American Bankers Association
Building Success. Together.

Robert R. Davis
Executive Vice President
Mortgage Markets, Financial
Management & Public Policy
(202) 663-5588
RDavis@aba.com

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
regs.comments@occ.treas.gov

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
regs.comments@federalreserve.gov

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW.
Washington, DC 20429
RIN 3064–AE10
comments@fdic.gov

Gerard Poliquin, Esq.
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314–3428
regcomments@ncua.gov

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

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street SW.
Washington, DC 20024
RIN 2590–AA61
RegComments@fhfa.gov

Re: Minimum Requirements for Appraisal Management Companies

Ladies and Gentlemen:

The American Bankers Association (ABA)[1] appreciates this opportunity to comment on the interagency proposed regulation on minimum requirements for appraisal management companies ("AMCs"). The proposal would implement the Dodd-Frank Act[2] requirements that AMCs that perform services related to a federally-related transaction be registered with the appropriate State or be subject to oversight by a Federal financial institutions regulatory agency.

ABA commends the agencies on the proposed rule. While the statutory requirement underlying this rulemaking establishes complex regulatory structures that will be challenging to implement,

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.

[2] Dodd Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010), amending the Financial Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 183 ("FIRREA").

the proposed rule fulfills the legislative mandate with precision and without creating undue regulatory burden. Nonetheless, ABA respectfully concludes that federal regulators must establish a registration system for those states that do not establish their own AMC programs. We are of the view that the statutory language not only requires that AMCs be subject to state supervision, but also provides authority for the Agencies to serve as the default supervisor and registrar for non-federally regulated AMCs operating in states unable to enact rules that comply with the minimum AMC standards in the Dodd-Frank Act.

Overview of Proposal

On March 24, 2014, the federal banking regulatory agencies, the Consumer Financial Protection Bureau (CFPB), the National Credit Union Administration and the Federal Housing Finance Agency, issued a joint proposed rule regarding AMCs. The proposed new provisions are required by section 1473 of the Dodd-Frank Act ("DFA"), and generally require federal regulators to establish minimum requirements regarding AMC registration and supervision.

Section 1473 of DFA amends FIRREA by adding section 1124 to Title XI of that statute. Under that amendment, DFA establishes minimum requirements that must be applied by States in the registration and supervision of AMCs. Under these new obligations, participating States must require that AMCs: register with, and be subject to, supervision by State certifying and licensing agencies; verify that only State-certified or State-licensed appraisers are used for Federally related transactions; require that appraisals comply with the USPAP; observe appraisal independence standards under the Truth in Lending Act; and ensure that AMCs have processes and controls reasonably designed to ensure proper AMC appraiser selections.

Under the proposed rule, and pursuant to the DFA mandate, participating states must have in place within the state certifying and licensing agency an AMC licensing program with general review and registration approval powers. Among other things, the agency must have authority to do the following—examine the books and records of an AMC operating in the state; verify that appraisers on AMC's appraiser list or network hold valid state certifications or licenses; conduct investigations of AMCs to assess potential regulatory violations; and discipline, suspend, terminate, and refuse to renew the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders.

Importantly, 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 within 36 months of issuance of the final AMC rule. However, unless and until a state establishes a compliant regulatory structure, AMCs may be barred by section 1124 from providing appraisal management services for Federally-related transactions.

Discussion

Banks Need Backstop for States that Opt Out

ABA is concerned that the proposed rule creates a dangerous legal void that can cause harmful lending disruptions for banks in affected jurisdictions. This risk results from the fact that the law

does not affirmatively require states to adopt a regulatory structure for AMC registration and supervision. As written, the proposed regulations only establish standards that would apply to states that opt to regulate non-federally regulated AMC's. The result—that non-federally regulated AMCs would be prohibited from providing appraisal management services for federally related transactions in states where such regulatory structures are not adopted—is of critical concern, and requires immediate attention by federal rule-writers.

ABA believes that AMCs play an integral role in ensuring that consumers have access to unbiased appraisals. In addition, AMCs are instrumental in assisting banks to meet their legal duties concerning appraisal independence standards under the Truth in Lending Act and other state laws and investor guidelines.[3] The key point is that a great number of banks across all states have constructed their appraisal activities around the services and assurances offered by AMC companies. These banks depend on AMC services to meet the strictures of the law, and to provide consumers with the best and most dependable valuation service possible.

The peril created by an AMC regulatory structure that could potentially prevent AMCs from operating in particular jurisdictions is that, should this come to pass, many banks might see their residential mortgage operations fall into non-compliance and thus become subject to fines, lawsuits and investor demands. If appraisal management services become unavailable, banks that rely on such services will be required to construct full regulatory compliance infrastructures and craft new policies and procedures to ensure that appraisal independence rules are not being violated. Under these appraisal independence rules, banks that move from an AMC model to a fee appraiser model would have to alter numerous operational elements to, among other things, ensure that there are no bank staff communications with appraisers that could be perceived as inducements and/or coercions for value, ensure that there are no mischaracterizations of value by staff or appraisers, and ensure that there are no conflicts of interests in the staff (meaning that employees selecting appraisers must not have any direct or indirect interest, financial or otherwise, in the property or the transaction being effected).

Compliance with these appraisal independence requirements are so difficult that they cannot be created overnight. Bank departments will require full reorganization, restructured lines of staff command within institutions, retraining of employees to ensure they are compliant when communicating with valuation professionals, etc. All in all, shifting from an AMC-dependent model to a non-AMC model will freeze an institution's residential mortgage operations, and possibly force the cessation of lending for considerable time periods. In most instances, creditors in such states will have to forego business in the entire jurisdiction, an outcome that will lead to higher prices and reduced consumer choice. We doubt that such results were foreseen or intended by Congress, but these results are nonetheless probable, particularly under the political dynamics that exist in numerous states.

[3] Generally, the appraisal independence rules aim to ensure that real estate appraisers use their independent professional judgment in assigning home values without influence or pressure from parties with interests in the transactions. In addition, the rules ensure that appraisers receive "customary and reasonable" payments for their services. (See regulatory issuances at 75 Fed.Reg. 66554-66587)

ABA therefore joins the *Mortgage Bankers Association, Consumer Mortgage Coalition,* and other financial industry representatives in strongly urging that any final regulations issued here must provide that, in states where standards are not adopted by a fixed date, the federal standards set forth in the rule shall apply. In such states, ABA urges that one of the Federal financial regulatory agencies, or several agencies, act as the default registry for AMCs. In short, the final rule should provide for a "backstop," and such backstop must be structured to allow a regulatory agency (or agencies) to serve as a registry for non-federally regulated AMCs.

There is support for this approach in legislation. Section 1124 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].

ABA shares the view that the statutory language not only requires that AMCs be subject to state supervision, but it also provides authority for the Agencies to serve as the default supervisor and registrar for non-federally regulated AMCs operating in states unable to enact rules that comply with the minimum AMC standards in the Dodd-Frank Act.

We note that the proposed rule contains provisions to allow the Appraisal Subcommittee to provide a means for federally regulated AMCs to submit registration information for a state (or states) where the AMC operates. This registry for federally regulated entities serves as the template for a default system that would cover non-participating states. The two systems could operate in tandem and be structured in similar fashion.

The Federal Agencies Should Encourage Consistent State AMC Regulation

State AMC regulation and nationwide AMC registration constitute a new wave of rules that will surely impose regulatory burden. ABA encourages that federal and state regulators, along with the *Conference of State Bank Supervisors,* begin coordinating their work with the states to ensure that AMC regulation and registration requirements are as consistent and as uniform as possible.

ABA accepts the fact that local variations will exist. Most appraisal standards are similar in intent, however, and such guidelines operate pursuant to very similar objectives. Most reporting is aimed at capturing similar information. There should, therefore, be focused coordination across state lines, facilitated by national entities such as CSBS, to ensure that the states classify and articulate standards in harmonized fashion. Such standardization will offer consistency and ensure that the requirements apply in the same manner in every State.

Dodd-Frank Act AMC Requirements Are Inapplicable to Commercial Loans

We agree with the rule-writers that the Dodd-Frank Act AMC requirements are inapplicable in a commercial lending context.[4] Appraising commercial properties differs substantially from appraising residential properties, and AMCs are not generally involved in appraisals of commercial properties. There would be no identifiable purpose to imposing regulatory requirements on AMCs for commercial mortgage lending or securitizations.

Conclusion

ABA appreciates the joint agency effort to implement the AMC registration requirements mandated by Dodd-Frank. We encourage continuing efforts to promote an efficient and workable registration structure that allows uninterrupted and uniform operations in all States.

Sincerely,

Robert R. Davis

[4] 79 Fed. Reg. 19521, 19524 (April 9, 2014).