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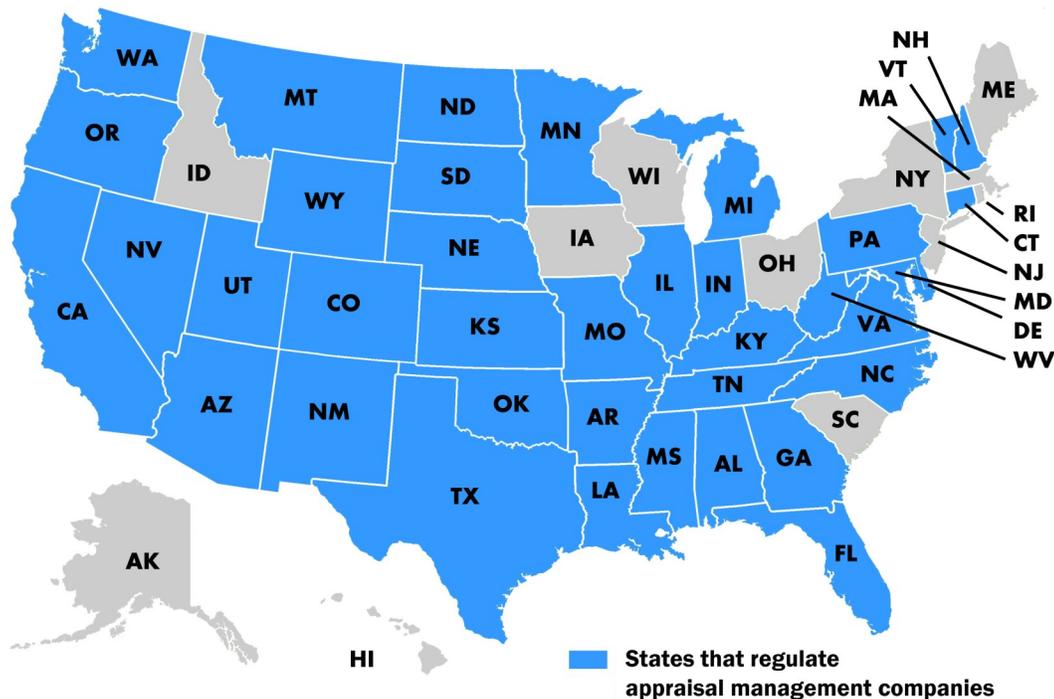
HOT TOPIC ALERT

Prepared for NAR by Legal Research Center, Inc.

Appraisal Management Companies

In 2010, President Obama signed the [Dodd-Frank Wall Street Reform Act](#), a sweeping renovation of the American financial industry. According to [some commentators](#), the law was the “most comprehensive financial regulatory overhaul since the Great Depression.” Dodd-Frank also contained a number of provisions that affected the real estate industry. One of these provisions requires the [Appraisal Subcommittee of the Federal Financial Institutions Examination Council](#) to monitor state requirements “for the registration and supervision of the operations and activities of an appraisal management company.” As of July 2014, thirty-eight states have adopted laws to regulate AMCs.

States Regulating Appraisal Management Companies



FHA Lenders: “Customary and Reasonable Fees”

FHA-approved lenders are supposed to pay AMC appraisal fees that are “customary and reasonable.” But what does that mean?

According to HUD, the term means the fee is “commensurate with the level of services provided and should reflect the amount of research, level of difficulty, and due diligence required on the appraiser’s part to produce a credible, reliable and accurate appraisal report that is in compliance with all FHA guidelines and USPAP.”

The rule regarding customary and reasonable fees was inserted in the law. At least one has argued that the rates paid to individual appraisers should be set by market forces and negotiation, rather than by regulation.

In March of 2014, six federal agencies—the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, and the National Credit Union Administration—[announced that they were proposing federal regulations for AMCs](#). The [proposed regulations](#) would set minimum requirements for state registration and oversight. There is no requirement that states enact such regulations, but AMCs would not be allowed to perform services for federally-related transactions in states that do not meet the minimum requirements.

This restriction seems minor, but it has a large practical impact. [Federal law](#) defines a “federally related transaction” as a real estate-related transaction that is regulated by the FDIC, Comptroller of the Currency, the Federal Reserve, the Consumer Financial Protection Bureau, FHFA, or the National Credit Union Administration. The result is that AMCs in states without regulation would be barred from providing services in a transaction financed by a federally-chartered bank or credit union.

(Note: appraisal management companies that are subsidiaries of federally-chartered financial institutions are not required to register with state regulators, so would not be prohibited from operating in a state that did not regulate AMCs.)

The minimum requirements for state laws are not complex. In order to comply with the proposed regulations, state laws would have to require AMCs to:

- Register in the state;
- Be subject to supervision by the state;
- Use only state-certified or licensed appraisers for federally related transactions;
- Require that appraisals comply with the Uniform Standards of Professional Appraisal Practice (USPAP);
- Ensure selection of competent and independent appraisers; and
- Establish and follow processes and controls designed to ensure that appraisals comply with the appraisal independence standards of the Truth in Lending Act.

State laws must also grant the agencies that certify and license AMCs the authority to:

- Approve or deny initial AMC registration applications and applications for renewal;
- Examine the AMC and require it to submit relevant information to the state;
- Verify that the appraisers on the AMC's appraiser network or panel hold valid state certifications or licenses;
- Conduct investigations of AMCs for potential violations of appraisal-related laws;
- Discipline an AMC for violations of appraisal-related laws; and
- Report violations of appraisal-related laws, disciplinary and enforcement actions, and other pertinent information about an AMC's operations to the Appraisal Subcommittee.

Who pays in bankruptcy cases?

In January 2013, the appraisal management company Evaluation Solutions/ES Appraisal Services (ESA) filed for bankruptcy protection. ESA listed debts of around \$11 million, with approximately \$5 million of that being unpaid fees for appraisals and broker price opinions.

Some of the appraisers who were unpaid JP Morgan Chase, the lender on whose behalf the appraisals were done. The appraisers relied on the common understanding in the appraisal community that the AMC acted as the agent of the lender, and that Chase was therefore liable for ESA's debts, since ESA acted as Chase's agent. But Chase avoided liability by settling all debts with ESA for approximately \$2 million, most of which was paid to a secured creditor. The settlement absolved Chase of any liability for any other ESA debts.

When it approved the settlement, the that ESA was not an "agent" of Chase under federal law, and that Chase was thus not liable for the unpaid fees. While this is a single decision in one jurisdiction, other lenders may be able to make the same argument.

How many AMCs are there?

*Since several states—including some populous ones like **New York** and **Massachusetts**—do not regulate or register AMCs, it is hard to know exactly how many companies are operating nationwide. Compounding the issue, many AMCs are registered in more than one state.*

*In **California**, a state that was one of the first to regulate AMCs, there are 270 registered AMCs. The **Illinois** Department of Financial and Professional Regulation lists 187 active AMCs.*

*In **South Dakota**, 109 AMCs are authorized to do business. It would seem that even less-populated states are able to sustain over 100 appraisal management companies; however, that number appears to be a reasonable low-end estimate for the number of AMCs in each state.*

The National Association of REALTORS® (NAR) supports the agencies' effort to guide states in registering and supervising AMCs. NAR provided [comments](#) on the proposed definition of an AMC, provided recommendations for calculating appraiser panel membership registration, clarified how to distinguish between an AMC vs. an appraisal firm, and advised the agencies how the Appraisal Subcommittee could implement standards if a state chooses not to participate.

Other industry comments on the proposal were generally positive. The Appraisal Institute gave its [strong support](#) to the proposed rules, noting that they are "mostly consistent" with state laws and regulations already in place. The Institute made some suggestions for clarifications of some terms in the proposal.

The [National Association of Appraisers](#) also supported the rule, but made comments regarding the distinction between independent contractors and employees of AMCs. The Independent Community Bankers of America (ICBA) [supports the proposal](#), but added its concern that any new regulations should not prevent or impede community banks from using local independent appraisers or staff appraisers familiar with the local real estate market.

The [American Banking Association](#) (ABA) submitted a comment in support of the proposed rule. The comment proposed an additional rule providing for a “backstop” federal regulation of AMCs in states that do not regulate or license them. The backstop regulation would simply say that the minimum standards of the proposed regulations apply to AMCs in those states. The ABA also proposed a federal registry of AMCs in the states that do not register the companies.

Not all of the comments received were in favor of the proposed rule. The [Consumer Mortgage Coalition](#) took the position that the Dodd-Frank act required all states to set minimum standards for AMCs. A [comment](#) letter submitted by a group of thirteen state appraisers’ associations raised objections to several provisions of the proposed regulation. The comments detailed the groups’ objections to certain definitions in the regulations, to the exemption of AMCs that provide appraisals for commercial real estate transactions, and the lack of a requirement regarding the “reasonable and customary fees” for appraisals. The comment also set out the groups’ general disagreement with the formation or operation of AMCs. The [Mortgage Bankers Association and American Financial Services Association](#) expressed their concern that the lack of a requirement that states adopt minimum standards in the proposed rules would undermine the ability of AMCs to operate on a nationwide basis.

The period for submitting comments on the proposed regulations closed in June 2014. It is certain that some form of federal regulation will be adopted, but for now, AMCs and state regulators do not need to make a frantic scramble for compliance. There is no official timetable for completing the final version of the proposal; however, there is [speculation that regulations](#) may be in place by the end of 2014. After the regulations become final, the next step will be for states to pass laws and adopt their own regulations that conform to the minimum requirements established by the federal agencies. In order to be in compliance with the federal regulations, state laws and rules will have to be in effect no later than 36 months after finalization.

States that already regulate AMCs probably will not notice any significant changes once the federal rules become final. States that do not have such laws in place will probably see a rush of state legislation to avoid barring local companies from a significant portion of the market.

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