

December 2021

HOT TOPIC ALERT

APPRAISAL MANAGEMENT COMPANIES



Introduction

In 2010, President Obama signed the [Dodd-Frank Wall Street Reform Act](#) into law. According to [some commentators](#), the law is the “most comprehensive financial regulatory overhaul since the Great Depression.” The law contains a number of provisions that affect the real estate industry, including a requirement that states maintain a registry of appraisal management companies (AMCs), and create minimum requirements for the operation and activities of appraisal management companies. Since the enactment of Dodd-Frank, [all 50 states have enacted legislation](#) for appraisal management company oversight. [Thirty-four states have adopted regulations](#) specific to appraisal management companies.

In this Hot Topic Alert, we look at the background of the federal law regulating AMCs, and also look at the state law enacted in response to the federal requirements. We also consider REALTOR® association activities relating to AMCs, and also the activities of other organizations in this area.

Background

A. What is an appraisal management company?

AMCs are business entities that serve as intermediaries between lenders and appraisers. Appraisal management companies are business entities that “administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lending institutions” according to the [Appraisal Institute](#). The definition applies to a network of appraisers, such as those who work as independent contractors for an appraisal management company. This definition does not apply to a unit of a business entity that performs appraisals for its own purposes (e.g. banks), and this definition does not apply to a group of appraisers.

The Dodd-Frank Act sets out a comprehensive system, including federally-mandated minimum requirements, for the regulation of Appraisal Management Companies. States are not required to establish a program to register and regulate AMCs, [section 1473 of Dodd–Frank](#), an AMC may not perform services related to a federally-related home mortgage transaction unless the company is registered with the regulatory authority of the state in which the AMC does business, or is subject to oversight by a federal financial institution’s regulatory agency. If the state does not have a registration and supervision program, AMCs are barred from working with covered federally-related transactions. Dodd-Frank also calls for the Appraisal Subcommittee of the [Federal Financial Institutions Examination Council \(ASC\)](#) to maintain a [national registry](#) of AMCs. The AMCs on the registry are either registered with and subject to supervision by a state agency, or are federally regulated.

The operations of AMCs have been largely standardized by law. AMCs recruit independent appraisers who are either certified or licensed by state law. AMCs verify [certifications or licensures](#) of independent appraisers. AMCs also negotiate fees and service expectations within the network of independent appraisers, often referred to an appraiser panel. AMCs are often responsible for appraisal reviews, collateral valuation, quality control, market value dispute resolution, warranty administration and record retention requirements. AMCs do not perform appraisals. Instead, AMCs give appraisal assignments to independent, certified, or licensed appraisers.

An AMC develops a screening and on-going assessment process which they use to screen independent appraisers before allowing independent appraisers to join the [AMC network](#). The AMCs work for the lenders directly, and do not work for individual consumers.

Federal Regulation of AMCs

a. Background

Reports of inflated [real estate loan appraisals](#) were common in the days before the real estate market crashed in 2008. An inflated loan appraisal determines an asking price that is much higher than the market value of the home. Inflated appraisals are a type of [mortgage fraud](#) that could cause a consumer to pay much more for a home than the market value of the property. Reducing and eliminating over-inflated appraisals is one goal of the [Dodd-Frank Act](#). That law attempts to establish legally acceptable practices for appraisers and lenders, including appraisal management companies. The goal is to ensure accurate, realistic home appraisals and to prevent pressure on independent appraisers from brokers and appraisal management companies. [All 50 states have enacted legislation](#) that includes, as part, a provision for ensuring that appraisers are independent and have not been coerced or influenced by AMCs or brokers.

An appraisal is a process determining an estimate of the market value of a property. Appraisals may be manual or automated, and typically involve comparisons of the prices paid in sales of similar properties, and market data analysis. There will usually be on-site inspections of the property being appraised, and federal entities such as Fannie Mae or Freddie Mac, the Federal Housing Authority, and agencies that regulate financial institutions may set additional requirements. Appraisals generally must be done in accordance with the [Uniform Standards of Professional Appraisal Practice \(USPAP\)](#), the generally accepted standards for professional appraisal practice.

An appraisal is not the only possible method for determining value. As the [Appraisal Institute](#) points out, federal law allows evaluations to be used in lieu of full-fledged appraisals to originate many mortgage loan transactions. Over the last several years, alternative services and processes allow clients to use alternatives to traditional appraisals. According to the [Real Estate Valuation Advocacy Association \(REVAA\)](#), these other services and processes include:

- An Automated Valuation Model (AVM) uses industry data and proprietary information from the developer of the model to deliver valuations. AVMs can often serve as an appraisal for mortgage financing purposes.
- Appraisal Risk Reviews (ARR) are tools for investors to use to judge the risk of a mortgage investment by measuring the accuracy, compliance, and risk factors of an appraisal.
- Broker Price Opinions (BPO) are an alternate real estate valuation used by financial institutions, AMCs and others. A BPO is an estimate of value prepared by a real estate licensee other than an appraiser (*i.e.* a broker or an agent). A BPO is usually a brief 2-3-page report that considers a neighborhood analysis, comparable properties, and local and regional market information.

Due to state appraiser licensing and certification laws, the ability of a real estate broker or salesperson to render a BPO or a CMA is limited in many states to providing these services in connection with the real estate listing and sales process. Several states have enacted new laws to expand the ability of brokers and salespersons to render BPOs and CMAs. A few states, including [Georgia](#), Indiana, and Tennessee, have also recently amended their appraiser licensing laws to allow appraisers to perform evaluations that do not comply with USPAP.

In 2009, in the wake of the financial crisis and several lawsuits, a set of appraisal rules called the [Home Valuation Code of Conduct](#) (HVCC) was developed. The rules were developed through the joint efforts of then-New York Attorney General Andrew Cuomo, Fannie Mae and Freddie Mac, with support from the Federal Housing Finance Agency. These rules were established to address appraiser independence. In this context, appraiser independence means “to eliminate undue influence by separating parties with a financial interest in a mortgage loan transaction from appraiser selection and retention.” The HVCC rules are no longer in force, but HVCC influenced the Appraiser Independence rules set out in Dodd-Frank and in the Consumer Protection Act.

Another persistent issue in real estate appraisal is appraisal bias on racial and ethnic lines. *The New York Times* reports that “[r]ace and housing policy has long been intertwined in the United States. Black Americans consistently struggle more than their white counterparts to be approved for home loans . . . Even in mixed-race and predominantly white neighborhoods, black homeowners say, their homes are consistently appraised for less than those of their neighbors, stymying their path toward building equity and further perpetuating income equality in the United States.”

Appraisal bias continues to be an issue. On September 20, 2021, Freddie Mac released a study titled [Racial and Ethnic Valuation Gaps in Home Purchase Appraisals](#). The study was inspired by media reports of appraisal bias, and looked at whether minorities are more likely to receive an appraisal value that is lower than the contract price. It considered several possible explanations for valuation gaps, including differences in comparable sale distances, comparable sale reconciliation, variances in sale prices of comparable properties, and possible systematic overpayment for properties by minorities. None of those possible factors provided an adequate explanation for the appraisal gaps for minority tracts. Commenting on the study findings, American Society of Appraisers (ASA) CEO Johnnie White said that the Freddie Mac study “sheds new light on a number of issues we hope to overcome through collaborative efforts with all housing finance stakeholders. We are committed to creating awareness about unconscious bias and promoting diversity, equity and inclusion for the appraisal profession. We look forward to working with all our industry partners to find durable solutions.”

b. Dodd-Frank Act

[Congress adopted Title XI](#) of the Dodd-Frank Act to address the problem of unregulated persons performing incompetent and/or fraudulent appraisals for federally regulated financial institutions. Title XI's purpose is to "protect Federal financial and public policy interests in real estate transactions by requiring that real estate appraisals done in connection with federally-related transactions are performed in accordance with uniform standards, and are done by individuals whose competency has been demonstrated and whose professional conduct is subject to effective supervision.

The Dodd-Frank Act establishes [minimum requirements](#) for appraisal management companies, and states are required to enact comprehensive AMC oversight and registration programs. The law requires the [Appraisal Subcommittee of the Federal Financial Institutions Examination Council](#) (ASC) to monitor state requirements "for the registration and supervision of the operations and activities of an appraisal management company." AMCs are not allowed to perform services for federally-related transactions in states that do not meet the minimum requirements. 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.

The ASC mission statement is as follows:

To provide federal oversight of State appraiser and appraisal management company (AMC) regulatory programs and a monitoring framework for the [Appraisal Foundation](#) and the Federal Financial Institutions Regulatory Agencies in their roles to protect federal financial and public policy interests in real estate appraisals utilized in [federally related transactions](#).

There are several important issues that the law seeks to address. First, appraiser independence is a consistent issue when it comes to appraisal management companies and the appraisal process in general. Dodd-Frank, federal regulations, and state laws address appraiser independence and prohibit coercion and undue influence in the appraisal process. Another consistent issue is appraiser bias, specifically along racial and ethnic lines. State and federal government oversight and monitoring can protect consumers from unconscious bias that may affect housing valuations for minorities.

As noted above, the ASC must also maintain a [National Registry](#) of AMCs. The AMCs on the National Registry are either registered with and supervised by a state appraiser certifying and licensing agency, or are operating subsidiaries of a Federally regulated financial institution.

c. Federal regulations

The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection established [Minimum Requirements for Appraisal Management Companies](#) to be applied by a State in the registration of appraisal management companies. The regulations apply to AMCs that provide appraisal management services related to consumer credit transactions secured by a consumer's principal dwelling. These regulations also apply to AMCs that oversee a panel of more than 15 appraisers in a single state, or a panel of 25 or more appraisers nationally in any one year. The law does not apply to AMCs owned and controlled by an insured depository institution and regulated by the OCC, FRB, or FDIC.

These requirements include a requirement that appraisal management companies register with a [state appraiser or appraisal board](#) and the companies will be subject to the supervision of that State appraiser or board. An AMC must verify that only licensed or certified appraisers are used in all federally related transactions. States are not required to set up a registry; however, AMCs in states without a registry may not provide services in a transaction financed by a federally-chartered bank or credit union. States that have registration requirements must provide information as required to the ASC. The minimum requirements also require AMCs to comply with the [USPAP](#). Because appraiser independence has been a persistent subject

of controversy, the minimum requirements also establish that appraisals are conducted independently and are free from inappropriate influence or coercion.

Federal regulations include several important definitions to keep in mind when looking at laws governing appraisal management companies. For example, the regulations define the [Appraisal Management Company National registry](#) as “the registry of State-registered AMCs and Federally regulated AMCs maintained by the Appraisal Subcommittee.” The regulations also define an appraisal management company as an entity that provides appraisal management services to creditors or secondary mortgage market participants in connection with valuing a consumer’s principal dwelling. This definition of an AMC excludes a department or division of an entity that provides appraisal management services only to that entity (e.g. banks). The regulations include a definition of an appraiser panel, defined as “a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC.” The appraisers on an AMC’s “appraiser panel” include “appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions.”

The federal regulations include [ownership limitations for State-Registered Appraisal Management Companies](#). One such limitation includes a provision on “[good moral character](#)” of owners of appraisal management companies. Any person who owns more than 10% of the appraisal management company must maintain good moral character. If an appraiser has had their license or certification revoked, or if the [State appraiser regulatory agency](#) determines the owner does not have good moral character or fails to submit to a background investigation, then that AMC will not be listed on the national registry. The federal regulations also establish [requirements for Federally Regulated Appraisal Management Companies](#). Federal requirements are imposed on AMCs, rather than individuals. An individual may not be appointed to an appraiser panel unless they are licensed or certified by the state.

d. State Laws

[All 50 states have enacted legislation](#) to oversee federally mandated minimum requirements for appraisal management companies. Each state also maintains a [State Appraiser Regulatory agency](#) or State agency that oversees appraisal management companies. Provisions under state law generally track requirements of federal regulations.

Some states require more than what is required under federal law, or provide for criminal penalties for AMC owners who do not comply. For example, New York passed [The Real Estate Appraisal Management Companies Executive Law](#), which includes a section called “Appraiser independence-unlawful acts” which specifically addresses the concerns of “appraiser independence” and provides a list of unlawful actions meant to coerce and influence appraisers. For example, the law prohibits AMCs from instructing, bribing, or intimidating an independent appraiser to mischaracterize the appraised value of a property, or from seeking to influence an appraiser to appraise at a higher value than warranted. However, AMCs are not prohibited from asking an appraiser to consider additional, appropriate property information such as additional comparable properties, or explanations of the appraiser’s findings. In addition, any person or company who fails to obtain a certificate of registration in New York is guilty of a [misdemeanor](#). In Arizona, a person who induces or influences an appraiser to over-value property is guilty of a [felony](#).

[California](#) requires that AMCs file a Change Notification Form within 10 days of the change. Changes include changes to the name of the AMC, changes to the contact information of the AMC, and changes in the controlling parties of the AMC. AMCs that falsify records, or that fail to notify the regulating agency of changes could be subject to criminal penalties and disciplinary action. Also, California, like many states, maintains an [online search platform](#) where consumers can search AMCs registered in California. The search provides information on disciplinary actions with a link to the disciplinary action documents. This provides relevant information for consumers and lenders.

REALTOR® Association Involvement

The National Association of REALTORS® believes in and fosters appraiser independence, as demonstrated in the Responsible Valuation Policy regarding home appraisals for consumers. NAR “strongly supports the independence of appraisers and the appraisal process. The role of the appraiser is to provide an independent and impartial analysis of real property. Compromising independence impacts the quality of appraisal reports, adding risk for both consumers and lenders.” In the [NAR Responsible Valuation Policy-Appraisals](#), NAR states that “[p]ersons who perform appraisals of real property shall be licensed or certified by their respective state regulatory agency and the appraisal shall be conducted in accordance with standards established in the [Uniform Standards of Professional Appraisal Practice \(USPAP\)](#). No person with an interest in the mortgage transaction shall compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate a person, appraisal management company, or firm for the purpose of causing the appraised value to be based on anything other than the independent analysis of the appraiser.”

NAR also supports alternatives other than AMCs. AMCs are not necessarily the best choice for all transactions. On the NAR website, the NAR Real Property Valuation Committee Chair, Rebecca Jones, and Vice Chair David Griffith discuss the [NAP Appraiser Independence Policy](#) as it relates to appraiser independence and they discuss alternatives to AMCs.

Other Organizations

a. Appraisal Institute

Although the [Appraisal Institute](#) has not taken a formal position on AMCs, appraiser independence is a focus of the Institute. The Appraisal Institute Board of Directors adopted the [Appraisal Institute Standards of Valuation Practice](#) (SVP) and the SVP became effective on January 1, 2015. Both public and private entities have also established Standards of Valuation Practice. These standards “provide the same assurances that the information being provided by the appraiser is credible and reliable, and that the appraiser is independent, impartial and objective.”

The Appraisal institute has published the [Appraiser Independence Laws](#), a document that examines how states are working towards ensuring appraiser independence. Federal AMC rules and subsequent state AMC licensing programs (all 50 states plus Washington, D.C.) mandate appraiser independence. AMCs must adhere to strict policies to ensure compliance.

The Appraisal Institute is also concerned with enforcement and compliance issues regarding state and federal laws as they relate to appraisals and appraiser bias. The Appraisal Institute had a “listening” session with the Property Appraisal and Valuation Equity Task Force in October 2021. In the [listening session paper](#), the Appraisal Institute wrote, “While there have been enforcement cases involving real estate appraisal, it has historically not been a significant source for fair housing complaints. As such, there is not a great deal of appraisal expertise or experience in fair housing agencies. Over the past year, the number of complaints has dramatically risen, most likely in response to multiple media reports on borrower concerns about race playing a role in valuation. Separately, we have heard appraisers express concern about value disagreements being couched as fair housing complaints. Additionally, fair housing education programs have been offered by appraisal education providers in the past, but it has not received sustained support or offering.” AI suggested that “all appraisers should be required to complete continuing education requirements on valuation bias and fair housing.” Several states have already enacted such requirements, including Minnesota, California, and New York.

As a further part of its efforts to combat bias, AI has adopted a [Code of Professional Ethics](#) which specifically requires that appraisers are “expected to engage in Valuation Practice in an unbiased and competent

manner. This term (valuer) is synonymous with appraiser.” They go on to define “biased” as something that is “not reasonably supported, and favoring or promoting the cause or interest of the client, one’s self, or another.” According to AI, “The Appraisal Institute has adopted its Code of Professional Ethics and Standards of Professional Practice to establish requirements for ethical and competent practice. These requirements also serve to promote and maintain a high level of public trust and confidence in Appraisal Institute Members.”

b. [Real Estate Valuation Advocacy Association](#)

The Real Estate Valuation Advocacy Association ([REVAA reports](#)) that AMC’s have existed since the 1960s and “grew in prominence following the global economic downturn in 2008.” REVAA goes on to explain why lenders use AMC’s. Compliance with state and federal laws regulating AMC’s is listed as a top reason lenders use AMC’s. “As third-party lenders, AMC’s guarantee compliance with all state and federal appraisal regulations.” REVAA goes on to state that “REVAA members comply with federal AMC rules and subsequent state AMC licensing programs (all 50 states plus Washington, D.C.) that mandate appraiser independence. AMC’s adhere to strict policies to ensure compliance by employees and vendors.”

c. [American Society of Appraisers](#)

The American Society of Appraisers (ASA) provides information from Fannie Mae on the Appraiser Independence Requirements. On January 6, 2021, Fannie Mae published a [lender letter](#) reminding lenders of their responsibility to comply with the [Appraiser Independence Requirements](#) published in October 2020. The Appraiser Independence Requirements explicitly address the separation of a seller’s sales function from the appraisal process. It goes on to list several activities that are prohibited as they relate to the appraisal process and appraiser independence.

The American Society of Appraisers supports the immediate passage of the [Real Estate Valuation Fairness and Improvement Act \(H.R. 2553\)](#). The bill addresses racial disparities in the residential and commercial real estate appraisal profession by establishing an interagency Task Force to analyze federal collateral underwriting standards. The Task Force would address six key areas, with the overall goal of reducing and eliminating bias in the housing appraisal profession, including AMC’s who use independent appraisers for consumer appraisal transactions. These goals include establishing specific definitions for limited or inactive markets where there is a dearth of comparable sales data and evaluating barriers to entry into the appraisal profession. Further, the bill would provide grant funding to promote diversity and inclusion in the appraisal profession, and for appraiser education to address unconscious bias. Grants would be administered by the Appraisal Subcommittee.

Conclusion

The Dodd-Frank Act was enacted into law more than eleven years ago. Since that time, all fifty states have enacted legislation designed to monitor and regulate home appraisals and appraisal management companies. Each state has a regulatory board designed for this purpose. The goal of the laws is to prevent fraud and to protect consumers. Both federal and state laws address appraiser independence, a persistent issue in real estate. Ensuring appraiser independence allows appraisers to use their skill and knowledge to best value a residential property. Appraiser bias is another persistent issue that is being address at the national level. Many appraiser advocacy organizations are addressing the issue of unconscious bias and support continuing education requirements for appraisers. Because AMC’s use a network of independent appraisers, they need to be aware of these proposed requirements. Alternatives to AMC’s are also being addressed in state legislation in some states. NAR supports both AMC’s and AMC alternatives in the valuation process. As David Griffith states, “Just like no one property is the same, no appraisal or appraisal process is the same.” Addressing appraiser independence and appraiser bias helps to ensure a fair and accurate valuation process.

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