

July 15, 2016

Ms. Lori Schuster  
Management and Program Analyst  
Appraisal Subcommittee  
1401 H. Street, NW, Suite 760  
Washington, DC 20005

**RE: Docket Number AS16-06**

Dear Ms. Schuster:

On behalf of the nearly 20,000 members of the largest professional organization of real estate appraisers and valuation professionals, thank you for the opportunity to comment on the Appraisal Subcommittee's ("ASC") proposed rulemaking on Collection and Transmission of Annual Appraisal Management Company ("AMC") Registry Fees.

Upon review of the proposed rule, the Appraisal Institute does not believe that the ASC has satisfied the requirements of Section 609(a) of the Regulatory Flexibility Act, which helps ensure that small entities have an opportunity to participate in the rulemaking by use of reasonable techniques. These techniques include the following:

- The inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;
- The publication of a general notice of proposed rulemaking in publications likely to be obtained by small entities;
- The direct notification of interested small entities;
- The conduct of open conferences or public hearings concerning the rule for small entities, including soliciting and receiving comments over computer networks; and
- The adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

The ASC claims that the rule will not have a significant economic impact on a substantial number of small entities<sup>1</sup> when, in fact, many of these registry fees likely will be passed through to real estate appraisal service providers, the vast majority of which are small businesses. This proposal only focuses on state boards and AMCs and does not consider flow-down impacts on practicing real estate appraisers. We strongly suspect that the proposed AMC registry fees, barring any state law prohibitions<sup>2</sup>, simply will pass on through to the contract appraiser. This undoubtedly will affect thousands of small business real estate appraisal firms across the country. Because many appraisers may contract with multiple AMCs, the bill to small businesses likely will cost thousands of dollars on an annualized basis.

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<sup>1</sup> The proposal states that the ASC "does not believe the rule will have a significant economic impact on a substantial number of small entities," and later says the number of impacted AMCs is "approximately 500."

<sup>2</sup> Texas enacted policies in 2011 and 2012 that collectively prohibit AMCs from requiring appraisers to pay AMC registry fees. See V.T.C.A. § 1104.203 (a)(18)(I) and V.T.C.A. § 1104.052(b), both available at <http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1104.htm>

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As such, we respectfully request that the ASC reexamine the proposed rule, in light of the unquestionably strong impact on small entities. The ASC should conduct appropriate outreach with small entities in accordance with Section 609(a) of the Regulatory Flexibility Act and reissue a proposal that adequately addresses the significant economic impact on small entities.

### **Actual Economic Impacts**

The actual economic impact of this proposed rule is significant for small businesses. While it is true that there are only 400-500 AMCs registered by state appraiser regulatory agencies today, this is the required projected figure for the ASC to consider as small businesses under the Administrative Procedures Act. In fact, most AMCs in this total also are small businesses that will feel the direct effects of the proposal. And this proposal may, in fact, force small-to-medium-sized AMCs out of business, but not without first passing on the cost of the registry to real estate appraiser practitioners.

Beyond the AMCs themselves, AI estimates indicate that this proposed rule indirectly will affect 15,000-25,000 sole proprietorships, a figure that the ASC also should use for compliance with the Regulatory Flexibility Act. This is a conservative projection derived from AI research, which reports the latest number of active certified and licensed real estate appraisers (76,100). Of this figure, approximately 58 percent are Certified Residential appraisers (44,138).

Approximately 62 percent of residential appraisers are self-employed or sole proprietors with no employees or partners. A similar percentage (roughly 60 percent) reports accepting assignments from AMCs. These figures do not include Licensed Residential real estate appraisers, who are solely residential-focused.

### **Cost-Benefit Analysis**

As an independent agency, the ASC is not required to adhere to Executive Order 12866 or issue a cost-benefit analysis of the proposed rule. Still, we believe that it is a sound best practice for a federal agency to do so in a proposal of this magnitude.

The ASC has not provided an estimated revenue projection from the proposed rule. Further, it has not outlined how much the AMC Registry development will cost the ASC. On the surface, the Registry does not appear to require a great deal of time or effort since states already report information to the ASC. Therefore, in our opinion, the ASC stands to capture a sizable windfall at the expense of small businesses.

Related to this, Congress granted the authorization of AMC Registry fees on the presumption of the development of a grant program to state appraiser regulatory agencies. To date, the ASC has chosen not to develop such a program. Instead, the ASC has chosen to provide those grant funds to The Appraisal Foundation for the purpose of developing courses for state appraisal board investigators<sup>3</sup>. It is our view that this is being done with the idea of satisfying the statute's requirements.

We note that the ASC's 2015 Annual Report indicates exploring other options, including additional course development for state appraiser regulatory agencies' staff. This continues to ignore the clear mandate from the Dodd-Frank Act to provide direct grant funding to state appraiser regulatory agencies. The proposed rule also includes vague reference to funding from this proposal being used to support existing

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<sup>3</sup> On September 11, 2013, the ASC adopted a *State Grant Policy*. "...State Investigator Training Courses (Training) funded and administered through the Appraisal Foundation grant are considered a grant to the States as the courses benefit State personnel." "...staff is concerned that a State may cut the appraisal Program's budget if the ASC were to grant money to a State for other items, e.g., computer equipment." From the Appraisal Subcommittee Open Session Meeting Minutes, September 13, 2013, available at <https://www.asc.gov/Documents/MeetingMinutes/09.11.13%20-%20Open%20Minutes.pdf> See also, ASC State Grant Policy, available at [https://www.appraisalinstitute.org/assets/1/29/asc\\_state\\_grant\\_policy\\_9\\_11\\_13.pdf](https://www.appraisalinstitute.org/assets/1/29/asc_state_grant_policy_9_11_13.pdf)

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ASC programs and Title XI activities<sup>4</sup>. Frankly, continuation of this position is unacceptable in our view and flies in the face of Congressional mandates.

Absent a defined program that benefits appraisers, consumers and users of appraisal services, we believe that the ASC should establish a cap to the AMC registry fee that aligns with the costs of carrying out its Title XI responsibilities. For reference, we do not believe that the Dodd-Frank Act prohibits the ASC from establishing a tiered AMC registry fee structure based on the size of an appraiser panel maintained by the AMC or the volume of appraisals brokered by AMCs. Such a tiered structure would incorporate a \$25-per-appraiser element and potentially establish maximum or minimum fees<sup>5</sup>.

### **Misuse of “Covered Transactions”**

The proposed rule also establishes the AMC Registry fee structure around the “covered transaction” loan classification, which is a reference found in the Truth in Lending Act. This is much broader than the purview of the ASC – “federally related transactions” – or Title XI of the Financial Institutions Reform, Recovery and Enforcement Act. In fact, the phrase “covered transactions” is not found in Title XI of FIRREA, as amended by the Dodd-Frank Act [12 U.S.C. §§ 3331-3355]. We strongly believe that the ASC should base the AMC Registry fee on appraisals completed for “federally related transactions” during the previous year.

### **State Mandates**

The proposed rule asks what difficulties states may have in collecting and transferring fees to the ASC. Collecting the appraiser national registry is one thing; establishing an AMC scheme is another matter entirely. We expect that the States may have difficulty determining the number of appraisers on AMC panels and whether or not the number reported and the dollar amount remitted is accurate.

The biggest challenge is one of an unfunded mandate to States, which we fear may result in increased fees on appraisers. Some have asked us whether States could capture a portion of the \$25-per-appraiser fee to cover the administrative burden. We suspect that the view of the ASC will be to oppose this position, which may prompt some States to enact additional administrative charges on top of those imposed by this proposed rule. The same concerns regarding push-down effects on small business exist here, as these additional fees will be indirectly assessed to appraisers, as well.

### **“Federally Regulated AMCs”**

The proposed rule asks the following question:

*Question 5. The ASC requests comment on Federally regulated AMCs operating in a State that does not elect to register and supervise AMCs. Should the ASC collect information and fees directly from Federally regulated AMCs that wish to appear on the AMC Registry but operate in States that do not elect to register and supervise AMCs?*

We do not believe that States should be responsible for collecting the National Registry fees from so-called, “federally regulated AMCs.” These entities are exempt from State registration requirements, even though the AMC minimum requirements are such that they must identify themselves and provide information to the State regarding the number of appraisers in the State for purposes of the national

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<sup>4</sup> The Proposed Rule states: “Based on the ASC’s anticipated costs of overseeing States that elect to register and supervise AMCs, as well as the ASC’s anticipated costs of maintaining the AMC Registry, the ASC believes the proposed annual AMC registry fee would adequately cover those costs while supporting other Title XI functions of the ASC as mandated by Congress, including further development of its grant programs, particularly for States.”

<sup>5</sup> In fact, the Dodd-Frank Act gives clear discretion to establish a minimum annual registry fee for an appraisal management company to protect against under-reporting the number of appraisers working for or contracted by the appraisal management company, which would serve as the basis for a tiered AMC registry fee structure.

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registry. We believe that the actual responsibility for collecting the fees from federally regulated AMCs should fall on the ASC.

**Conclusion**

The number of certified and licensed appraisers in the United States has seen a significant reduction in recent years. The Appraisal Institute is projecting another 20-25 percent reduction over the next 5-10 years. Our profession currently faces great difficulty attracting qualified professionals to perform critically important risk management services that help protect the safety and soundness of real estate financing, especially in residential appraisal. There are numerous reasons for this projected decline, but a key reason is the increasing cost of operating a residential appraisal business. While fees for residential appraisal services remain largely stagnant, the cost to be a residential appraiser has increased. Proposals like the one being put forward by the ASC only stand to exacerbate this problem and cause further harm to appraisers. Therefore, we urge the ASC to perform a more extensive analysis on how the proposed rule will affect residential appraisers before proceeding with any Final Rule.

Thank you, again, for the opportunity to comment. Please call Bill Garber, Director of Government and External Relations for the Appraisal Institute, at 202-292-5586, [bgarber@appraisalinstitute.org](mailto:bgarber@appraisalinstitute.org), or Brian Rodgers, Manager of Federal Affairs, at (202) 298-5597, [brodgers@appraisalinstitute.org](mailto:brodgers@appraisalinstitute.org), should you have any questions.

Sincerely,

Appraisal Institute