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June 9, 2014

Housing Finance & Regulatory Affairs

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Office of the Comptroller of the
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Washington, DC 20219
Docket ID: OCC 2014-0002
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Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: Robert E. Feldman,
Executive Secretary
FDIC – RIN 3064-AE10
comments@FDIC.gov

Federal Housing Finance Agency
400 Seventh Street, SW
Washington, DC 20024
Attn: Alfred M. Pollard,
General Counsel
RIN 2590-AA61
RegComments@FHFA.gov

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

Bureau of Consumer Financial
Protection
1700 G Street, NW
Washington, DC 20552
Attn: Monica Jackson
Office of the Executive Secretary
Docket No. CFPB – 2014-0006
www.regulations.gov

National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
Attn: Gerard Poliquin,
Secretary of the Board
RIN 3133-AE22
www.regulations.gov

RE: Minimum Requirements for Appraisal Management Companies

Submitted via Electronic Delivery to: <http://www.regulations.gov>

Dear Sir or Madam,

On behalf of the National Association of Home Builders (NAHB), I appreciate the opportunity to submit comments on the above-referenced Joint Notice of Proposed Rulemaking that has been proposed by the Board of Governors of the Federal Reserve System (Board); Bureau of Consumer Financial Protection (Bureau); Federal Deposit Insurance Corporation (FDIC); Federal Housing Finance Agency (FHFA); National Credit Union Administration (NCUA); and Office of the Comptroller of the Currency, Treasury (OCC). The Board, Bureau, FDIC, FHFA, NCUA, and OCC (collectively, the Agencies) are proposing a rule to implement the minimum

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requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) to be applied by States in the registration and supervision of appraisal management companies (AMCs). The proposed rule also implements the requirement in the DFA for States to report to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) information required by the ASC to administer the new national registry of appraisal management companies (AMC National Registry or Registry). In conjunction with this implementation, the FDIC is proposing to integrate its appraisal regulations for State nonmember banks and State savings associations.

NAHB is a Washington DC-based trade association representing more than 140,000 members involved in all aspects of single family and multifamily residential construction. NAHB and its members have a strong interest in establishing and sustaining a housing finance system that provides home buyers access to affordable mortgage financing in all geographic areas, in all economic conditions.

NAHB is committed to addressing the systemic appraisal issues that our industry experienced before, during and after the housing crisis. Since 2009, NAHB has convened five Appraisal Summits involving representatives of major housing and financial institution stakeholders, appraisal organizations, and federal housing and banking regulators to discuss appraisal problems and solutions. There was broad agreement at the Appraisal Summits that the stakeholder organizations should work together to address the critical appraisal issues that remain a major impediment to the housing recovery and, therefore, finding solutions to these problems continues to be a major priority for NAHB.

In 2012, NAHB continuing its efforts to find appraisal reform solutions, formed an Appraisal Working Group (AWG), consisting of home builders and representatives from the financial and appraisal sectors. The collaboration produced A [*Comprehensive Blueprint for Residential Appraisal Reform*](#), a white paper with specific recommendations. In this process, there was extensive dialogue with all stakeholders in the residential appraisal process. The AWG through the white paper addressed the need for reform in four areas:

- Regulatory Framework and Oversight
- Data & Technology
- Professional Standards
- Practice, Process and Procedures

Background

The DFA, signed into law in July 2010, authorized significant changes to mortgage lending practices. Section 1473 added a new section 1124 to Title XI of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1998 (FIRREA) and established minimum requirements to be applied by States in the registration and supervision of AMCs. An AMC is an entity that serves as an intermediary for, and provides certain services to, appraisers and lenders. These minimum requirements apply to States that have elected to establish, pursuant to section 1117 of FIRREA, an appraiser certifying and licensing agency with authority to register and supervise AMCs. States may establish additional requirements in addition to those required by section 1473. Section 1473 of the DFA also created the AMC National Registry, which will be administered by

the ASC, and requires participating States to report AMC registration information to the ASC to support the Registry.

Under section 1124, participating States must require that AMCs:

- Register with, and be subject to supervision by, the State appraiser certifying and licensing agency in the State or States in which such company operates;
- Verify that only State-certified or State-licensed appraisers are used for federally related transactions;
- Require that appraisals comply with the Uniform Standards of Professional Appraisal Practices (USPAP) and;
- Require that appraisals are conducted in accordance with the statutory appraisal independence standards under the Truth in Lending Act (TILA).

The rule proposes that an AMC that is a subsidiary owned and controlled by an insured depository institution or an insured credit union, and that is regulated by a federal financial institutions regulatory agency is subject to all the minimum requirements, except the requirement to register with a State. The minimum requirements defined the statutory size threshold, where the AMC oversees an appraisal panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more appraisers nationally in a given year.

Under section 1124 of FIRREA, beginning 36 months from the time the Agencies issue the final rule, an AMC may not provide services for a federally related transaction in a State unless the AMC is registered with the State or is subject to oversight by a federal financial institutions regulatory agency. This provision effectively allows each State 36 months to set up registration and supervision systems that meet the requirements of the final rule. The ASC, with approval from FIFIEC, may extend the deadline to assist States who have made substantial progress towards implementation.

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. However, unless a state establishes a regulatory structure, AMCs are barred by section 1124 from providing appraisal management services for federally related transactions.

NAHB Comments

The ongoing stress in the housing and mortgage credit markets has brought greater focus to the importance of credible appraisals. In response to criticism that lax appraisals contributed to the financial crisis, more restrictive, and in some cases conflicting, appraisal policies have been implemented by lenders, federal banking regulators, the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the United States Department of Agriculture (USDA), and Fannie Mae and Freddie Mac (the Enterprises). The problem has been exacerbated by improper appraisal practices, a shortage of experienced appraisers and inadequate oversight of the appraisal system.

It is difficult to come to a conclusion other than appraisal standards are not clear, best practices have not been well communicated, and enforcement is not occurring in a consistent manner. For all sectors that interact with appraisers - consumers, builders, real estate agents, lenders, the

Enterprises and mortgage insurers, - appraisal quality and appraiser competence remain tremendous challenges. The problem is an urgent one, yet throughout the extended housing recession little attention has been focused on the fundamental problems.

NAHB believes these problems must be addressed in order to restore confidence to the real estate market and establish a foundation for sustainable growth of the US economy. This can only be accomplished by creating an environment that promotes safe and sound valuation practices, policy, and procedures to produce more credible valuations under all economic circumstances through the establishment of a renewed system that features consistency and the alignment of the interests of all key stakeholders in the appraisal process.

NAHB acknowledges the substantial coordination the Agencies undertook collectively to propose AMC minimum requirements that promote safe and sound valuation practices, policy and procedures to produce more credible valuations and aligns the interests of all key stakeholders in the appraisal process. It is important that the Agencies continue this collaborative and inclusive environment as they evaluate industry responses to the proposed rule.

NAHB's comments on the proposed AMC rules and some of the Agencies' specific questions follow. Our comments focus on the following:

- Definitions proposed by the Agencies
- Proposed minimum requirements for State registration and supervision of AMCs
- Proposed minimum requirements for State-registered AMCs on appraiser selection
- AMC obligations with respect to appraiser compensation
- Concerns regarding economic barriers and challenges for the States to implement the proposed AMC rules

Proposed Definitions (Questions 1 – 4)

Questions 1-3

NAHB supports the definitions the Agencies are proposing for AMCs and appraiser networks or panels. Specifically, we concur with the Agencies that it is appropriate to define an appraisal panel as a network of state-licensed or state-certified appraisers who are independent contractors to an AMC. NAHB also supports 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. In the case of hybrid firms that hire both appraisers as employees and engage independent contractors to perform appraisals, we agree that these hybrid firms should be treated as an AMC for purposes of State registration if it meets the statutory AMC size threshold.

Question 4

NAHB believes that the final regulation should clarify that AMC credit union service organizations (CUSOs) are subject to State registration and supervision since CUSOs are not federally regulated by the NCUA.

Proposed minimum requirements for State registration and supervision of AMCs (Question 6)

NAHB is supportive of the proposed minimum requirements for State registration and supervision of AMCs. Under the proposed rules, the States must have in place within the State appraiser and licensing agency a licensing program that has the authority to:

- Review and approve or deny an AMC's application for initial registration.
- Review and renew or refuse to renew a AMCs registration periodically.
- Examine the books and records of an AMC operation in the state and require the AMC to submit reports, information and documents to the State.
- Verify that the appraisers on the AMC's appraiser list, network, panel, or roster have valid State certifications or licenses.
- Conduct investigations of AMCs to assess potential violations of appraisal-related laws, regulations or orders.
- Discipline, suspend, terminate and refuse to renew the registration of an AMC that violates applicable appraisal-related laws, regulations or orders.
- 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 ASC.

NAHB also supports the ASC's authority to monitor whether the States have:

- Supervision systems in place that allow a State to process complaints against an AMC.
- Conduct investigations in connection with those complaints.
- Determine whether a State takes appropriate enforcement actions against an AMC.

While NAHB supports the minimum requirements, NAHB does have concerns about whether States have adequate dedicated funding and human resources to implement additional supervision. In September 2013, NAHB partnered with the Association of Appraisal Regulatory Officials (AARO) and conducted a survey of individual State appraisal regulatory boards on a variety of topics intended to identify best practices for enforcing and administering real estate appraisal laws in member jurisdictions. In addition to the survey NAHB reached out to a variety of key state regulators of different sizes and organizational structure to acquire additional insight. The outreach provided the following reoccurring insights:

- Many State Appraisal Boards are responsible for the enforcement of a number of other professional services, which reduces their capacity for appraisal oversight and enforcement. Eighty percent of the states responding to the survey are responsible to oversee other professional activities.
- A significant issue facing the State Appraisal Boards is inadequate resources. In many cases personnel are shared and funds are swept from appraisal activities into the state's general fund.
- Standardization of state oversight practices within and across the states would provide numerous efficiencies and improve reciprocity between the states.

NAHB suggests that the ASC proactively work with AARO, States, AMCs, and other industry stakeholders to identify areas where governance can be standardized and best practices can be shared providing efficiencies to the States. Understanding the need to protect State rights, based on NAHB's survey and individual feedback, NAHB believes there are areas where States

would support standardization and better defined guidance assist them in developing efficiencies by streamlining workflows.

Minimum Requirements for State-Registered AMC's

Appraiser Selection

NAHB strongly supports the requirement that an AMC must have processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who has the requisite education, expertise, and experience necessary to complete competently the assignment for the particular market and property type. This minimum requirement is a core principle of the Interagency Appraisal and Evaluation Guidelines (IAEG) and USPAP that an appraiser must not only be competent generally, but also have specific competency to perform a particular appraisal.

Appraiser selection is of critical importance to NAHB members. Appraisers must be educated, experienced and properly selected to value newly constructed homes. Properly recognizing and valuing newly constructed homes, particularly those with energy efficient features requires that appraisers are knowledgeable of existing policies and guidance and have highly visible and easily accessible paths to maintain or become competent in the valuation of energy efficient and high performance homes. The need for awareness and education becomes even more important as national, regional and local policies and codes evolve requiring our communities and homes to be more compatible with the environment. NAHB suggests additional clarity and communication to industry participants regarding appraiser selection to ensure selected appraisers are sufficiently skilled in appraisal methodologies necessary to form an accurate value opinion.

Appraiser Compensation and Compliance with TILA

It is important to NAHB that appraisers and AMCs are economically viable enabling them to perform their respective roles unencumbered to ensure the most credible valuations. NAHB supports industry participants working together to determine reasonable and customary fees to ensure that appraisers are adequately compensated for their work and that AMCs are fairly recognized for the services they provide to their lending clients. Further, NAHB supports the proposed rule provisions that grant States the authority to audit, investigate and enforce appraiser independence provisions contained in TILA.

Potential Challenges to State Implementation of the Proposed AMC Rules (Questions 8 – 10)

While supportive of the proposed AMC minimum requirements, NAHB is concerned that some States may not have sufficient resources to implement and enforce the proposed AMC rules. As mentioned above, NAHB, working with AARO, surveyed the state regulatory agencies and identified financial and human resource issues that already are making it difficult to pursue disciplinary and enforcement actions. NAHB urges the ASC to assist the States in establishing best practices to ensure successful implementation of the final rule when published.

Many states have already begun the process of writing and implementing AMC guidance but may need to make alterations based on the Agencies' final rule. It was not clear in the

proposed rule the timetable for ASC to establish the AMC national registry. NAHB is of the opinion that it would best serve the States for the ASC to provide early and frequent communications regarding the progress and functionality of the Registry.

Considering the potential challenges the States face in establishing and implementing the AMC rules, NAHB has concerns that the 36-month timetable may not be sufficient time for some states. Wisely the proposed rule provides that the ASC, with the approval of the FFIEC, may extend the 36-month deadline for an additional 12 months if the ASC makes a finding that the State has made substantial progress toward implementation of a system that meets the criteria in the final rule. NAHB is concerned that if a State, due to resources issues, is not able to satisfy these timetables, then AMCs will not be able to operate within that state. This could be disruptive to home buyers and the home buying process.

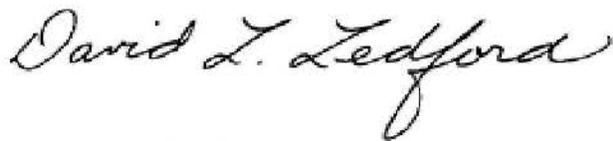
NAHB suggests the Agencies evaluate additional safeguards to assist the ASC and the States in ensuring that the rules do not create any unintended consequences that could cause additional stress on a housing market that is still very fragile. Currently, it is anticipated that most States will choose to implement AMC minimum requirements. However, if a state should choose not to implement AMC minimum requirements the Agencies should evaluate what additional safeguards should be considered to ensure the housing industry has sufficient appraisal resources during a period of stress. NAHB supports State choice and many industry participants believe that independent appraisers and appraisal firms would fill the gap. However, NAHB believes additional safeguards must be considered.

Conclusion

NAHB stands ready to work with appraisal, housing and financial stakeholders to address the real challenges we face in restoring the public trust in how we build, transfer, value and finance the American consumer's most valuable asset. NAHB looks forward to working with the Agencies, consumers and industry stakeholders to create a sustainable, responsible and robust lending environment supported by sound collateral risk valuation policies. We must work together to establish appraisal practices that support accurate and sustainable values. NAHB believes the proposed AMC minimum requirements rules will help to bring clarity to the appraisal process.

Thank you for your consideration of NAHB's comments. If you have questions, please contact Steve Linville, NAHB's Director of Single Family Finance, at 202-266-8597 or slinville@nahb.org.

Sincerely,



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Housing Finance & Regulatory Affairs