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Re: Proposed Rule, Minimum Requirements for Appraisal Management Companies
OCC Docket ID OCC-2014-0002
Federal Reserve System Docket No. R-1486
FDIC RIN 3064-AE10
NCUA RIN 3133-AE22
CFPB Docket No. CFPB-2014-0006
FHFA RIN 2590-AA61

The Real Estate Valuation Advocacy Association ("REVAA") expresses our appreciation to the Agencies for their efforts in developing this proposed rule as directed by the Dodd-Frank Act ("DFA"). We have carefully reviewed and considered the proposal, and we offer our comments and observations as well as suggest several key areas for substantial revision. REVAA is the valuation industry's leading trade association representing Appraisal Management Companies ("AMCs") and supporting valuation related products and services. REVAA represents its members and is an active participant in industry and public policy forums in Washington, DC and around the country. REVAA advocates on federal and state related issues including state registration of AMCs as required by the DFA. In addition to letters of comment, REVAA has testified before the Committee on Financial Institutions of the U.S. House of Representatives.

Our comments highlight five areas of concern, and we address them along with the questions raised by the Agencies in the proposal. Our key concerns with respect to the proposed rule include the following issues.

First, the Appraisal Subcommittee ("ASC") should serve as a federal regulatory backstop to register AMCs if a state states declines to adopt conforming regulations. The proposed rule fails to address the adverse consequences for consumers that will result if a state fails to adopt conforming regulations. AMCs would be barred from providing appraisal related services in such a state.

The apparent assumption in the proposal is that all states will adopt required regulations and that no state with such regulations in place before the effective date of the final rule will repeal them. We believe this to be ill-considered, particularly if distinctions between AMCs and appraisal firms are not effectively addressed by the Agencies. By authorizing the ASC to serve as a backstop, consumers, home buyers, and lenders would not face a lack of competition and choice among entities performing appraisal related functions and be left with fewer choices for services. Consumer choice should be a driving factor in this proposal.

Second, the proposed rule should not permit state appraiser certifying agencies to directly investigate, interpret and enforce the federal independence standards of the Truth in Lending Act and Regulation Z ("TILA"). Section 1124 of FIRREA does not mandate such authority, but obligates AMCs to require that appraisals are performed in compliance with the TILA appraisal independence standards. In addition, state regulatory enforcement of a federal banking law would undermine the authority of the CFPB to pre-empt such regulations that would interfere with the power the CFPB has to establish a single national standard in these areas.

Third, the proposed rule should not distinguish between AMCs (which generally would be subject to its requirements) and appraisal firms (which generally would not be subject to its requirements) that are not required by the DFA and that will cause substantial harm to the goals of the DFA. Consumers should receive the same protections regardless of who manages the appraisal fulfillment process. Both AMCs and appraisal firms, regardless of their structure, perform essentially the same functions (appraisal review, due diligence, administration, appraisal delivery, client maintenance and oversight).

Fourth, the proposed definition of an AMC unnecessarily undermines smaller AMCs, by effectively requiring them to register in multiple states when their AMC business may be concentrated in only one state. Fairness dictates that numerical triggers should not be arbitrary, and proper accounting for appraiser panel members, such as those that perform no assignments, is required. We believe panel members should be counted only after accepting and delivering an assignment. Because the appraisal independence rules mandated in DFA are meant to govern appraisals being performed, panel membership should likewise be calculated based on whether an appraiser actually accepts and completes an assignment from an AMC in a given year.

Fifth, the ASC should be required to establish and maintain reporting functions for Federally regulated AMCs. Imposing this requirement on state agencies will be challenging as many states: (i) are neither

well-staffed nor funded to handle the expectation; (ii) are will not be in a sound position to verify any information that is provided; and (iii) have no supervisory authority over Federally regulated AMCs.

We strongly encourage your reconsideration of these issues, and would be pleased to engage in such further dialog as you may desire.

Below are our comments on the questions posed in the proposal.

1) Question 1 – Request for comment on all aspects of the proposed definition of AMC.

    a) Comment 1 – A key element of the AMC definition is that an AMC oversees, within a given year, an appraiser panel of more than 15 state-certified or –licensed appraisers in a given state or 25 or more state-certified or –licensed appraisers in two or more states. Unfortunately, this definition does not reflect how AMCs typically operate, and is counter-productive. An AMC may maintain a relatively large panel of appraisers who are eligible to receive appraisal assignments, usually to help assure that the potential needs of clients are met. Typically, not all appraisers on a panel receive an assignment from the AMC in a given year and there is no guarantee that an appraiser will receive an assignment. The relevant factor should be whether an appraiser accepts and completes an assignment from an AMC. To that end, this portion of the AMC definition should be reformulated so that it is based on the number of appraisers in a given state to whom an AMC offers an assignment and who accept such assignments.

2) Question 2 – Request for comment on the proposed definition of "appraiser network or panel" (including whether this should include employees as well as independent contractors) and whether and how the term "independent contractor" should be defined.

    a) Comment 1 – There is no substantive difference between entities that use employees to perform appraisals (which would not be subject to the proposed rule) and entities that utilize independent contractors to perform appraisals (which would be subject to the proposed rule). In either case the entity will by necessity perform appraisal management services, which include: (i) recruiting, selecting, and retaining appraisers; (ii) managing the process of having appraisals performed, including paying appraisers; and (iii) reviewing and verifying the work of appraisers.

        The entity will perform these functions without regard to whether the appraiser in question is an employee or independent contractor. Therefore, the definition of "appraiser network or panel" should include employees as well as independent contractors. Further, the proposed rule fails to make meaningful distinctions between and among AMCs on the one hand, and appraisal firms on the other hand. For example, the proposed rules would not prevent in any way an appraisal firm from being owned by someone who had an appraisal license revoked, which does not serve the interests of consumers. Entities performing the same core functions should be similarly regulated.

b) Comment 2 – There does not appear to be consensus among states for the definition of "independent contractor". We would recommend the more uniform IRS definition. Since many AMCs operate in multiple states, a uniform definition would promote greater consistency for the benefit of consumers.

c) Comment 3 – As described above, the appraiser panel should be defined as including only those appraisers who actually have accepted and completed appraisal assignments from an AMC in a given time period. As noted, AMCs often maintain a large pool of appraisers to whom they can offer appraisal assignments in order to ensure that they can meet current and prospective client expectations.

   If each of these appraisers is included in the appraiser panel, the resulting annual fee that each state would have to collect from an AMC and transmit to the ASC could be considerable. For example, an AMC might maintain a pool of 1,000 appraisers in a given state, but only offer assignments to 250 of them. If all of the appraisers are included in the definition of the appraiser panel and are therefore considered to have "contracted with" the AMC, the annual AMC National Registry fee payable by the AMC would be $25,000, as opposed to a fee of $6,250 if only those appraisers who actually performed appraisals for the AMC are counted. We see no consumer benefit to imposing such a fee on what amounts to a contingent basis.

d) Comment 4 – The Agencies should clarify whether, for the purposes described in Comment 3 above, an appraiser who is licensed in multiple states and performs work for an AMC in those states is counted in each state for the fee purposes. Without clarification this could result in AMCs paying for multiple registrations, essentially paying a fee for the same appraiser multiple times. Additionally, the Agencies should clarify whether persons who are in the process of being trained as appraisers would count for these purposes.

e) Comment 5 – The Agencies should clarify what constitutes an "appraisal" for purposes of determining whether an appraiser has performed an appraisal for an AMC and therefore should be included on the AMC's appraiser panel. For example, appraisers performing evaluations, such as inspections, should not be considered to have performed an appraisal under the proposed rule.

3) Question 3 – Request for comment 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.

a) Comment 1 – As noted above, there is no substantive difference between the appraisal management services performed by an appraisal firm with respect to its employees and the appraisal management services performed by an AMC with respect to its independent contractors. We believe consumers and lenders deserve the same level of service to ensure that a quality appraisal is prepared by a properly qualified appraiser.

This appears to be a distinction whose only purpose is to prevent appraisal firms from being considered as AMCs. We don't see a rationale for treating entities performing the same functions differently. Consumer protection is the desired goal. Subjecting one class of appraisal management entity to strict supervision, while exempting another class of appraisal management entity from such supervision entirely, presents a serious risk that consumers will be harmed where appraisal management services are performed by the unsupervised entity.

4) Question 4 – Request for comment on references to NCUA and insured credit unions should be removed from the definition of "Federally regulated AMC".

   a) No comment.

5) Question 5 – Request for comment on proposed definition of "secondary market participant".

   a) No comment.

6) Question 6 – Request for comment on the proposed minimum requirements for state registration and supervision of AMCs.

   a) Comment 1 – AMCs not owned and controlled by an insured depository institution and not regulated by a federal financial institutions regulatory agency must register with, and be subject to supervision by, the state appraiser certifying and licensing agency in order to do AMC business in that state. If a state does not establish such a conforming registration program, and at the current time 12 states do not, then AMCs will not be able to do business in that state. Such a perverse outcome would directly limit competition and harm all participants in the market, most importantly consumers, by denying them choice.

      In order to prevent this unwelcomed and unintended result, we suggest that the rule expressly permit and authorize the ASC to establish overarching "registration" requirements and systems for AMCs to utilize in those states that do not implement AMC registration systems. We see nothing in the DFA that would prevent the Agencies from including such a provision in its final rule--and thereby requiring the ASC to play a "stand by" or "back up" role if needed.

   b) Comment 2 – The proposed rule mandates that AMCs establish and comply with processes and controls reasonably designed to ensure that it conducts its appraisal management services in accordance with the requirements of Section 129E(a)–(i) of TILA, 15 U.S.C. § 1639e(a)–(i), and regulations thereunder. We believe this proposed rule is inconsistent with FIRREA and would result in significant unintended consequences to consumers.

      Section 1124(a)(4) of FIRREA requires the Agencies to mandate by regulation that all AMCs 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 TILA. This requirement unambiguously applies to appraisals being performed, and not appraisal management services, and current law supports this position. Section 1124(a)(4) is consistent with the other mandates for AMCs, such as requiring appraisers to comply with USPAP and be properly credentialed when performing an appraisal for federally related transactions. There are clear requirements in Section 129E of TILA that apply to appraiser behavior. For example, an appraiser may not have a conflict of interest in a subject property. We urge the Agencies to amend the proposed rule to impose an obligation on AMCs to require that appraisers comply with the appraisal independence standards established under Section 129E of TILA.

In addition, the proposed rule suggests that states would have the ability to directly interpret and enforce the appraisal-related requirements of TILA, which is a federal statute enforced by the CFPB and interpreted generally by the federal courts. Under the DFA, to the extent that a state law is inconsistent with the provisions of Title X of the DFA, that state law is preempted to the extent of the inconsistency. Title X of the DFA bestows on the CFPB primary rulemaking and enforcement authority over federal consumer financial protection laws, including TILA, and states that one of the CFPB's main objectives is ensuring that such laws are enforced consistently in order to promote fair competition.

Under the proposed rules, AMCs could therefore be subject to multiple entities interpreting and enforcing the same federal statute, which could potentially lead to serious conflicts of law, and would seriously undermine the federally pre-emptive nature of such federal rules and regulations.

The proposed rules therefore should make clear that to the extent a state must investigate potential violations of applicable federal appraisal-related laws and enforce such laws, the state will rely upon the regulations and interpretations promulgated by the CFPB with respect to such laws and will not attempt to separately interpret such laws in a way that would interfere with fair nation-wide consistency. For example, if TILA permits an AMC to determine customary and reasonable appraiser compensation using a certain method, a state should be prohibited from interpreting TILA in a different manner (or imposing new requirements) that would prohibit the AMC from utilizing this method.

The consequence of conflicting interpretations of TILA between states or even within the same jurisdiction are higher appraisal costs for borrowers. The potential risk of conflicting interpretations over what a lender or AMC must pay an appraiser, for example, will result in the passing of that risk to consumers by way of higher fees.

c) Comment 3 – As part of the required supervision by state agencies under the proposed rules, states must ensure that AMCs include on their panels only state-licensed or state-certified appraisers. We propose that AMCs should be able to rely upon the national registry of state-licensed or –certified appraisers maintained by the ASC, as described in Section 1103 of FIRREA.

d) Comment 4 – Part of the supervision required by state agencies under the proposed rule requires AMCs to design reasonable processes to assure that AMCs select appraisers who are independent of the transaction and who are competent to perform the appraisal assignment. This is beyond the scope of AMCs to be able to assure independence.

   Only appraisers themselves are able to assure that they are independent, competent, and able to perform appraisals in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). In order to avoid placing an unreasonable burden on AMCs (who are already required to direct appraisers to perform appraisals in compliance with USPAP), we recommend permitting AMCs to rely upon appraisers' own assessments and attestations that they are independent and competent to perform appraisal assignments offered to them for consideration by AMCs.

7) Question 7 – Request for comment on the proposed approach to the appraisal review issue.

   a) No comment.

8) Question 8 – Request for comment on what barriers, if any may make it difficult for a state to implement the proposed AMC rules.

   a) Comment 1 – Adjustments in the definition of an appraisal company to include any entity providing appraisal management services and managing a panel of employee and/or independent contractors, as described above, should give states ample direction on developing appropriate regulations. As described below, however, we believe states should be given a sufficient opportunity to implement the proposed AMC rules in order to ensure the rules can be properly met.

9) Question 9 – Request for comment on what aspects of the rule will be challenging for states to implement within 36 months.

   a) Comment 1 – States may be unable to fully adopt the requirements of the proposed rule even in a 36-month timeframe, due to the interaction between the rules and the role of the ASC. For example, states will not be able to fully implement the proposed rules until the ASC establishes the AMC national registry. Additionally, it is likely that some states will have a difficult time implementing portions of the rules before the ASC issues clarifying regulations. We recommend that the Agencies modify the proposed rule so that states have 36 months to implement the rules, beginning once the ASC establishes the national registry and issues clarifying regulations.

10) Question 10 – Request for comments as to whether there are any barriers to a state collecting information on Federally regulated AMCs and submitting such information to the ASC.

a) Comment 1 – This will be burdensome for the states to implement, since the states currently do not have any process for the collection of this information from Federally regulated AMCs in place. Since the ASC itself must establish a reporting mechanism applicable to such Federally regulated AMCs, we recommend simply requiring that the ASC intake the information directly from Federally regulated AMCs, and share this information with the states.
b) Comment 2 – We note that with respect to Federally regulated AMCs, the proposed rule does not define or describe what it means for an AMC to be a subsidiary that is owned and controlled by a federally regulated financial institution. We recommend that the Agencies offer further guidance on this issue.

11) Question 11 – Request for comments on questions raised by differences between state law and the proposed rule.

a) Comment 1 – Several of these potential issues have already been addressed; for example, the inappropriateness of state agencies interpreting and enforcing federal regulations such as TILA.

b) Comment 2 – For purposes of determining when appraisers are or are not included on an appraisal panel, the proposed rule contemplates permitting each state to establish its own 12-month period (for example, April to April) for determining when an appraiser is no longer a member of an AMC's panel. This would be highly confusing, inefficient, and unwieldy for AMCs operating in multiple states, if each state imposes a different 12 month period. We recommend that the calendar year be required to be used in each state instead.

12) General Comments – The following are general comments on portions of the proposed rule not specifically included in one of the Agency questions.

a) Section 215(a) – This provision states that an AMC may not be registered by a state or included on the National Registry if it is owned, in whole or in part, directly or indirectly, by any person who has had an appraiser license or certification revoked, refused, denied, or the like. For an AMC that is itself a publically-traded company, or owned by a publicly-traded company or investment fund, it likely will be impossible to determine if an AMC is owned “in part” and “indirectly” by such a person.

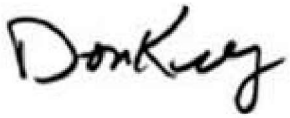
The Agencies should clarify this requirement. Additionally, there is no similar requirement prohibiting the ownership of an appraisal firm by a person who has had an appraiser license or certification revoked, refused, denied, or the like, and the Agencies have not presented a reason as to why AMCs should be treated differently from appraisal firms in this respect. As noted above, the more that one class of entities performing appraisal management functions is treated differently than another class of entities performing those same functions, the greater the likelihood is that consumers ultimately will be harmed.

Finally, we urge the Agencies to reconsider the breadth of this proposed requirement. State appraisal boards typically have broad discretion to revoke, or even suspend, an appraiser license, and under the proposed rule, it would only take one state exercising such discretion to effectively terminate the ability of a person to be a whole or part owner of an AMC across the nation, even if another state normally would not revoke or suspend that person's appraiser license in a similar circumstance. This gives each state an inordinate amount of control over the ability of a person to own an AMC anywhere in the country, and we recommend that the Agencies reconsider this provision with these concerns in mind.

b) Section 215(b) – AMCs may be owned by corporate entities, for whom "good character" is impossible to determine and for whom background checks are inapplicable. The Agencies should clarify that this requirement applies only to natural persons.

REVAA again commends the agencies on their efforts to create this proposal, and their consideration of the foregoing comments, observations and suggestions. We would be pleased to address any questions the agencies may have as you consider these issues, and would welcome the opportunity to engage further with you as you complete your work toward implementation of a final rule.

Very truly yours,



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