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National Registry for Appraisal Management Companies on the Horizon

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On May 20, 2016, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC) issued a [proposed rule](#) to implement collection and transmission of the appraisal management company (AMC) annual national registry fee. The AMC National Registry will be a database maintained by the ASC containing certain information about state-licensed or registered AMCs and federally regulated AMCs as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹ The AMC registry fee will impose a financial burden on AMCs, but how this fee could impact appraisers and the cost of appraisals is not yet clear. Although \$25 per appraiser may seem like a nominal fee, for an AMC with thousands of appraisers on its panels, the annual AMC registry fee may pose a significant financial burden. The proposed rule does not specify the timing of the AMC National Registry but rather indicates that the ASC will issue a bulletin prior to the effective date of the final rule addressing when the AMC National Registry will be open for states and the information that states will have to report to the ASC. Comments to the ASC's proposed rule are due by July 19, 2016.

Background

The ASC was established under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to provide federal financial and public policy protection by requiring that real estate appraisals performed in connection with a federally related transaction meet the uniform standards established by Title XI. A registry for individual appraisers was established in 1989 when the ASC was created by Congress with \$5 million in startup funding and a mandate that its expenses be funded through the collection of registry fees.

The Dodd-Frank Act amended FIRREA to authorize states to elect to register and supervise AMCs and permit states to add information about state-licensed or certified AMCs to the AMC National Registry. To

¹ Under the proposed rule, "AMC Registry" is defined as "the national registry maintained by the ASC of those AMCs that meet the Federal definition of AMC, as defined in 12 U.S.C. 3350(11), are registered by a State or are Federally regulated, and have paid the annual AMC registry fee."

carry out the new functions of the ASC, the Dodd-Frank Act authorizes the ASC to impose annual registry fees on AMCs in addition to the fees imposed on individual appraisers of federally regulated transactions.

For states that elect to register and supervise AMCs, Section 3338(a)(4) of FIRREA (12 U.S.C. § 3338(a)(4)) authorizes the ASC to collect:

(1) [f]rom AMCs that have been in existence for more than a year an annual registry fee of \$25 multiplied by the number of appraisers **working for or contracting with** such AMC in the state during the previous year; and (2) from AMCs that have not been existence for more than a year, \$25 multiplied by an appropriate number to be determined by the ASC.

The ASC has the discretion to adjust the \$25 fee to a maximum of \$50 if necessary to carry out the ASC's Title XI functions.

The Dodd-Frank Act also required the federal financial agencies to establish rules prescribing minimum standards for states electing to register and supervise AMCs within three years (with the possibility of a one-year extension) of the effective date of the final rule ("[AMC Rule](#)"). Although states are not required to register and supervise AMCs, if a state has not adopted the AMC minimum requirements established by the AMC Rule, an AMC is prohibited from providing appraisal management services in connection with a federally related transaction unless an AMC is owned and controlled by a federally regulated depository institution.² Alston & Bird [previously described](#) the AMC Rule, which went into effect on August 10, 2015.³

The AMC Rule did not address how to determine the number of appraisers on an AMC's appraiser panel to calculate the amount of the AMC registry fee or the logistics of collecting the fee, but left it to the ASC to define by rule.

Key Aspects of the Proposed Rule

The ASC's proposed rule would establish the annual AMC registry fee that is to be applied by states that elect to register and supervise AMCs. For an AMC that has been in existence for more than one year, the registry fee would be calculated by multiplying \$25 by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such state during the previous year. For a newly formed AMC in existence for less than one year, the registry fee would be determined by multiplying \$25 by the number of appraisers who have performed an appraisal for the AMC on a covered transaction since the AMC began doing business. The ASC adopted the minimum fee of \$25 established under Section 3338.

² Forty-one states have implemented AMC statutes requiring the licensing or registration of AMCs, with Iowa most recently enacting its AMC law on May 27, 2016.

³ The Dodd-Frank Act mandated that the Consumer Financial Protection Bureau, Federal Reserve Board, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, National Credit Union Administration and Office of the Comptroller of the Currency establish by rule minimum requirements for the registration and supervision of AMCs by states that elect to register and supervise AMCs pursuant to Title XI.

Definition of AMC

The applicability of the AMC registry fee turns on whether an entity meets the definition of an AMC. The proposed rule incorporates the definition of AMC contained in the AMC Rule: “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 12-month period ... 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 ...”

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

Alston & Bird Observation: A footnote to the preamble of the proposed rule provides that “[i]f a State has a more expansive regulatory framework that covers entities that provide appraisal management services but do not meet the Title XI definition of AMC, the State should only submit information regarding AMCs meeting the Title XI definition to the AMC Registry.” In practice, making this determination may be difficult. States are allowed to establish requirements for registration and supervision beyond the minimum standards, such as to regulate entities that provide appraisal management services but don’t meet the size thresholds or define appraisal management services to include valuations in connection with commercial loans or consumer loans for other than valuing a consumer’s principal dwelling.

Working for or Contracting with an AMC

Section 3338 of FIRREA provides that the appraisal registry fee is to be calculated based on the number of appraisers “working for or contracting with” an AMC. In interpreting the phrase “working for or contracting with,” the ASC considered three options, ultimately proposing option three. Under option one, the ASC interpreted “working for or contracting with” to consist of every appraiser on an AMC’s appraiser panel during the reporting period in a particular state, including appraisers accepted by the AMC for consideration for future appraisal assignments. Under option two, the timing of when an appraiser would be considered “working for or contracting with” an AMC would be at the point of engagement to perform a particular appraisal, regardless of whether the appraisal was fully performed during the reporting period. Under option three, “working for or contracting with” would exclude appraisers accepted by the AMC for consideration for future appraisal assignments and appraisers who performed appraisals in the past but did not perform any appraisals in the state during the reporting period. The ASC explained that it “believes the third option imposes the minimum fee allowed under the statutory provisions of section 1109 [12 U.S.C. § 3338] and therefore imposes the least burden on AMCs.”

The proposed rule provides that the annual AMC registry fee is calculated by multiplying the number of appraisers “who have performed an appraisal for the AMC on a covered transaction in such State.”

“Performance of an appraisal” is defined as “the appraisal service requested of an appraiser by the AMC [that] was provided to the AMC.”

Alston & Bird Observation: Recognizing the significant financial impact on AMCs, the ASC has requested comment on its interpretation of “working for and contracting with.” While the ASC recognizes that the third option imposes the least financial burden on AMCs because it includes only those appraisers who have performed an appraisal for the AMC during the reporting period, it requests comment on whether the second option (“[t]he AMC engaged an appraiser to perform an appraisal, regardless of whether the appraiser completed the appraisal during the reporting period”) would be easier for the states to implement. The first option, the broadest, arguably would penalize AMCs that vet a large number of appraisers and could result in AMCs responding by reducing the number of appraisers accepted for vetting and relying more heavily on a smaller group of appraisers to which it can assign appraisals on a regular basis.

Ultimately, that could negatively impact an AMC’s ability to respond to appraisal requests, particularly in geographic areas in which the AMC has less frequent demand for appraisals (i.e., rural areas). It isn’t clear if the ASC considered other options. For example, the ASC could read “working for and contracting with” to include a de minimus exemption because an appraiser is not “working for” an AMC unless the appraiser performs more than two appraisals for that AMC in a calendar year.

Definition of Covered Transaction

The ASC’s proposed rule is applicable to a “covered transaction,” meaning any consumer credit transaction secured by the consumer’s principal dwelling. A footnote to the proposed rule notes that “[c]onsistent with the AMC Rule, the proposed determination of performing an appraisal is proposed to be based on ‘covered transactions’ rather than ‘Federally related transactions.’” In turn, the AMC Rule defines a covered transaction as “any consumer credit transaction secured by the consumer’s principal dwelling.” Historically, Title XI of FIRREA and its implementing regulations have applied to federally related transactions (generally, credit transactions involving a federally regulated depository institution). In adopting the AMC Rule, the agencies explained that the broader definition of “covered transaction” is “consistent with the structure and text of other parts of section 1124, most of which address appraisals generally rather than appraisals only for Federally related transactions.”

Alston & Bird Observation: The ASC’s national registry fee for real estate appraisers is limited to appraisers performing appraisals in connection with a federally related transaction. The Dodd-Frank Act did not include this limiting language for the AMC registry fee. The ASC applied the AMC registry fee more broadly to covered transactions consistent with the AMC Rule. AMCs must note the inconsistent applications when calculating the appraiser national registry fee, which is applicable to federally related transactions, versus the AMC registry fee, which is applicable to covered transactions.

Collection and Transmittal of the Registry Fee

States that elect to register and supervise AMCs are responsible for the collection and transmission of the AMC registry fee on an annual basis. Only those AMCs that have paid the registry fee would be eligible for inclusion on the federal AMC registry. Under the proposed rule, the ASC gave states flexibility to align the

one-year reporting period with any 12-month period, which may coincide with the calendar year. The ASC reasoned that “allowing States to set the 12-month period provides appropriate flexibility and will help States comply with the collection and transmission of AMC fees and reduce regulatory burdens for State governments.”

Alston & Bird Observation: Allowing the states to set the registration cycle provides states with flexibility to comply with the collection and transmission requirements and potentially reduces the regulatory burden on the agencies. Each state, however, could in turn require an AMC to pay the registry fee on a different schedule. AMCs, particularly those registered in multiple jurisdictions, will need to be vigilant to monitor the different state deadlines, as the ramifications for missing a deadline could be significant and may prohibit an AMC from accepting orders or jeopardize their license.

There are also consequences for a state that fails to pay the national AMC registry fee on time. The Dodd-Frank Act authorizes the ASC to impose sanctions, including suspension, other interim actions or derecognition, against a state agency that fails to have an effective appraiser regulatory program. In determining what constitutes an effective regulatory program, the ASC must include analysis of “the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies.”

The proposed rule has left unanswered questions, such as whether an AMC can pass the cost of the registry to an appraiser. At least one state, Illinois, has proposed legislation that would prohibit an AMC from requiring an appraiser to pay the national registry fee required by the ASC for a person who is a certified appraiser in Illinois and on the appraisal panel of the AMC.

The preamble to the proposed rule also provides that it is the ASC’s understanding that the “failure of a State to collect the fees under this rule within the Implementation Period would not subject otherwise properly registered and supervised AMCs in that State to the ban on providing services for Federally related transactions in that State.” It would be beneficial if the ASC recognized this scenario in the text of the rule as it is one that could arise at or after implementation.

Federally Regulated AMCs

The text of the ASC proposed rule does not indicate how the AMC registry fee would be collected for federally regulated AMCs. However, the AMC Rule sets forth a requirement that federally regulated AMCs must report to the state(s) in which they operate that have an AMC registration law the information required to be submitted by the state in accordance with ASC policies. Moreover, the AMC Rule does not prohibit a state from collecting an additional fee from federally regulated AMCs to offset the cost of administering the AMC registry fee.

Final Thoughts

The ASC's efforts to reduce the financial burden on AMCs by including only those appraisers that have performed an appraisal during the reporting period in a state in its determination of the AMC registry fee appears to recognize the impact this rule could have on AMCs and how they manage their appraisal panels. The ASC provided three possible interpretations of the important phrase "working for or contracting with" an AMC and which of the options would be easiest for states to administer. Interested stakeholders should consider commenting on this aspect of the rule, as well as others. Alston & Bird is available to provide assistance in navigating the AMC registry fee or preparing comments to the ASC's proposed rule.

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