit to the State's regulatory jurisdiction.

The language in Section 1117 as amended by Dodd-Frank indicates that the authority of such a state appraiser certifying and licensing agency includes the registration and supervision of AMCs. Although Section 1124 may not compel the states to establish an AMC registration and supervision program, the inference in Section 1117 is that *if* a state determines that consumer protection and public policy interests warrant the regulation of appraisers, then it would also be necessary and prudent to register and supervise AMCs for the same reason. While the FIRREA amendments may be unclear, the House Financial Services Report language on the Dodd-Frank amendments offers a more succinct directive, specifically, Dodd-Frank directs "designated federal financial regulatory agencies, including the Federal Reserve Board and the CFPB, to jointly establish, by rule, minimum requirements a state *must* apply in the registration of appraisal management companies." To date, 38 states have established an AMC registration program, including three of the six states with a voluntary program for appraisers. It is difficult to foresee any logical rationale for a state that has an existing appraiser certifying and licensing structure in place, to *not* provide an AMC registration and supervision structure; however, the language cited in the proposed rule seems to encourage that stance.

The Agencies' statement indicates that a State will not be penalized in the event a regulatory structure for AMCs is not established. While the states might not be penalized, lenders, consumers, appraisers and AMCs will. The risks associated with managing a national panel and network of qualified appraisers has led many lenders to rely on appraisal management companies to coordinate their appraisal assignments. These AMCs spend a majority of their resources focusing on engaging qualified appraisers with specific competencies. A state's failure to enact AMC regulations would result in a substantial impact on interstate commerce for both lenders and AMCs; additionally, it would be detrimental to consumers in several ways. First, if some lenders choose not to face the added costs of managing their own appraiser panels and networks and not offer loans in these states, borrowers might be limited in their choice of loans and lenders. In the alternative, if lenders do decide to spend the additional resources building their own appraiser panel and network, or increase staffing to manage the appraisers they choose to utilize, these additional costs will be passed on to the consumers. Finally and most importantly, AMCs focus on the appraisal process and are constantly creating additional protections to make sure the appraisers they use are afforded appropriate independence and the appraisals those appraisers produce are credible reports, free of any undue influence. Lenders who are forced to manage this process on their own may not have this expertise, which could be extremely harmful to the real estate industry as a whole. In summary, a state that elects not to register AMCs reduces competition by placing restraints on the lenders' choices in obtaining an appraisal to facilitate the consumer's loan process. A lack of AMC coverage may result in delays in closing loans and increased costs to the consumer, as national lenders will be required to amend processes and policies in those states where an AMC registration program is not made available.

Given that the purpose of Title XI of FIRREA is to "provide that Federal financial and public policy interests in real estate related transactions will be protected" by applying accountability measures to appraisers including being subject to effective supervision, it is reasonable to expect that those states having established an appraiser licensing agency would be compelled to establish an AMC registration program to effectively register and supervise AMCs. In the event a state has elected to establish an appraiser program in order to allow appraisers to participate in federally related transactions, the same opportunity should be provided to AMCs. Should a state that has an established appraiser program elect not to establish an AMC registration program, the proposed rules should allow for

oversight of all AMCs via the Appraisal Subcommittee to offer the degree of supervision necessary to comply with Dodd-Frank and not inhibit the provision of appraisals for Federally Related Transactions.

Request: In light of the foregoing discussion, it is our position that the proposed rules should set forth the directive specified in the House Financial Services Report and inferred by FIRREA Section 1117 that in those states that have determined the regulation of appraisers is necessary, those states must also provide regulation for AMCs. Alternatively or in addition to, the proposed rule should provide for some semblance of oversight via the Appraisal Subcommittee to offer the degree of supervision to all AMCs necessary to comply with Dodd-Frank and not inhibit the provision of appraisals for Federally Related Transactions.

Question 1:
The Agencies have requested comments on all aspects of the proposed definition of Appraisal Management Company (AMC).

Impact Analysis Summary of Proposed Rule - Relating to Question 1

Consumer -
- Limits consumer protection from appraisals obtained from an appraisal firm

Lender/ Client -
- Limits protection from appraisals obtained from an appraisal firm

Appraiser –
- None apparent

AMC -
- Results in additional regulatory obligations not imposed on other entities providing the same services
- Results in financial burdens not imposed on other entities providing the same services

Comments -
In defining an AMC, the agencies have significantly departed from the Dodd-Frank definition in two areas: Section 34.211 (c)(1)(iii) and the connective language relative to the appraisal management services elements in Section 34.211 (d).

The proposed definition of an Appraisal Management Company in 34.211(c) incorporates the Dodd-Frank language and properly reiterates the three criteria that describe an AMC: (i) provides AMC services; (ii) provides such services relative to a consumer's principal dwelling; and (iii) within a given year, oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more in two or more states. In relation to subpart (c)(1)(iii), the FIRREA definition as amended by Dodd-Frank (12 U.S.C. §3350(11)), specifically states that an AMC "oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally with in a given year." The proposed definition of an AMC does not include the phrase "network or," instead only focusing on "panel." It is noted that the definition of appraiser panel offered in 34.211(e) includes the "network or panel" language as mandated in the Dodd-Frank Act. Assuming the "network or panel" language in 34.211(e) remains unchanged, we have no concerns. However, we would like to reiterate the crucial nature of the need for the phrase "network or panel," as it was used specifically in Dodd-Frank. This distinction provides additional consumer protections to ensure the broadest coverage possible by including all entities that oversee appraisers, regardless of the manner in which the company contracts with its appraisers (employment or independent contractor agreement) or how the company chooses to present their groups of appraisers to the public or lenders. The removal of "network or" would undermine this intent and could encourage entities to structure their business models to circumvent regulation, which could pose potential risks to consumers.

In defining Appraisal Management Services in §34.211, the agencies utilize the connector 'and' after sub-section (d)(3) rather than the connector 'or,' which was utilized in the Dodd-Frank Act's definition of AMC service elements in the FIRREA Section 1121. The connector 'and' has a significant impact on the meaning in that it suggests all of the elements listed must apply; however, the original term 'or,' used in Dodd-Frank, implies the intent that if any *one* of these elements apply in conjunction with the

three basic criteria elements, the entity is deemed an AMC. Additionally, it is noted that in the definition of valuation management functions offered in 12 CFR Part 1026 of the Truth in Lending Act, §1026.42 (b)(4) the connector 'or' is also used. For the reasons stated above, an entity that meets the fundamental criteria set forth in the definition of an AMC, and provides any one of the four elements listed in appraisal management services, should be considered an AMC.

Request – We request that the "network or panel" language in 34.211(e) remains unchanged so that the definition of an AMC set forth in 34.211(c) continues to reflect those standards as defined in Dodd-Frank; specifically, that the functions of the company rather than the business structure determines if the entity qualifies as an AMC, subject to supervision. We also request the proposed definition follow the intent of Dodd-Frank by revising the appraisal management services definition so the connector 'and' is replaced by 'or' between sub-sections (d)(3) and (d)(4).

Question 2:
The Agencies request comment on the proposed definition of "appraiser network or panel" and on the alternative of defining this term to include employees as well as independent contractors. The Agencies also request comment on whether the term "independent contractor" should be defined, and if so why and how, including whether it should be defined based upon Federal law (e.g., using the standards issued by the Internal Revenue Service or standards adopted in other Federal regulations, such as those issued under the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act)), or left to State law (so as to be consistent with existing AMC laws).

Impact Analysis Summary of Proposed Rule - Relating to Question 2

Consumer -
- Limits consumer protection from appraisals performed by an appraiser contracted via employment

Lender/ Client -
- Reduces lender/client choice in obtaining appraisal services
- Limits protection from appraisals performed by an appraiser contracted via employment

Appraiser -
- None Apparent

AMC -
- None Apparent

Comments -
The FIRREA definition as amended by Dodd-Frank (12 U.S.C. §3350(11)), specifically states that an AMC "oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year." Therefore, we are in agreement that the definition of appraiser panel in §34.211 (e) correctly includes 'network,' as the intent of Dodd-Frank is to ensure the broadest coverage possible and to include all entities that oversee appraisers, regardless of the manner in which the company contracts with its appraisers (employment or independent contractor agreement) or how the company chooses to advertise their groups of appraisers to the public or lenders. Given that Dodd-Frank does not provide any distinction between an independent contractor appraiser and an employee appraiser, we believe it is not necessary for the Agencies to provide a definition for the term "independent contractor," in fact, we believe that "who are independent contractors to the AMC" should be struck from the definition of Appraiser Panel in §34.211(e). The definition of appraiser panel should include any appraiser, employee or independent contractor, who performs appraisal services for the entity. How an appraiser is hired to perform a service, either as an independent contractor or as an employee is irrelevant for the purposes of Dodd-Frank's intent to provide consumer protection, appraiser independence, and safety and soundness in the mortgage lending process.

Request - The definition of an Appraiser Panel should reflect those standards as defined in Dodd-Frank; specifically, Dodd-Frank does not provide any distinction between an independent contractor appraiser and an employee appraiser. We request that "who are independent contractors to the AMC"

should be struck from the definition of Appraiser Panel in §34.211(e). As such. there is no need to define "independent contractor."

Question 3:
The Agencies have requested comments on the distinction the Agencies have drawn between employees and independent contractors as a basis for exclusion of appraisal firms from the definition of an AMC.

Impact Analysis Summary of Proposed Rule - Relating to Question 3

Consumer -
- Limits consumer protection from appraisals obtained from an appraisal firm

Lender/ Client -
- Limits protection from appraisals obtained from an appraisal firm

Appraiser -
- None Apparent

AMC -
- Results in additional regulatory obligations not imposed on other entities providing the same services
- Results in financial burdens not imposed on other entities providing the same services

Comments -
The definition of an Appraisal Management Company provided by Dodd-Frank focuses on the *activities* of the entity rather than the business structure. In reviewing the activities associated with an AMC as defined in Dodd-Frank, appraisal firms certainly do perform all the functional components that qualify the activities of an AMC: recruit appraisers; assign appraisal assignments to specific appraisers; contract by employment with appraisers to perform appraisal assignments; manage the process of having the appraisal performed including receiving orders; providing quality control measures on behalf of their clients; submitting reports prepared by employee appraisers; and compensating those appraisers for the appraisal services. Dodd-Frank did allow for an acknowledgement that smaller appraisal firms, those below the threshold of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers nationally, were granted an exception and did not qualify as an AMC. Historically, appraisal firms were smaller entities, with a single appraiser owning the firm, and retaining a small group of appraisers as employees to assist in performing appraisals in a limited geographic market. The smaller size of these appraisal firms allowed the sole appraiser owner to directly supervise and mentor the appraisers in its employ as well as oversee the appraisal process. As lending expanded to national levels, many of these 'firms' evolved as well, with ownership expanding from sole proprietorship to limited liability partnerships or corporations. The numeric threshold provided for in Dodd-Frank serves as an exemption which allows for small businesses, with limited resources, to continue to conduct business without the associated costs inherent to significant regulatory involvement. The threshold of overseeing more than 15 certified or licensed appraisers in a state or more than 25 appraisers nationally also provides a clear benchmark where significant consumer protection issues may begin to emerge and where regulatory involvement is needed.

The agencies have stated that an appraisal firm is "a firm that is engaged to perform appraisals." The language goes on to state that the "Dodd-Frank Act appears to distinguish AMCs that contract with others to perform appraisals from appraisal *firms* that are comprised of groups of appraisers that perform appraisals as part of a single firm or partnership." A citation for the preceding statement is not provided and it is unclear as to the basis of fact supporting this premise. In the prepared remarks at the Federal Reserve Bank of Chicago on May 9, 2014, Richard Cordray states that *"Whatever you think about government regulation, it cannot work in a piecemeal or patchwork manner, by having a system that addresses some competitors while leaving others alone."* The position that specific entities performing like functions should be excluded from supervision due to its business structure is contrary to the spirit of Dodd-Frank in providing consumer protection measures in the mortgage lending industry. Consumers should be afforded equal protection throughout the appraisal process regardless of how the appraisal is procured.

The Agencies set forth two reasons to distinguish between AMCs and appraisal firms. The first reason relates to the business structures of each entity, which as discussed above seems contradictory to the consumer protection intent of Dodd-Frank. The second major distinction set forth is that the AMC provides appraisal management services including retaining appraisers to perform appraisals, but does not *perform* appraisals and that an appraisal firm does perform appraisals using one of the firm's employees or partners. This distinction is also invalid for several reasons.

First and foremost, appraisals cannot be performed by entities but must be performed by a certified or licensed appraiser. The state agencies license and certify the individual appraiser to perform appraisals regardless of how that appraiser practices: as an employee appraiser or an independent contractor. Appraisal firms are not licensed to perform appraisals. Furthermore, the signature on the appraisal is that of the appraiser, not the appraisal firm. As previously stated, appraisal firms do in fact provide appraisal management services. The firm assigns the appraisal order to an employee appraiser to perform appraisals at its direction. The appraiser completes the appraisal and delivers it back to the appraisal firm, which reviews and verifies the appraisal in accordance with client standards and delivers the completed report back to the client. The client compensates the appraisal firm, which in turn, compensates the appraiser in accordance with the terms of the employment contract.

The second reason the Agencies set forth is the function of the AMC as noted in Section 1473 of the AMCs to "contract with State-certified or State-licensed appraisers to perform appraisal assignments." The Agencies have surmised that "while Congress could have explicitly included "performing appraisal assignments" in this list of business lines, it did not." As previously stated, appraisal firms do contract with appraisers just as do AMCs. The distinction between the two is that appraisal firms generally contract by employment and AMCs generally contract via an independent contractor relationship. The omission of the 'performing appraisal assignments' language is more likely attributed to Congress' understanding that in protecting the consumer, the business structure of the entity is irrelevant. Rather the functions these entities perform are the defining factors in determining those entities subject to supervision. The Agencies secondary basis for excluding appraisal firms from State AMC registration is also predicated in that FIRREA Section 1124 "uses the term "Appraisal Management Company," which, again, is understood generally to refer to an entity that provides appraisal management services by retaining appraisers as independent contractors and not by performing appraisals." Neither appraisal firms nor appraisal management companies can perform appraisals. Considering that Congress' focus was on the functions inherent to the management of appraisal assignments for a consumer's principal dwelling rather than the business structure of the entity, the definition set forth most certainly describes the activities performed by a business structure utilizing employee appraisers and a business structure that utilizes independent contractor appraisers.

In regard to the distinction between independent contractors and employees, it is noteworthy that the TILA amendments in Dodd-Frank recognize the payment construct within the business structure of an appraisal company with employee appraisers differs from that of an appraisal company with independent contractors. The definitions section of TILA 1026.42(b) does not define the term "appraiser" nor make a distinction between an employee appraiser and an independent contract appraiser. However, §1026.42(f) relating to the payment of customary and reasonable compensation utilizes the term "fee appraiser" and offers a definition specific *only* to paragraph (f) as follows:

> (i) *Fee appraiser.* The term "fee appraiser" means:
> (A) A natural person who is a state-licensed or state-certified appraiser and receives a fee for performing an appraisal, but who is not an employee of the person engaging the appraiser; or
> (B) An organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers to perform appraisals, receives a fee for performing appraisals, and is not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3353).

Since the FIRREA amendments make no distinction from an employee appraiser to an independent contractor appraiser, it appears that the intent was for any appraisal firms that exceed the threshold of "more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States" and provide appraisal management services would be classified as an appraisal management company. The acknowledgement in the TILA amendments that employees are paid "wages" rather than "fees," such as "fees" paid to independent contractors or organizations, excludes appraisal firms from being required to pay their employees a customary and reasonable fee in lieu of the compensation provisions in the employment contract.

Finally, in response to the concept of "hybrid firms or entities," we contend that the definition of "appraisal panel" includes any appraiser performing appraisal work for any entity; therefore, if an appraisal firm exceeds the numeric thresholds defined by the statute, it would be considered an AMC. As such, there would be no "hybrid firms or entities;" instead, entities would either be an appraisal firm or an AMC based upon their functions and number of appraisal panel members.

Request – The definition of an AMC set forth in the proposed AMC Minimum Standards should reflect those actions as defined in Dodd-Frank and clarify that the functions of the company rather than the business structure determines if the entity qualifies as an AMC, subject to supervision. We request the proposed distinction between employees and independent contractors as a basis for exclusion of appraisal firms from the definition of an AMC be eliminated. It is appropriate that those companies performing the functions as described in Dodd-Frank that exceed the defined thresholds for state licensed or certified appraisers be included in the revised definition of an AMC, subject to supervision. Furthermore, to eliminate the distinction between employees and independent contractors In the definition of "Appraiser Panel," we reiterate our request that the phrase "who are independent contractors to the AMC" be struck from the definition of Appraiser Panel in §34.21 (e).

Question 6:

The Agencies have requested comments on the proposed minimum requirements for State registration and supervision of AMCs.

Impact Analysis Summary of Proposed Rule - Relating to Question 6

Consumer -

- Potential delays in finalizing the loan process due to a reduced AMC panel

Lender/ Client -

- Reduces lender/client choice in obtaining appraisal services
- Limits protection from appraisals performed by an appraiser contracted via employment
- Potential delays in obtaining appraisals due to a reduced AMC panel

Appraiser -

- Reduces engagement opportunities with AMCs

AMC -

- ncreases costs to maintain full appraisal panel
- Provides incentive to reduce panel members due to financial constraints
- nterference with interstate commerce
- Significant potential for the release of an AMC's confidential and proprietary information
- Results in regulatory burdens not applied to other market participants and does not provide any meaningful benefits to consumers or other parties to the appraisal transaction

Comments on Implementation ssues -

In addition to the concerns regarding §34.211(e) and the definition of "appraiser panel" as noted in the comments provided for Question 2, we believe it is imperative we comment on §34.212. The definition in §34.21 (c)(1)(iii) sets forth the meaning of what constitutes an appraisal management company, referencing §34.212, the appraiser panel section, as the construct for panel determination in that subpart. Subpart (a) of §34.212 indicates an appraiser is deemed to be part of the AMC's appraiser panel upon the occurrence of one of two circumstances: 1) the AMC has performed its due diligence and accepted the appraiser as eligible to receive future assignments; or 2) the AMC has engaged an appraiser to perform one or more appraisals. It is our position the AMC's appraiser panel

should be determined *only* by the actual engagement of the appraiser to perform individual appraisal services in a given time period and *not* by the designation of the appraiser being accepted on the appraiser panel, eligible to receive assignments. In addition, the proposed rules should define the term 'engagement and/or engage' to mean the point in time at which the appraiser accepts the assignment conditions set forth in a written engagement letter to perform appraisal services on specific real property for a specific intended use and on behalf of a specific intender user.

AMCs provide appraisal management services for many clients in many areas and have a rigorous acceptance platform in order to meet client and consumer needs in any given market area. This acceptance process includes, but is not limited to, validating the appraiser's credentials, determining competency, and collecting all pertinent documentation, resulting in the acceptance of the appraiser as eligible to receive future assignments. This process can take from one week to one month to complete in its entirety in order to properly vet the appraiser's qualifications as required by clients and regulatory mandates. The appraiser is then placed in an eligible status and ready to be engaged for appraisal assignments. For a variety of reasons, after the completion of this process, the appraiser may *never* perform an appraisal assignment for the AMC.

The definition of an AMC under F RREA §1124 (11) includes references that an AMC "contracts" with appraisers to perform appraisal assignments. AMCs contract with appraisers in one of two primary ways. First, an AMC accepts the appraiser's qualifications and credentials by executing a written, signed contract (may include an employment contract or independent contractor agreement) in which the appraiser provides license information, a credential check, background check authorization, confirmation of competency, acknowledges performance expectations, etc. This places the appraiser on the AMC's appraiser panel or network as eligible to be engaged to provide appraisal services. Second, an AMC contracts with an appraiser on a transactional level for each individual appraisal assignment which sets the scope of work expectations requested by the client as well as the terms of the engagement; the appraiser accepts the terms of the engagement, and is awarded the assignment.

An AMC never unilaterally engages an appraiser to perform an appraisal assignment. In accordance with the Interagency Appraisal and Evaluation Guidelines (the Guidelines), Section VI., Selection of Appraisers or Persons who Perform Evaluations, B. Engagement Letters, AMCs typically engage appraisers for specific appraisal assignments utilizing a written engagement letter. As stated in the Guidelines, the written engagement document "facilitates communication with the appraiser and documents the expectations of each party to the appraisal assignment" including any legal or contractual restrictions relating to the appraisal. This communication assists the appraiser in establishing the scope of work in accordance with the client's needs so that the appraiser can consider acceptance of any scope of work assignment conditions requested by the client. Establishing a definition for 'engagement and/or engage' will clarify that the 'engagement' occurs at the point in time at which the appraiser accepts the assignment conditions set forth in a written engagement letter to perform appraisal services on specific real property for a specific intended use and on behalf of a specific intender user.

The proposed rule as written is problematic in that the inclusion of those appraisers in the panel count who have been accepted as eligible, but who never engaged for an appraisal assignment, will result in significant additional costs to the AMCs to maintain the appraiser panel in accordance with industry standards. The unintended consequence will be that the AMC will reduce its panel size to include only those appraisers that are engaged on a regular basis, leaving market areas underserved, with no appraisers readily available to perform appraisals on behalf of consumers and lenders. This will result in an acceptance process that is prompted only upon the receipt of an actual appraisal assignment order from a client which will inevitably delay the provision of a credible appraisal report to finalize the consumer's loan process.

The acceptance process currently utilized by most AMCs allows the industry to prepare for the cyclical nature of the real estate lending market, ensuring qualified appraisers are available to be engaged for specific appraisal assignments in a given market area. The proposed rule will inhibit that process and force AMCs to adopt a more conservative acceptance process which will result in lengthening the time

it takes to engage a competent appraiser to provide a credible appraisal to secure the consumer's loan. There is no impact on the consumer until such a time as the appraiser is engaged to perform appraisal services, and therefore, it is unnecessary to include 'accepting the appraiser as eligible to receive future assignments' as a determining factor of what constitutes an appraisal panel.

Request - In light of the foregoing discussion, it is our position the AMC's appraiser panel should be determined *only* by the actual engagement of the appraiser to perform individual appraisal services in a given time period and *not* by the designation of the appraiser being accepted on the appraiser panel, eligible to receive assignments. In addition, the proposed rules should define the term 'engagement and/or engage' to mean the point in time at which the appraiser accepts the assignment conditions set forth in a written engagement letter to perform appraisal services on specific real property for a specific intended use and on behalf of a specific intender user.

Comments on the Minimum Requirements for Registration and Supervision of AMCs

Section 34.213 lays out guidelines as to the establishment and maintenance of the State appraiser certifying and licensing agency's licensing program for AMCs. There are seven elements listed in Section (a) in which the State must have the legal authority and appropriate mechanism to act. Sub-sections 1, 2, and 4 are relevant and appropriate. As proposed, the other Sub-sections are ambiguous and overly broad granting significant authority to a state appraiser and licensing agency that is neither consistent with the statute, nor necessary to carry out the provision of Title XI. Specific comments to the Sub-sections at issue are as follows:

34.213(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

It is likely the State will need to collect some documentation from an AMC in order to process complaints and complete investigations as noted in §1118(a)(2). However, the proposed language is arbitrary and ambiguous in authorizing the State to examine the AMCs books and records without qualifying the requirements. The term 'books and records' suggests a myriad of documents including accounting statements and profit and loss statements which are clearly not relevant to the mandates of Title XI. Further, many of the documents maintained by AMCs contain proprietary and confidential information. The provision of such documents to a state agency may result in public disclosure in accordance with a state's Freedom of Information statutes.

Request – We request this requirement be clarified to limit the review of these documents to only what is necessary and essential for an agreed upon proper purpose pursuant to obligations under Title XI. Appraisers are required to maintain a 'workfile' relative to each appraisal assignment; this is an example of relevant documentation that would assist the state appraiser regulatory agency in processing complaints and completing investigations in keeping with the AMCs responsibilities outlined in Title XI.

34.213(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

F RREA §1118(a)(2) requires the State to 'process complaints and complete investigations' in a timely manner. The Dodd-Frank language infers that any investigation is a result of a complaint and many States' appraiser investigations are established only on the basis of a formal complaint. The proposed language in the rule referencing a 'potential' violation suggests a credible basis for an investigation is the expectation; however, the proposed language is not definitive in that assertion. The ambiguity in this language allows for capricious and arbitrary investigations of AMCs without any substantive rationale for such an investigation.

Request – The proposed rule should be revised to clarify that investigations are to be based on a formal complaint or credible information indicating

misconduct. The proposed rule language could be revised to state: "Conduct investigations of AMCs to assess potential violations of Title XI on the basis of a formal complaint or other credible information indicating misconduct."

34.213(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;
34.213(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and
34.213(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.
These three Sub-sections reference "applicable appraisal-related laws, regulations, or orders" without specifically defining these terms. A review of FIRREA Sections 1103, 1109 and 1118 do not provide any similar references to this language. Therefore, the proposed language is subject to a broad interpretation of what may be 'applicable' as well as what is termed an 'order' versus what might be viewed as an industry preference. The authority granted to a State in supervising the activities of an AMC is limited to those activities that are consistent with Title XI. This would include the AMC minimum standards as promulgated by the Agencies as well as the State AMC licensing and registration requirements. Consequently, the proposed rule should clarify that the applicability is limited to obligations under Title XI.
Request – The proposed rule should be revised to clarify that any investigation assessments, disciplinary actions and reported violations be limited to those requirements under Title XI. The reference to "applicable appraisal-related laws, regulations, or orders" should be removed and revised as follows:
(5) Conduct investigations of AMCs to assess potential violations of *the obligations under Title XI*;
(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates *the obligations under Title XI*; and
(7) Report an AMC's violation of *the obligations under Title XI*, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

Section (b) of 34.213 lays out guidelines as to requirements to be imposed by the States for those AMCs. There are five elements related to FIRREA Section 1124 listed in Section (b) which the States must impose on AMCs. Sub-section (1) is clearly defined in the statute and requires no comment. Specific comments to each of the remaining Sub-sections are offered as follows:

34.213(b)(2) Use only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;
AMCs routinely verify the appraisers they engage are state certified or licensed appraisers. States can vary widely in their expectation of how an AMC must validate the use of appropriately certified or licensed appraisers. As noted in the final rule for Appraisals for Higher-Priced Mortgage Loans (HPML) (RIN 2590-AA58), the Agencies provided a safe harbor for creditors to verify that the appraiser holds a valid appraisal certification or license; specifically, a creditor may meet its obligations by verifying through the ASC's "National Registry" that the appraiser is a certified or licensed appraiser in the State in which the property is located as of the date the

appraiser signs the appraiser's certification. As this due diligence has been deemed sufficient for creditors, it is reasonable to expect that it would be deemed sufficient for AMCs who face the same compliance uncertainties.

Request – We request that to meet the obligations under §34.213(b)(2), the Agencies include a safe harbor provision, similar to that provided in the HPLM Final Rule, in which AMCs can establish compliance by verifying through the ASC's "National Registry" that the appraiser is a certified or licensed appraiser in the State in which the property is located as of the date the appraiser signs the appraiser's certification.

34.213(b)(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

34.213(b)(4) Direct the appraiser to perform the assignment in accordance with USPAP: and

The Agencies have indicated that these provisions are in direct correlation to the requirement listed in FIRREA 1124(a)(3) implementing that appraisals coordinated by an AMC comply with USPAP. Again, to promote consistency and in alignment with the safe harbor provided to creditors as outlined in the final rule for Appraisals for Higher-Priced Mortgage Loans (HPML) (RIN 2590-AA58), it seems reasonable that a similar safe harbor be provided by the Agencies to AMCs, as the HPML safe harbor was deemed to "provide reasonable protections to consumers and compliance guidance to creditors." Although the HPML rule was directed to appraisals for higher-priced mortgages, the consumer protection concerns and the elements addressed are certainly appropriate to apply in the procurement of appraisals in general, regardless of the loan level. Additionally, as most AMCs often act as a third party to the creditor, it is logical that the requirements placed upon the AMC mirror those binding the creditor. The safe harbor in the HPML rule established affirmative steps creditors could follow to ensure they satisfy regulatory obligations. One of those obligations was that the creditor validate the appraiser performed the appraisal in conformity with the USPAP. The affirmative step established by the Agencies was that the creditor "Orders the appraiser to perform the appraisal in conformity with USPAP and F RREA title XI, and any implementing regulations, in effect at the time the appraiser signs the appraiser's certification (§ 1026.35(c)(3)(ii)(A))." Since the Ethics Rule of USPAP requires the appraiser to disclose any current or prospective interest in the subject property or parties involved prior to accepting an assignment and the Competency Rule Section specifically addresses the appraiser's competency, the elements outlined in Sub-section (3) and (4) are accounted for within the safe harbor provided within the HPML rule. The safe harbor language also aligns with the mandate of 1124(a)(3) in that the AMC must "require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice."

Request – We request that to ensure appropriate protections to the consumers and compliance guidance to AMCs that the Agencies provide a safe harbor in which an AMC can operate, modeled after the safe harbor provided in the final rule for Appraisals for Higher-Priced Mortgage Loans (RIN 2590-AA58), to include an affirmative step of the AMC providing in the engagement letter to the appraiser an order to perform the appraisal in conformity with USPAP and FIRREA title XI, and any implementing regulations, in effect at the time the appraiser signs the appraiser's certification.

34.213(b)(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)-(i) of the Truth in Lending Act. 15 U.S.C. 1639e(a)-(i), and regulations thereunder.
Section 1124 (a)(4) states the minimum requirements must require the AMC to "require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under Section 129E of the Truth in Lending Act." The proposed rule has modified the language significantly in two aspects: revised 'require' to 'ensure,' and revised 'appraisals' to an AMC's 'appraisal management services.'

The appraisal activity TILA amendments in the Dodd-Frank Act relate to property appraisal requirements and appraisal independence requirements. Sections 129E (a) through (i) apply to both creditors and any "person that provides settlement services" which includes both appraisers and AMCs. The language imposed within the FIRREA amendments recognizes that the AMC's responsibility is to "require that appraisals are conducted independently and free from inappropriate influence and coercion" and not to *ensure* that position. That responsibility is shared by other parties to the transaction including the creditor and the appraiser. The requirements in TILA relating to coercion, mischaracterization, and prohibitions on conflicts of interest apply equally to the creditor, the appraiser, and the AMC. Consequently, the language utilized in the FIRREA amendments indicating the *appraisal* as the impetus of these actions and not the appraisal management services is appropriate as it would include those activities of ***all*** parties and not just the AMC. This rendering provides for the broadest appraiser independence and consumer protection among all parties to the transaction as intended by Dodd-Frank. The language set forth in the proposed rule eliminates the acknowledgement that the responsibility is not solely with the AMC but includes all covered persons involved in the appraisal transaction.

Another concern is that although FIRREA Section 1124 directs the Agencies to establish the minimum requirements to be applied by the states, the language in Section 34.213 (b)(5) of the proposed rule offers the perception that the individual states can establish those minimum processes and controls and then investigate and enforce those requirements. This is particularly problematic for several reasons. First of all, the lack of clarification in the proposed language as to the company's ability to determine those processes and controls rather than the state's may lead to capricious requirements mandated by the states to apply to all AMCs in that particular state. Mandating a company's business processes would place unnecessary burdens on AMCs with no benefit to creditors, appraisers, or consumers and is anti-competitive in nature. Secondly, TILA is a federal banking law intended to provide substantive protection for consumers and imposes requirements on a broad range of participants other than AMCs and appraisers. State regulatory agencies should not be empowered to interpret federal laws. The inevitable result would be an erosion of the national safe and sound banking practices as contradictory interpretations of a similar requirement would be applied to only select participants from state to state.
Request – The proposed rule should be revised to be consistent with FIRREA and reflect that the AMC must require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under Section 129E of the Truth in Lending Act. We would also request the Agencies clarify whether

the proposed rule provides independent authority for state regulatory agencies to interpret TILA.

Although we have submitted our comments regarding the proposed rules, it is clear that there continues to be a great deal of misunderstanding and misinformation about AMCs. Therefore, we urge the agencies to carefully scrutinize all public comments to discern actual facts from subjective rhetoric in an effort to better understand the appraisal process and the role that AMCs play in that process. n that regard, our company is available to participate in any study committee discussions the agencies may deem prudent to clarify the role of the AMC. We are committed to participating in the preservation of the safety and soundness of the appraisal process including adherence to all regulatory appraisal policies at both the federal and state level and look forward to working with the agencies in that respect.

Thank you for allowing us to submit our comments on the proposed rules that will significantly impact all market participants including AMCs, lenders, appraisers, and consumers. Please feel free to contact me at any time at 412.776.2213 or Beth.Buell@bkfs.com as you consider these issues.

Respectfully submitted,

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