June 9, 2014

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E–218,
Mail Stop 9W–11
Washington, DC 20219
Docket ID OCC–2014–0002

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

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
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Washington, DC 20429
RIN 3064–AE10

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National Credit Union Administration
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Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
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Docket No. CFPB–2014–0006

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Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street, SW
Washington, DC 20024
RIN 2590–AA61

RE: Proposed Minimum Requirements for Appraisal Management Companies (AMCs)

Dear Ladies and Gentlemen,

The undersigned associations (Associations) appreciate the opportunity to comment on this proposed rule (Proposal) issued on April 9, 2014 by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Bureau of Consumer Financial Protection (CFPB), and Federal Housing Finance Agency (FHFA) (collectively the "Agencies") which would establish minimum requirements for appraisal management companies (AMCs).

AMCs perform a key function in the mortgage process by facilitating appraiser independence to ensure the quality of the appraisals. To this end, AMCs arrange and supervise the performance of qualified appraisers insulating them from undue pressure. Lenders rely on AMCs for these purposes.

While the Proposal requires new standards for AMCs, which we support, we are concerned that it may unwittingly impede the operations of many AMCs. While the rule establishes new standards, it does not require states to adopt them. It also does not establish an alternative regulatory structure for AMC registration and supervision in states where the requirements are

not adopted. Consequently, AMCs not owned and controlled by an insured depository (non-federally regulated AMCs) could be prevented from providing appraisal management services for federally related transactions in states where such regulatory structures are not adopted.

For these reasons, while the Associations strongly support standards for AMCs, regrettably, we cannot support this Proposal as it stands. Unless the Proposal is revised, to allow AMCs to operate nationally, we believe it will harm consumers and unduly increase their costs.

Background

Traditionally, loan originators directly commissioned appraisals from appraisers. While this practice usually resulted in fair valuations, unfortunately, it also allowed some participants in the lending process to exercise undue pressure to increase valuations in ways that were harmful to consumers and the broader market. This situation led to a series of regulatory reforms which were designed to insulate individual appraisers and their valuations from improper influence. We would note that it was the appraisers themselves who sought protection from undue interference with the appraisal process.

In May 2009, Fannie Mae, Freddie Mac, and FHFA implemented the Home Valuation Code of Conduct (HVCC) to require the separation within lenders' organizations of the appraisal and loan production functions.[1] Specifically, the HVCC prohibited lenders' use of appraisers selected, retained, or compensated by mortgage brokers, real estate agents, or other third parties. It also applied these standards to all conventional mortgage loans sold to Fannie Mae and Freddie Mac.

The Dodd-Frank Wall Street Reform and Consumer Protection Act incorporated similar appraiser independence provisions modeled on the HVCC. The Federal Reserve issued an Interim Final Rule, amending Regulation Z, implementing these provisions on December 27, 2010.[2] Dodd-Frank also amended the Financial Institution Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to require the Agencies to promulgate the minimum AMC requirements contemplated by this Proposal.

These requirements—from the HVCC to the Interim Final Rule—have shared the goal of providing consumers a credible and accurate valuation by an appraiser free of undue influence. The AMC business model, as described below, provides lenders a convenient and cost-effective method to achieve this objective.

Summary of Comment

As indicated, under amendments to FIRREA made by Dodd-Frank, Congress required that federal regulators establish minimum requirements for AMC registration and supervision. The proposal establishes such standards for both federally regulated and non-federally regulated AMCs. As indicated, however, it does not require adoption of standards in those states that choose not to regulate non-federally regulated AMCs. Consequently, because these standards are required for AMC's to operate, non-federally regulated AMCs could be prevented

[1] The HVCC followed appraisal independence guidelines issued by OCC, Federal Reserve Board, FDIC, NCUA, and the Office of Thrift Supervision in 2005.
[2] After the Interim Final Rule was released, Fannie Mae and Freddie Mac replaced HVCC with the similar appraisal independence requirements (AIR).

from providing appraisal management services for federally related transactions in states where such AMC regulatory structures are not adopted.

Notably, in some states, some appraisers have sought to curtail AMCs. If these individuals are successful in stopping (or repealing) AMC legislation, lenders will not be able to use AMCs to ensure consumers an unbiased appraisal. Lenders in such states will have to absorb the costs of creating appraisal panels or simply forego business in such states. These outcomes can be expected to lead to longer processing and loan approval times, higher prices and reduced consumer choice and could serve to undo much of the progress made in strengthening appraisal independence.

The Associations strongly believe that it was Congress's intention when it enacted Dodd-Frank to establish minimum standards for AMCs, not to prevent them from operating. Therefore, the Associations urge that the final rule require that states implement at least the minimum standards established by the Agencies. If the Agencies choose not to require that states implement the standards, the Associations propose that the rule provide that in states where standards are not adopted by a fixed date, the standards in the rule shall apply. In such states, the Associations urge that the one of the Agencies act as the default registry for AMC. This "backstop" would allow the Agencies to serve as a registry for non-federally regulated AMCs just as the Appraisal Subcommittee (ASC) will perform that function under this proposal for federally regulated AMCs to receive registration information.

Discussion

1. **The important role of AMCs in the marketplace.**

   According to estimates included in a GAO report to Congress on the appraisal industry published in 2011, between 60 and 80 percent of residential appraisals ordered each year are ordered through AMCs.[3]

   AMCs perform several key functions for lenders including:

   - Maintaining a roster of qualified appraisers which the AMC screens to determine whether appraisers are qualified, properly licensed and have professional liability insurance;
   - Coordinating and tracking properties assigned to the appraiser and completion of appraisal reports;
   - Helping ensure appraiser independence by acting as a liaison between the lender and appraiser when dealing with questions or issues concerning an appraisal;
   - Performing a quality control review of the appraisal before sending it to the lender;
   - Formatting and uploading the appraisal to the Fannie Mae or Freddie Mac portal;
   - Sending a copy of the appraisal to the consumer; and
   - Processing compensation to the appraiser.

[3] United States Government Accountability Office, Residential Appraisals, Opportunities to Enhance Oversight of an Evolving Industry 32 (July 2011).

Many AMCs undertake additional quality control to review appraisals against other valuations and databases to ensure that appraisals are credible and accurate. These additional quality control processes benefit both the lender and consumer.

In addition, for consumers, AMCs offer "fee certainty" while ensuring a well qualified competent appraiser completes the assignment. AMC's normalize fees at a local level, typically by quoting county level pricing to lenders. Consumer pricing in turn is based on AMCs' ability to average their underlying service costs (including individual fee appraiser charges) across a large number of engagements. Consistent with Dodd-Frank, AMCs must pay appraisers compensation that is "customary and reasonable" for the specific assignment.

Finally, AMCs provide a proactive quality process/infrastructure to ensure that substandard appraisers are unable to harm consumers by faulty or fraudulent valuations. If lenders were forced to take over these functions it would be an inefficient use of resources and lenders would likely be forced to pass the added expense to the consumer. Some lenders, especially smaller ones, may find it impossible to assume these functions. Consequently, consumers will bear the costs of decreased competition as well.

2. **Require states to implement the minimum AMC standards established by the Agencies.**

As indicated, under Dodd-Frank's amendments to FIRREA, the Agencies are required "jointly, by rule, [to] establish minimum requirements to be applied by a State in the registration of appraisal management companies."[4] The House Committee Financial Services Committee Report on H.R. 4174 (the House version of the bill that became Dodd-Frank) indicates that Congress intended that states be required to implement the minimum AMC requirements.[5] That report states in its section covering the AMC requirements that the designated federal financial regulatory agencies are "to jointly establish, by rule, minimum requirements a state **must** apply in the registration of appraisal management companies [emphasis added]."

To implement Dodd-Frank consistent with Congress's intent, the Associations strongly urge that the final rule make clear that states must implement at least the minimum standards established by the Agencies to allow AMCs to operate safely—and if they chose not to do so, then minimum standards established by the Agencies will apply.[6]

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[4] FIRREA Sec.1124, as enacted by Dodd-Frank act Sec. 1473(f)(2), codified at 12 U.S.C. Sec. 3353.

[5] House Committee on Financial Services, 111th Congress, Report on the Dodd-Frank Wall Street Reform and Consumer Protection Act, http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@L&summ2=m&.

[6] The SAFE Act may provide a useful model. It requires state enactment of licensure laws and provides that Federal standards will apply in the absence of state action.

3. **If the Agencies choose not to require the states to implement the minimum AMC standards under the Proposal, then the Agencies should act as the default registry for AMCs.**

If the Agencies choose not to require states to implement the minimum standards under the Proposal, the Associations urge that that the Agencies designate one of them, possibly the CFPB or the ASC, as a default registry. Such agency or entity would administer the standards in the proposed rule for non-federally regulated AMCs doing business in states which do not enact and maintain rules that comply with the minimum AMC standards. The proposed rule already would permit the ASC to perform similar functions for federally regulated AMCs such as the submission of registration information for a state or states where the AMC operates that has not established a process for accepting such information.

Section 3353 of FIRREA provides:

> [The Agencies] shall jointly by rule, establish minimum requirements to **be applied by a State** in the registration of appraisal management companies.
>
> [and]
>
> 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** [emphasis added].

The Associations are of the view that the statutory language not only evidences the requirement that AMCs must be subject to regulation to perform services related to a federally related transaction, but it also provides authority for the Agencies to serve as the default registry for non-federally regulated AMCs operating in states unable to enact rules that comply with the minimum AMC standards in the Proposal.

4. **Other concerns**

- **State ability to handle reporting information on federally regulated AMCs to the ASC.**

  The Associations are concerned that the Proposal imposes an undue burden on state appraisal licensing agencies that they may not be equipped to handle by requiring them to coordinate the collection and sharing of information on federally regulated AMCs with the ASC. States appraisal licensing agencies in many cases already face funding and staffing challenges. Requiring state regulators to handle these tasks risks diverting them from other important functions.

  Moreover, since the state appraisal licensing agencies lack authority over federally regulated AMCs their power to verify information is not evident. The Associations suggest the Agencies require federally regulated AMCs to report all information directly to the ASC relieving the states of this responsibility. This approach also will have the benefit of allowing federally regulated AMCs that

operate in more than one state to report to only one entity, the ASC, eliminating unnecessary costs.

- **Reiterate the customary and reasonable fee provisions of TILA interpretation and enforcement to states.**

  The Associations appreciate the judicious rulemaking that implemented the requirement that fees for appraisals be "customary and reasonable." Some states have taken divergent views on what these terms mean. The Associations believe that by empowering the Federal Reserve Board to promulgate these rules Congress intended that these standards be national ones. The Associations recommend that the agencies remind the states of the meaning of these terms to avoid piecemeal and contradictory interpretation and enforcement by the states which unnecessarily adds cost and burden to the process.

- **Provide lenders access to the ASC's AMC National Registry.**

  The Associations urge that the rules explicitly provide lenders access to the ASC's AMC National Registry. In order to carry out their compliance responsibilities, lenders are expected to perform due diligence on vendors including appraisers. Without access to the registry, vendor management will be considerably more difficult and costly to lenders and ultimately consumers.

- **The final rule should encourage consistent state AMC regulation and explicitly provide that the Agencies control the definition of what is and what is not an AMC.**

  Dodd-Frank charged the Agencies with establishing rules for AMCs including defining what an AMC is. MBA urges the Agencies to work with the states to ensure uniformity in AMC regulation and registration requirements including ensuring a consistent definition of the term AMC itself.
  The structure of the law provides support for "AMC" having a single definition to be applied nationally. Section 1473 of the law amends Section 1124 of FIRREA to require the Agencies to "jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies." Section 1473 of the Dodd-Frank Act also added to FIRREA the definition of an "appraisal management company" (which encompasses a definition of appraisal management services similar to that found in the Proposed Rule) – but placed the definition in Section 1121, rather than within Section 1124 where the other minimum standards are found. Had Congress intended for the definition of an "appraisal management company" to be a minimum standard upon which states could build their own variations, it would have included the definition within Section 1124. The Agencies should make clear in the final rule that they are responsible for the definition of AMC and that it can only be revised by them. The alternative, a piecemeal approach that allows states to redefine the term will bring confusion to the marketplace and increase costs to consumers.

- **Make clear who will determine whether an appraisal providing entity is an AMC.**

  The Proposal does not make clear who will determine whether a firm is considered an AMC under the rule. The Associations suggest that the Agencies designate an agency or other entity, possibly CFPB or ASC, for this task.

- **Establish appraisal review standards as required by Dodd-Frank**

  Amendments to FIRREA made by Dodd-Frank also require the Agencies to establish appraisal review standards for appraisals in connection with federally related transactions.

  Lenders and AMCs play a critical role in ensuring that appraisals are accurate and comply with applicable requirements. With a broad spectrum of appraisal reviews being conducted (such as USPAP Standard 3 reviews, quality control reviews), there is still no clear standard of what a review entails, including but not limited to scope and definition, applicable licensing requirements. We urge the Agencies to propose for comment appraisal review standards at the earliest possible date that recognizes the interplay between this AMC rulemaking and those new standards.

Conclusion

The Associations again appreciates the opportunity to comment on this Proposal. As discussed above, we have serious concerns about how the Proposal could impact how lenders and consumers access appraisal services unless it is revised. Should you have questions or wish to discuss any aspect of these comments further, please contact Ken Markison, Mortgage Bankers Association, Vice President and Regulatory Counsel, at (202) 557-2930 or kmarkison@mba.org; or Joe Gormley, Mortgage Bankers Association, Assistant Regulatory Counsel, at (202) 557-2870 or jgormley@mba.org.

Thank you for your consideration of these views.

Sincerely,

American Financial Services Association
Mortgage Bankers Association