

Consumer Mortgage Coalition

June 9, 2014

Legislative and Regulatory Activities
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9W-11
Washington, DC 20219
Docket ID OCC-2014-0002
regs.comments@occ.treas.gov

Robert deV. Frierson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue NW.
Washington, DC 20551
Docket No. R-1486
regs.comments@federalreserve.gov

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
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Ms. Monica Jackson
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Bureau of Consumer Financial Protection
1700 G Street NW.
Washington, DC 20552
Docket No. CFPB-2014-0006
www.regulations.gov

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Re: Minimum Requirements for Appraisal Management Companies

Ladies and Gentlemen:

The Consumer Mortgage Coalition (“CMC”), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments on the interagency proposed regulation on minimum requirements for appraisal

management companies (“AMCs”). The proposal would implement the Dodd-Frank Act¹ requirements that AMCs be supervised by the states in which they operate and that they be state-registered if they are not subject to oversight by a federal financial institutions regulatory agency.

AMCs serve an important role in ensuring accurate, independent appraisals. Mortgage lenders, servicers, and investors are victims of all forms of mortgage fraud, including appraisal fraud. The potential losses from fraudulent or otherwise faulty appraisals give lenders a strong incentive to avoid overvaluation of the property that serves as security for their loans. AMCs contribute to avoiding fraudulent or inaccurate appraisals by ensuring that appraisers are qualified, independent, and appropriately overseen.

This letter urges the agencies to encourage uniform state regulation of AMCs. We do not believe the Dodd-Frank Act permits states to elect not to regulate AMCs, as we discuss below. Moreover, the agencies’ final rule should state explicitly that states must supervise AMCs at least to the extent of the Dodd-Frank minimum AMC requirements, and that if a state were to fail to do so the minimum requirements would still apply. We urge the agencies to promote uniform, nationwide AMC supervision and registration requirements. We explain why the definition of appraisal panel should not distinguish between employees and independent contractors. Finally, this letter makes more specific comments on aspects of the proposal that we support and areas in which the proposed regulation could be clarified so that an AMC’s registration status would not be subject to doubt.

AMCs Serve an Important Role in Ensuring Quality Appraisals

Consumer mortgage lenders rely on AMCs to minimize appraisal risks. The use of AMCs has provided enormous benefits to lenders and to the appraisal process over the years. Contracting with an AMC enhances a lender’s ability to obtain accurate appraisals because it imposes additional layers of insulation between loan-production staff and the individual appraiser. Through a combination of highly-trained personnel and sophisticated technology applications, AMCs have created systems that allow them to manage the appraisal process efficiently and to maintain high standards of accuracy, quality, and service. Because they serve a number of customers, AMCs can maintain a nationwide network of high-quality in-house and independent appraisers that is more extensive than that of even the largest lender. The AMC’s national footprint allows a lender to move into a new geographic market quickly without having to develop its own network of appraisers and discover, often through trial and error, which individuals can be relied on to produce accurate and timely appraisals. AMCs’ specialized knowledge allows them to react quickly to changes in market conditions and legal requirements.

¹ Dodd Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010), which, among other things, amended appraisal provisions in the Financial Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 183 (“FIRREA”).

AMCs specialize in valuation, and therefore have been able to improve the valuation process in many ways, including:

- Improving appraisers' awareness of secondary market and investor requirements.
- Quality-control programs that are customized to meet each lender's needs. Independent appraisers, by contrast, typically rely on their customers or investors to detect and correct errors.
- Independent management of appraiser panels, including minimum qualifications for appraisers to meet before acceptance on the panel, as well as ongoing quality control to remove under-performing appraisers.
- Immediate payment to the appraiser for a completed appraisal, regardless of its outcome or value.
- Significant capital and errors and omissions insurance, both of which most individual appraisers lack.
- A network of independent appraisers, which allows AMCs to provide better, more consistent service, a high quality product, and a more consistent customer experience to borrowers. Like their counterparts who are employed by lenders, appraisers retained by AMCs have an incentive not to inflate values because their management companies will be liable for an improperly conducted appraisal.

AMCs have also been at the leading edge of improvements in technology. For example, they began requiring electronic delivery of appraisal reports in the 1990s, which is now the industry standard, resulting in many process and service efficiencies. Other technological innovations for which AMCs are responsible include:

- Use of the Extensible Markup Language ("XML") data protocol as a standard reporting format, which has facilitated electronic data transmission, valuation, quality control, and underwriting.
- Electronic valuation underwriting software that uses the XML data for automatic quality control.
- Data-entry software for appraisers that contains rules to prevent the transmittal of a report that does not meet minimum quality standards.
- A direct interface with the lender's loan-origination system, allowing for automatic entry of the current status of the appraisal into the system, as well as automatic communication to the lender.

Taking advantage of an AMC's specialized expertise, a lender puts itself at the cutting edge of AMC improvements in the appraisal process for the competitive advantages they provide for lenders.

Dodd-Frank Requires States to Register AMCs and to Supervise AMC Compliance with the Dodd-Frank Act Minimum AMC Requirements

Under Dodd-Frank’s amendments to FIRREA, the agencies are required to establish minimum AMC supervision and registration requirements. It is important to note that this mandate is not restricted to federally related transactions. Further, the Dodd-Frank Act requires the minimum supervision standards to apply to all AMCs, and the registration requirement to apply to certain AMCs, all unconditioned on state action. The statute further provides that states may establish additional, but not lesser, AMC requirements. We discuss these points below. We begin this discussion with the relevant Dodd-Frank language:

“(a) IN GENERAL.—[The agencies] **shall** jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies. Such requirements **shall** include a requirement that such companies—

(1) register with and be subject to supervision by a State appraiser certifying and licensing agency **in each State in which such company operates**;

(2) verify that only licensed or certified appraisers are used for **federally related transactions**;

(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice, and
(4) 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.

(b) RELATION TO STATE LAW.—Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a).”²

Most of § 1124 Applies to all Transactions and is Not Limited to Federally Related Transactions

Congress used the term “federally related transactions” in § 1124(a)(2) but, significantly, did not apply that term to all of § 1124(a). That means the term does not apply to § 1124(a) as a whole. In other words, § 1124(a) requires the following minimum requirements, without being limited to federally-related transactions: minimum supervision requirements for all AMCs, § 1124(a); supervision, and sometimes registration, of AMCs in each state where they operate, § 1124(a)(1); AMC appraisals must comply with USPAP, § 1124(a)(3); AMC appraisals must be independent and free from inappropriate influence and coercion in compliance with Truth in Lending Act

² FIRREA § 1124, as enacted by Dodd-Frank Act § 1473(f)(2), codified at 12 U.S.C. § 3353 (emphasis added).

(“TILA”) § 129E, § 1124(a)(4). The restriction to federally related transactions only applies to § 1124(a)(2).

Congress directed the agencies to set minimum requirements for AMC supervision, without regard to whether a transaction is federally related. That is, if a state-chartered lender that is not supervised by a federal banking agency or the NCUA uses an AMC, that AMC must be supervised by the state where it operates. If any entity uses an AMC, that AMC must be state-supervised. This includes, for example, state non-profit agencies that assist low-income families finance home purchases.

In amending FIRREA, the Dodd-Frank Act did distinguish between federally-regulated AMCs and other AMCs, by limiting the AMC registration requirement to non-federally regulated AMCs:

“(c) **FEDERALLY REGULATED FINANCIAL INSTITUTIONS.**—The requirements of subsection (a) shall apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency. An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State.”³

That is, all AMCs must be state-supervised, and in some but not all circumstances must be state-registered as well. This statutory distinction between state- and federally-regulated AMCs relates to the registration requirement, not to the supervision requirement. This language does not override the § 1124(a) requirement that all AMCs be subject to supervision.

Congress limited § 1124(f)(1) to federally regulated transactions. Here, Congress prohibited AMCs from performing services for a federally related transaction (after an implementation period) unless the AMC is registered with a state or is federally-overseen:

“No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date on which the regulations required to be prescribed under subsection (a) are prescribed in final form unless such company is registered with such State or subject to oversight by a Federal financial institutions regulatory agency.”

³ FIRREA § 1124(c), codified at 12 U.S.C. § 3353(c).

The FIRREA definition of federally related transaction is:

“The term “federally related transaction” means any real estate-related financial transaction which—
(A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and
(B) requires the services of an appraiser.”⁴

In every federally related transaction involving an AMC, the transaction must be “engage[d] in, contract[ed] for, or regulate[d]” by, a federal financial institutions regulatory agency. That is, any AMC in such a transaction must be “subject to oversight by a Federal financial institutions regulatory agency” within the meaning of § 1124(f)(1). The § 1124(f)(1) reference to state registration therefore does not mean that a state may elect not to supervise AMCs.

The statutory language is clear that AMCs that operate in any state must be supervised by each state in which they operate, unconditioned on state action or inaction. Were a state to fail to act, the Dodd-Frank Act minimum AMC supervision and registration requirements would still apply.

Congress Limited State Registration and Supervision of AMCs to AMCs that Operate in the State

The required minimum AMC supervision standards must apply in each state where each AMC operates. It would not be logical to read this mandate to mean that states can somehow opt out of the Congressional mandate that states supervise AMCs. Such a reading would require inserting contrary language into § 1124(a)(1), such as, the minimum requirements must require AMCs to “register with and be subject to supervision by a State appraiser certifying and licensing agency in each state where such company operates, **if the state were to establish the minimum state supervision requirements required under this section.**”

The more logical reading of the phrase “in each State in which such company operates” is simply that state A need not supervise, or supervise and register, an AMC that operates only in states B and C.

⁴ FIRREA § 1121(4), codified at 12 U.S.C. § 3350(4).

Congress Set the Floor for State AMC Supervision

Had Congress intended to permit states to prohibit AMCs from operating, it would have said so. It did not. On the contrary, Congress permitted states leeway only as follows:

“Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a).”⁵

By negative inference, this language means that this section must be construed to require states to adopt at least the § 1124(a) “minimum requirements to be applied by a State” for AMC supervision and registration.

The Dodd-Frank Act Legislative History Confirms the State Supervision Requirement

The legislative history of the Dodd-Frank Act confirms that Congress intended all states to supervise AMCs, and that it never envisioned AMC supervision as being somehow optional:

“H.R. 1728 would authorize the ASC to monitor companies that retain or contract with appraisers and manage the process of having an appraisal performed (appraisal management companies). The bill would require those companies to be registered with a state (or be subject to oversight by a financial regulatory agency) in order to provide appraisal services on transactions undertaken through federally regulated financial institutions. As a result, the ASC would be required to develop regulations **that states must follow** in licensing appraisal management companies. Further, the ASC would be required to maintain a registry of appraisal management companies that are registered with a state licensing agency.”⁶

Further:

“In response to the growth of and concerns about AMCs, subsection (f) **creates a State-by-State system for registering and supervising AMCs**, with oversight of the States conducted by the ASC, and it generally requires the system to be in place within 3 years of enactment. The subsection provides for the establishment of minimum standards to be applied in the registration of AMCs. . . . The amendment additionally puts in place a parallel Federal system of oversight for an AMC that operates as a subsidiary of a financial institution overseen by a Federal banking regulator.”⁷

⁵ FIRREA § 1124(c), codified at 12 U.S.C. § 3353(c).

⁶ H. Rep. No. 111-94, at 75 (2009) (emphasis added).

⁷ *Id.* at 97 (emphasis added).

State-by-state means all states. A state-by-state AMC supervision system does not mean an optional, some-state-by-some-state system. Had Congress intended optional supervision of AMCs, there would be some hint in the legislative history, but there is not.

Accordingly, to implement the Dodd-Frank minimum AMC requirements, we strongly urge that the final rule make clear that states must implement at least the minimum standards.

If any State Fails to Implement the Required Minimum AMC Standards, the Agencies Should Provide a Default Supervisor and Registrar for AMCs

Some appraisers have sought to curtail AMCs because they believe AMCs reduce appraiser fees. Congress addressed this issue in the Dodd-Frank Act by requiring appraiser fees to be customary and reasonable, with TILA liability for violations.⁸ Individual appraiser compensation should not interfere with lenders' ability to use AMCs to ensure the quality of their appraisals. It is true that AMCs receive compensation, but AMCs in exchange provide a number of services formerly provided by individual appraisers.

Should appraisers be successful in preventing a state from supervising and registering AMCs, and in the absence of a default supervisor, lenders would not be able to use AMCs in that state. Such an interruption would cause unnecessary turmoil in mortgage lending in that state. To prevent such a disruption, we urge that the agencies establish a default supervisor and registrar for AMCs for states that fail to act. The CFPB or the Federal Financial Institutions Examination Council Appraisal Subcommittee ("Appraisal Subcommittee") could serve this role.⁹

The Federal Agencies Should Encourage Consistent State AMC Supervision and Registration

State AMC supervision and nationwide AMC registration will impose regulatory burden. We strongly encourage the rulewriters, along with the Conference of State Bank Supervisors, to work together with the states to ensure that all AMC supervision and registration requirements are uniform to minimize unnecessary burden. The consumer protection and the safety and soundness needs for high-quality appraisals is equally important in all states, so there is no need for a patchwork of varied standards. Compliance with a variety of standards increases the cost of appraisals, and consumers bear those costs.

⁸ Dodd-Frank Act § 1472(a), adding TILA § 129E. See TILA § 129E(i) and (k).

⁹ The CFPB regulates "covered persons" defined broadly. Congress exempted some entities from CFPB's supervision, Dodd-Frank Act § 1027, 12 U.S.C. § 5517, but not AMCs. The CFPB has authority to act as the default supervisor and registrar in states that fail to supervise and register AMCs as required.

It is especially important that the agencies establish a joint, uniform definition of AMC so that state supervision and registration is uniform. One entity should not be an AMC in one state but not in another.

We also request that the agencies ensure that TILA § 129E and its implementing federal regulations apply uniformly in all states. As proposed, the rule would require states to require AMCs to “[e]stablish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with [TILA § 129E] and regulations thereunder.”¹⁰ Some state regulations are modeled after TILA provisions, so that this proposed reference to “regulations thereunder” could be construed to refer to state regulations even if they conflict with TILA and federal regulations. We suggest the phrase be “federal regulations thereunder.”

States will require AMCs to report information that the states will report to the Appraisal Subcommittee.¹¹ There is no reason why this reporting should vary by state, and differing reporting standards would interfere with the Appraisal Subcommittee’s ability to make use of the reports. There should be uniform reporting requirements that apply in the same manner in each state. We suggest it would be more efficient and faster for AMCs to report to the Appraisal Subcommittee directly.

Comments on Specific Aspects of the Proposal

We present below comments on more specific aspects of the proposal.

Appraiser Networks or Panels Should Include Employees

The proposed definition of appraiser panel is:

“[A] network or panel of licensed or certified appraisers who are independent contractors to the AMC.”¹²

The agencies solicit comment on the distinction between independent contractors and employees for purposes of this definition. We support including appraisers who are either independent contractors or employees of an AMC in the definition of appraiser panel because of the possibility that an appraisal firm could avoid state regulation as an AMC by the simple expedient of classifying appraisers as employees even though they work intermittently or part-time. Appraisal firms and AMCs both perform appraisal management functions. Consumers will benefit from state supervision of AMCs whether

¹⁰ Proposed § 34.213(b)(5). For ease of reference, this letter refers to section numbers in the proposed rule text for the Comptroller of the Currency.

¹¹ Proposed §§ 34.214(b) and 34.216.

¹² Proposed § 34.211(e).

their appraisers include employees or independent contractors.

The Dodd-Frank Act AMC Requirements Are Inapplicable to Commercial Loans

We agree with the rulewriters that the Dodd-Frank Act AMC requirements are inapplicable in a commercial lending context.¹³ Appraising commercial properties differs substantially from appraising residential properties, and AMCs are not generally involved in appraisals of commercial properties. There would be no purpose to imposing regulatory requirements on AMCs for commercial mortgage lending or securitizations.

Incomplete State Filings Should Not Threaten AMC Registration Status

Proposed § 34.216 provides:

“Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.”

If, for some reason, a State were to fail to submit to the Appraisal Subcommittee all the information required by Appraisal Subcommittee regulations or guidance when due, this fact alone should not automatically cause AMCs registered in that state to lose their registered status. There may be any number of reasons why a state filing may be late or partially incomplete, with no immediate impact on the quality of appraisal services or appraisal management services. Incomplete filings may be especially likely before states have had sufficient time to establish reliable procedures for accepting information from AMCs, processing it, and conveying required information to the Appraisal Subcommittee. It is not clear that each lender and registered AMC will have the ability to track when each state in which they operate has or has not filed all information required by regulation or guidance.

We suggest that the Appraisal Subcommittee work with states that fail to file required information, and that any such state have a reasonable opportunity to provide information the Appraisal Subcommittee determines is missing or incomplete. We suggest that the Appraisal Subcommittee should have the ability to waive state filing requirements or guidance when reasonably appropriate. We further suggest that all AMC registrations in a state remain valid, in a state that fails to file required information, until after the Appraisal Subcommittee makes a public, formal finding that the state has not produced the required information despite such reasonable opportunity, and that the quality and

¹³ 79 Fed. Reg. 19521, 19524 (April 9, 2014).

integrity of appraisals managed by AMCs in that state are thereby threatened.

***States Should Determine Lack of Owners' Good Moral Character Before
Registration Status is Invalid***

The Dodd-Frank Act provides:

“[E]ach person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency[.]”¹⁴

Proposed § 34.215(b) provides:

“An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—
(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character[.]”

It may not always be clear whether any person that owns more than 10 percent of an AMC has the required “good moral character” because this term is undefined and subjective. We suggest replacing the term “Is determined” in proposed § 34.215(b)(1) with “Has been determined” to clarify that the state must make a determination before a vague lack of “good moral character” voids the registration of the potentially affected AMC. States would be able to deregister AMCs as and when appropriate, but the standard would be clearer.

This approach would be consistent with the approach in proposed § 34.215(a), which prohibits registration based on objective, publicly known facts. It provides that an AMC shall not be registered by a state or included on the AMC national registry if the AMC is directly or indirectly owned or partially owned:

“by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.”

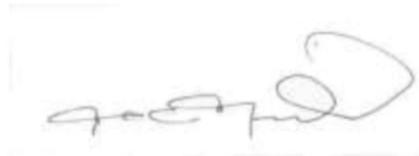
The lack of appraiser licensure or certification, or termination of appraiser licensure or certification, are defined, objective facts and are public, so that a lender relying on an AMC, by knowing its owners, will be able to know when the AMC’s registration is valid.

¹⁴ FIRREA § 1124(d) as added by Dodd-Frank Act § 1473(f)(2), 124 Stat. 1376, 2192 – 93, codified at 12 U.S.C. § 3353(d).

Conclusion

We appreciate the interagency effort to implement the Dodd-Frank Act minimum AMC requirements. We encourage continuing efforts to promote consistent requirements in all states.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne C. Canfield", is enclosed within a thin black rectangular border.

Anne C. Canfield
Executive Director