



## Minimum Requirements for Appraisal Management Companies

Legislative and Regulatory Activities Division

Office of the Comptroller of the Currency

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Attention: Comments/Legal ESS

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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

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Dear Agencies;

The Collateral Risk Network would like to thank the Agencies for the opportunity to comment on the AMC Minimum Requirements published in the Federal Register on April 9, 2014.

The Collateral Risk Network is comprised of a broad cross section of the valuation community -- chief appraisers, risk managers and compliance officers from financial institutions; officers and chief appraisers of Appraisal Management Companies (AMCs); as well as appraisers. In total there are 466 members.

The CRN would like to commend the Agencies on the draft rules. A survey was sent to all members of the CRN allowing them to anonymously respond. Generally, the consensus was the rules are clear. Any conflicting opinions are captured in the comments noted below. Please note that because of the diversity of members within the CRN, not all comments represent the opinion of all members.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joan N. Trice".

Joan N. Trice  
Founder, Collateral Risk Network

### **Question 1: The Agencies request comment on all aspects of the proposed definition of an AMC.**

The definition of an appraisal company, or firm, as one who issues W-2s and an AMC as one who engages independent contractors clarifies the issue and with recognition that there are hybrids. But with all rules and regulations there are always loopholes. It would be important to further define a firm that engages full time dedicated employees who do not work for other firms or maintain a separate appraisal practice.

Comments from several, noted that Appraisal Firms should not avoid the registration process as well. The rationale for the comments is a concern that just as there was a rush towards becoming

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an AMC post HVCC, there now will be a rush towards changing status to an Appraisal Firm to evade oversight. The same thresholds would apply.

And given that State's may opt in or out of the registration process the proposal would be inclusive of any entity regardless.

Would an appraiser who has had his license revoked be able to maintain ownership in an Appraisal Firm? There are strong comments in the CRN survey that suggest there should not be a double standard.

### **Question 2: The Agencies request comment on the proposed definition of “appraiser network or panel”.**

An AMC panel should include only independent contractors on an approved list. It would be irrational for an AMC to be penalized for paying a fee to maintain an appraiser on an exclusionary list. Independent contractors should be as defined by the IRS, as 1099 contractors. It would also not be fair and equitable for an AMC to pay a panel fee multiple times for appraisers who hold licenses in multiple jurisdictions.

The rules should include proper notification to the appraiser if placed upon an Exclusionary List. Processes should be in place to allow for an appraiser to rebut. The abuses around appraisal independence emanated from this very practice. Practically speaking, with Mandatory Reporting per Dodd Frank, any AMC who files a complaint against an appraiser would logically be placing that appraiser on an Exclusionary List. Legacy exclusionary lists (prior to HVCC) with no providence of policy or practices should be eliminated.

### **Question 3: The Agencies request comment on the distinction between employees and independent contractors as a basis for exclusion of appraisal firms from the definition of an AMC.**

It is an unfortunate practice that many appraisal firms have historically compensated staff as independent contractors as opposed to W-2 employees. It has been an insidious practice that often puts those who are compliant at a competitive disadvantage. It is time that changes.

The AMC Rules will shed light upon this poor business practice. Many who believe they own appraisal companies will be surprised to learn that they have been functionally operating as an AMC for years and will now be subject to registration as an AMC.

Or as noted earlier, consideration should be given to including Appraisal Firms in State registration and oversight.

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It has also been a practice for AMCs to engage other AMCs. In some cases, the intent was to purposefully evade registration in every State. It also exposes a lack of due diligence by the lender.

**Question 4: The Agencies request comment on whether references to the NCUA and insured credit unions should be removed from the definition of “Federally regulated AMC” and other parts of the final regulation to clarify that AMC CUSOs are subject to State registration and supervision.**

Credit Unions and CUSOs should receive no exemptions.

**Question 5: The Agencies request comment on the proposed definition of “secondary mortgage market participant.” Are the types of entities cited in the proposed definition appropriately included in this context? Should any other types of entities be expressly included or excluded from this definition, for the sake of clarity? Should any other types of entities be considered “ an underwriter or other principal in the secondary mortgage markets” for the purpose of the definition of AMC in the Dodd-Frank Act?**

No comment.

**Question 6: The Agencies request comment on the proposed minimum requirements for State registration and supervision of AMCs.**

At present there is a system in place whereby 38 States have already begun registration of AMCs. It is already apparent that these registrations are not managed in “real time”. An AMC can be fully registered but when a lender checks the State website it hasn’t been updated. This delay is creating a restraint of trade.

How will the States manage disciplinary actions against AMCs? Will lenders be required to manually monitor 50 State websites to ensure valid registration at each transaction? How long will States have to process registrations? The ASC will need far greater sophistication in their AMC Registry than currently exists with their Appraisal Registry. Will States need to monitor the activities of the AMC in other States? If an AMC is suspended in one State would that affect other State’s decisions?

All of these activities require sophisticated data management systems.

The weakest link is the State to provide oversight of AMC activities. Some States will perform well, while the expectation is that many will not. It will take six things for a State to effectively supervise AMC activity:

- 1) Data management systems
- 2) Strong policy statements from the ASC
- 3) Education and training on how to audit the activities of an AMC
- 4) Understanding of compliance around appraiser selection
- 5) Strong leadership at the State agency
- 6) Financial resources

Just like MISMO created a data standard for appraisal data, a standard needs to be established for AMC registration. A minimum standard should be established for an audit process. Could a third party entity that specializes in audits create an attestation program for AMCs that would satisfy each State at a cursory level? It would seem that all stakeholders would benefit by establishing these standards.

We have already seen over the past several years the failure of a few AMCs creating a significant impact on the appraisal community. Had financial audits been performed on a regular basis, or effective surety bond required, the depth and breadth of the losses could have possibly been mitigated. We also believe that requirements in the proposed rule for a moral character determination and background check of AMC owners should also ensure that AMCs will not be granted registration when they are owned by individuals who have had serious disciplinary actions.

Will the revenue generated from AMC registrations and panel fees be sufficient to sustain a viable program? One of the possible unintended consequences is that the cost of compliance will force many AMCs out of business leaving a handful of mega- AMCs. The paradox is that then the revenue generated from fees drops dramatically. Another unintended consequence of imposing a panel fee is that AMCs will dramatically reduce the size of their panels to avoid excessive fees.

And as previously noted many AMCs may rush to become an Appraisal Firm to avoid registration altogether.

Responses to CRNs survey varied, but some felt that until we resolve the C&R debate, a misaligned incentive remains for some AMCs to engage the cheapest appraiser to ensure the highest possible margins. Only 1 State has proactively sought to enforce C&R at the present time. The rules require that the AMC comply with TILA section 129(e). Some, but not all, of our responses invited additional rules on the topic of C&R, specifically that the IFR be repealed and new rules be written in a manner consistent with the intent of Dodd Frank.

One of the areas of concern expressed by CRN members is the possibility that a State not enact AMC registrations. Can a Federally regulated AMC do business in those States? In the absence

of a State registration program can the ASC manage registrations for those States allowing a Federal registration program?

While most believe that the likelihood of this event occurring is small it could have an impact on a considerable number of lenders and AMCs and consumers as well.

**Question 7: The Agencies request comment on the proposed approach to the appraisal review issue.**

We respectfully request a bulletin or additional rules on the topic of review. The fundamental problem begins with definitions. As part of the vernacular we use terms such as “little r ” and “big R” reviews. We use technical and administration reviews, which were at one time, included in USPAP and then disappeared from print but not from the lingo. We use QC review and QA review.

There has been significant investment by multiple firms in development of automated review products including scorecards. Reviews are being done “offshore” to save money. It should be noted that these are tools but not a substitute for a manual review.

Once definitions are firmly established clarity around who can perform each level of review would be meaningful. When must a review be done? How can automation play an appropriate role? If a review is performed by a licensed or certified appraiser, must the appraiser be credentialed in the State where the subject is located? Additional clarification is needed on whether a review provides an opinion of value or not.

We fully understand that whatever minimum guidelines are established that States may impose additional standards. A mechanism for encouraging standardization with registrations, review, and other practices would be for the ASC to provide grant monies to those States who fall within certain criteria.

**Question 8: What barriers, if any, exist that may make it difficult for a State to implement the proposed AMC rules?**

As noted in #6 lack of education and training would be the biggest barrier to enforcement. Development of systems to manage and maintain a registry system and registry standards should be a primary focus of the ASC. Development of audit processes, procedures and practices should be developed at a Federal level and enforced at the local level.

**Question 9: 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 it easier, while maintain consistency with the statute?**

36 months is ample time for anyone to implement these rules. A uniform registration process with a centralized database should be a priority. The ASC needs to create a national AMC Registry sooner, rather than later.

**Question 10: Are there any barriers to a State collecting information on Federally regulated AMCs and submitting such information to the ASC? And if so what are they?**

How would a State know which AMCs are Federally Regulated?

**Question 11: 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?**

As noted earlier national standards with State enforcement would be ideal.