DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC-2014-0002]

RIN 1557-AD64

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 208 and 225

[Docket No. R-1486]

RIN 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 2014-006]

RIN 3170-AA44

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1222

RIN 2590-AA61

Minimum Requirements for Appraisal Management Companies

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC);

National Credit Union Administration (NCUA); Bureau of Consumer Financial Protection (Bureau); and Federal Housing Finance Agency (FHFA).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, NCUA, Bureau, and FHFA (collectively, the Agencies) are jointly proposing a rule to implement the minimum requirements in section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act) to be applied by States in the registration and supervision of appraisal management companies (AMCs). The proposed rule also implements the requirement in section 1473 of the Dodd-Frank Act for States to report to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) the information required by the Appraisal Subcommittee (ASC) to administer the new national registry of appraisal management companies (AMC National Registry or Registry). In conjunction with this implementation of section 1473, the FDIC is proposing to integrate its appraisal regulations for State nonmember banks and State savings associations.

DATES: Comments must be received on or before [INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title ‘‘Minimum Requirements for Appraisal Management Companies” to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

***OCC*:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Minimum Requirements for Appraisal Management

Companies" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- Federal eRulemaking Portal—"regulations.gov": Go to http://www.regulations.gov. Enter "Docket ID OCC-2014-0002" in the Search Box and click "Search". Results can be filtered using the filtering tools on the left side of the screen. Click on "Comment Now" to submit public comments.
- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- E-mail: regs.comments@occ.treas.gov.
- Mail: 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.
- Hand Delivery/Courier: 400 7th Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- Fax: (571) 465-4326.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC-2014-0002" in your comment. In general, the OCC will enter all comments received into the docket and publish those comments on the Regulations.gov web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking

action by any of the following methods:

- Viewing Comments Electronically: Go to http://www.regulations.gov. Enter "Docket ID OCC-2014-0002" in the Search box and click "Search". Comments can be filtered by Agency using the filtering tools on the left side of the screen.

- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

- Docket: You may also view or request available background documents and project summaries using the methods described above.

Board: Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

- *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments.

- *E-mail:* regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC

20551. All public comments will be made available on the Board's web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

***FDIC*:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments.
- *Agency Web site:* http://www.FDIC.gov/regulations/laws/federal/propose.html.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *Email:* comments@FDIC.gov. Comments submitted must include "FDIC" and "RIN 3064-AE10." Comments received will be posted without change to http://www.FDIC.gov/regulations/laws/federal/propose.html, including any personal information provided.

***NCUA*:** You may submit comments, identified by RIN 3133-AE22 by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *NCUA Web Site*: http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx. Follow the

instructions for submitting comments.

- *E-mail*: Address to regcomments@ncua.gov. Include "[Your name] Comments on Minimum Requirements for Appraisal Management Companies" in the e-mail subject line.
- *Fax*: (703) 518-6319. Use the subject line described above for e-mail.
- *Mail*: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- *Hand Delivery/Courier in Lieu of Mail*: Same as mail address.

You can view all public comments on NCUA's web site at http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

Bureau: You may submit comments, identified by Docket No. CFPB-[2014-0006] or RIN 3170-AA44, by any of the following methods:

- *Electronic*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail*: Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier in Lieu of Mail*: Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20552.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1700 G Street, NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

***FHFA*:** You may submit your comments, identified by regulatory information number (RIN) 2590-AA61**,** by any of the following methods:

- *E-mail*: Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to RegComments@fhfa.gov. Please include "RIN 2590-AA61" in the subject line of the message.

- *Federal eRulemaking Portal*: http://www.regulations.gov. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Please include "RIN 2590-AA61" in the subject line of the message.

- *Hand Delivered/Courier*: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA58, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service*: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA61, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024.

Copies of all comments will be posted without change, including any personal information you provide, such as your name, address (mailing and email), and phone number, on the FHFA Web site at http://www.fhfa.gov. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., Eastern Time, at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

FOR FURTHER INFORMATION CONTACT:

***OCC*:** Robert L. Parson, Appraisal Policy Specialist, (202) 649-6423, G. Kevin Lawton, Appraiser (Real Estate Specialist), (202) 649-7152, Mitchell E. Plave, Special Counsel, or Charlotte M. Bahin, Senior Counsel, Legislative & Regulatory Activities Division, (202) 649-5490, , or Christopher Manthey, Special Counsel, Bank Activities and Structure Division, (202) 649-5500.

Board: Carmen Holly, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, at (202) 973-6122, Walter McEwen, Senior Counsel, Legal Division, at (202) 452-3321, or Will C. Giles, Senior Attorney, Legal Division, at (202)-3351, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Beverlea S. Gardner, Senior Examination Specialist, Division of Risk Management and Supervision, at (202) 898-3640, Sandra S. Barker, Senior Policy Analyst,

Division of Consumer Protection, at (202) 898-3915, Mark Mellon, Counsel, Legal Division, at (202) 898-3884, Kimberly Stock, Counsel, Legal Division, at (202) 898-3815, or Benjamin K. Gibbs, Senior Regional Attorney, at (678) 916-2458, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

***NCUA*:** John Brolin or Pamela Yu, Staff Attorneys, Office of General Counsel, at (703) 518-6540, or Vincent Vieten, Program Officer, Office of Examination and Insurance, at (703) 518-6360, or 1775 Duke Street, Alexandria, Virginia, 22314.

***Bureau*:** Owen Bonheimer, Counsel, Office of Regulations, or Connor Raso, Attorney-Advisor, Legal Division, 1700 G Street, NW., Washington, DC 20552, at (202) 435-7000.

***FHFA*:** Robert Witt, Senior Policy Analyst, Office of Housing and Regulatory Policy, (202) 649-3128, or Ming-Yuen Meyer-Fong, Assistant General Counsel, Office of General Counsel, (202) 649-3078, Federal Housing Finance Agency, 400 Seventh Street, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Background

AMC minimum requirements

On July 21, 2010, the Dodd-Frank Act[1] was signed into law. Section 1473 of the Dodd-Frank Act added a new section 1124 to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)[2] and established minimum requirements to be applied by States in the registration and supervision of AMCs. An AMC is an entity that serves as an

[1] Pub. L. 111-203, 124 Stat. 1376.
[2] Pub. L. 101-73, 103 Stat. 183; 12 U.S.C. 3353.

intermediary for, and provides certain services to, appraisers and lenders.[3] These minimum requirements apply to States that have elected to establish, pursuant to section 1117 of FIRREA,[4] an appraiser certifying and licensing agency with authority to register and supervise AMCs (participating States). Section 1473 of the Dodd-Frank Act[5] also created the AMC National Registry, which will be administered by the ASC, and requires participating States to report AMC registration information to the ASC to support the Registry.[6] The AMC National Registry will include AMCs that are either: (1) registered with, and subject to supervision of, a State appraiser certifying and licensing agency; or (2) subsidiaries owned and controlled by an insured depository institution or an insured credit union and regulated by a Federal financial institutions regulatory agency.

Under section 1124, participating States must require that AMCs: (1) register with, and be subject to, supervision by the State appraiser certifying and licensing agency in the State or States in which such company operates; (2) verify that only State-certified or State-licensed appraisers are used for Federally related transactions;[7] (3) require that appraisals comply with the Uniform Standards of Professional Appraisal Practice (USPAP); and (4) require that appraisals are conducted in accordance with the statutory appraisal independence standards under the Truth in Lending Act (TILA) (15 U.S.C. 1639e) and implementing regulations.[8] An AMC that is a subsidiary owned and controlled by an insured depository institution or an insured credit union, and that is regulated by a Federal financial institutions regulatory agency is subject to all of the

[3] The term "appraisal management company" is defined in more detail in section 1121 of Title XI of FIRREA, 12 U.S.C. 3350(11), and in proposed § 34.211(c).
[4] 12 U.S.C. 3346.
[5] Hereafter, section references are to Title XI of FIRREA unless otherwise noted.
[6] 12 U.S.C. 3332(a)(6); 3338(a)(3); 3353(e).
[7] Under FIRREA, a Federally related transaction is a real estate related financial transaction that involves an institution regulated by the OCC, Board, FDIC, or NCUA and that requires the services of an appraiser under the interagency appraisal rules. OCC: 12 CFR part 34, subpart C and 12 CFR part 164; Board: 12 CFR part 208, subpart E and 12 CFR part 225, subpart G; FDIC: 12 CFR part 323; and NCUA: 12 CFR part 722.
[8] *See* Board: 12 CFR 226.42; Bureau: 12 CFR 1026.42.

minimum requirements, except the requirement to register with a State. The minimum requirements will apply to any AMC that provides appraisal management services, as defined in the proposed regulation, and meets the statutory size threshold, which is that the AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or of 25 or more appraisers nationally in a given year. States may establish requirements for AMC registration and supervision that are in addition to these minimum requirements.[9]

Under section 1124, beginning 36 months from the time the Agencies issue the final AMC rule, an AMC may not provide services for a Federally related transaction in a State unless the AMC is registered with the State or is subject to oversight by a Federal financial institutions regulatory agency. This effectively allows each State up to 36 months to set up registration and supervision systems that meet the requirements of the final rule. The ASC, with the approval of the FFIEC, may extend the 36-month deadline for an additional 12 months if the ASC makes a finding that the State has made substantial progress toward implementation of a system that meets the criteria in the final rule.

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, in such a State, unless and until it establishes such a regulatory structure, AMCs are barred by section 1124 from providing appraisal management services for Federally related transactions.[10]

Under section 1124 of Title XI, the Agencies must establish, by rule, minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on

[9] 12 U.S.C. 3353(b).

[10] 12 U.S.C. 3353(f)(1). Under section 1124, this restriction will not apply to AMCs that are subsidiaries owned and controlled by an insured depository institution or an insured credit union, and regulated by a Federal financial institutions regulatory agency. Such AMCs are subject to all the requirements of section 1124, with the exception of the requirement to register with a State.

AMCs doing business in the State.[11] The statute also directs the Agencies to issue regulations that identify certain activities of AMCs that participating State appraiser certifying and licensing agencies should report to the ASC. This proposed rule implements these statutory requirements.

Consolidation of FDIC and OTS rules on appraisals

Title III of the Dodd-Frank Act transferred the powers, duties, and functions formerly performed by the Office of Thrift Supervision (OTS), the Federal entity formerly responsible for the supervision of federally insured savings associations and their holding companies, to the FDIC for State savings associations and authorized the FDIC to consolidate OTS and FDIC rules.[12] This proposed rule implements this authority by rescinding the OTS regulatory provisions on appraisals pertaining to State savings associations as such associations are covered by the FDIC's existing appraisal rules.

II. The Proposed Rule

The Agencies are issuing this proposal to implement the minimum requirements for registration and supervision of AMCs in the Dodd-Frank Act, Title XIV, Subtitle F (Appraisal Activities). As required by the Dodd-Frank Act, this proposal was developed jointly by the OCC, the Board, the FDIC, the Bureau, the FHFA, and the NCUA. The proposed rule would: (1) establish the minimum requirements in section 1473 of the Dodd-Frank Act for registration of AMCs; (2) establish the minimum requirements for AMCs that register with the State under section 1473 of the Dodd-Frank Act; (3) require Federally regulated AMCs to meet the minimum requirements of section 1473 (other than registering with the State); and (4) require the reporting of certain AMC information to the ASC. The proposed rule is being published in the CFR separately by the OCC, the Board, the FDIC, and the FHFA. No substantive difference between

[11] 12 U.S.C. 3353(a).
[12] The OTS was abolished on October 19, 2011.

the rules is intended. The proposed rule would also integrate FDIC appraisal regulations for State nonmember banks and State savings associations.

Key Definitions

Appraisal management company. Proposed § 34.211(c)[13] defines an AMC as a person[14] that: (1) provides appraisal management services to creditors or secondary mortgage market participants; (2) provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction (including consumer credit transactions incorporated into securitizations); and (3) within a given year, oversees an appraiser 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 proposed definition cross-references proposed § 34.212 for the rules on how to calculate the numeric threshold for the appraiser panel.

Securitization within the definition of appraisal management company. The proposed definition of AMC applies to appraisal management services provided in connection with residential mortgage transactions and securitizations involving residential mortgages. The proposed rule does not extend to appraisal management services provided in connection with commercial real estate transactions or securitizations involving commercial real estate mortgages. In drafting the definition of AMC for the proposal, the Agencies considered whether the statutory definition of AMC in section 1121 should be construed to encompass not only appraisal management services provided for securitizations of residential mortgages, but also appraisal services in connection with securitizations of commercial mortgages.

The Agencies' reading of the statute -- that it only extends to residential mortgage

[13] For ease of reference, the preamble refers to section numbers in the proposed rule text for the OCC.
[14] The proposed rule incorporates the definition of "person" from Regulation Z, which defines a person as "a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit." 12 CFR 1026.2(22).

transactions and securitizations involving residential mortgages -- is consistent with the text of section 1124 and of other relevant portions of the Dodd-Frank Act taken as a whole. Non-residential or commercial mortgages are not mentioned in any AMC provisions in section 1473 (or elsewhere in Title XIV of the Dodd-Frank Act). The lack of a reference to commercial mortgage lending in the relevant Dodd-Frank Act provisions suggests that AMCs were not intended to be covered by the AMC minimum requirements when they are providing appraisal management services for underwriters or other principals of commercial mortgage securitizations. Moreover, the Agencies understand that individual appraisers, as opposed to AMCs, are more typically retained to provide an appraisal of properties that will be included in securitizations of commercial mortgage loans because of the size and complexity of those properties.[15]

"External third party" within the definition of appraisal management company. Section 1121 defines an AMC as any "external third party" authorized to take certain actions 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.[16] Consistent with the statutory definition, the proposal would define the term AMC to exclude a department or division of an entity when such department or division provides appraisal management services only to that entity. These departments or divisions are not "external third parties" as required by the statute. An AMC that is an affiliate (rather than a department or division) of a creditor or secondary market principal, however, would be treated as an AMC under the proposed rule, even if the AMC provides appraisal management services only to the entity with which it is affiliated,

[15] This understanding is based on the supervisory experience of the Agencies as well as outreach to a major trade association for AMCs and a large AMC, which confirmed that, under the current business model, AMCs do not generally provide services in connection with securitizations of commercial mortgages.
[16] 12 U.S.C. 3350(11).

because the affiliate is a separate legal entity.

The Agencies believe that this interpretation is consistent with the plain meaning of "external" and "third party," as well as with section 1124(c), which by its terms contemplates that the requirements of section 1124 would apply to subsidiaries of financial institutions. In the Agencies' view, this interpretation is also consistent with section 1124 as a whole, which is directed at regulating parties that provide appraisal management services on behalf of creditors and secondary market principals, but does not regulate creditors or secondary market principals directly.

Question 1. The Agencies request comment on all aspects of the proposed definition of AMC.

Appraisal management services. Proposed § 34.211(d) defines "appraisal management services" to mean one or more of the following: (1) recruiting, selecting, and retaining appraisers; (2) contracting with State-certified or State-licensed appraisers to perform appraisal assignments; (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 paying appraisers for services performed; or (4) reviewing and verifying the work of appraisers. This definition reflects the appraisal management services outlined in the definition of AMC in section 1121.

Appraiser panel. The definition of AMC in section 1473 of the Dodd-Frank Act provides that an entity will be treated as an AMC for purposes of State registration if it has an "appraiser network or panel" of more than 15 State-certified or State-licensed appraisers in a State or 25 or

more nationally within a given year. Section 1473 does not specify whether a "network or panel" consists of employees of an AMC or independent contractors retained by the AMC (or both). To help address this issue, the Agencies conducted outreach with associations that represent AMCs and appraisers to gather information about the AMC business model. The Agencies also conducted outreach with State appraiser certifying and licensing agencies to gather information on the experience of States that have adopted AMC laws that define "appraiser panel."[17]

Based on this outreach, the Agencies understand that a majority of States that have adopted AMC laws define "appraiser panel" as being comprised of independent contractors.[18] A minority of States use a broader definition for "appraiser panel" that encompasses a combination of independent contractors and employees.[19] The majority approach is consistent with the model AMC code offered by a trade association for appraisers and the minority approach is consistent with a model code offered by a trade association for AMCs.

Proposed § 34.211(e) defines an appraiser network or panel as a network of State-licensed or State-certified appraisers who are independent contractors to an AMC. This definition reflects the approach taken by the majority of States that have adopted AMC registration laws or have proposed such laws, as discussed above. The proposed definition of appraiser panel also reflects the Agencies' understanding, based on the outreach, that AMCs typically engage appraisers as independent contractors under the current AMC business model, rather than having employees perform appraisals. Proposed § 34.211(e) also reflects the

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[17] The Agencies conducted outreach in 2013 with State appraiser certifying and licensing agencies through the Association of Appraisal Regulatory Officials (AARO), *see* *http://www.aaro.net/*.

[18] *See, e.g.,* N.C. Gen. Stat. § 93E-2-2 (defining an appraiser panel as a network or panel of appraisers who are independent contractors to the AMC); Vernon's Tex. Code Ann. Occupations Code § 1104.003(b)(3) (same); Louisiana La. Rev. Stat. Ann § 37:3415.2(a) (same); *see also* Ohio (draft code) (same).

[19] *See, e.g.,* Cal. Bus. & Prof. Code § 11302 (defining AMC to include both independent contractors and employees); Ark. Code Ann. § 17-14-402(2) (same); Ky. Rev, Stat. § 324A.150(2)(same).

definition of appraisal management company in section 1121, which outlines typical tasks carried out by AMCs, such as contracting with State-licensed or State-certified appraisers. This definition of AMC and its description of appraisal management services *do not include* performing appraisals.

Although the Agencies believe that defining an "appraiser network or panel" as including independent contractors is consistent with the Dodd-Frank Act and the current business model of AMCs, the Agencies, in conjunction with the ASC, will monitor AMCs to assess whether they are hiring appraisers as part-time employees to avoid State registration requirements. Outreach with State officials did not indicate this is currently occurring or at significant risk of occurring.

Question 2. The Agencies request comment on the proposed definition of "appraiser network or panel" and on the alternative of defining this term to include employees as well as independent contractors. The Agencies also request comment on whether the term "independent contractor" should be defined, and if so why and how, including whether it should be defined based upon Federal law (*e.g.*, using the standards issued by the Internal Revenue Service[20] or standards adopted in other Federal regulations, such as those issued under the Secure and Fair Enforcement for Mortgage Licensing Act[21] (S.A.F.E. Act)),[22] or left to State law (so as to be consistent with existing AMC laws).

Appraisal firms. An appraisal firm is a firm that is engaged to perform appraisals.

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[20] *See, e.g.*, IRS Publication 1779, "Independent Contractor or Employee," available at http://www.irs.gov/pub/irs-pdf/p1779.pdf; IRS Publication 15-A, "Employer's Supplemental Tax Guide," at p. 7 *et seq.* (discussing factors for distinguishing employees from independent contractors), available at http://www.irs.gov/pub/irs-pdf/p15a.pdf.

[21] 12 CFR 1008.23 ("*Independent contractor* means an individual who performs his or her duties other than *at the direction of and subject to the supervision and instruction of* an individual …"). The term "independent contractor" is distinguished from "employee," which is defined as an individual (1) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and (2) whose compensation for Federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.).

[22] The S.A.F.E. Act was enacted as part of the Housing and Economic Recovery Act of 2008, Pub. L. 110–289, Division A, Title V, sections 1501–1517, 122 Stat. 2654, 2810–2824 (July 30, 2008), *codified at* 12 U.S.C. 5101–5116.

Section 1473 of the Dodd-Frank Act appears to distinguish AMCs that contract with others to perform appraisals from appraisal *firms* that are comprised of groups of appraisers that perform appraisals as part of a single firm or partnership. For the following reasons, the Agencies believe that appraisal firms should not be treated as AMCs under section 1473.

One basic reason to distinguish between AMCs and appraisal firms is that the business models of AMCs and appraisal firms are different. AMCs provide appraisal management services to third parties, including retaining appraisers to perform appraisals, but AMCs do not perform appraisals. This is a core characteristic of an AMC that distinguishes its model from appraisal firms, given that appraisal firms perform appraisals using one of the firm's employees or partners.[23]

The text of section 1473 also reflects these difference in the business models of AMCs and appraisal firms. Section 1473 describes the duties of AMCs as including "contracting with State-certified or State-licensed appraisers to perform appraisal assignments." While Congress could have explicitly included "performing appraisal assignments" in this list of business lines, it did not. Another basis for excluding appraisal firms from State AMC registration is that section 1124 uses the term "Appraisal Management Company," which, again, is understood generally to refer to an entity that provides appraisal management services by retaining appraisers as independent contractors and not by performing appraisals.

Given this statutory language, the proposal differentiates between entities that contract with appraisers to perform appraisals (such entities being AMCs), versus those whose employees directly perform appraisals (those entities being appraisal firms). For this reason, and for other

[23] *See, e.g.*, U.S. House of Reps., Comm. on Fin. Servs., *Report on H.R. 1728, Mortgage Reform and Anti-Predatory Lending Act*, No. 111–94, 75 (May 4, 2009) (noting that the AMC statutory provision would authorize the ASC to oversee companies that retain or contract with appraisers and manage the process of having an appraisal performed (appraisal management companies)).

reasons discussed above, the Agencies have proposed that business entities that perform appraisals should not be treated as AMCs for purposes of implementing the Dodd-Frank Act's State registration and supervision requirements, with the exception of a hybrid firm, as discussed below. Thus, the proposed regulation does not authorize participating States to require appraisal firms to register as AMCs or to require that appraisal firms be subject to supervision under the AMC registration and supervision programs implemented by the proposed regulation (again, however, with the exception of a hybrid firm).[24]

Hybrid firms or entities. The Agencies have considered the possibility that there are, or may be in the future, "hybrid" entities, meaning entities that both hire appraisers as employees to perform appraisals, and engage independent contractors to perform appraisals. In this situation, the entity could be considered both an AMC and an appraisal firm. In such a case, the entity should be treated as an AMC for purposes of State registration 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 numerical calculation for hybrid entities should only include appraisers engaged as independent contractors.

Question 3. The Agencies request 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.

Covered transaction. The proposed rule applies to AMCs that provide appraisal management services relating to a "covered transaction." Proposed § 34.211(h) defines a covered transaction as any consumer credit transaction secured by the consumer's principal

[24] The Agencies note that participating States would have authority, under their general power to regulate commerce within their borders, and not in implementation of this rule, to regulate appraisal firms.

dwelling. The proposed definition does not limit the definition of "covered transaction" to Federally related transactions (generally, credit transactions involving a Federally regulated depository institution, *see* 12 U.S.C. 3350(4)), even though Title XI of FIRREA and its implementing regulations have historically applied only to appraisals for Federally related transactions.

This interpretation is proposed to reflect the statutory text of section 1121(11), which defines the term "appraisal management company" in connection with "valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization." This interpretation is also consistent with the structure and text of other parts of section 1124, which distinguish between "appraisals" generally and appraisal services related specifically to Federally related transactions.[25] Furthermore, the text of section 1124(a)(4) indicates that one of the chief purposes of the minimum requirements for AMCs is to ensure compliance with the appraisal independence standards established under section 129E of TILA.[26] Those standards apply to AMCs whenever they engage in a consumer credit transaction secured by a principal dwelling, regardless of whether the transaction is a Federally related transaction.[27]

For these reasons, the proposed rule would establish minimum requirements in participating States for *all* entities that meet the definition of AMC, regardless of whether the AMC participates in Federally related transactions.

Federally regulated AMCs and Federally related transaction regulations. Under section 1124(c), an AMC that is a subsidiary owned and controlled by an insured depository institution or an insured credit union and that is regulated by a Federal financial institutions regulatory

[25] See 12 U.S.C. 3353(a)(3) and (4); contra 12 U.S.C. 3353(a)(2) and (f)(1).
[26] 12 U.S.C. 3353(a)(4).
[27] *See* 15 U.S.C. 1639e(a) (defining scope); 12 CFR 1026.42(b)(1)-(2) (implementing regulations defining scope).

agency[28] is not required to register with a State.[29] Proposed § 34.211(j) defines such an AMC as a "Federally regulated AMC," meaning an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and that is regulated by the OCC, Board, NCUA, or the FDIC.

A Federally regulated AMC must follow the minimum requirements that are applicable to State-registered AMCs and is subject to supervision for compliance with these standards by the appropriate Federal financial institutions regulatory agency. In addition, a Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State to the ASC for inclusion of the AMC on the AMC National Registry.

The NCUA, unlike the other banking agencies to this rulemaking, does not directly oversee or regulate any subsidiaries owned and controlled by credit unions, including AMC subsidiaries. Rather, the NCUA's regulations permit Federal credit unions to invest in or lend only to credit union service organizations (CUSOs) that conform to specific requirements outlined in part 712 of the NCUA's regulations.[30] As explained above, the Agencies are interpreting section 1124(c)[31] to apply only to AMC subsidiaries owned and controlled by an insured depository institution, or an insured credit union, *and* regulated by a Federal financial institutions regulatory agency. NCUA has not, historically, asserted that CUSOs or their employees are exempt from applicable State registration and licensing regimes, and this

[28] The term "Federal financial institutions regulatory agencies" means the Board, the FDIC, the OCC, the former OTS, and the NCUA. 12 U.S.C. 3350(6). Title III of the Dodd-Frank Act provides that the OCC is now the Federal financial institutions regulatory agency for Federal savings associations. Title III of the Dodd-Frank Act also provides that the FDIC is the Federal financial institutions regulatory agency for state savings associations. Finally, the Dodd-Frank Act provides that the Board is responsible for regulation of savings and loan holding companies.
[29] 12 U.S.C. 3353(c).
[30] 12 CFR Part 712.
[31] 12 U.S.C. 3353(c).

proposed rule would not alter that approach.[32] Nor does NCUA directly regulate or oversee CUSOs owned by State-chartered credit unions. Accordingly, under the proposal, AMC CUSOs, whether owned by a State or Federally chartered credit union, are not considered to be regulated by a Federal financial institutions regulatory agency at this time and would be required to be registered in accordance with applicable State requirements.

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.

Proposed § 34.211(k) defines "Federally related transaction regulations" to mean the regulations issued by the OCC, Board, FDIC, and NCUA pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341-3343. These interagency regulations established certain safety and soundness standards for appraisals conducted in connection with lending by institutions regulated by the OCC, Board, FDIC, or NCUA. The Agencies added this definition to implement the minimum standard in section 1124(a)(2) that requires an AMC to verify that only certified or licensed appraisers are used for Federally related transactions.

Secondary mortgage market participant. The term "secondary mortgage market participant" is used in the proposed regulation to implement the corresponding reference in the statute to "an underwriter of or other principal in the secondary mortgage markets." Proposed § 34.211(n) 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 includes individual investors in a mortgage-backed security only if they also serve in

[32] *See* 75 FR 44656, 44659 (July 28, 2010) (Applying similar reasoning to the licensing of mortgage loan originators who were employees of CUSOs under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008).

the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

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?

Minimum AMC Requirements and Implementation Issues

Method for assessing the number of appraisers on AMC panels. The proposed rule provides parameters for determining whether, within a given year, an AMC oversees an appraiser 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.[33] Under the proposed rule, an appraiser is deemed part of the AMC's appraiser panel as of the earliest date the AMC accepts the appraiser for consideration for future appraisal engagements, or contracts with the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal, including an affiliate of such a creditor or principal.

An appraiser who is considered to be part of the AMC's appraiser panel is deemed to remain on the panel until the date on which the AMC sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; receives written notice from the appraiser asking to be removed from the appraiser panel; or receives notice of the death or incapacity of the appraiser. If an appraiser is removed from an AMC's appraiser panel, but the AMC subsequently re-admits the appraiser or engages the appraiser at

[33] The Agencies recognize that States, in exercise of their general powers to license and regulate commerce within their borders and not in implementation of this rule, may choose to adopt registration provisions for AMCs that do not meet the size thresholds in the proposed rule.

any time during the twelve months after the appraiser's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption. The Agencies believe that these procedural provisions will provide clarity to States and prevent circumvention of the registration requirement.

Minimum requirements for State registration and supervision of AMCs. Under the proposed rule, participating States must have in place within the State appraiser certifying and licensing agency a licensing program that has authority to: (1) review and approve or deny an AMC's application for initial registration; (2) review and renew or refuse to renew 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 to the State; (4) verify that the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable; (5) conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders; (6) discipline, suspend, terminate, and refuse to renew 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 ASC.

These proposed authorities and mechanisms reflect the Agencies' interpretation of the provisions of section 1124(a), including the minimum requirement in section 1124(a)(1) that AMCs be "subject to supervision" by the State agency.[34] The Agencies interpret section 1124(a) as being consistent with the criteria outlined in sections 1103, 1109, and 1118(a) of FIRREA, as

[34] The Agencies believe that section 1124 allows the Agencies to establish more specific requirements for supervision and registration of AMCs that implement the general requirements enumerated in section 1124(a). In addition, by providing that the regulation shall "include" the requirements enumerated in section 1124, it is implied that the Agencies have the discretion to establish additional supervisory standards for State oversight of AMCs beyond the general requirements specifically enumerated in section 1124(a).

amended by the Dodd-Frank Act, which describe the elements of State regulation of AMCs that will be monitored by the ASC.[35] For example, the ASC will monitor whether States have supervision systems in place that would allow a State to process complaints against an AMC and conduct investigations in connection with those complaints. The ASC will also monitor whether a State takes appropriate enforcement actions against an AMC that is found to have violated applicable laws and regulations.

The Agencies believe that the proposed rule will provide notice to States of the enforcement and supervision obligations the States have under FIRREA and ensure that State appraiser certifying and licensing agencies have the required minimum structures for registration and supervision of AMCs

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

Minimum requirements for State-registered AMCs. Under section 1124, participating States are required to ensure that AMCs that provide appraisal management services for a creditor or "underwriter of or other principal in the secondary mortgage markets" related to a covered transaction follow certain minimum requirements. The proposed rule implements these requirements.

Under the proposed rule, an AMC must register with, and be subject to supervision by, a State appraiser certifying and licensing agency in each State in which the AMC operates. (Again, however, the requirement to register with a State does not apply to Federally regulated AMCs; the rules for these AMCs are discussed further below.) In addition, an AMC must verify

[35] *See* 12 U.S.C. 3332(a)(1)(B) (requiring the ASC to monitor requirements established by the States for supervision of AMCs); 12 U.S.C. 3338(a) (requiring each participating State to transmit reports to the ASC on supervisory activities involving AMCs and disciplinary actions taken); and 12 U.S.C. 3347(a) (requiring the ASC to monitor States to assess whether a State has an effective regulatory program).

that only State-certified or State-licensed appraisers are used when a creditor or secondary mortgage market participant engages in a transaction that requires the services of a State-certified or State-licensed appraiser under the Federally related transaction regulations. An AMC must also have processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who has the requisite education, expertise, and experience necessary to complete competently the assignment for the particular market and property type. This minimum requirement implements the requirement of section 1124(a)(3) and emphasizes a core principle of the Interagency Appraisal and Evaluation Guidelines and USPAP, which is that an appraiser must be not only be competent generally, but also have specific competency to perform a particular appraisal.[36]

The proposed rule also requires that an AMC establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with: (1) the AMC's obligations as a covered person with respect to mandatory reporting, conflicts of interest, and other acts or practices that would violate appraisal independence pursuant to section 129E(a) through (e) of TILA; and (2) the AMC's obligations as a creditor's agent with respect to appraiser compensation pursuant to section 129E(i) of TILA, 15 U.S.C. 1639e(i).[37] The proposed rule directly imposes these requirements on Federally regulated AMCs.

The purpose and scope section of the proposed rule notes that the AMC minimum standards do not affect the responsibility of banks, Federal savings associations, state savings associations, bank holding companies, and credit unions for compliance with applicable regulations and guidance concerning appraisals. Under the interagency appraisal standards, for

[36] Interagency Appraisal and Evaluation Guidelines, 75 FR 77450, 77458 (December 10, 2010).
[37] *See* 12 CFR 226.42 (Board); 12 CFR 1026.42 (Bureau).

example, if an appraisal is prepared by a fee appraiser (as opposed to in-house, by the institution), the appraiser must be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.[38] As such, as stated in the Interagency Appraisal and Evaluation Guidelines, an institution that engages a third party such as an AMC to act as its agent in administering any part of the institution's appraisal program remains responsible for compliance with applicable laws concerning appraisers and appraisals.[39]

In drafting these minimum requirements, and the definition of appraisal management services discussed previously, the Agencies considered whether to require AMCs to follow minimum standards when performing appraisal reviews. The Agencies note that section 1110 of FIRREA, as amended by section 1473 of the Dodd-Frank Act,[40] requires a separate rulemaking to require "appropriate" appraisal review for compliance with USPAP in connection with Federally related transactions. The Agencies believe that the section 1110 rulemaking provides the appropriate opportunity to address the requirement for appraisal reviews. For this reason, the Agencies are not proposing to issue appraisal review standards in this AMC rulemaking.

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

Minimum requirements for Federally regulated AMCs. As explained earlier in this preamble, section 1124 provides that AMCs that are owned and controlled subsidiaries of an insured depository institution or an insured credit union and regulated by a Federal financial

[38] 12 CFR 34.45 and 164.5 (OCC); 12 CFR 225.65 (Board); 12 CFR 323.5 (FDIC).
[39] *See* Interagency Appraisal and Evaluation Guidelines, 75 FR 77450, 77463 (December 10, 2010)(discussing third party arrangements).
[40] Section 1110(3), 12 U.S.C. 3339(3).

institutions regulatory agency, are not required to register with a State.[41] These Federally regulated AMCs are, however, subject to the same minimum requirements as AMCs that are not regulated by a Federal financial institutions agency.

The proposed rule implements these minimum requirements in § 34.214(a) using the same substantive standards that are proposed for AMCs that are not subject to regulation by a Federal financial institutions regulatory agency. Specifically, the proposed rule requires Federally regulated AMCs to have systems in place to ensure that only State-certified or State–licensed appraisers perform appraisals for Federally related transactions; that appraisers with the requisite education, expertise, and experience necessary for the assignment are used; that the appraisers comply with USPAP; and that the appraisal independence requirements of TILA section 129E are complied with.[42]

In addition, in order to establish a means for Federally regulated AMCs to be included in the ASC National Registry, the proposed rule would require Federally regulated AMCs to provide to each participating State in which it operates the information required by the ASC for administration of the AMC National Registry. First, the proposed rule would require Federally regulated AMCs to provide information related to the determination by the ASC of the AMC National Registry fee. This provision implements section 1124(e) of FIRREA.[43] Second, the proposed rule would require Federally regulated AMCs to provide to each participating State the information needed to determine whether the limitations on registration or inclusion in the AMC National Registry under § 34.215 apply. *See* proposed § 34.215 and accompanying section-by-section analysis, below. The proposed rule recognizes, however, the possibility that a State

[41] However, nothing in the proposed rule would prohibit a Federally regulated AMC from registering with a State if the State permitted it to do so.
[42] *See* proposed § 34.214(a) and 15 U.S.C. 1639e (implemented at 12 CFR 1026.42) (implementing section 129E of TILA).
[43] 12 U.S.C. 3353(e).

might not establish a system for collecting such information from Federally regulated AMCs. If the State does not have a system for accepting such information and reporting it to the ASC, the proposed rule would direct the Federally regulated AMC to the ASC for more information on alternative means for submitting the information outlined in § 34.214(b).

Registration limitations. Proposed § 34.215 would place certain limitations on whether an AMC (whether or not Federally regulated) can be registered in a State or included in the National Registry. Proposed § 34.215 is based on section 1124(d) of FIRREA,[44] which provides that an AMC shall not be registered by a State or included on the AMC National Registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Section 1124(d) provides further that each person who owns more than 10 percent of an AMC must be of good moral character, as determined by the State appraiser certifying and licensing agency, and must submit to a background investigation carried out by the State appraiser certifying and licensing agency.

To implement this provision, proposed § 34.215(a) would provide that an AMC may not be registered by a State or included on the AMC National Registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. As indicated above, the statute clearly states that the limitations regarding appraiser licensure and certification determine both whether an AMC may be "registered by a State" and whether an AMC may be "included on the national registry" of AMCs.[45]

[44] 12 U.S.C. 3353(d).
[45] 12 U.S.C. 3353(d).

Proposed § 34.215(b) provides that, for AMCs seeking to be registered in a State, each person who owns more than 10 percent of an AMC must be of good moral character, as determined by the State appraiser certifying and licensing agency, and must submit to a background investigation carried out by the State appraiser certifying and licensing agency. The statute is ambiguous regarding whether the limitation regarding the moral character of AMC owners applies to both registration with a State and inclusion on the AMC National Registry. Given that the title of the statutory section is "Registration Limitations," the Agencies have proposed that the limitation would apply only with respect to AMC registration with a State. Under the proposal, this limitation would apply to Federally regulated AMCs only if they seek to register voluntarily with a State.

Under the proposal, these threshold requirements concerning licensure would be ongoing obligations for State appraiser certifying and licensing agencies. As such, a State would be expected to review whether an AMC meets the proposed registration limitations, as described in the statute and in proposed § 34.215, at the time of registration of an AMC, and at the time of renewal of the AMC license each year, or more frequently as determined necessary by that State.

Submission of reports to the ASC. Under § 34.216 of the proposed rule, States that establish AMC registration programs must submit to the ASC the information regarding AMCs required by ASC regulations and guidance. The proposed rule implements the requirement in section 1124(e) for the Agencies to establish these reporting requirements.

Integration of FDIC and OTS Rules on Appraisals

As noted previously, pursuant to Title III of the Dodd-Frank Act, the FDIC is proposing to integrate its appraisal regulations for both nonmember banks and State savings associations. Specifically, the FDIC proposes to rescind 12 CFR Part 390, Subpart X (Part 390, Subpart X), of

the former OTS regulation 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 implementation of applicable provisions of Title III of the Dodd-Frank Act. Upon removal of Part 390, Subpart X, the appraisal regulations applicable for all insured depository institutions ("IDIs"), for which the FDIC has been designated the appropriate Federal banking agency (including State savings associations), will be found at 12 CFR Part 323, entitled "*Appraisals*."

Rescinding Part 390, Subpart X will serve to streamline the FDIC's rules and eliminate redundancy and unnecessary regulations. The FDIC does not, however, see any need to make conforming amendments to Part 323 of its Regulations to accomplish this goal. This is because Part 323 already applies to "regulated institutions," defined by section 323.1(b) as "institutions regulated by the FDIC." As noted previously, under Title III of the Dodd-Frank Act, the FDIC is now responsible for the regulation of State savings association. The FDIC is therefore of the opinion that Part 323 as currently drafted is sufficiently broad to include State savings associations without any further amendment. If the proposal is adopted in final form, all insured depository institutions regulated by the FDIC, including State savings associations, will be regulated in a uniform manner. The FDIC nonetheless solicits comment on these proposed changes.

III. Request for Comment on the Proposed Rule

The Agencies request comments on all aspects of this proposed rule, including specific requests for comment that appear throughout the Supplementary Information above. In addition, we ask for specific comment on the following questions:

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

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 implementation easier, while maintaining consistency with the statute?

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?

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?

IV Regulatory Analysis

Paperwork Reduction Act

Certain provisions of the proposed rule contain "information collection" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Under the PRA, the Agencies may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed rule are being submitted to OMB for review and approval by the FDIC, FHFA, and OCC under section 3506 of the PRA and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The collection of information requirements in the proposed rule are found in §§ 34.212-34.216. This information is required to implement section 1473 of the Dodd-Frank Act.

Title of Information Collection: Minimum Requirements for Appraisal Management Companies.

OMB Control Nos.: The Agencies will be seeking new control numbers for these collections.

Frequency of Response: Event generated.

Affected Public: States; businesses or other for-profit and not-for-profit organizations.

Abstract:

State Recordkeeping Requirements

States seeking to register AMCs must have an AMC certifying and licensing program. Section 34.213(a) requires participating States to establish and maintain within its appraiser certifying and licensing agency a licensing program with the legal authority and mechanisms to: (i) review and approve or deny an application for initial registration; (ii) periodically review and renew, or deny renewal of, an AMC's registration; (iii) examine an AMC's books and records and require the submission of reports, information, and documents; (iv) verify an AMC's certifications or licenses; (v) investigate and assess potential law, regulation, or order violations; (vi) discipline, suspend, terminate, or deny registration renewals of, AMCs that violate laws, regulations, or orders; and (vii) report violations of appraisal-related laws, regulations, or orders, and disciplinary and enforcement actions to the Appraisal Subcommittee.

Section 34.213(b) requires each participating State to impose requirements on AMCs not owned and controlled by an insured depository institution and regulated by a Federal financial institution regulatory agency to: (i) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which the AMC operates; (ii) use only State-certified or State-licensed appraisers for Federally regulated transactions in conformity with any Federally

regulated transaction regulations; (iii) 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; (iv) direct the appraiser to perform the assignment in accordance with USPAP; and (v) establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with section 129E(a)-(i) of the Truth in Lending Act.

State Reporting Burden

Section 34.216 requires that each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted under this Subpart and any additional information required by the Appraisal Subcommittee concerning AMCs**.**

AMC Reporting Requirements

Section 34.214(b) requires that a Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies, including: (i) policies regarding the determination of the AMC National Registry fee; and (ii) the information listed in § 34.215.

Section 34.215 provides that an AMC may not be registered by a State or included on the AMC National Registry if such company is owned, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Each person that owns more than 10 percent of an appraisal management company shall submit to a background investigation carried out by the State appraiser certifying and licensing agency. While section 34.215 does not authorize States to conduct background

investigations of Federally regulated AMCs, it would allow a State to do so if the Federally regulated AMC chooses to register voluntarily with the State.

AMC Recordkeeping Requirements

Section 34.212(b) provides that an appraiser in an AMC's network or panel is deemed to remain on the network or panel until: (i) the AMC sends a written notice to the appraiser removing the appraiser with an explanation; or (ii) receives a written notice from the appraiser asking to be removed or a notice of the death or incapacity of the appraiser. The AMC would retain these notices in its files.

Burden Estimates:

Total Number of Respondents: 500 AMCs, 50 States.

Bureau: The Bureau is not seeking OMB approval for the information collection requirements already accounted for by the other agencies' information collection requests submitted to OMB in association with this rule.

FDIC Burden Total: 1,545 hours.

FHFA Burden Total: 617 hours.

OCC Burden Total: 1,545 hours.

Board Burden Total: 1,545 hours.

Total Burden: 5,252 hours.

The Agencies have a continuing interest in the public opinion of our collections of information. Comments regarding the questions set forth below may be sent to the OMB desk officer for the Agencies by mail to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the internet to

oira_submission@omb.eop.gov, with copies to the Agencies at the addresses listed in the ADDRESSES section of this SUPPLEMENTARY INFORMATION.

a. Whether the information collection is necessary for the proper performance of the Agencies' functions, and how the instructions can be clarified so that information gathered has more practical utility;

b. The accuracy of the Agencies' estimates of the burdens of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

The OCC currently supervises 1,745 banks (1,139 commercial banks, 66 trust companies,

492 federal savings associations, and 48 branches or agencies of foreign banks). Approximately 1,195 of OCC-supervised banks are small entities based on the Small Business Administration's (SBA's) definition of small entities for RFA purposes. The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense.

As discussed in the **SUPPLEMENTARY INFORMATION** above, section 1473 of the Dodd-Frank Act requires the Agencies to jointly prescribe regulations to implement the minimum requirements for State registration and supervision of AMCs. The proposal meets this obligation by requiring States that elect to register and supervise AMCs to impose certain requirements on AMCs. The proposal also requires participating States to have certain basic supervisory authorities, such as the ability to investigate complaints against AMCs, and take disciplinary action with respect to AMCs that violate applicable laws.

The OCC believes the proposed rule will not have a significant economic impact on a substantial number of small entities for several reasons. First, the proposed rule imposes requirements primarily on States, not on national banks or Federal savings associations. Second, to the extent that the proposal imposes burden on national banks or Federal savings associations that own and control an AMC, there are only two such AMCs, and these are owned by large national banks. For these reasons, the OCC estimates that the average cost per small bank or Federal savings association will be zero. Therefore, the OCC certifies that the supplemental final rule will not have a significant economic impact on a substantial number of small entities.

Board: The RFA requires an agency to provide and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, if the agency certifies that the rule will

not have a significant economic impact on a substantial number of small entities (defined in regulations of the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million or $35.5 million or less in annual revenues for the majority of nonbank entities that are likely to be subject to the proposed regulations) and publishes its certification and a short explanatory statement in the Federal Register together with the rule.[46] Based on its analysis, and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities.

The proposed AMC rule applies to States that establish licensing and certifying authorities to regulate AMCs. In the Board's regulatory flexibility analysis for this rule, the Board determined that approximately 32 entities subject to Board regulation and supervision would be subject to the requirements of the rule. Data currently available to the Board are not sufficient to estimate how many of the approximately 32 entities subject to Board regulation and supervision would be classified as "small entities." In addition, the number of these 32 entities that will be subject to State regulation and supervision is currently unknown since one or more of the entities may have a network or panel of contract appraisers that is too small to satisfy a threshold requirement of the proposed AMC rule and therefore may be exempt from registration.

The proposed AMC rule does not impose directly any significant new recordkeeping, reporting, or compliance requirements on small entities. The proposed AMC rule requires those States electing to establish licensing and certifying authorities for AMCs to impose certain requirements on AMCs registered in the State. Generally, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when the agency's rule directly regulates the small entities. The impact of the proposed rule on small entities is indirect.

[46] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/sites/default/files/files/size_table_07222013.pdf.

In addition, while certain minimum requirements are imposed on participating States by the language of section 1473 of the Dodd-Frank Act, each State may establish additional requirements in addition to those required by section 1473. Furthermore, an entity with a network or panel of appraisers that does not meet the numerical test specified in section 1473 may voluntarily register with a participating state and the ASC, thus incurring some nominal expenses in establishing and maintaining the required registration information and meeting the minimum operational requirements. Because of these uncertainties, calculation of the impact of the Proposed rule on an affected institution or entity is uncertain, although the number of Board-supervised institutions or entities subject to the rule is expected to be less than 32.

Based on its analysis, and for the reasons stated above, the Board believes that the proposed rule, if adopted in final form, will not have a significant economic impact on a substantial number of small entities. The Board is publishing an initial regulatory flexibility analysis and, if necessary, will conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

The Board requests public comment on all aspects of this analysis.

***FDIC*:** The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[47] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million) and publishes its certification and a short, explanatory statement in the Federal Register together with the rule. As of September 30, 2013,

[47] See 5 U.S.C. 601 et seq.

there were approximately 3,632 small FDIC-supervised institutions, which include 3,324 State nonmember banks and 308 State-chartered savings institutions.

The FDIC analyzed the organizational structure information in the Board of Governors of the Federal Reserve System's National Information Center database. This analysis found that few FDIC-supervised institutions owned or controlled an entity that provides the types of appraisal management services specified in Section 1473. Of these institutions, none oversees a network or panel of appraisers that meets the numerical test requirement specified in Section 1473 for an entity to be an AMC. Therefore, the proposed rule would not have any impact on any FDIC-supervised institutions. If any FDIC-supervised institution that owns or controls an entity with a network or panel of appraisers that does not meet the numerical test specified in Section 1473 *voluntarily* decides to register that entity with the States, then the institution may incur some nominal expenses in establishing and maintaining a process for providing the required registration information and meeting the minimum operational requirements.

It is the opinion of the FDIC that the proposed rule will not have a significant economic impact on a substantial number of small entities that it regulates in light of the fact that no FDIC-supervised institutions own or control an entity with a network or panel of appraisers that meets the numerical test requirement specified in Section 1473 for an entity to be an AMC. Accordingly, the FDIC certifies that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. Thus, an initial regulatory flexibility analysis is not required.

The FDIC seeks comment on whether the proposed rule, if adopted in final form, would impose undue burdens, or have unintended consequences for, small FDIC-supervised institutions and whether there are ways such potential burdens or consequences could be minimized in a

manner consistent with section 1473(f) of the Dodd-Frank Act.

Bureau: The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[48] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[49]

An IRFA is not required for this proposed rule because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Bureau notes that the proposed rule would not impose requirements on AMCs, but instead seeks to encourage States to adopt minimum requirements in their regulation of AMCs. Nonetheless, to inform the rulemaking and to inform the public, the Bureau has exercised its discretion to analyze economic impacts that may be imposed by States on AMCs if the proposed rule were adopted.[50] For this purpose, the Bureau assumed States that have not yet passed an AMC licensing and registration law (14 States, as of July 2013; this number is expected to decrease by the time the Agencies adopt a final rule) would all elect to pass such a law and establish an AMC licensing and supervision program that satisfies the standards of the proposed

[48] For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).
[49] 5 U.S.C. 609.
[50] The Bureau does not assume costs associated with the proposed rule's requirements to ensure compliance with USPAP and other regulations because AMCs would be subject to these standards even without their being referenced in the proposed rule.

rule. This assumption is taken to establish an outer bound. Because the proposed rule does not require States to adopt the minimum requirements in the proposed rule, however, it is possible that not all 14 States would do so.[51]

State registration fees would constitute the primary economic impact of the proposed rule. In estimating the impact of the proposed rule in the 14 States that have not yet passed an AMC licensing and registration law as of July 2013, the Bureau notes that State fees vary widely. Such State registration and renewal fees are not necessarily for the sole purpose of recovering costs of administering the minimum requirements under the proposed rule. States can impose charges for a variety of reasons, including to raise revenue (independent of the cost of the registration regime) or to fund the administration of a regime that exceeds the minimum requirements under the proposed rule. The Bureau believes that the fee charged by Vermont – $125 for registration and $250 for annual renewal – would be sufficient to comply with the proposed rule.[52] The Bureau therefore considered this fee in estimating the economic impact of the proposed rule in the 14 States that do not yet have AMC registration requirements. As discussed below, however, the Bureau also considered more conservative estimates of the impact of the proposed rule using significantly higher fee amounts.

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[51] A state could accept the consequences on AMCs' business in the state from not implementing the proposed rule. FIRREA section 1124(f) provides that three years after the proposed rule takes effect, AMCs cannot provide services related to Federally related transactions in a state that has not implemented the proposed rule. However, the Bureau understands that only a minority of mortgage transactions are "Federally related transactions" within the meaning of FIRREA. *See, e.g.,* 12 CFR 225.62(f) (transaction must "[r]equire the services of an appraiser" to be federally related). *But see id.* at 225.63(a)(1),(9),(10) (exemptions from FIRREA appraisal requirements for transactions of $250,000 or less, transactions insured by or sold to a U.S. government agency, and transactions that conform to GSE appraisal standards). However, the Bureau believes all states will choose to participate.

[52] As of the Bureau's 2013 review of State laws, the application fee in Vermont was $125. *See* http://vtprofessionals.org/opr1/real_estate_appraisers/AMC/AMC_Application.pdf The application fee in Vermont is $125. The annual renewal fee is $250. *See* http://vtprofessionals.org/opr1/real_estate_appraisers/AMC/Appraisal%20Management%20Company%20Renewal%202013.pdf.http://vtprofessionals.org/opr1/real_estate_appraisers/AMC/Appraisal%20Management%20Company%20Renewal%202013.pdf. In addition, while some States may elect to impose additional requirements relating to examination and inspection of their AMCs, the Bureau does not believe that the minimum requirements that states must provide would lead to significant costs for AMCs.

With respect to the Federal registration fee, the Bureau notes that the proposed rule neither requires collection of registration fees by the Appraisal Subcommittee (ASC) nor authorizes the collection of such fees. The Dodd-Frank Act grants that authority exclusively to the ASC.[53] Therefore, the Bureau does not consider any fees imposed on AMCs by the ASC (whether directly or through the States for forwarding to the ASC) as an impact of the proposed rule.

An additional requirement in the proposed rule is that the State AMC licensing programs have authority and mechanisms to examine books and records of the AMCs, to otherwise obtain information from the AMCs, and to discipline AMCs. The Bureau believes that existing State registration fees generally already account for the cost to the States of having such authority and mechanisms, and that the requirement in the proposed rule therefore would not lead to higher registration fees in any significant amount.[54] Accordingly, in the 14 States that would adopt new registration and renewal systems, the Bureau believes the registration fee currently charged in Vermont would cover the State's cost associated with implementing this requirement.

The Bureau notes that the proposed rule is not prescriptive as to how or when the States must exercise the authority or mechanisms. Exercise of such authority and mechanisms is determined by the discretion of the States, subject to monitoring by the ASC for effectiveness in the judgment or discretion of the ASC. Accordingly, to the extent that State exercise of such authority and mechanisms leads to burden on small entities, such burden would be attributable to such State implementation and/or ASC oversight expectations rather than to the proposed rule itself. Therefore, State statutes that implement this requirement relating to establishing

[53] *See* 12 U.S.C. 3338.
[54] *See, e.g.*, Vermont Statutes Title 26 § 3324 (requiring AMCs to "retain all records related to an appraisal, review, or consulting assignment for no less than five years … [and w]ith reasonable notice, a licensee or registrant shall produce any records governed by this section for inspection and copying by the board or its authorized agent.").

examination authority and mechanisms are not expected to cause fee increases or new burden above the $125 overall baseline assumed for purposes of this analysis.[55]

Similarly, the Bureau believes that other minimum requirements for AMCs under the proposed rule (verifying the use of licensed or certified status of appraisers, requiring that appraisers comply with USPAP, complying with any contractual review provisions, and establishing and complying with processes to ensure appraisers are qualified and independent and that the AMC acts in compliance with applicable appraisal independence regulations), as well as the standard for removing appraisers from the appraiser panel, would not result in new burden on AMCs because these standards merely reinforce existing compliance requirements as well as industry practice.[56] The Bureau further notes that States have discretion to interpret the requirements to establish processes and controls to ensure compliance, subject to monitoring by the ASC for effectiveness in the judgment or discretion of the ASC. Accordingly, to the extent that State interpretations of such requirements leads to burden on small entities, such burden would be attributable to such State implementation and/or ASC oversight expectations rather than to the proposed rule itself.

Just as these conduct standards would not impose a significant burden on AMCs required to register at the State level, the Bureau does not believe they would impose significant burdens on Federally regulated AMCs either. *See* Interagency Appraisal and Evaluation Guidelines, 75

[55] In addition, the Bureau does not believe that in States that add this requirement there will be any significant new burden on the AMCs. The Bureau believes that the AMCs already keep their books and records in order as a standard course of business practice, and thus the occasional State examiner visits should not impose any significant burden. In addition, the proposed rule requires only that the State have the authority and mechanism to request records and information. The proposed rule does not require that the State exercise this authority and any burdensome exercise of this authority would therefore not be caused by the proposed rule. Finally, to the extent State supervision programs do increase burden, the Bureau believes this burden would be within the sensitivity tolerances described in the footnote at the end of this section.

[56] These requirements also would not result in new burden on Federally regulated AMCs, for the same reason. Federally regulated AMCs do not have to comply with state registration and renewal requirements, which can entail fees. Conservatively, however, the Bureau applied the State fee burden to all of the small AMCs in its calculation method described herein. As a result, the estimated burden of State fees associated with the proposed rule may be overestimated.

FR 77450 (Dec. 10, 2010) (Interagency Guidelines). The Interagency Guidelines, part VI, already require Federal financial institutions to select appraisers who are certified or licensed, qualified, in compliance with USPAP, and independent. 75 FR at 77458. AMCs that are affiliated with Federal financial institutions frequently perform appraisals for their affiliates. Therefore, it can be assumed that in delegating these functions to AMCs, these Federal financial institutions also delegate these requirements from part VI of the Interagency Guidelines to these AMCs.

To estimate the impact of the proposed rule on small AMCs, the Bureau conducted a survey. The Bureau called nine AMCs, picked randomly from a list of approximately 500 AMCs provided by industry trade associations. The AMCs were asked for certain basic data including the number of States in which they operate, their revenue (including the revenue from any non-appraisal business), and the number of appraisals that they performed in 2012.[57] The Bureau estimated the revenue to be the number of appraisals performed in 2012 multiplied by $350 – the average appraisal cost assumed in the Agencies' analysis under section 1022 of the Dodd-Frank Act in the 2013 Interagency Appraisals Rule. This revenue estimate is likely to be underestimated, given that several AMCs out of nine reported additional revenue that was not due to the residential appraisal business. Out of the nine AMCs, seven had revenues of less than $7,000,000 in 2012, and thus would be within the scope of the RFA analysis based upon Small Business Administration guidelines.[58] The Bureau computed the cost of registration and renewal fees in States that do not already have them, allocated these costs to individual AMCs based

[57] One of the AMCs did not report its revenue.
[58] NAICS code 531320 – Offices of Real Estate Appraisers – includes "appraisal services," which we believe would include services provided by AMCs in the processing and review of appraisals. An alternative classification would be NAICS code 561110 – Office Administrative Services. In any event, this code also has an SBA threshold of $7,000,000.

upon the number of States in which the AMC operated,[59] and computed the ratio of these allocated costs to the AMCs' revenues.

The Bureau acknowledges that requiring AMCs to send letters to the appraisers that the AMC decides to remove from its panel might add burden in States that do not already have registration requirements (which typically include notice provisions). The Bureau does not possess any evidence on the number of appraisers to whom an AMC would have to send these letters. According to the Bureau of Labor and Statistics' October 2013 preliminary numbers (available at http://www.bls.gov/news.release/jolts.t11.htm), 1.9 percent of the labor force in the real estate and rental and leasing industry was either laid off or discharged in the most recent month. Thus, the Bureau estimates that an AMC will dismiss approximately a quarter of appraisers from its panel in any given year. The Bureau assumes that each AMC will have several standardized letters explaining the reason for dismissal: for example, changing economic conditions or the appraiser's violation of USPAP or work performance issues. Each AMC might incur a minimal one-time cost to draft these letters, with some industry associations potentially providing templates. After this minimal one-time cost is incurred, the ongoing cost would include a minimal adjustment of the letter based on the appraiser's particular circumstances and the actual printing and mailing cost. These letters also could be sent in batches, periodically, such as on an annual basis. Thus, for the purposes of this analysis, the Bureau implicitly accounts for these costs in the sensitivity analyses below (which use a State fee to $5,250 and include a $300 administrative expense). The Bureau requests comments on availability of data on these costs.

The Bureau then fit the received ratios using three different distributions: normal,

[59] The Bureau assumed that an AMC that operated in x states needs to register in additional (14/50)*x states. This assumption results in a (14/50)*x*$250 state registration and renewal fee burden on an AMC operating in x states.

generalized extreme value, and logistic. The three different distributions were used because no *a priori* assumptions regarding how these ratios are distributed can be made. The three distributions mentioned above are commonly used by empirical researchers to fit observed values. Considering the costs imposed by the States as a result of the proposed rule, the Bureau believes that less than 1 percent of the small entities would experience a cost of over 1 percent of their revenue, using either the normal, or the logistic, or the generalized extreme value distributions.[60] The Bureau also notes that because the sample did not include any AMCs that were either too small (for example, less than 15 appraisers in one State) or that were subsidiaries of Federally regulated financial institutions, these estimates are likely overstated.

The Bureau seeks comment on the data used in its analysis as well as the methodology for estimating burden described in this analysis, including data from States that have existing registration and renewal regimes on whether the proposed minimum requirements would lead them to change their laws and impose any new fees (which this analysis assumes would not occur). In addition, as noted in the section-by-section analysis above, the Agencies are seeking comment on the proposed approach of not imposing minimum requirements for appraisal reviews or defining appraisal review and verification activities. The Bureau seeks data on the types of review and verification services provided by AMCs, and in particular, AMCs that meet the definition of small entities, as well as the frequency with which each type of practice is

[60] The Bureau notes that the percentage of small institutions for which the estimated burden of the proposed rule would amount to over 3 percent of the revenue would remain under 1 percent even if the Bureau had used the following alternative assumptions: (1) $5,250 as the assumed burden of the proposed rule for states that adopt new registration regimes – the highest among the existing State registration fees as of the Bureau's 2013 review of state laws (in Minnesota), and assumed this same amount as the annual renewal fee (even though the Minnesota renewal fee at the time of the review was only $2,650); and (2) an additional annual labor cost of $300 for any possible associated burden of (a) filling out registration and renewal forms in those states (assuming an AMC operates in approximately 20 States on average, such that 6.26 of those States adopt new AMC licensing programs) and any additional burden related to notices from small AMCs removing appraisers from their panels in those states. The percentages of institutions for which this cost would amount to over 1 percent of the revenue changed, respectively, to 18 percent, 13 percent, and 9 percent of the small institutions affected, according to the normal, generalized extreme value, and logistic distributions.

performed. Further, the Bureau seeks data on the potential impact of any minimum review requirements or review and verification definitions – such as requirements or definitions that would be set at a level above administrative checks for grammatical errors or other technical or computerized quality checks that are not performed by licensed appraisers.

Certification

Accordingly, the Bureau Director, by signing below, certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

FHFA: The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to analyze a proposed regulation's impact on small entities if the final rule is expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The proposed rule implements Section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act and establishes minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on AMCs doing business in the State. FHFA has considered the impact of this regulation and determined that it is not likely to have a significant economic impact on a substantial number of small entities because States and FHFA's regulated entities—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks—are not small entities for purposes of the Regulatory Flexibility Act. See 5 U.S.C. 601(6).

NCUA: The Regulatory Flexibility Act (RFA)[61] requires NCUA to provide an initial regulatory flexibility analysis with a proposed rule to certify that the rule will not have a significant economic impact on a substantial number of small entities and publish its certification and a short explanatory statement in the Federal Register also with the proposed rule.[62] As explained above, the requirements of this proposed rule would only apply directly to AMC

[61] 5 U.S.C. 601 *et seq*.
[62] 78 FR 4032 (Jan. 18, 2013).

subsidiaries owned and controlled by an insured depository institution, or an insured credit union, *and* regulated by a Federal financial institutions regulatory agency. NCUA, unlike the other banking agencies to this rulemaking, does not directly oversee or regulate any subsidiaries owned and controlled by credit unions, including AMC subsidiaries. Rather, NCUA's regulations permit Federal credit unions to invest in or lend only to credit union service organizations (CUSOs) that conform to specific requirements outlined in part 712 of the NCUA's regulations. Because NCUA does not directly regulate or oversee CUSOs owned by State or federally chartered credit unions, NCUA is not proposing regulatory text or proposing any requirements through this rulemaking that would directly affect small entities. Accordingly, the NCUA Board certifies the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 Determination

OCC: Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). For the following reasons, the OCC finds that the proposal does not trigger the $100 million UMRA threshold. First, the mandates in the proposed rule apply only to those States that choose to establish an AMC registration system. Second, the costs specifically related to requirements set forth in law are excluded from this UMRA analysis.

Given that the proposed rule reflects requirements that arise from section 1473, the UMRA cost estimate for the proposal, if implemented, is zero. For this reason, and for the other reasons cited above, the OCC has determined that this proposed rule will not result in

expenditures by State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, this proposal is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in Lending.

12 CFR Part 208

General membership and Branching Requirements, Investments and Loans, Bank Securities and Securities Related Activities, Prompt Corrective Action, Real Estate Lending and Appraisal Standards, Financial Subsidiaries of State Member Banks.

12 CFR Part 225

Appraisal Standards, Bank Holding Companies, Financial Holding Companies, Non-banking Activities and Acquisitions, Change in Bank Control.

12 CFR *Part* 323

Banks, banking, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 1222

Appraisals, Government sponsored enterprises, Mortgages.

Department of the Treasury

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend 12 CFR part 34 as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 25b, 29, 93a, 371, 1463, 1465, 1701j-3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, and 5412(b)(2)(B) and 15 U.S.C. 1639h.

2. Subpart H to part 34 is added to read as follows:

Subpart H--Appraisal Management Company Minimum Requirements

Sec.

34.210 Authority, purpose, and scope.

34.211 Definitions.

34.212 Appraiser panel.

34.213 Appraisal management company registration.

34.214 Requirements for Federally regulated appraisal management companies.

34.215 Registration limitations.

34.216 Information to be presented to the Appraisal Subcommittee by participating States.

§ 34.210 Authority, purpose, and scope.

(a) Authority. This subpart is issued by the Office of the Comptroller of the Currency under 12 U.S.C. 93a and Title XI of the Financial Institutions Reform, Recovery, and

Enforcement Act (FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111-203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 et. seq.

(b) Purpose. The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) Scope. This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) Rule of construction. Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines[63] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings associations, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 34.211 Definitions.

For purposes of this subpart:

(a) Affiliate has the meaning provided in 12 U.S.C. 1841.

(b) AMC National Registry means the registry of State-registered appraisal management companies (AMCs) and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) Appraisal management company (AMC) means a person that:

[63] 75 FR 77450 (December 10, 2010).

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given year, oversees an appraiser 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, as described in § 34.212 of this subpart;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) Appraisal management services means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) Appraiser panel means a network or panel of licensed or certified appraisers who are independent contractors to the AMC.

(f) Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) Consumer credit has the meaning provided in 12 CFR 1026.2(a)(12).

(h) Covered transaction means any consumer credit transaction secured by the consumer's principal dwelling.

(i) Creditor has the meaning provided in 12 CFR 1026.2(a)(17).

(j) Federally regulated AMC means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, or the Federal Deposit Insurance Corporation.

(k) Federally related transaction regulations means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341-3343.

(l) Person has the meaning in 12 CFR 1026.2(a)(22).

(m) Principal dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property, that is also a consumer's primary residence. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. A vacation or other second home is not a principal dwelling. A consumer can have only one principal dwelling at a time. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling.

(n) Secondary mortgage market participant means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) States mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) Uniform Standards of Professional Appraisal Practice (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 34.212 Appraiser panel.

For purposes of determining whether, within a given year, an AMC oversees an appraiser 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 under § 34.211(c)(1)(iii) of this subpart–

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Affirms eligibility or acceptance of the appraiser for the AMC's consideration for future appraisal assignments; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel,

with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently re-admits or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The annual period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 34.213 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 34.215 and 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 the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable;

(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.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution or by an insured credit union and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Use 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 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.

§ 34.214 Requirements for Federally regulated appraisal management companies.

(a) Requirements in providing services. To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in sections 34.213(b)(2) through (b)(5) of this subpart.

(b) Reporting information for the AMC National Registry. A Federally regulated AMC must:

(1) Report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies regarding:

(i) The determination of the AMC National Registry fee, including but not necessarily limited to a statement that the AMC is a Federally regulated AMC; and

(ii) The collection of information related to the limitations set forth in § 34.215, as applicable.

(2) Contact the Appraisal Subcommittee for alternative arrangements to submit the information described in paragraph (b)(1) of this section if a State in which a Federally regulated AMC operates has not established a process for accepting the information from Federally regulated AMCs.

§ 34.215 Registration limitations.

(a) Appraiser certification or licensing of owners. An AMC shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.

(b) Good moral character of owners. An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(i) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(ii) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 34.216 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

Board of Governors of the Federal Reserve System

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR parts 208 and 225, as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

3. The authority citation for Part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, 3353, and 3905-3909; 15

U.S.C. 78b, 78l(b), 78l(i), 780-4(c)(5), 78q, 78q-1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104b, 4106, and 4128.

Subpart E – Real Estate Lending, Appraisal Standards, and Minimum Requirements for Appraisal Management Companies.

4. Section 208.50 is revised to read as follows:

§208.50 Authority, purpose, and scope.

(a) *Authority*. Subpart E of Regulation H (12 CFR 208, subpart E) is issued by the Board of Governors of the Federal Reserve System under section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, (12 U.S.C 1828(o)), Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act, (12 U.S.C 3331-3351), and section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (12 U.S.C. 3353).

(b) *Purpose and scope*. This subpart E prescribes standards for real estate lending to be used by member banks in adopting internal real estate lending policies. The standards applicable to appraisals rendered in connection with federally related transactions entered into by member banks and the minimum requirements for Appraisal Management Companies are set forth in 12 CFR 225, subpart G (Regulation Y).

PART 225 – BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

5. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1844(b), 3106 and 3108, 1817(j)(13), 1818(b), 1831i, 1972, 3310, 3331-3351 and 3353 and the International Lending Supervision Act of 1983 (Pub. L. 98-181,

title IX). The BHC Act is codified at 12 U.S.C. 1841, *et seq*.

6. Section 225.1(b)(7) is revised to read as follows:

§ 225.1 Authority, purpose, and scope.

* * * * *

(b) * * *

(7) Subpart G prescribes minimum standards that apply to the performance of real estate appraisals, identifies transactions that require state certified appraisers, and establishes minimum standards to be applied by participating States in the registration and supervision of appraisal management companies.

* * * * *

Subpart G—Appraisal Standards for Federally Related Transactions and Minimum Requirements for Appraisal Management Companies.

7. Section 225.61 is revised to read as follows:

§ 225.61 Authority, purpose, and scope.

(a) *Authority*. This subpart is issued by the Board of Governors of the Federal Reserve System /(the Board) under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)(Pub. L. No. 101-73, 103 Stat. 183 (1989)), 12 U.S.C. 3310, 3331-3351, section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 3353, and section 5(b) of the Bank Holding Company Act, 12 U.S.C. 1844(b).

(b) *Purpose and scope*. (1) The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

Title XI provides protection for federal financial and public policy interests in real estate related

transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This subpart implements the requirements of title XI as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act and applies to all federally related transactions entered into by the Board or by institutions regulated by the Board and applies to States and to appraisal management companies (AMCs) performing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(2) This subpart:

(i) Identifies which real estate related financial transactions require the services of an appraiser.

(ii) Prescribes which categories of federally related transactions shall be appraised by a State certified appraiser and which by a State licensed appraiser;

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with federal related transactions under the jurisdiction of the Board;

(iv) Prescribes minimum requirements to be applied by participating States in the registration and supervision of appraisal management companies (AMCs); and

(v) Prescribes minimum requirements to be applied by participating States to report certain information concerning appraisal management companies registered with the States to a national registry of appraisal management companies.

(c) Rule of construction. Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this

subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines[64] or other relevant agency guidance that cautions banks and bank holding companies, that each organization is accountable for overseeing the activities of third party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the creditor.

8. Sections 225.68.1 through 225.68.6 are added to read as follows:

§ 225.68.1 Definitions.

For purposes of this subpart:

(a) Affiliate has the meaning provided in 12 U.S.C. 1841.

(b) AMC National Registry means the registry of State-registered appraisal management companies (AMCs) and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) Appraisal management company (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given year, oversees an appraiser 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, as described in § 225.68.3 of this subpart;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) Appraisal management services means one or more of the following:

[64] 75 FR 77450 (December 10, 2010).

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) Appraiser panel means a network or panel of licensed or certified appraisers who are independent contractors to the AMC.

(f) Consumer credit has the meaning provided in 12 CFR 1026.2(a)(12).

(g) Covered transaction means any consumer credit transaction secured by the consumer's principal dwelling.

(h) Creditor has the meaning provided in 12 CFR 1026.2(a)(17).

(i) Federally regulated AMC means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(j) Federally related transaction regulations means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the

Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341-3343.

(k) Person has the meaning in 12 CFR 1026.2(a)(22).

(l) Principal dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property, that is also a consumer's primary residence. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. A vacation or other second home is not a principal dwelling. A consumer can have only one principal dwelling at a time. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling.

(m) Secondary mortgage market participant means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(n) States mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(o) Uniform Standards of Professional Appraisal Practice (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 225.68.2 Appraiser panel.

For purposes of determining whether, within a given year, an AMC oversees an appraiser 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 under § 225.68.1(c)(1)(iii)

of this subpart–

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Affirms eligibility or acceptance of the appraiser for the AMC's consideration for future appraisal assignments; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently re-admits or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The annual period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 225.68.3 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 225.68.5 and 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 the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable;

(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.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution, an insured credit union, and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Use 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 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.

§ 225.68.4 Requirements for Federally regulated appraisal management companies.

(a) Requirements in providing services. To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in sections 225.68.4(b)(2) through (b)(5) of this subpart.

(b) Reporting information for the AMC National Registry. A Federally regulated AMC must:

(1) Report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies regarding:

(i) The determination of the AMC National Registry fee, including but not necessarily limited to a statement that the AMC is a Federally regulated AMC; and

(ii) The collection of information related to the limitations set forth in § 225.68.5.

(2) Contact the Appraisal Subcommittee for alternative arrangements to submit the information described in paragraph (b)(1) of this section if a State in which a Federally regulated

AMC operates has not established a process for accepting the information from Federally regulated AMCs.

§ 225.68.5 Registration limitations.

(a) Appraiser certification or licensing of owners. An AMC shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.

(b) Good moral character of owners. An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(i) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(ii) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 225.68.6 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

Federal Deposit Insurance Corporation

Authority and Issuance

For the reasons set forth in the preamble, the FDIC proposes to amend 12 CFR Parts 323 and 390 as follows:

PART 323—APPRAISALS

9. Revise the authority citation for part 323 to read as follows:

Authority. 12 U.S.C. 1818, 1819 [“Seventh” and “Tenth”] and 3331 *et seq*.

10. Place Sections 323.1 through 323.7 under a new subpart A, and the heading for which is added to read as follows:

Subpart A—Appraisals Generally

11. Amend Sections 323.1, 323.3, 323.4 and 323.5 by removing “part” and adding “subpart” in its place in each instance in which it appears.

12. Add Subpart B to Part 323 to read as follows:

Subpart B—Appraisal Management Company Minimum Requirements

Sec.

323.210 Authority, purpose, and scope.

323.211 Definitions.

323.212 Appraiser panel.

323.213 Appraisal management company registration.

323.214 Requirements for Federally regulated appraisal management companies.

323.215 Registration limitations.

323.216 Information to be presented to the Appraisal Subcommittee by participating States.

§ 323.210 Authority, purpose, and scope.

(a) Authority. This subpart is issued under 12 U.S.C. 1818, 1819 [“Seventh” and “Tenth”] and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act

(FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111-203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 *et. seq.*

(b) Purpose. The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) Scope. This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) Rule of construction. Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines[65] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings association, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 323.211 Definitions.

For purposes of this subpart:

(a) Affiliate has the meaning provided in 12 U.S.C. 1841.

(b) AMC National Registry means the registry of State-registered appraisal management companies (AMCs) and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) Appraisal management company (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

[65] 75 FR 77450 (December 10, 2010).

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given year, oversees an appraiser 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, as described in § 323.212 of this subpart;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) Appraisal management services means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) Appraiser panel means a network or panel of licensed or certified appraisers who are independent contractors to the AMC.

(f) Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) Consumer credit has the meaning provided in 12 CFR 1026.2(a)(12).

(h) Covered transaction means any consumer credit transaction secured by the consumer's principal dwelling.

(i) Creditor has the meaning provided in 12 CFR 1026.2(a)(17).

(j) Federally regulated AMC means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, or the Federal Deposit Insurance Corporation.

(k) Federally related transaction regulations means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341-3343.

(l) Person has the meaning in 12 CFR 1026.2(a)(22).

(m) Principal dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property, that is also a consumer's primary residence. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. A vacation or other second home is not a principal dwelling. A consumer can have only one principal dwelling at a time. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling.

(n) Secondary mortgage market participant means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security

if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) States mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) Uniform Standards of Professional Appraisal Practice (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 323.212 Appraiser panel.

For purposes of determining whether, within a given year, an AMC oversees an appraiser 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 under § 323.211(c)(1)(iii) of this subpart–

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Affirms eligibility or acceptance of the appraiser for the AMC's consideration for future appraisal assignments; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently re-admits or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The annual period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 323.213 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 323.215 and 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 the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable;

(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.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution or an insured credit union and not regulated by a Federal financial institution regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Use only State-certified or State-licensed appraisers for Federally regulated 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 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.

§323.214 Requirements for Federally regulated appraisal management companies.

(a) Requirements in providing services. To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally

regulated AMC must comply with the requirements in sections 323.213(b)(2) through (b)(5) of this subpart.

(b) Reporting information for the AMC National Registry. A Federally regulated AMC must:

(1) Report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies regarding:

(i) The determination of the AMC National Registry fee, including but not necessarily limited to a statement that the AMC is a Federally regulated AMC; and

(ii) The collection of information related to the limitations set forth in § 323.215, as applicable.

(2) Contact the Appraisal Subcommittee for alternative arrangements to submit the information described in paragraph (b)(1) of this section if a State in which a Federally regulated AMC operates has not established a process for accepting the information from Federally regulated AMCs.

§ 323.215 Registration limitations.

(a) Appraiser certification or licensing of owners. An AMC shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.

(b) Good moral character of owners. An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(i) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(ii) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 323.216 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

PART 390 – REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

13. The authority citation for Part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

Subpart A also issued under 12 U.S.C. 1820.

Subpart B also issued under 12 U.S.C. 1818.

Subpart C also issued under 5 U.S.C. 504; 554-557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78l; 78o-5; 78u-2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78l.

Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 et seq.

Subpart G also issued under 12 U.S.C. 2810 et seq., 2901 et seq.; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601-3619.

Subpart I also issued under 12 U.S.C. 1831x.

Subpart J also issued under 12 U.S.C. 1831p-1.

Subpart K also issued under 12 U.S.C. 1817; 1818; 15 U.S.C. 78c; 78l.

Subpart L also issued under 12 U.S.C. 1831p-1.

Subpart M also issued under 12 U.S.C. 1818.

Subpart N also issued under 12 U.S.C. 1821.

Subpart O also issued under 12 U.S.C. 1828.

Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p-1; 3339.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463; 1464; 1831m; 1831n; 1831p-1.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p-1; 1881-1884; 3207; 3339; 15 U.S.C. 78b; 78l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78w.

Subpart U also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w; 78d-1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart V also issued under 12 U.S.C. 3201-3208.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C.1831o.

Subpart Z also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828 (note).

Subpart X – [Removed and Reserved]

14. Remove and reserve Subpart X consisting of sections 390.440 through 390.447.

Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons stated above, the Bureau amends Regulation Z, 12 CFR part 1026, as follows:

PART 1026—TRUTH IN LENDING (REGULATION Z)

15. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C.2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq*.

Subpart A -- General

16. Section 1026.1(a) is amended by revising paragraph (a) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

(a) *Authority.* This part, known as Regulation Z, is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This part also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Public Law 100-86, 101 Stat. 552). Furthermore, this part implements certain provisions of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601 *et seq.*). In addition, this part implements certain provisions of the Financial Institutions Reform, Recovery, and Enforcement Act, as amended (12 U.S.C. 3331 *et seq.*). The Bureau's information-collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170-0015 (Truth in

Lending).

Subpart E – Special Rules for Certain Home Mortgage Transactions

17. Section 1026.42 is amended to add paragraph (h), as follows:

§ 1026.42 Valuation independence.

***** ***** ***** ***** *****

(h) The Bureau issued a joint rule to implement the appraisal management company minimum requirements in the Financial Institutions Reform, Recovery, and Enforcement Act, as amended by section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. See 12 CFR part 34.

Federal Housing Finance Agency

Authority and Issuance

For the reasons set forth in the Supplementary Information, FHFA proposes to amend 12 CFR Part 1222, as follows:

PART 1222—APPRAISALS

18. The authority citation for part 1222 is revised to read as follows:

Authority: 12 U.S.C. 4501 et seq., 12 U.S.C. 4526 and 15 U.S.C. 1639h.18. Add Subpart B to part 1222 to read as follows:

Subpart B—Appraisal Management Company Minimum Requirements

Sec.

1222.20	Authority, purpose, and scope.
1222.21	Definitions.
1222.22	Appraiser panel.
1222.23	Appraisal management company registration.

1222.24 Requirements for Federally regulated appraisal management companies.

1222.25 Registration limitations.

1222.26 Information to be presented to the Appraisal Subcommittee by participating States.

§ 1222.20 Authority, purpose, and scope.

(a) Authority. This subpart is issued by the Federal Housing Finance Agency under 12 U.S.C. 4501 et seq., 12 U.S.C. 4526, and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111-203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 et seq.

(b) Purpose. The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) Scope. This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) Rule of construction. Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines[66] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings associations, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

[66] 75 FR 77450 (December 10, 2010).

§ 1222.21 Definitions.

For purposes of this subpart:

(a) Affiliate has the meaning provided in 12 U.S.C. 1841.

(b) AMC National Registry means the registry of State-registered appraisal management companies (AMCs) and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) Appraisal management company (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given year, oversees an appraiser 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, as described in section 1222.22 of this subpart;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) Appraisal management services means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from

creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) Appraiser panel means a network or panel of licensed or certified appraisers who are independent contractors to the AMC.

(f) Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) Consumer credit has the meaning provided in 12 CFR 1026.2(a)(12).

(h) Covered transaction means any consumer credit transaction secured by the consumer's principal dwelling.

(i) Creditor has the meaning provided in 12 CFR 1026.2(a)(17).

(j) Federally regulated AMC means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, or the Federal Deposit Insurance Corporation.

(k) Federally related transaction regulations means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341-3343.

(l) Person has the meaning in 12 CFR 1026.2(a)(22).

(m) Principal dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property, that is also a consumer's primary

residence. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. A vacation or other second home is not a principal dwelling. A consumer can have only one principal dwelling at a time. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling.

(n) Secondary mortgage market participant means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) States mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) Uniform Standards of Professional Appraisal Practice (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 1222.22 Appraiser panel.

For purposes of determining whether, within a given year, an AMC oversees an appraiser 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 under section 1222.21(c)(1)(iii) of this subpart–

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Affirms eligibility or acceptance of the appraiser for the AMC's consideration for future appraisal assignments; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently re-admits or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The annual period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 1222.23 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in section 1222.25 and 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 the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable;

(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.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution or by an insured credit union and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Use 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 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.

§1222.24 Requirements for Federally regulated appraisal management companies.

(a) Requirements in providing services. To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in sections 1222.23(b)(2) through (b)(5) of this subpart.

(b) Reporting information for the AMC National Registry. A Federally regulated AMC must:

(1) Report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies regarding:

(i) The determination of the AMC National Registry fee, including but not necessarily limited to a statement that the AMC is a Federally regulated AMC; and

(ii) The collection of information related to the limitations set forth in § 1222.25, as applicable.

(2) Contact the Appraisal Subcommittee for alternative arrangements to submit the information described in paragraph (b)(1) of this section if a State in which a Federally regulated AMC operates has not established a process for accepting the information from Federally regulated AMCs.

§ 1222.25 Registration limitations.

(a) Appraiser certification or licensing of owners. An AMC shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.

(b) Good moral character of owners. An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(i) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(ii) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 1222.26 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING ENTITLED "MINIMUM REQUIREMENTS FOR APPRAISAL MANAGEMENT COMPANIES"]

Dated: March 20, 2014

(SIGNED) THOMAS J. CURRY

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Thomas J. Curry
Comptroller of the Currency

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING ENTITLED "MINIMUM REQUIREMENTS FOR APPRAISAL MANAGEMENT COMPANIES"]

Dated: March 19, 2014

(SIGNED) ROBERT de/V. FRIERSON

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Robert deV. Frierson
Secretary of the Board

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING ENTITLED "MINIMUM REQUIREMENTS FOR APPRAISAL MANAGEMENT COMPANIES"]

Dated at Washington, D.C., this 19th day of March, 2014.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

(SIGNED) ROBERT E. FELDMAN

Robert E. Feldman
Executive Secretary

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING ENTITLED "MINIMUM REQUIREMENTS FOR APPRAISAL MANAGEMENT COMPANIES"]

Dated: March 11, 2014.

(SIGNED) RICHARD CORDRAY

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Richard Cordray
Director, Bureau of Consumer Financial Protection

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING ENTITLED "MINIMUM REQUIREMENTS FOR APPRAISAL MANAGEMENT COMPANIES"]

Dated: March 1, 2014

(SIGNED) MELVIN L. WATT

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Melvin L. Watt
Director, Federal Housing Finance Agency

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING ENTITLED "MINIMUM REQUIREMENTS FOR APPRAISAL MANAGEMENT COMPANIES"]

In consultation with:

By the National Credit Union
Administration Board on March 20, 2014

(SIGNED) GERARD POLIQUIN

Gerard Poliquin
Secretary of the Board.