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Attention: Comments/Legal ESS
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National Credit Union Administration
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Alfred M. Pollard
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Attention: Comments/RIN 2590-AA61
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Eighth Floor
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Re: Minimum Requirements for Appraisal Management Companies

**DEPARTMENT OF THE TREASURY
Office of the Comptroller of the
Currency
12 CFR Part 34
[Docket No. OCC-2014-0002]
RIN 1557-AD64**

FEDERAL RESERVE SYSTEM**12 CFR Parts 208 and 225****[Docket No. R-1486]****RIN 7100-AE15****FEDERAL DEPOSIT INSURANCE****CORPORATION****12 CFR Parts 323 and 390****RIN 3064-AE10****BUREAU OF CONSUMER FINANCIAL****PROTECTION****12 CFR Part 1026****[Docket No. CFPB 2014-0006]****RIN 3170-AA44****FEDERAL HOUSING FINANCE****AGENCY****12 CFR Part 1222****RIN 2590-AA61**

Dear Agencies;

This letter is in response to the Agencies' request for comments on the Proposed Rules on Minimum Requirements for Appraisal Management Companies. The undersigned represent a networked council of professional state appraisal organizations. We appreciate this opportunity to comment and thank the Agencies for their work and interest in creating and implementing appraisal management company (AMC) regulation.

The proliferation of AMCs is a relatively recent phenomenon, resulting from the May 2009 Fannie Mae implementation of the Home Valuation Code of Conduct (HVCC)/Appraiser Independence guidelines.

By their design, AMCs' operations cover an extremely large amount of geographic and lending territory. As a result, they handle a tremendous amount of monies and interests associated with the various services they attempt to offer to lenders and consumers. Many AMCs not only supply appraisal services, but also title and other real estate related services. The potential for a single AMC to affect an enormous number of transactions should not be underestimated. Our members have already witnessed several large AMCs closing their doors without notice and filing for bankruptcy.

The professional appraiser's business, as well as the *appraisal profession*, have been decimated by the increasing market dominance of AMCs. Trust and credibility have been significantly damaged, highly qualified appraisers have left the business, and the financial viability of the traditional appraiser business model has been destroyed. While the Appraisal Foundation and its Appraisal Standards and Appraiser Qualifications Boards have attempted to raise standards and qualifications to combat the mounting deterioration and loss of confidence in America's valuation system, AMCs continue to be a negative influence with which the working independent fee appraiser must contend on a daily basis. The downward pressure on turn times and fees, as well as interference toward objective valuations they impose on our members is unreasonable and should never have been tolerated.

On behalf our combined members, we would like to respond not only to your request for comments, but also to make additional statements.

The implementation of rules and regulations by Fannie Mae, Freddie Mac, HUD, Dodd/Frank, etc., which intended to promote appraiser independence, have had the opposite effect. They have created an environment in which AMCs thrive with the ability to manipulate a *much larger* segment of professional appraisers, *much more effectively* than ever before. One such AMC recently advertised they guarantee a 100% review of any appraisal that does not come in at a contracted sales price – a direct assault on “Appraiser Independence”. An appraiser forced to work for this AMC by their client would not be considered “independent”. This is not a more “reliable” or “credible” way of ensuring against manipulation and steering.

One of the most important, yet confusing aspects of these proposed rules, is the separation of AMCs “owned or controlled” by a federally regulated entity from those independently owned. The proposed rules assure that both entities are subject to the same rules with the exception of a state registration requirement. This is not acceptable. In our experience, states are much more efficient at implementing and enforcing rules regarding AMCs than are federal agencies. Our members and organizations have filed complaints and networked with both the Consumer Financial Protection Bureau and HUD in regards to reckless AMC behavior and apparent violations of interim rules, Dodd/Frank and stated agency policies with no success. Our organizations have continued success legislating locally, having rules created and enforced by our local state agencies. While necessary work is ongoing, federal leadership, in our experience, has been ineffective. When a complaint is made to one agency, our members are referred to another without any resultant action. Unfortunately, many AMCs utilize this rule as a loophole which excuses them from compliance with state enforcement. AMCs have claimed federal oversight when, in fact, they are subject to state regulation and authority. Clear guidance is needed in regard to this issue so that all stake holders are properly informed.

This concern should also be considered as a response to your question about barriers or questions a state might encounter with these proposed rules. If it is accepted that AMCs owned and operated by federally regulated entities are exempt from state registration, a clear and concise explanation of states’ regulatory authority and enforcement powers over that entity is sorely needed. States could be reluctant to enforce regulation if they perceive that they do not have the authority to take action. In the same sense, state legislators could be reluctant to enact legislation if conflict is perceived to exist with federal authority.

In reference to your request for comments:

Q1 – Proposed Definitions

- **Appraisal Management Services:** In order to provide more clarity to the operational function of an AMC, we recommend that the definition be re-ordered as follows:

1, formerly 3: Managing the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary mortgage market participants, collecting fees from creditors and secondary mortgage market participants for services provided, **and payments being received by appraisers in no more than 30 days from invoice submission or per report date** for services performed;

2, remains 2: Contracting with state certified or state licensed appraisers to perform appraisal assignments;

3, formerly 4: Reviewing and verifying the work of appraisers. This definition reflects the appraisal management services outlined in the definition of AMC in section 1121; (1) Recruiting, selecting, and retaining appraisers;

4, formerly 1: recruiting, selecting, and retaining appraisers.

“**Special Item:** We strongly recommend the proposed rules require the practice(s) of **Broadcasting** (sending a large number of appraisers the same appraisal order via email or similar method simultaneously) or **Bulletin Boarding** (posting the same order on an electronic bulletin board for a large number of appraisers simultaneously) should be prohibited within 180 days of the adoption of the new rules. Best practice is to contact the most qualified and competent panel appraiser to complete the order with consideration given to past performance. Broadcasting and Bulletin Boarding are inconsistent with both the spirit and the letter of the HVCC/AIR and Dodd-Frank and are not best practices.

- **Appraiser Panel:** The definition should read as follows: “a panel of state licensed or state certified appraisers who are independent contractors to an AMC”. A second definition could read “**comprised of independent contractors**”, but in all instances the definition must include that panel participants are state licensed or state certified appraisers.

- **We believe that the definition of an AMC should not be determined by how many appraisers are on a panel, but rather by identification of ownership and operation.** A definition which is based primarily on the number of appraisers an entity controls or utilizes will lead to unregistered activity. Instead, ownership, control, and function of the entity should be considered. An entity owned and operated by appraisers and producing appraisals from within is not an AMC - even if it operates in multiple locations with several appraisers. This is an appraisal firm. It is important to recognize this distinction, as large appraisal firms are not only needed, but are an aspiration for many appraisers seeking success in the business. Why should they not have the opportunity to own and operate a large firm not unlike real estate firms, law firms, or physicians’ practices? Many AMCs are owned and operated by other corporate entities and individuals with no appraisal credentials who do not produce appraisals in-house. These AMCs are often solely administrative and service-oriented operations. An appraiser or group of appraisers attempting to expand their credentialed business should be differentiated from an AMC.

Q2 – Definition(s)

- **“Appraiser (network or) panel”:** Delete the word “network”. The clearest and most concise definition is the word “panel”. Also, exclude “network” from future consideration. - Suggested wording: Appraiser Panel: “A panel of state licensed or state certified appraisers who are independent contractors to an AMC or other buyers/users of appraisal services.”

- **Independent Contractor:** Should use standards issued by the Internal Revenue Service.

- **“Appraisal Firm(s)”:** One or more State licensed or State-certified appraiser(s) working individually, or together, as a non-incorporated or incorporated entity providing appraisal services. In an appraisal firm, a principal, employee or independent contractor of the firm signs the appraisal certification taking personal responsibility for the context of the appraisal report.

This would not be the case with an AMC. Appraisal firms with one or more appraiser participants, are not by any definition an AMC. A firm is engaged to actually complete the appraisal assignment and provides the Errors & Omissions insurance to cover the completed product. See also our comments regarding the definition of an AMC. **An appraiser provides appraisal services; an AMC provides administrative services.**

- **Hybrid firms or entities:** Agencies should under no circumstances consider a “hybrid-type firm” as a valid business model. Any such groups which may currently exist should be afforded a reasonable period of time to select the business model they consider most attractive for continuing operation, i.e. either an Appraisal Firm (one or more state licensed or certified appraisers providing appraisal services) or an AMC (providing administrative services for appraisal management including utilizing the services of an appraiser panel, however comprised).

Q3 –Distinctions between employees and independent contractors.

- Clear and distinct Internal Revenue Service definitions exist to distinguish between employees and independent contractors. Separate definitions can only create confusion.

- **Covered Transaction:** The term “appraisal management” should not be associated with or in any way confused with the actual performance of an appraisal as defined by USPAP. Each function or service, must be viewed as distinct and separate. Any and all descriptions, written or otherwise, of these two functions should present the functions clearly and as distinctly separate from each other, particularly on the HUD1 Disclosure.

- **Federally regulated AMCs and federally related transaction regulations:** In principal, the AMC, whether its own entity and separate from any control other than its stated or incorporated leadership, or a subsidiary, division, or department owned and controlled by an insured depository institution or Credit Union, should be required to register with and be regulated by the state. Such a guideline provides for consistent oversight and regulation. See previous statement regarding federal versus state oversight of AMCs.

Q4 –The Agencies request comment on whether references to the NCUA and insured credit unions should be removed from the definition of federally-regulated AMCs and other parts of the final regulation to clarify that AMC CUSOs are subject to State registration and supervision.

- We feel that the best response to this question is "none of the above". If the intent of the rule is to regulate AMCs, those owned or used by credit unions should be included in its coverage. This rule should not create a loophole that would damage the intent of the proposal. What would keep a lending institution from owning a credit union to avoid state oversight?

Q5 – Proposed definition of "secondary market participant"

- We believe this to be a “banking” question versus an “appraisal” question. Since appraisers do not typically deal directly with the secondary mortgage market, we believe that this is a question best answered by those within the banking industry.

Q6 – Minimum Requirements for State Registration and supervision of AMCs

- Clarification as to the “who”, “what”, “where” and “why” of this rule. While there are sections of the rules which contain language specific to these issues, it cannot be emphasized enough that descriptions of responsibilities for implementation and enforcement need to be repeated and clarified.

- The AMC’s obligation as a “creditor’s agent” needs to be expanded upon. While a recent OCC bulletin emphasized that a lender is responsible for the behavior of its third party agent, AMCs have repeatedly gone out of business, declared bankruptcy, and left lenders, appraisers and real estate brokers with a complicated mess of legal and fiduciary issues. Furthermore, many lenders claim no financial responsibility despite requiring themselves being named as client. In most cases, the AMC is *indeed* an agent of the lender. We would like to see language regarding an AMC’s responsibilities inserted here.

An AMC is a third party and is obligated to honor its responsibilities. The business model of most AMCs is to accept monies intended for third parties (appraisers, real estate brokers, title agents, attorneys, etc.) and to deposit these monies into their operating accounts. To maximize their profit, they search for and engage the least expensive servicer in order to keep a higher percentage of this capital in their account. Once an AMC goes out of business and declares bankruptcy, these funds disappear or are locked up by a bankruptcy trustee. Instead, AMCs should be required to hold these fees in a trust account separate from their operating account, while the AMC charges a separate fee for their own services, commensurate with that service, and as the market dictates. This model is more similar to those used by attorneys or both real estate and mortgage brokers who handle third party monies. A security bond or recovery fund does not provide an adequate level of protection to release a lender or AMC from its contractual obligations to pay its contractors. *A trust account requirement eliminates this concern entirely.* It would also make the AMC’s trustee criminally liable for missing funds.

Q7 – Reviews and Federally regulated AMCs

- The distinction between a review completed by a state licensed or state certified appraiser and one completed by an in-house non-appraiser as part of a quality control program needs to be understood. AMCs order reviews on appraisals from other appraisers; it can be a part of their service to a client or their own process. As such, reviews of this type do need to be addressed in these rules. A separate standard is written in the Uniform Standards of Professional Appraisal Practice (USPAP) regarding appraisal reviews.

A review, when completed by an appraiser, is often ordered as both a critique of another appraiser’s work and a parallel appraisal in order to verify that the original opinion of value is reasonable. An in-house review completed by a non-appraiser for quality control purposes is basically a “checklist” incapable of analyzing the appraiser’s judgment - something entirely different that can vary broadly based on how it is completed.

The intent for and use of either of these reviews could also have broad ramifications. As stated previously, an AMC advertised that all appraisals that came in under the contract price would be reviewed. The intent here is obviously different from what Dodd/Frank intended relating to mandatory reporting of possible USPAP violations by appraisers. It is intended to put added pressure upon appraisers to arrive at a predetermined value. Therefore, we believe it is important for the Agencies to understand and address “reviews” in these minimum

requirements. “Reviews” in this sense have been methods of intimidation, placing an extraordinary burden on our members.

- We have already commented on our view of “Federally regulated AMCs” and have stated that we also disagree that the registration limitations would pertain only to AMC state registration and not to inclusion on the AMC National Registry. We feel that registration limitations should apply to federally regulated AMCs regardless of whether or not they voluntarily register within the state.

- Federal AMC registration should be required to renew annually or at the same frequency as the respective state requirement.

Q8 - What barriers, if any, exist that may make it difficult for a state to implement the proposed AMC rules?

- To date, 38 states have enacted comprehensive legislation concerning the oversight and registration of appraisal management companies (AMCs) conducting business in those states.

- State agencies report the biggest obstacles toward implementation and proactive administration of the proposed rules are monetary resources and time. A lack of comprehensive understanding also exists regarding the level of participation an AMC has in the mortgage marketing process. This lack of understanding poses barriers for efficient implementation, and appears to negatively impact the abilities of state agencies to effectively administer the proposed rules.

- Educating elected officials as to the role AMCs play in the mortgage marketing process is also a challenging part of the implementation process. Because AMCs have operated unregulated for so many years, most state legislators do not fully comprehend the function of the AMC and the effect of AMCs on the housing finance market. An explanation of the current proposed rules and why they are necessary is highly recommended. Defining and distinguishing an AMC from an independent appraiser should clarify the issue for those outside the mortgage marketing process.

Q9 - What aspects of the rule, if any, will be challenging for States to implement within 36 months? To the extent such challenges exist, what alternative approaches do commenters suggest that would make implementation easier, while maintaining consistency with the statute?

- State agencies should actively and equally include professional state appraiser organization representatives as stakeholders in the implementation and rule writing processes. These representatives could offer an invaluable source of procedural and practical knowledge from which the states would benefit. Appraisers understand the role of the AMC in the mortgage marketing process and would be the most effective in providing information to elected officials about the purpose of the regulation as well as assisting in proposing timelines for efficient implementation. As appraisers are widely spread throughout every state, each district would receive knowledgeable representation, resulting in a higher level of efficiency.

- Require transparency in state agency endeavors towards AMC legislation and regulation. If obstacles or scheduling problems exist, the deficiency should be openly identified and addressed. Regulatory agencies should refrain from closed stakeholder meetings without having appraisers present.

Q10 - Are there any barriers to a state collecting information on federally regulated AMC's and submitting such information to the ASC? And if so what are they?

- States will have to prepare for collection of information with limited technological resources and monetary constraints. This may very well pose limitations as to what state agencies can and cannot manage. It would be beneficial for agencies to have adequate technological resources available to process data and comply with the registration and oversight requirement within the proposed rules.
- A nationwide AMC database should be established to identify AMC violations. Easy, interstate access should be available for all agencies and appraisers to identify those AMC's that are not in compliance with the rules.
- How will a state collect information on an AMC if certain AMC's are not required to register?

Q11 - Are any questions raised by any differences between state laws and the proposed AMC rules? Should these be addressed in the final AMC rules and, if so, how?

- Many states have regulations in place that exceed the federal proposed minimum requirements. These regulations meet the needs of the individual states as each state differs; a universal plan would be a disservice to the variety of markets. However, needed protections, such as the previous suggestion of trust accounts, are very difficult to enact locally due to a lack of understanding of issues by state legislators. In these areas, federal requirements would clear the way for needed reform and understanding.

A considerable shortcoming of the proposed rules is that they only apply to those AMC's which provide services in connection with credit transactions secured by a consumer's principal dwelling. AMC's have branched out into other areas, including commercial services. Many appraisals and other services offered by AMC's are related to vacation homes, rental properties, etc. An AMC's business may involve services to lenders on Real Estate Owned (REO) properties. All of these activities and services have a similar impact on the housing market, the lending industry, and the nation's economy, yet as proposed, many of these AMC's will not be regulated. A broader scope of regulation and enforcement should be considered to accommodate the massive impact one AMC could have on a market.

Another item conspicuously missing from the proposed minimum requirements is the Dodd/Frank demand for Customary and Reasonable fees. The ability for the AMC to control and profit by siphoning off a significant portion of the appraiser's fee that is understood by consumers to be paid to the appraiser has been one of, if not the primary, issue contested between appraisers and AMC's. This is one of the main reasons AMC's have been able to overwhelm and control the valuation system in this country. This interference threatens to collapse the appraisal profession. It is contrary to the intent behind the Truth in Lending Act (TILA) and the trust of consumers that rely on housing and lending professionals to serve and protect them from false and misleading activities. While a "customary and reasonable" fee might be difficult to pinpoint, certainly a process for allowing the market to decide the fee should be defined and enforced. Begin by prohibiting AMC's from controlling and using monies meant for third parties as operating capital. Require clear exposure to consumers as to what is charged for each individual service. PROHIBIT the practice of allowing the AMC fee to be presented as the "appraisal fee". Ending this practice will allow AMC's to be paid for the true value of *their* service *which does not include completing an appraisal*. It will also end the

practice of hiring the cheapest appraiser in order to covertly maximize profits rather than finding the most competent and qualified appraiser. We hope that this issue will soon be addressed and given the attention appraisers have been pleading for.

We sincerely appreciate your consideration of these comments. An in-person meeting could be arranged if that would be helpful to you. If you should have any questions, please contact Peter Gallo, State Association Council Organizer, at 704-752-6252 x101/peterg@homesightllc.com or any of the officers of the signing organizations.

Sincerely,

Appraiser's Coalition of Washington

Arizona Association of Real Estate Appraisers

California Coalition of Appraisal Professionals

Georgia Coalition of Appraisal Professionals

Idaho Coalition of Appraisal Professionals

Illinois Coalition of Appraisal Professionals

Maryland Association of Appraisers

Mississippi Coalition of Appraisers

North Carolina Real Estate Appraiser Association

Ohio Coalition of Appraisal Professionals

South Carolina Professional Appraisers Coalition

Virginia Coalition of Appraisal Professionals

West Virginia Council of Appraiser Professionals