Bureau of Real Estate Appraisers

Initial Statement of Reasons

Subject Matter of Proposed Regulations: Federal Compliance

Sections Affected: Amend Sections 3577 and 3582 of Title 10 of the California Code of Regulations

Introduction: The Bureau of Real Estate Appraisers (Bureau) regulates appraisers and Appraisal Management Companies (AMC). The Appraisal Subcommittee (ASC) provides federal oversight of all State appraiser and appraisal management company regulatory programs. This regulation is necessary to ensure the Bureau remains in compliance with recent federal rules regarding AMCs.

Specific Purpose of Each Adoption, Amendment, or Repeal

This proposal seeks to add three subdivisions to section 3577. The first will prohibit ineligible individuals from owning an interest in an AMC. The second will allow an exception to the ownership prohibition. The third will establish a national registry form to collect the national registry fee as required by federal law. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by the Dodd-Frank Reform Act states, in relevant part:

> An appraisal management company shall not be registered by a State or included on the national registry if such company, 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. (12 U.S.C.A. § 3353.)
>
> Each State with an appraiser certifying and licensing agency whose certifications and licenses comply with this chapter, shall… collect… from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this chapter or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of…$25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year. (12 U.S.C.A. § 3338.)

Based upon these federal provisions, there was a joint rulemaking issued by several federal agencies.[1] These agencies adopted regulations to implement the minimum requirements for state

[1] Department of Treasury Office of Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Bureau of Consumer Financial Protection, Federal Housing Finance Agency.

registration of AMCs as set forth in the Dodd-Frank Reform Act quoted above. The joint rulemaking included the following:

> Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State. (12 C.F.R. § 34.216.[2])

The ASC requires all states prohibit certain persons from owning, directly or indirectly, an AMC and requires each state remit the AMC registry fee each year.[3] This proposal will ensure the Bureau meets the federal requirements, but will not be preempted by federal requirements.

First, the Bureau proposes to add the federal statute ownership prohibition language directly into Bureau regulation. This will ensure compliance with the federal statute 12 U.S.C.A section 3353.

Second, the Bureau proposes to allow an AMC to be owned by an appraiser who was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified. This will ensure compliance with the joint rulemaking referenced in footnote one. An example of these regulations is the Federal Finance Housing Agency, 12 C.F.R. section 1222.24(a)(2), which states:

> An AMC subject to State registration pursuant to § 1222.23 is not barred by paragraph (a)(1) of this section from being registered by a State or included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

Third, the Bureau proposes to establish a form, REA 5030 (rev. 1/1/19), to collect the national registry fee. Section 3577 incorporates this form by reference. This form is designed using federal language to collect the correct national registry fee as established by federal law. Currently, the Bureau has in its regulations the ability to collect $25 as a processing fee for the national registry. This works well to compensate the Bureau for the processing of the national registry fee for appraisers. However, it is insufficient to process AMCs on the national registry. Thus, the Bureau proposes to amend its regulations to specify the $25 fee applies to appraisers, as is currently done, and establish a new fee of $110 to process AMC national registry fees.

The Bureau has determined it will incur a cost of $110 in Bureau employee time to process the form. In order to process the form, Bureau staff must maintain the database where the data from the form is entered and electronically submitted to the Appraisal Subcommittee (ASC). The

---

[2] *Id.*

[3] ASC Policy Statement 8 and 9.

Bureau estimates 10% of a Bureau Information Technology Associate's time will be devoted to database maintenance valued at $13,839 per year. This number is divided by 240 AMCs processed each year, which equals $58 per AMC per year. The Bureau will also incur one hour of a Program Technician's time valued at $36 and half an hour of an Office Technician's time valued at $19. The Information Technology Associate will ensure the database continuously and accurately communicates with the ASC's national registry. The Information Technology Associate will work with the ASC to identify and resolve issues as they arise and continue to test and monitor the database to ensure proper operations. The Program Technician will be tasked with monitoring when the forms are due and suspending those AMCs failing to timely comply. This will be time consuming as it is a yearly reporting period, but AMCs renew every two years. To try and avoid suspensions, the Program Technician will also be mailing notices to AMCs before the form is due. When the form is received, the Program Technician will enter the data into the database. If deficient, they will issue a deficiency letter. If the AMC fails to submit the form, they will issue the suspensions. The Office Technician will intake and log the receipt of the form, complete the accounting forms, package and mail checks and/or credit card information to the Department of Consumer Affairs, and distribute the forms to the Program Technician for further processing. This results in a total cost to the Bureau of $113 (rounded to $110) which the Bureau seeks to recoup as a processing fee.

The form will be due every year because the statute (12 U.S.C.A. section 3353) requires reporting every year. The Bureau choose June 1, 2020, as this is the date the Bureau must have the form effective to be compliant with federal requirements.[4] The Bureau choose thirty days as a month is a reasonable amount of time to compile and provide the information required on the form.

Form 5030 Contents

Form REA 5030 requires the AMC to complete the form in blue or black ink. The Bureau requires blue or black ink to ensure the form is completed in an easily readable permanent color.

Form REA 5030 requires the AMC to mail or deliver the completed form, fee, and qualifying documentation to 3075 Prospect Park Drive, Suite 190, in Rancho Cordova, California, 95370, because this is the Bureau's office location.

Form REA 5030 requires the name of the AMC and the AMC registration number for tracking purposes so the Bureau can keep track of which AMCs have completed the form and paid the required fee.

Form REA 5030 requires an AMC's original signature because copies can be illegible.

Form REA 5030 requires payment by pre-printed personal check, personal check, company check, cashier's check, certified check, money order, or credit card. The Bureau proposes to allow these payment methods to allow a wide variety of payment options, and because cash presents processing issues for the Bureau.

[4] 12 U.S.C.A. section 3353, subd, (f).

Form REA 5030 requires the AMC to sign the form under penalty of perjury because certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App.4th 1214, 1223 [judicial explanation for the use of certifications].) Every panel member will cost the Appraisal Management Company $25 so there is a financial reason to not include all panel members. The penalty of perjury will encourage the signer to accurately report their panel member size.

The benefits of this regulation are compliance with federal requirements and the ability for AMCs to continue operating in California.

Underlying Data

The Bureau did not rely on any underlying data.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. The initial determination is based on the following facts or evidence/documents/testimony. The national registry fee is a federally established fee that will be applied to all AMCs across the nation. Thus, all AMCs will incur the cost so California AMCs are not disadvantaged compared to other states nor are they disadvantaged among themselves since all AMCs pay the fee. The $110 fee to process the national registry fee is necessary to compensate the Bureau for its time processing the form and will likely not impact businesses. The Bureau has been in contact with AMCs and the AMC association Real Estate Valuation Advocacy Association (REVAA) to inquire about the impact of the national registry fee and the Bureau processing fee. While the Bureau has not heard support for the fees, the Bureau has also been informed AMCs will continue to operate with the fees in place.

Economic Impact Assessment

The regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the fee is not significant enough to create or eliminate jobs.
- It will not create new businesses or eliminate existing businesses within the State of California because the fee is not significant enough to create new businesses or eliminate existing businesses.
- It will not affect the expansion of businesses currently doing business within the State of California because the fee is not significant enough to affect the expansion of businesses currently doing business within the State.
- The regulatory proposal benefits the health and welfare of California residents because it aligns California regulations with ASC requirements to ensure AMCs can continue to operate in California and continues lender, appraiser, and consumer access to AMCs who can facilitate appraisals for home purchases.

- The regulatory proposal benefits does not affect worker safety because it established an ownership prohibition and a fee. This proposal does not address worker safety.
- The regulatory proposal does not affect the state's environment because it established an ownership prohibition and a fee. This proposal does not address the state's environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth are the alternatives which were considered and the reasons each alternative was rejected:

- Do nothing. This was rejected because California would be out of compliance with federal law and would be subject to ASC action.

- Establish a different Bureau processing fee. This option was rejected because the Bureau seeks to recover its costs to process the form so it could not charge less than $110. The Bureau also did not want this form to be a money generator so it rejected charging more than $110 to process the form.