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SUBMITTED ELECTRONICALLY

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
Docket ID OCC–2014–0002

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
RIN 3133-AE22

Robert deV. Frierson, Secretary
Board of Governors
of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R–1486

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552
Docket No. CFPB–2014–0006

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
FDIC RIN 3064–AE10

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA61
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington, DC 20024

RE: Proposed Minimum Requirements for Appraisal Management Companies

Dear Ladies and Gentlemen:

On behalf of Valuation Information Technology, LLC dba Rels Valuation, please accept the comments contained within this letter and the attached Appendix in response to proposed Minimum Requirements for Appraisal Management Companies (Proposed Rule) as jointly proposed and published in the Federal Register, Vol. 79, No. 68, on April 9, 2014 by the "Agencies"[1].

Rels Valuation is a premier national provider of valuation products and services for the lending community that has operated as an appraisal firm and appraisal management company (AMC) for over 20

[1] The Agencies include the Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; National Credit Union Administration; Bureau of Consumer Financial Protection; and Federal Housing Finance Agency. Rels Valuation relies on the OCC's proposed amendments to 12 CFR Part 34 when citing to the Proposed Rule.

years, making us one of the longest-serving AMCs in the United States. Rels Valuation fully supports and appreciates the Agencies' efforts to mandate and implement minimum registration and supervision requirements for AMCs. We thank the Agencies for their good work in publishing the Proposed Rule, and for the opportunity to participate in the comment process.

Above all else, the regulations concerning adoption of minimum requirements for registration and supervision of AMCs should be viewed through the lens of consumer protection and the public policies espoused by passage of the Dodd-Frank Act. We hope that, as the final regulation is being developed, the Agencies will consider our comments from the perspective of consumer protection and appreciate the risk of serious, unintended consequences from the Proposed Rule.

Rels Valuation's primary concerns and corresponding recommendations are summarized immediately below. The attached appendix includes detailed analysis of our primary concerns, and provides feedback to the questions posed in the Proposed Rule.

1. Voluntary Registration of AMCs

Concern: The failure of any State to adopt an acceptable AMC registration and supervision program will cause significant unintended consequences in the residential lending industry due to uncertainty over how lenders may be able to fulfill appraisal orders.

Request: We respectfully request that the Agencies require states to adopt an AMC registration and supervisory program or, in the alternative, require the Appraisal Subcommittee to manage registration and supervision of AMCs for any state that fails to meet the minimum requirements.

2. State Appraiser Regulator Enforcement of TILA

Concern: The Proposed Rule appears to empower state appraiser regulators with authority to directly interpret, investigate, and enforce the federal Truth in Lending Act. Such authority will undoubtedly cause uncertainty in the national lending marketplace, leading to inconsistent and conflicting interpretations regarding the application of federal banking law to the valuation industry.

Request: We respectfully urge that the Agencies not authorize state appraiser regulators to directly interpret, investigate, or enforce the federal Truth in Lending Act.

3. Clarification of Federally Regulated AMC

Concern: Although Dodd-Frank exempts AMCs that are owned and controlled by a federally regulated financial institution from state registration and supervision, as do all the states that currently regulate AMCs, there is little clarity over the practical application of the exemption.

Request: We respectfully request that the Agencies define what it means for an AMC to be a subsidiary owned and controlled by a federally regulated financial institution, and require the ASC to provide Federally regulated AMCs a formal letter of exemption from state registration.

4. Definition of an AMC

Concern: The practical outcome of the Proposed Rule's definition of an AMC will be to exempt the activities of certain entities that perform appraisal management services from state registration and supervision.

Request: We respectfully recommend that the Agencies broadly define an appraisal management company in order to maximize consumer protection.

5. Determination of AMC Appraiser Panel Size

Concern: An AMC's appraisal management activity should not be exclusively measured by the number of appraisers on an AMC's appraiser panel. The development and management of an appraiser panel is based, in large part, upon anticipated but unrealized client business. Because the proposed definition will directly affect the annual AMC National Registry Fee calculation, the proposed determination of appraiser panel size will reduce business competitiveness in the valuation management marketplace resulting in delays in the delivery of appraisals, delays in lending decisions, and higher fees to the consumer.

Request: For purposes of defining an AMC, we respectfully recommend that the Agencies clarify that the determination of whether an appraiser is on an appraiser panel should depend upon whether the appraiser accepted and completed an appraisal assignment.

6. Application of the Proposed Rule

Concern: States will be unable to fully satisfy the requirements of the Proposed Rule because many of its components are not yet developed. The Appraisal Subcommittee has not promulgated final regulations developing the AMC National Registry or clarified expectations regarding state AMC registration and supervisory requirements.

Request: To ensure that states can adequately meet the AMC minimum registration and supervision requirements, we respectfully recommend that the Agencies postpone the state compliance deadline until the Appraisal Subcommittee has promulgated necessary final regulations.

Rels Valuation appreciates the opportunity to contribute in the rule making process and we hope that the above comments prove helpful to the Agencies. Please feel free to contact me if we can be of any further assistance.

Sincerely,

Daniel P. Hackman
President
Rels Valuation
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(952) 345-4999

APPENDIX

BACKGROUND

Rels Valuation provides a valuable service to the mortgage industry, and our company's strategies, practices, and procedures include:

- Assisting lenders and their customers in obtaining a timely, economical, and quality valuation product.
- Continually monitoring and assessing federal and state laws affecting the valuation industry, and incorporating policies and practices assuring compliance with all national and state regulations for our company and our clients.
- Conducting extensive quality assurance, both manually and through robust technology applications.
- Developing technology that supports fast, secure online ordering for all traditional appraisal products, with real-time status viewing capability.

Rels Valuation is committed to partnering with state appraiser certifying and licensing agencies and federal agencies in ensuring that the appraisal process protects consumers and supports and promotes the safety and soundness of the mortgage industry. Whether working closely with FHFA and HUD in developing appraiser policy and automated review technology, or collaborating with banking and capital market regulators to discuss market trending, we are a committed partner devoted to ensuring that consumers receive a quality appraisal from a quality appraiser.

Rels Valuation is a proponent of industry regulation, and we were one of the first AMCs to express support for the reasonable and consistent state registration and supervision of AMCs. We have been actively involved in the ongoing development of the appraisal management regulatory landscape under which appraisal management companies must operate. We are a member of the Real Estate Valuation Advocacy Association (REVAA), as well as the Coalition to Facilitate Appraisal Integrity Reform (FAIR), two groups that are focused on improving the valuation industry.

SUBSTANTIVE COMMENTS

A. <u>Concern Over Voluntary Registration</u>

We request that the Agencies amend the Proposed Rule to require the Appraisal Subcommittee (ASC) to regulate AMCs in any state that fails to adopt an acceptable AMC registration and supervision program.

Section 1124 of FIRREA does not require states to establish an AMC registration and supervision program. Instead, FIRREA provides that an AMC may not perform services related to federally related transactions in a state unless the AMC is registered with that state (or is subject to oversight by a federal financial institutions regulatory agency).

1. <u>Unintended Consequences for Consumers, Lenders, and AMCs</u>

There would be significant unintended consequences for both lenders and consumers if a state were to fail to adopt an AMC registration and supervision program. Most AMCs would become ineligible to perform services related to federally related transactions in that state, because they are not presently subject to oversight by a federal financial institutions regulatory agency, and lenders that rely on such AMCs to manage the appraisal process would be forced to scramble to find other channels for obtaining these services. In such states, lenders and consumers will not benefit from the valuable services provided by an AMC. Appraisal fulfillment costs will increase, appraisal quality will suffer, and lenders will be challenged to obtain compliant appraisals in a reasonable timeframe.

Further, lenders would likely need to manage the process "in-house" increasing both time and expense. The unintended consequences could expand beyond nonconforming states if AMCs are forced out of business because they are unable to perform services in all states. Small to medium sized AMCs may not be economically viable if they cannot provide services in key states. With such contraction, lenders will have fewer AMC alternatives even in those states that do adopt the minimum regulations.

2. Unintended and Inconsistent Regulation of AMCs

The current regulatory landscape of the valuation management industry at the state level is extraordinarily complex, inconsistent, and confusing. While we support AMC registration and supervision, many state AMC laws were passed without the benefit of any consistent or authoritative guidance and there have, at times, been provisions proposed or promulgated that do not appear to be consistent with the goals of FIRREA.

One practical consequence of the Proposed Rule, unfortunately, is that unless the Agencies mandate that all states regulate and supervise AMCs, certain states may fail to enact regulations that are consistent with the Dodd-Frank Section 1124, the goals of FIRREA, or may fail to enact any regulations at all.

Inconsistent regulation and lack of regulation each uniquely threaten the viability of AMCs and the benefits they provide to consumers.

3. Avoid Unintended Consequences by Granting ASC Authority to Regulate AMCs

We believe that the Agencies have the authority to require the ASC to manage registration and supervision of AMCs operating in a state that fails to adopt an acceptable program. Granting such authority to the ASC is consistent with the Agencies' proposed approach for the ASC to manage information for Federally regulated AMCs when a state has no available reporting mechanism.[2] Moreover, requiring the ASC to serve as an alternate "backstop" regulator serves a number of public policy purposes:

- Consumers will not be burdened with greater delays and costs in the fulfillment of an appraisal.
- Market disruption will be significantly reduced because a lender relying on AMCs to manage appraisal fulfillment will not be operating under a cloud of uncertainty over who can manage appraisals.
- Appraisal management companies will remain competitive and focused on providing quality management services.

Prohibiting AMCs from providing services in states which do not enact the minimum requirements penalizes AMCs, lenders, and consumers and runs contrary to the goal of the regulation. Rels Valuation urges the Agencies to amend the Proposed Rule to include an ASC "backstop" in order to prevent the exclusion of AMCs from providing services in states that do not adopt the minimum requirements.

[2] Proposed § 34.214(b)(2).

B. Proposed Definition of an Appraisal Management Company (*Question 1*)

1. Consumer Protection Should be the Focus

The nomenclature used in today's marketplace to describe a person who provides valuation-related services should not dictate the applicability of the Proposed Rule. Whether an entity is or has been historically known publicly as an "AMC," "appraisal firm," "portal," "appraisal company," "valuation solutions provider," or other, the Proposed Rule should be applied in a way that maximizes consumer protection.

Rels Valuation urges the Agencies to set aside the industry's outdated labels and titles and focus the Proposed Rule on ensuring that a requesting party receives a quality appraisal from a quality appraiser who is managed by a quality company.

2. AMC Definition Should be Tied to the Calendar Year

Proposed § 34.211(c)(1)(iii) defines an "appraisal management company", in part, as a person who within a given year oversees an appraiser panel of more than fifteen (15) State-certified or State-licensed appraisers in a state, or twenty-five (25) or more State-certified or State-licensed appraisers in two or more states. Proposed § 34.212(d) further provides that for purposes of counting the number of appraisers on a potential AMC's appraiser panel, the relevant annual period may be either the calendar year or any other 12-month period established by a state.

i. *Use the Calendar Year*

Rels Valuation believes the Agencies should provide that the determination of an appraiser panel be based on a calendar year. States that currently register AMCs vary greatly in their renewal periods, and the Proposed Rule provides no guidance as to how the calculation would work when states provide for different annual measurement periods. Given that the determination of panel size will affect the AMC's contribution to the AMC National Registry, we believe a consistent time period should apply on a nationwide basis.

ii. *Enforce the Minimum Requirements Without Overburdening Small Businesses*

While we understand that the Proposed Rule is effectively copied from § 1121(11) of FIRREA, which defines an AMC, the proposed definition is ambiguous and impractical to enforce. While some larger companies are clearly AMCs, there are hundreds of smaller companies that maintain an appraiser panel of a size that fluctuates near the thresholds in the proposed definition. If the proposed definition is adopted it would be challenging for states to adequately investigate and understand the size of a company's appraiser panel and determine whether the company must register as an AMC.

In fact, in our conversations with various state appraiser certifying and licensing agencies concerning the Proposed Rule, it has been clear that many states do not believe they have the tools and capability to investigate and enforce the proposed definition. As a result, many states are considering requiring any company performing appraisal management services, regardless of size, to register with a state because there is no practical and effective way to ascertain the exact size of an AMC's appraiser panel.

In addition, there are a number of ancillary questions that we believe are important for the Agencies to clarify, including but not limited to:

- Given that AMCs engage with appraisers to perform various types of assignments, what is considered an "appraisal" for purposes of § 34.212(a)(2)?
- If an appraiser is licensed in two states and performs assignments for an AMC in two states, does he or she count as one appraiser or as two given the appraiser has credentials from both states?
- Is an independent contractor appraiser who is retained exclusively to perform internal review quality assurance functions considered to be on the AMC's appraiser panel?
- Does a trainee count as a State-certified or State-licensed appraiser?

Lastly, the proposed definition will significantly decrease competition among small AMCs, as a number of these businesses will likely exit the industry. Although the numerical thresholds in the proposed definition attempts to protect certain small AMCs from registration and supervision, the fact that most AMCs operate in more than one state makes it extremely unlikely that a significant number of AMCs will be able to avoid registration and the significant costs it entails.

For example, assume a small AMC performs appraisal management services solely in two adjoining states. In state A, the AMC works with 14 appraisers, and in state B the AMC works with 10 appraisers. If a client requests that the AMC manage one assignment in state C, it appears that in order for the AMC to process that one order the AMC would need to obtain: (1) a registration in state A; (2) a registration in state B; and (3) a registration in state C, as well as pay a National Registry Fee for each appraiser on the AMC's panel. As a practical matter, the AMC will be unable to service the client and the client will seek an alternative provider before the AMC can obtain the necessary registrations.

The rising costs of appraisal fulfillment – from on-boarding appraisers to an appraiser panel to performing necessary quality control to implementation of new technology – cannot be effectively managed without robust competition in the AMC marketplace. A significant contraction in the AMC industry may result in processing delays and increased fees in appraisal fulfillment.

We believe the Agencies should re-evaluate the appraiser panel element of the AMC definition to determine whether there is a more practical approach by which smaller businesses might be exempted from state AMC registration and supervision. State appraiser certifying and licensing agencies are in need of clearer guidance on how to ensure that AMCs are appropriately registered.

C. Proposed Definition of "Appraiser Network or Panel"; Whether to Include Employee Appraisers and Distinguish Appraisal Firms; Whether to Define the Term "Independent Contractor"; Determination of Panel Size (*Questions 2, 3*)

We request that the Agencies amend the definition of "appraiser panel" to include employees as well as independent contractors to ensure that consumers, who are considering using their principal dwelling as security for a consumer credit transaction, are protected without regard for which entity provides management services.

1. Whether to Include Employee Appraisers and Distinguish Appraisal Firms

Proposed § 34.211(e) provides that an "appraiser panel" means a network or panel of licensed or certified appraisers who are independent contractors to the AMC. The Agencies identify the following reasons for the proposed definition:

- A majority of states that have adopted AMC laws define the term as being comprised of independent contractors.

- Under the traditional model, AMCs typically engage appraisers as independent contractors rather than as employees.
- The activities performed by AMCs as provided in § 1121(11) of FIRREA do not include performing appraisals.
- Appraisal firms are not AMCs because a firm is engaged to perform appraisals.
- Perceived concern that AMCs may attempt to avoid registration by hiring part-time employees to avoid state registration and supervision requirements.

For a number of reasons, we believe the proposed definition is inconsistent with existing practice as well as existing regulations affecting appraisal fulfillment. First and foremost, ensuring that the consumer protection goals of Dodd-Frank are met requires equal treatment of appraisal firms and AMCs. The public will not be properly protected if only certain entities performing appraisal management services fall under the oversight and supervision of a state while a significant segment of the industry remains unregulated. Lenders and consumers should be entitled to receive a quality appraisal from a quality appraiser managed by a quality company, regardless of whether the appraisal is performed by an employee or independent contractor. As drafted, the Proposed Rule suggests that consumers will not receive the same protections when an appraisal is managed by an appraisal firm.

Entities performing appraisal management services are treated equally under various federal appraisal-related laws. For example, the Truth in Lending Act and FIRREA generally do not distinguish between an appraisal firm and an AMC.

- Firms and AMCs cannot intimidate or unduly influence an appraiser, regardless of whether an appraiser is an employee or independent contractor.[3]
- Firms and AMCs cannot have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.[4]
- An appraiser has a responsibility to perform a credible appraisal regardless of whether that person works for an appraisal firm or is an independent contractor to an AMC.[5]

An example helps underscore our concern with unequally protecting consumers. Proposed § 34.215 requires that any owner of more than ten (10) percent of a non-Federally regulated AMC satisfy a background check in order to expose any material criminal history. Yet, because the Proposed Rule's applicability hinges on whether appraisers are engaged as employees or independent contractors, an appraisal firm, using only employee appraisers, could be owned by a person with an undetected criminal history. Because the opportunity for consumer harm is the same in either context, we believe this is a compelling reason to base the definition on the services that are provided, rather than the manner in which appraisers are engaged.

Second, the proposed definition unreasonably impacts competition in the marketplace. Both AMCs and appraisal firms perform all of the functions listed under the definition of an AMC, yet the proposed definition effectively creates significant barriers to entry only for AMCs while appraisal firms are allowed to operate with very few state restrictions. Registration of AMCs requires a significant investment of time, effort, and money, as most states require, among other things, a background check, surety bond,

[3] 15 U.S.C. § 1639e(b).
[4] 15 U.S.C. § 1639e(d).
[5] 15 U.S.C. § 1639e(d); 12 U.S.C. §§ 3342, 3343.

large and complicated registration forms, significant registration fees,[6] and complicated disclosure of an entity's appraiser panel. As a result, an AMC entering a state typically cannot service any clients until it is registered with the state.

The Agencies raise concern that an AMC may avoid registration by improperly characterizing independent contractors as employees. We are not aware that this has happened to any significant degree. We believe the Agencies should be aware, however, that many entities are currently avoiding state AMC registration and supervision requirements by claiming to be an appraisal firm whereby the firm directly owns or manages, and provides various administrative and operational support to, a separate legal entity that engages independent contractor appraisers to fulfill orders.

Third, while a majority of states that have adopted AMC laws define an "appraisal panel" as being comprised of independent contractors, we believe the analysis underlying the Proposed Rule fails to consider the history under which AMC laws were initially enacted and the current practical development and implementation of AMC laws and regulations. While a majority of state AMC laws define an appraiser panel to exclude employees, those same laws include requirements applicable to any appraiser with whom an AMC contracts to perform an assignment, regardless of the appraiser's status as independent contractor or employee.[7]

Fourth, although it is true that "performing appraisals" is not an activity noted in the definition of an AMC under § 1121(11) of FIRREA, it is decidedly not true that appraisal firms perform appraisals while AMCs do not. Neither appraisal firms nor AMCs can directly hold an appraiser credential and both rely on State-licensed and State-certified appraisers to perform appraisals. Furthermore, a very large majority of appraisal firms perform all functions listed in the definition of appraisal management services:

- Firms recruit, select, and retain appraisers.
- Firms contract with appraisers to perform appraisal assignments.
- Firms manage the process of having an appraisal performed – they assign orders, receive orders, perform quality control, and collect fees from creditors and distribute to appraisers.
- Firms review and verify the work of appraisers.

Fifth, a growing number of appraisal firms use independent contractors; far from being new, so-called "hybrid" entities have been common within the industry for some time. Many AMCs originally began as companies that only engaged employee appraisers.

Lastly, we appreciate that § 129E of the Truth in Lending Act uses the term "firm", and that term should have meaning in the context used. We believe that "firm" should mean any entity that does not meet the definition of an AMC under FIRREA, and should not be used to define a company that exclusively engages with employee appraisers to perform assignments.

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[6] For example, the 2014-15 AMC registration renewal fee for Rels Valuation in Texas will be approximately $8,000.00.

[7] For example, Alabama defines an appraiser panel as a network of licensed or certified appraisers who are independent contractors of an appraisal management company. Ala. Stat. 34-27A-2(10). Alabama also requires that any employee performing appraisal services must be an appraiser certified in Alabama. Ala. Stat. 34-27A-52(c). We do not object to the requirement, but this example underscores the fact that a state's definition of an appraiser panel does not limit regulation of AMCs only to independent contractors engaged by an AMC to perform appraisal assignments.

For all the reasons stated above, Rels Valuation urges the Agencies to include both employees and independent contractors in the definition of an appraiser panel. The services provided by an entity, not the employment status of the appraisers engaged by an entity, should dictate regulation. Without the suggested definition change, we believe many companies will simply alter their employment structure to avoid registration and regulation.

2. Whether to Define the Term "Independent Contractor"

The Agencies should define the term "independent contractor" in the final rules. Specifically, we support the use of the standards issued by the Internal Revenue Service to determine an appraiser's relationship with an entity and evaluate whether the entity is an AMC.

The vast majority of state AMC laws do not define the term "independent contractor". Because the large preponderance of entities likely to meet the definition of an AMC operate in more than one state, having a consistent definition: (1) provides businesses with certainty over how to manage their panel; (2) provides states with clarity concerning whether an entity's business practices require it to be considered an AMC; and (3) provides the ASC with certainty when auditing states to determine whether an AMC registration and supervision program is sufficient.

3. Determination of Appraiser Panel Size

Rels Valuation believes a number of revisions are needed regarding the proposed determination of an AMC's panel size. The proposed definition will likely make it cost-prohibitive for a large percentage of AMCs to operate in more than one state, and will likely reduce the number of appraisers with whom AMCs work, by penalizing AMCs based on panel size.

Proposed § 34.212 provides guidelines for helping an entity determine whether its panel meets the definition of an appraiser panel under § 34.211(e). An appraiser is considered to be on an AMC's appraiser panel as of the earlier of the date on which the AMC: (i) affirms the eligibility or acceptance of the appraiser for future appraisal assignments; or (ii) engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market participant.

As a practical matter, we respectfully believe the Agencies have not considered the typical business methodology entities employ in developing an appraiser panel. AMC generally develop (and size) their appraiser panel to meet the anticipated future requirements of current and prospective clients, as well as serve existing needs. Therefore, it is extremely common, in addition to good business practice, for an AMC to manage an appraiser panel sized in excess of what is required to service existing business volume. A final regulation that penalizes AMCs for attempting to be well-prepared to serve clients would be counterproductive.

i. *The Definition of an Appraiser Panel Directly Impacts AMC National Registry Fees, and Will Penalize AMCs*

The commentary to the Proposed Rule does not appear to consider the extraordinary financial impact the proposed definition will have on AMCs. Section 1109 of FIRREA states that once the necessary standards and mechanisms are in place, AMCs will be required to pay a fee for each appraiser working for or contracting with the AMC in a state during the previous year. Using the proposed definition, the ASC will count all such appraisers when calculating Registry fees, without regard for whether a given appraiser's presence on the AMC's appraiser panel generated any tangible benefit to the AMC.

Consequently, under the proposed definition an AMC would need to pay Registry fees for appraisers who are eligible to receive future assignments, even if they may not have performed any appraisal services for the AMC in either the current or the previous year. The financial effect of this requirement will be significant. If an AMC has an appraiser panel of 500 appraisers, then the AMC may be responsible to pay an *annual* fee to the ASC of $125,000. Even if the AMC only contracts with 100 of those appraisers to perform at least one assignment, the AMC must still pay the annual $125,000 fee. If the number of viable AMCs is reduced due to the expense of maintaining a panel, as previously noted, lenders and consumers will be faced with delays in the appraisal fulfillment process and increased fees.

In addition, we believe there is little risk that entities will dramatically change the size of their appraiser panel in order to avoid being deemed an AMC. The current business climate and increasing client expectations around appraisal management services are strong counterweights against an AMC making intense swings in panel size.

ii. *Define an Appraiser Panel Based on Engagement and Performance of Appraisal Services*

We understand that the appraiser fee paid by an AMC to the AMC National Registry is intended to be used to manage the AMC registration and supervision process. But if an appraiser on an AMC's appraiser panel has not performed any assignments, we respectfully question whether there is a consumer protection concern that justifies payment of a fee.

We urge that the definition of an appraiser panel (and the likely assessment of the AMC National Registry fee) be based exclusively on the number of appraisers who have accepted and performed one or more individual appraisal assignments. As proposed, § 34.211 will likely result in AMCs working with fewer appraisers. Removing appraisers, for whom there is no current need, from an AMC's appraiser panel is the only real alternative if AMCs will be required to pay a Registry fee for appraisers who have not performed any appraisal assignments or otherwise contributed to the economic good of the AMC.

D. Proposed Minimum Requirements for State Registration and Supervision of AMCs (*Question 6*)

1. The Agencies Should Clarify that AMCs can Rely on the National Registry to Validate an Appraiser's Credential

Proposed § 34.213(b)(2) states that, as part of an acceptable state AMC registration and supervision program, an AMC must use only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations.

We support the Proposed Rule, but we believe the Agencies should clarify that an AMC may satisfy the above requirement by verifying the appraiser's credential through the National Registry[8]. States vary in providing any guidance on how an AMC should validate an appraiser's credential, and certain states are imposing unreasonable requirements on AMCs. For example, one state is currently proposing a rule that would potentially require an AMC to validate an appraiser's credential by contacting the state **and** visiting the National Registry. Such a requirement provides no benefit as the National Registry should be a sufficient resource for credential validation.

[8] National Registry means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. *See* 12 C.F.R. § 34.203(a)(3).

The Agencies have provided guidance regarding validation of an appraiser credential in the Rule for Appraisals for Higher-Priced Mortgage Loans, and we believe similar clarification is appropriate for the Proposed Rule.

2. <u>The Agencies Should Clarify How AMCs are to Ensure Appraiser Compliance with USPAP</u>

Proposed § 34.213(b)(3-4) provides that, as part of an acceptable state AMC registration and supervision program, an AMC must 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, and direct the appraiser to perform the assignment in accordance with USPAP.

Rels Valuation does not object to these proposed requirements but we believe that the Agencies should either clarify what actions would satisfy the requirements or, alternatively, require the ASC to promulgate clarifying regulations.

The Rule for Appraisals for Higher-Priced Mortgage Loans provides instructive guidance which should be considered by the Agencies (or alternatively, the ASC) in finalizing guidance on this point. The Rule provides, among other things, that in order to fall under an available safe harbor with respect to the Uniform Standards of Professional Appraisal Practice (USPAP), a lender that is engaging an appraiser should:

- Order that the appraiser perform the appraisal in conformity with USPAP; and
- Require the appraisal to include a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of USPAP.[9]

We believe additional clarification from the Agencies is appropriate as we have seen states attempt to impose requirements that deviate far from what the Agencies promulgated in the Higher-Priced Mortgage Loan Rule. For example, we have seen proposals that would prohibit an AMC from contracting with an appraiser for an assignment unless the appraiser's address is within a specified number of miles from the subject property. AMCs and lenders almost universally consider geographic proximity as a factor in assignment placement, but it should never be used as an absolute measuring stick of an appraiser's competency.

3. <u>The Agencies Misinterpret FIRREA by Granting States Authority to Regulate the Truth in Lending Act - § 34.213(b)(5)</u>

Proposed § 34.213(b)(5) states that in order to operate as an AMC, a company must establish and comply with processes and controls reasonably designed to ensure that it "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." This language ostensibly reflects the requirement of § 1124(a)(4) of FIRREA, which requires the Agencies to mandate by regulation that all AMCs must:

> (4) require ***that appraisals are conducted*** independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 1639e of title 15.[10]

[9] 12 C.F.R. § 34.203(c)(2).
[10] 12 U.S.C. § 3353(1)(4) (emphasis added).

Section § 1124(a)(4), however, is clearly focused on the performance of *appraisal* services, not *appraisal management* services. It does not implicate appraisal management services in any respect. Consequently, proposed § 34.213(b)(5) is inconsistent with FIRREA. It is important to note that we are not suggesting that appraisal management services are exempt from compliance with TILA. Our position is that FIRREA's minimum requirements for registration and supervision of AMCs by the states do not include any requirement that grants state appraiser certifying and licensing agencies the ability to directly investigate, interpret, or enforce TILA.

Other sections of the Proposed Rule support our interpretation. Section 1124(a)(4) of FIRREA provides that an AMC must require that "appraisals coordinated" by the AMC comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The Agencies, in proposing § 34.213(b)(4), followed FIRREA and applied the requirement to appraisals performed by an appraiser. Yet, when interpreting § 1124(a)(4) of FIRREA, which uses the term "appraisals are conducted", the Agencies determined the provision applies to appraisal management services. Had Congress intended this provision to apply to appraisal management services, the requirement in FIRREA would have been drafted as such.

There is also a public policy purpose for AMCs to require that appraisers comply with TILA because TILA has provisions that apply directly to appraisers:

- An appraiser conducting an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may not have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.[11]
- An appraiser cannot mischaracterize the appraised value of the property securing the extension of the credit.[12]
- An appraiser is expected to disclose any perceived violation of appraiser independence because a creditor cannot extend credit bard on an appraisal if it is known at or before loan consummation that there was a violation of appraisal independence standards.[13]

We are also extremely concerned that, unless amended, the Proposed Rule will be interpreted as granting states authority to directly investigate, interpret, and enforce federal banking law. TILA, which applies to creditors and their agents, is intended to ensure a national standard to promote a safe and sound national lending system. Violations of TILA are primarily asserted by federal agencies, state Attorneys General, and private citizens. Other than federal agency enforcement actions, federal courts are the sole arbiter as to whether a violation of TILA has occurred.

Without clear statutory authority, state regulatory agencies should not be in a position to directly investigate, interpret, and enforce TILA. Granting independent and direct authority to determine TILA violations to states, especially state appraiser certifying and licensing agencies, potentially erodes TILA's objective of supporting a sound national lending system by creating different and conflicting interpretations.

Because § 129E of TILA also applies to entities other than AMCs, any unique or inconsistent interpretation of § 129E by a state appraiser certifying and licensing agency could have significant consequences for creditors that do not fall under the jurisdiction of those agencies. If the Proposed Rule is not amended, we believe it is extremely likely that states will develop competing interpretations over what actions TILA § 129E requires. The resulting uncertainty over of how to comply with TILA will put

[11] 15 U.S.C. § 1639e(d).
[12] 15 U.S.C. § 1639e(b).
[13] 15 U.S.C. § 1639e(f).

AMCs and lenders at risk, and ultimately may result in the imposition of higher appraisal costs on consumers.

Proposed § 34.213(b)(5) is inconsistent with FIRREA, and we urge the Agencies to amend the provision to reflect that states must require AMCs to require that appraisers perform appraisals independently and free from inappropriate influence and coercion as required by 129E of the Truth in Lending Act. We also request that the Agencies clarify whether the Proposed Rule grants state regulatory agencies the independent and direct authority to investigate, interpret, and enforce § 129E of TILA.

4. The Agencies Should Clarify How Corporate-Owned AMCs Would Satisfy the Restriction Under § 34.215(a)

Proposed §34.215(a) states that 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.

The majority of states that currently register and supervise AMCs have a similar provision to the one proposed, but there is significant debate among regulators and the industry as to how an AMC can sufficiently comply with the requirement. In particular, many AMCs are directly owned by a corporate entity, and there may be many layers of ownership. Often, AMCs are ultimately owned by a publicly-traded company with public shareholders.

The issue is how far up an AMC's chain of ownership the AMC is required to go to identify an individual who may have forfeited or be ineligible for an appraiser's license. The Proposed Rule suggests that an AMC and its corporate ownership must adopt controls to ensure that no shareholder of a publicly-traded company that owns any portion of an AMC has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any state. This is an impossible task.

We believe that read literally, the Proposed Rule is unreasonable and places a burden on AMCs that ultimately cannot be satisfied. Moreover, the requirement can plainly only apply to a natural person, and not a Person as defined in the Proposed Rule, given that only a natural person can potentially obtain an appraiser license.

We request that the Agencies amend the Proposed Rule to clarify that the restriction stated in § 34.215(a) only applies to natural persons. We also request that the Agencies consider limiting the application of this restriction to natural persons who have direct ownership or who have an indirect ownership of an AMC and play a meaningful role in the AMC's operations.

In addition, we believe the Agencies should apply this requirement only to involuntary cancellations of an AMC license. A natural person who voluntarily cancels an appraiser license (but not in lieu of revocation or disciplinary action) should not be prohibited from owning an AMC.

5. The Agencies Should Only Require Natural Persons to Undergo a Background Check

Proposed § 34.215(b)(2) states that a non-Federally regulated AMC shall not be registered by a state if any person that owns more than ten (10) percent of the AMC fails to submit to a background investigation carried out by the state appraiser certifying and licensing agency.

We request the Agencies clarify that this requirement only applies to natural persons. Many state AMC laws include a provision similar to Proposed §34.215(b), but there continues to be confusion over the application of the requirement.

One state's recently implemented AMC registration and supervision program, for example, requires each owner of more than ten percent of an AMC submit to a background investigation. In their applications, many AMCs disclosed that only corporate entities owned more than a ten percent interest in the entity and no natural person was, therefore, subject to a background check. Nevertheless, the state refused to issue a registration to those AMCs unless they performed a background check on an individual, regardless of whether that individual owned more than ten percent of an AMC. AMCs, fearing they would not be able to obtain a registration otherwise, provided background checks on non-owner individuals.

We respectfully submit that such conduct is unreasonable. While most states understand corporate formation, a number of states desperately need clarification on these minimum requirements. We do not believe that AMCs should be forced to comply with requirements that do not exist and are inconsistent with law, and submit that the Proposed Rule is a critical opportunity for the Agencies to provide consistent guidance to states.

In addition, commentary to the Proposed Rule suggests that states have an ongoing obligation to review whether an AMC meets the requirements of proposed § 34.215, at the time of registration of an AMC, upon renewal, or more frequently as determined necessary by that state. The Proposed Rule suggests that states should require owners of more than ten percent of an AMC to undergo a background check upon renewal – such a requirement would result in AMC owners undergoing a background check more frequently than appraisers, a strange result given that AMC owners typically are not entering consumers' homes.

We understand the purpose of the Proposed Rule, and request that the Agencies clarify that states can satisfy proposed § 34.215(b) by requiring an AMC to notify the state regulator within a specified period of time if an owner of more than ten percent is arrested, found guilty, or pleads nolo contendere to a financial services-related misdemeanor or any felony. Alternatively, we request that the Agencies require the ASC to adopt regulations clarifying federal expectations of state regulators with regard to re-assessing the moral character of AMC owners.

E. Proposed Approach to Appraisal Review (*Question 7*)

In drafting the Proposed Rule, the Agencies considered whether to require AMCs to follow minimum standards when performing appraisal reviews. Because § 1110 of FIRREA requires a separate rulemaking to require "appropriate" review for compliance with USPAP in connection with Federally related transactions, the Agencies decided not to issue review standards in connection with the current rulemaking.

We generally do not oppose the decision by the Agencies to postpone rulemaking on this issue, but we believe it is important to provide general context on this matter given that a majority of states have already established requirements surrounding the appraisal review process.

Section 1110 requires that the Agencies adopt rules that require, at a minimum, that "such appraisals shall be subject to ***appropriate review*** for compliance with the Uniform Standards of Professional Appraisal Practice. It is important to note that this requirement reflects the expectation that creditors review appraisals, not that they perform an "appraisal review" which refers to the development of an appraisal review assignment in specific accordance with USPAP.

The Agencies have, in part, addressed expectations regarding the review of an appraisal in publishing the Higher-Priced Mortgage Appraisal Rule, stating:

> The Agencies remain concerned that, practically speaking, a creditor might not be able to determine with certainty whether an appraiser complied with USPAP for a residential appraisal. An appraisal performed in accordance with USPAP represents an expert opinion of value. Not only does USPAP require extensive application of professional judgment, it also establishes standards for the scope of inquiry and analysis to be performed that cannot be verified absent substantially re-performing the appraisal.[14]

As a result, the Agencies adopted an important safe harbor that does not require a creditor to perform an USPAP-complaint "appraisal review" on an appraisal.

Of the 38 states with AMC licensing/registration requirements, however, approximately 32 have specific requirements governing who can review an appraisal for compliance with USPAP and/or how many reviews must be performed by an AMC. These requirements vary significantly, and in a number of states are extremely costly for the appraisal management industry. For example:

- A large majority of states provide that only an appraiser licensed or certified in the subject property state can review an appraisal for compliance with USPAP.
- One state requires that each AMC annually review a random 5% sample of appraisals managed in the state with a very unique scope of work, which has generated a cottage industry of entities that offer services to meet the unique scope.
- One state requires each AMC to annually review at least two appraisals for each appraiser who perform assignments for the AMC, or a single review if only one assignment was performed.

While there is a great range of appraisal review requirements, there is little empirical evidence that additional reviews are resulting in increased appraisal quality. Rels Valuation believes a discussion is necessary regarding the appropriate level of quality assurance and review for appraisals.

F. <u>Aspects of Rule That Will Make It Challenging for States to Implement Within 36 Months (*Question 9*)</u>

While the Proposed Rule provides an overarching framework for state regulation and supervision of AMCs, it allows a state regulator significant discretion in its practical implementation. This creates a substantial risk of inconsistent interpretation. Unless further clarification is provided in the final iteration of the Proposed Rule, states will have significant difficulty adopting language that both meets the minimum requirements and is likely to satisfy an ASC audit.

Rels Valuation believes that the ASC will ultimately be required to adopt regulations or policy statements clarifying a number of issues related to the minimum requirements for registration and supervision of AMCs. Without such clarification, state appraiser certifying and licensing agencies risk failing an ASC audit resulting in significant consequences for AMCs and appraisers alike. The Agencies have the authority to require the ASC to adopt regulations or policy statements further directing states on the implementation of an AMC regulatory structure in order to ensure that states have appropriate and sufficient guidance to withstand ASC scrutiny.

In addition, we anticipate that by the time the Proposed Rule is final there still likely will be no process for states to report required AMC information to the ASC. Proper implementation of a state's AMC

[14] Fed. Reg., Vol. 78, No. 30, Wednesday, February 13, 2013, p. 10385.

regulatory program necessarily relies on the ASC developing and executing an AMC National Registry process.

As a result, Rels Valuation urges the Agencies to delay the start of the 36-month period during which states must adopt the minimum requirements until the ASC has established a functional AMC National Registry and has promulgated necessary further clarification of the minimum requirements for an acceptable AMC registration and supervision program. This approach will help ensure consistent interpretation and application of the minimum requirements and provide states sufficient advance notice of the ASC's expectations.

G. Barriers to States Collecting Information on Federally Regulated AMCs and Submitting Such Information to the ASC (*Question 10*)

The primary impediment to states collecting information on Federally regulated AMCs and submitting such information to the ASC is that the definition of a Federally regulated AMC is ambiguous, and there is no clear process by which an entity may clarify and document whether an AMC is Federally regulated.

Section 34.211(j) states that a 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.

1. Definition of a Federally Regulated AMC

The Agencies should clarify what it means for an AMC to be "owned and controlled" by an insured depository institution or an insured credit union. FIRREA does not specify what standard is used to determine whether an entity is owned and controlled.

A majority of states have a similar exemption, but they may vary from the language in FIRREA.[15] We believe that the Agencies can provide significant certainty for regulators, Federally regulated AMCs, insured depository institutions and credit unions by defining what standard is used to determine whether an AMC is owned and controlled.

The Agencies should also amend the definition of a Federally regulated AMC to be consistent with the appropriate language in § 1124(c) of FIRREA. The proposed definition appears to require that for an AMC to be Federally regulated, the AMC must meet two requirements. First, the AMC must be owned and controlled by an insured depository institution or an insured credit union. Second, the AMC must be regulated by the OCC, Federal Reserve, NCUA, or FDIC.

[15] In Wyoming, registration and supervision does not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency. Wyo. Stat. § 33-39-204. In Texas, AMC law does not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under Section 1104.203 or the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) through regulation by an agency of this state or the United States government. Tex. Stat. § 1104.004.

FIRREA, however, avoids this potentially confusing interpretation. Section 1124(c) states:

> The requirements of subsection (a) shall apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency. **An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State.**[16]

The second sentence of 1124(c) is not reflected in the Proposed Rule, but is explicit that an AMC is not required to register with a State if the AMC is a subsidiary owned and controlled by a financial institution that is regulated by a Federal financial institution regulatory agency. In other words, it provides that an AMC must only meet one requirement to be Federally regulated: be owned and controlled by a federally regulated insured depository institution or an insured credit union. We believe that the Agencies should amend the definition of Federally regulated AMC by removing the word "and" from Proposed § 34.211(j).

2. <u>Determination of Whether an AMC is Federally Regulated</u>

We believe the Agencies should require that, upon the written request of an AMC, the ASC must identify whether an AMC is Federally regulated and exempt from registration with a state. A majority of states currently exempt Federally regulated AMCs from their registration program, but those states rarely provide any type of explicit exemption.

This is important because in the current environment, many appraisers have requested an AMC's state AMC license/registration number prior to performing an assignment. Even when an AMC is exempt from the state's requirement, and the AMC informs appraisers of such exemption, some appraisers have refused to work with that AMC. This problem is exacerbated by state appraiser laws that prohibit appraisers from performing appraisal assignments for unregistered AMCs.

Proposed § 34.214(b)(1)(i) appears to suggest that the Appraisal Subcommittee adopt policies regarding the determination of the AMC National Registry fee, including but not necessarily limited to *a statement that the AMC is a Federally regulated AMC*. We believe this language is confusing and will result in conflicting interpretations by the states over whether an AMC is Federally regulated because the provision seems to suggest that each state will be making its own independent interpretation.

There should be a consistent process to ensure that states know definitely which AMCs are exempt from their registration process, and that appraisers know which AMCs can operate without a registration. Given that the Proposed Rule anticipates that the ASC will develop a structure for Federally regulated AMCs to report certain information directly to the ASC, we believe the ASC is in the best position to determine whether an AMC meets the definition of a Federally regulated AMC and is exempt from state registration and supervision.

3. <u>The ASC Should Manage the Minimum Requirements for Federally Regulated AMCs</u>

As described above, we believe it is important to avoid the development of a registration process that is inconsistent and results in a patchwork, with some states adopting reporting requirements for Federally regulated AMCs and others choosing not to do so. We recommend that the Agencies amend Proposed

[16] 12 U.S.C. § 3353(c) (emphasis added).

§ 34.214(b) to require that the ASC exclusively manage the disclosure requirements for Federally regulated AMCs.

States already have limited resources to regulate appraisers and AMCs. We believe states will have a difficult time developing a third process to manage the delivery of information for Federally regulated AMCs, which could result in delay and complications in the ASC's management of receiving such information.

Moreover, we believe states will be unable to appropriately determine what AMCs are Federally regulated. There is significant risk of inconsistent determinations by the states. What happens if State A determines an AMC is Federally regulated and therefore exempt from state registration, while State B determines the same AMC is subject to state registration and oversight?

We believe that the Agencies have the authority to require the ASC to exclusively manage Federally regulated AMC compliance with the minimum requirements in order to avoid such unintended consequences and ensure appropriate and consistent regulatory oversight of Federally regulated AMCs, The Proposed Rule already identifies the ASC as a backstop in the event a state does not develop a process for Federally regulated AMCs to comply with the minimum requirements, meaning the ASC will need to develop an alternative mechanism in the event a state fails to develop its own, which is highly likely.

H. Differences Between State Laws and Proposed Rule that Should be Addressed (*Question 11*)

The comments above include Rels Valuation's concerns and suggestions regarding differences between existing state laws and the Proposed Rule.