



Financial Services & Products ADVISORY ■

OCTOBER 24, 2017

Appraisal Subcommittee Finalizes Rule for Appraisal Management Company National Registry Fees

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The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC) issued its anticipated [final rule](#) providing for collection and transmission of the appraisal management company (AMC) annual national registry fee applicable to states that elect to register and supervise AMCs. Effective November 24, the rule will direct the ASC's work with the states to collect information and registry fees from AMCs operating in those states.

Section 1473 of the Dodd–Frank Wall Street Reform and Consumer Protection Act established the registry, amending Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to require the ASC to “maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.” The collection of registry fees, which FIRREA also provides for, is intended to support the ASC's maintenance of the registry. (Further background is available in our [June 2016 advisory](#) relating to the ASC's proposed rule for registry fees.)

Details of the registry's implementation remain to be finalized; the ASC indicated in the rule that it will issue further guidance to the states identifying when the registry will be open to collect information and what information states will be required to be report. In the meantime, as the rule's effective date approaches, we wanted to bring your attention to a few aspects of the rule.

Fee Amount

The rule adopts the proposed fee of \$25 per appraiser. For AMCs that have been in existence for more than one year, the fee is multiplied by the number of appraisers working for or contracting with the AMC in the state during the previous year; for AMCs in existence less than a year, the fee is multiplied by the number of appraisers working for or contracting with the AMC in the state since the AMC began doing business.

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Fee pass through

Since the ASC's original proposal, discussion has focused on the ability of AMCs to pass registry fees through to appraiser panel members. The ASC stated that the majority of comments it received on the proposed rule related to this topic, but ultimately concluded that the ability of an AMC to pass through registry fees to appraisers "is outside the authority of the ASC." Arkansas expressly prohibits an AMC from passing through registry fees to appraisers; Maine's law will do the same upon becoming effective. Now that the ASC has clarified its stance on the issue, will other states follow suit?

State processing fees

In the commentary to the rule, the ASC recognized that implementation of the registry may require states to make changes to their existing regulatory structures – including, to echo one commenter, "the necessity to adopt new rules, create new forms and update current IT systems to collect and maintain [the requested] data, all of which will result in increased labor costs for staff needed for implementation of the proposed rule." To address these costs, the ASC indicated that it will expand its grants program to make additional funds available to the states to help offset the costs of complying with their collection and reporting obligations for the registry. States may provide for the collection of costs necessary for the administration of their AMC laws, which could include fees to process information for the national registry. Earlier this month, California enacted legislation to provide for the collection from AMCs of a processing fee intended to offset reporting-related expenses.¹

"Working For or Contracting With"

In adopting the rule, the ASC followed its proposed method of determining the number of appraisers for which an AMC must pay registry fees, which is those appraisers "working for or contracting with" the AMC in the state during the previous year. An appraiser is considered to have worked for or contracted with an AMC if it performed an appraisal for a covered transaction (one secured by the consumer's principal dwelling) during that year. The ASC deemed this method of calculation the least burdensome to AMCs.

Determination of the Annual Reporting Period

Section 1102.403 of the rule clarifies that states electing to register and supervise AMCs must collect and transfer to the ASC registry fees, but leaves to each participating state the determination of what one-year period it will use to collect fees. This 12-month period "may, or may not, be based on the calendar year"; by implication, states could adopt the same 12-month period they use for the renewal of AMC registrations. To date, no state has specified the reporting period it intends to utilize for the collection and transmittal of fees.

State Implementation

In its commentary to the rule, the ASC "recognize[d] that States electing to register and supervise AMCs may need to amend their rules and/or regulations, or revise their operating procedures" in order to collect the information and fees required for the registry. To date, 15 states have laws and/or regulations in place expressly permitting them to collect

¹ The California provision is limited to collection from federally regulated AMCs. Effective January 1, 2018, Section 11345.8 of the Business and Professions Code permits the Bureau of Real Estate Appraisers to charge a federally regulated AMC "a state fee in an amount not to exceed the reasonable regulatory cost to the board for processing and submitting the information [that the bureau is required to submit to the ASC];" which will "be deposited in the Real Estate Appraisers Regulation Fund." Texas is considering adoption of a rule that would also permit collection of a processing fee, but it would not be limited in application to federally regulated AMCs.

registry fees and information; another 15 provide for one or the other, but not both. For states that intend to maintain their AMC regulatory programs, we anticipate that in short order they will propose rules to create fee and information collection mechanisms so as to permit their fulfillment of these obligations once the registry is open.

Reporting Timeline

The rule permits each state to determine what 12-month period it will use for the purpose of measuring panel participation and collecting information and fees; the timeline may be the calendar year or another period of the state's choosing (i.e., the renewal year). Commenters to the rule anticipated that the lack of uniformity could make an AMC's internal tracking more challenging, but the ASC declined to adjust the proposed rule to mandate a particular reporting timeline. Slightly more than half of the states that have enacted AMC legislation have established a uniform renewal timeline (which may be the calendar year or may fall during another time), and might choose to align their reporting period with their renewal calendar. In the states without a uniform renewal timeline, it remains to be seen what reporting timeline will be adopted.

We will continue to monitor both the ASC for issuance of further guidance and the states for legislative and regulatory activity that will facilitate participation in the registry.

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