

April 15, 2015

**MEMORANDUM TO:** The Board of Directors

**FROM:**

Doreen R. Eberley   
Director, Division of Risk Management Supervision

**SUBJECT:**

Final Rule:  
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 Final Rule entitled *Minimum Requirements for Appraisal Management Companies* (FR) and authorize publication of the FR in the *Federal Register*. The FR 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 (NCUA), the Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency (collectively, the Agencies).

The FR implements minimum requirements for State registration and supervision of appraisal management companies (AMCs), as set forth in section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA). The FR also implements the requirement in section 1473 for States to report information to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) for the ASC to administer the new national registry of AMCs. The FR will also make technical changes to the FDIC's Rules and Regulations to eliminate redundancy by integrating FDIC supervised State savings associations, streamlining FDIC rules, and rescinding the former Office of Thrift Supervision (OTS) appraisal rule located at Part 390, Subpart X.

### **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 an agency register and supervise AMCs, which would permit an AMC to provide appraisal management services in connection with Federally related transactions 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 and regulated by a Federal financial institution regulatory agency. Currently, no FDIC-supervised institutions own AMCs that meet 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 agency on AMCs doing business in that State. The minimum requirements will apply to any entity that meets the definition of an AMC.

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

In addition to these changes, Title III of the DFA transferred the powers, duties, and functions formerly performed by the OTS, the Federal entity previously responsible for the supervision of savings associations and their holding companies, to: the FDIC, as 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 re-designation of certain transferred regulations of the former OTS applicable to State savings associations through an interim final rule. FDIC staff recommends that the transferred OTS appraisal rule located at Part 390, Subpart X, be removed and rescinded.

### **Summary of the NPR**

Per the statutory definition, an AMC is a an external third-party that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year that provides certain appraisal management services in connection to valuing a consumer's principal dwelling securing a consumer credit transaction. The notice of proposed rulemaking (NPR) required all AMCs to register with the State, except for a Federally regulated AMC, which is an AMC owned and controlled by an insured depository institution AND regulated by a Federal banking regulator.

The NPR also required each state electing to register AMCs to:

- Establish and maintain an AMC licensing program with the legal authority and mechanisms to:
  - (1) Review and approve or deny an AMC's application for initial registration;
  - (2) Review and renew or review and deny an AMC's registration periodically;
  - (3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;
  - (4) Verify that only licensed or certified appraisers are used for Federally related transactions;

- (5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;
  - (6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and
  - (7) 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 Appraisal Subcommittee.
- Impose requirements on AMCs to:
    - (1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;
    - (2) Engage only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;
    - (3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;
    - (4) Direct the appraiser to perform the assignment in accordance with Uniform Standards of Professional Appraisal Practice (USPAP); and
    - (5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)-(i) of the Truth in Lending Act, 15 U.S.C. § 1639e(a)-(i), and regulations thereunder.

Federally regulated AMCs must comply with items (2) through (5) above. The NPR noted that the AMC minimum standards do not affect the responsibility of banks, Federal savings associations, State savings associations, bank holding companies, and credit unions to comply with applicable regulations and guidance concerning appraisals.

### *Key Definitions*

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

One request for comment in the NPR related to the definition of an "appraisal panel." The majority of States that have adopted AMC registration laws (or that have proposed such laws) considered an "appraisal panel" to include only independent contractors, which reflects the model AMC code

developed by a trade association for appraisers. However, a model code developed by a trade association for AMC's and adopted by a minority of States defined "appraiser panel" more broadly to also include entities that perform appraisals directly using their employees or partners as opposed to AMC's that hire independent contractors and provide appraisal management services. It was the Agencies' opinion that Section 129E of TILA, as added by the DFA, differentiates between AMC's and appraisal firms, as it defines a fee appraiser, in part, as an organization that, in the ordinary course of business, employs State-licensed or State-certified appraisers to perform appraisals, receives a fee for performing appraisals, and is not a company subject to the requirements of section 1124 of FIRREA (is not an AMC).

It also was the Agencies' opinion, as set forth in the NPR, that an appraisal firm made up of appraisers who are employees or partners of the firm should not be treated as an AMC because of the differences in the business models of AMC's and appraisal firms. This difference is reflected in the definition of "appraisal management services" in section 1473, which focuses on administrative tasks related to appraisals that AMC's 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 requested comment on the distinction drawn between employees and independent contractors as a basis for excluding appraisal firms from the definition of an AMC. The Agencies also proposed 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 oversees 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 numerical test).

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

The NPR provided parameters for determining whether, within a given year, an AMC meets the numerical test. The NPR also defined minimum requirements for State registration and supervision of AMC's and Federally regulated AMC's (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 proposed to implement the section 1473 requirement to establish reporting requirements to the ASC for States that establish AMC registration and supervision systems.

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

The FDIC proposed the rescission and removal of 12 C.F.R. 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.

## **Summary of the Final Rule**

The agencies collectively received 255 comment letters, with 88 unique comments. The FR is substantially the same as the NPR except for the following revisions.

### *Independent Contractor Definition*

In response to the comments received, the FR revises the standard for determining whether an appraiser is an independent contractor based on whether the appraiser is treated as an independent contractor by the AMC for federal income taxation purposes.

### *AMC/Appraisal Firm Distinction*

As proposed in the NPR, the FR distinguishes between AMCs and appraisal firms based on their respective use of fee appraisers and employees. In addition to the statutory definition of fee appraiser in Section 129E of TILA, other differences between AMCs and appraisal firms are cited in the FR's preamble to support the distinction. The FR notes that relevant DFA statutory language specifically addresses AMCs, but conversely does not mention appraisal firms. Moreover, while an AMC provides appraisal management services, that is, all services in connection with an appraisal with the exception of performing the actual appraisal itself, an appraisal firm will itself perform an appraisal through the use of an employee.

Further, while AMCs were not subject to regulatory oversight prior to enactment of the DFA, appraisal firms were already subject to supervision via the State credentialing process and application of the Uniform Standards of Professional Appraisal Practice. Each employee appraiser must pay a registration fee to the State or States where that appraiser practices. An AMC will only become subject to a registration fee requirement once State registration and supervision regulations become effective pursuant to the DFA. As proposed in the NPR, the FR provides for coverage of "hybrid" firms, meaning entities that both hire appraisers as employees to perform appraisals and engage independent contractors to perform appraisals. Finally, the FR notes that the majority of commenters who responded to this issue supported the exclusion of appraisal firms.

### *AMC Panel Threshold Size*

The FR clarifies that the counting of appraisers for the purpose of determining the panel threshold size for an AMC will be based on the number of appraisers listed on the roster who are potentially available to perform appraisals and not on the number of appraisers actually engaged to perform appraisals. The FR notes that the counting of appraisers for the purpose of determining the panel threshold does not control or affect the counting of appraisers for purposes of payment of the ASC fee. As such, it is the ASC, and not the Agencies promulgating this rule, that will determine how to calculate and pay the ASC fee.

### *TILA Cross-References Removed From Definitions*

The FR removes cross-references to TILA from the definitions section. This was done so States will not have to update, clarify, or amend State laws as TILA is amended over time, thus reducing their burden.

### *AMC Registration Limits Clarified*

The FR clarifies that AMC registration limits for individuals who have had their licenses refused, denied, cancelled, surrendered, or revoked do not apply if a license has been revoked for non-substantive reasons or reinstated. For example, if an appraiser has a license revoked due to failure to pay a fee on time, but is then reinstated after paying the fee, the registration limits would not apply.

### *AMC Credit Union Service Organizations*

The FR clarifies that an AMC credit union service organization is not considered to be a Federally regulated AMC and therefore would be regulated by the State or States in which it operates. This interpretation is in accord with the NCUA's position on the issue.

### *Trainee Appraisers Not Barred*

The FR clarifies AMCs may engage appraisers who use trainee appraisers to assist on assignments.

### *Other State-Related Issues*

The FR specifies that Federally regulated AMCs will report the information required for the AMC National Registry directly to the States, because every State already has an appraiser certifying and licensing agency and a process for providing such information to the ASC. The FR also states that a State is not barred from collecting a fee from Federally regulated AMCs to offset the cost of collecting the ASC fee and reporting information. The Agencies added this clarification to address potential concerns some commenters raised about an unfunded mandate being imposed on a State.

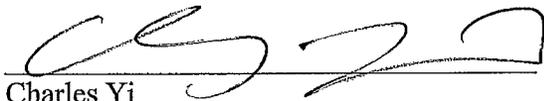
As provided for by the DFA, participating States will have up to three years from the FR's effective date to establish registration and supervisory systems meeting the minimum requirements for AMC registration and supervision.

### *OTS Rules Integration*

As proposed in the NPR, the FR rescinds and removes Part 390, Subpart X, thus completing the FDIC's review of this subpart of the OTS rules. Under the FR, 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 FDIC Rules and Regulations. In rescinding and removing Part 390, Subpart X, the FDIC will eliminate the unnecessary regulations in accordance with section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act (12 U.S.C. § 3311).

**Recommendation:** Staff recommends that the Board approve the attached Resolution to adopt and authorize for publication in the *Federal Register* the attached FR.

**Concur:**

A handwritten signature in black ink, appearing to read 'CY', is written over a horizontal line.

Charles Yi  
General Counsel

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Attachments