

March 5, 2014

**MEMORANDUM TO:** The Board of Directors

**FROM:** Doreen R. Eberley  
Director, Division of Risk Management Supervision

**SUBJECT:** Notice of Proposed Rulemaking:  
Minimum Requirements for Appraisal Management Companies

### **Summary of Staff Recommendation**

Staff recommends that the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) approve the attached Notice of Proposed Rulemaking entitled *Minimum Requirements for Appraisal Management Companies* (NPR) and authorize publication of the NPR in the *Federal Register* for a 60-day comment period. The NPR would be issued jointly by the FDIC, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency (collectively, the Agencies).

The NPR would implement the minimum requirements for the State registration and supervision of appraisal management companies (AMCs) set forth in section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the DFA). The NPR also would implement the requirement in section 1473 for States to report information to the Appraisal Subcommittee (the ASC) of the Federal Financial Institutions Examination Council (FFIEC) that the ASC needs to administer the new national registry of AMCs. Staff also proposes to use this opportunity to make technical changes to the FDIC's Rules and Regulations to integrate FDIC supervised state savings associations, streamline FDIC rules, and rescind the former Office of Thrift Supervision (OTS) appraisal rule located at Part 390, Subpart X, to eliminate redundancy.

### **Background**

Section 1473 of the DFA added a new section 1124 to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) that established minimum requirements to be applied in the registration and supervision of AMCs. The statute and proposed rule set forth the minimum requirements that a participating State must follow in having its appraiser certifying and licensing agency register and supervise AMCs in order for an AMC to be permitted to perform appraisal management services in connection with a federally related transaction within the State.

Section 1473 of the DFA also created a new national registry of AMCs (AMC National Registry) to be administered by the ASC and requires participating States to report AMC registration information to the ASC to support the AMC National Registry. The AMC National Registry will include AMCs that are either: (1) registered with and subject to supervision by a State appraiser certifying and licensing agency; or (2) subsidiaries owned and controlled by insured depository institutions or insured credit unions and regulated by a Federal financial institution regulatory agency. Currently, no FDIC-supervised institutions have AMCs meeting this definition.

Under section 1124 of Title XI, the Agencies are directed to establish, by rule, minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on AMCs doing business in the State. The minimum requirements will apply to any entity that meets the definition of AMC, including the requirement that, within a given year, the AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more nationally.

*Effective Date:* Participating States will have 36 months from the time the Agencies issue the final AMC rules to set up AMC registration systems. The ASC, with FFIEC approval, may extend the deadline for participating States to establish an AMC registration system for 12 months if it makes a finding that a participating State has made substantial progress toward implementation of a registration system. While the rule does not explicitly require a State to establish an AMC registration and supervision program, after the effective date, no entity meeting the definition of an AMC may perform appraisal management services in connection with a Federally related transaction in a State that has elected to not participate or in a participating State that has not implemented an AMC registration system.

In addition to these changes, Title III of the DFA transferred the powers, duties, and functions formerly performed by the OTS, the Federal entity originally responsible for the supervision of savings associations and their holding companies, to the FDIC with respect to State savings associations; the OCC as to Federal savings associations; and the FRB as to savings and loan holding companies. The OTS was abolished on October 19, 2011. On June 14, 2011, the FDIC's Board approved the reissuance and redesignation of certain transferring regulations of the former OTS applicable to state savings associations through an interim final rule. FDIC staff have been reviewing the transferred OTS rules and making recommendations with regard to the incorporation of the transferred regulations into other FDIC rules, amending or rescinding them as appropriate. The transferred OTS appraisal rule located at Part 390, Subpart X, is one of the rules FDIC staff have been reviewing.

### **Summary of the NPR**

The proposed rule would: (1) establish the minimum requirements in section 1473 of the DFA for registration of AMCs; (2) establish the minimum requirements for AMCs that register with the State under section 1473 of the DFA; (3) require Federally regulated AMCs to meet the minimum requirements of section 1473 (other than registering with the State); (4) require the reporting of certain AMC information to the ASC; and (5) rescind the appraisal regulations transferred from the OTS, as duplicative of the FDIC's appraisal regulation in Part 323.

### *Key Definitions*

The NPR would define a number of terms for purposes of implementing the requirements of section 1473. Some of the more important terms to be defined include "appraisal management company," "appraisal management services," "appraiser panel," and "secondary mortgage market participant." The proposed rule would apply only to AMCs performing appraisal management services related to a covered transaction.

The Agencies are requesting comment on how the term "securitization" should be treated in the context of the statutory definition of "appraisal management company." Section 1473 defines an

AMC in part to mean, “in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling *or by an underwriter of or other principal in the secondary mortgage markets....*” It is the opinion of the Agencies’ staff that this definition does not extend to commercial loans (or to securitizations of such loans on the secondary market) where a creditor authorizes the “external third party” to perform appraisal management services, because non-residential or commercial mortgages are not mentioned in any AMC provisions in Title XIV of the DFA. This understanding is based on the supervisory experience of the Agencies, as well as outreach to a trade association for AMCs and a large AMC. This outreach confirmed that, under the current business model, AMCs do not generally provide appraisal management services in connection with commercial securitizations.

Another request for comment relates to the definition of an “appraisal panel.” The majority of States that have adopted AMC registration laws (or that have proposed such laws) only consider an “appraisal panel” to include independent contractors, which reflects the model AMC code developed by a trade association for appraisers. A model code developed by a trade association for AMCs and adopted by a minority of States, however, defines “appraiser panel” more broadly to also include entities that perform appraisals directly using their employees or partners (as opposed to merely performing appraisal reviews). The Agencies believe an appraisal firm made up of appraisers who are employees or partners of the firm should not be treated as AMCs, because of the differences in the business models of AMCs and appraisal firms. Although appraisal firms directly perform appraisal assignments, an AMC does not. This difference is reflected in the definition of “appraisal management services” in section 1473, which focuses on administrative tasks related to appraisals that AMCs provide to third parties. In addition, section 1124 uses the term “Appraisal Management Company,” which is generally understood to refer to an entity that performs appraisal management services by retaining appraisers as independent contractors.

The Agencies are requesting 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. The Agencies also propose that a “hybrid” entity, which both hires appraisers as employees to perform appraisals and engages independent contractors to perform appraisals, be treated as an AMC if it meets the numerical test (of overseeing 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 within a given year).

The NPR also defines “secondary mortgage market participant” to mean a guarantor or insurer of mortgage-backed securities or an underwriter or issuer of mortgage-backed securities. The definition excludes individual investors in a mortgage-backed security that solely invest in a mortgage-backed security and do not serve in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security. The Agencies are requesting comment as to whether the types of entities named in the proposed definition are appropriately included or whether other types of entities should be considered “an underwriter or other principal in the secondary mortgage markets” for the purpose of the definition.

#### *Minimum AMC Requirements and Implementation Issues*

The NPR would provide parameters for determining whether, within a given year, an AMC oversees a network or panel 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 (the numerical test). The NPR also would define minimum requirements for: State registration and supervision of AMCs; State-registered AMCs; and Federally regulated AMCs (an AMC that is a subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency). In addition, the NPR would implement the section 1473 requirement to establish reporting requirements to the ASC for States that establish AMC registration programs.

*Integration of OTS Appraisal Rules with FDIC's Part 323*

As noted previously, the FDIC proposes to use this NPR to rescind and remove 12 C.F.R. Part 390, Subpart X (Part 390, Subpart X), of the former OTS rules entitled *Appraisals*. The proposed rescission of Part 390, Subpart X completes the FDIC's review of this subpart of the OTS rules for rescission, amendment, or adoption. This subpart was included in the regulations that were transferred to the FDIC from the OTS on July 21, 2011, in connection with the abolition of the OTS pursuant to Title III of the DFA. The requirements for state savings associations in the former OTS rule are substantively the same as the requirements for state nonmember banks. Upon removal of Part 390, Subpart X, the appraisal regulations applicable to all insured depository institutions for which the FDIC has been designated the appropriate supervisory Federal banking agency (including State savings associations) will be found in Part 323 of the FDIC Rules and Regulations.

**Recommendation**

Staff recommends that the Board approve the attached Resolution to adopt and authorize for publication in the *Federal Register* the attached NPR for public comment.

**Concur:**

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Acting General Counsel

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Attachments