

# Comments of the Independent Regulatory Review Commission



## State Board of Certified Real Estate Appraisers Regulation #16A-7021 (IRRC #3113)

### Appraisal Management Companies

October 7, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the August 8, 2015 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Certified Real Estate Appraisers (Board) to respond to all comments received from us or any other source.

#### 1. General. Consistency with Federal rules.

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) submitted comments that the proposed rulemaking does not address certain requirements for registration and supervision that were recently implemented by AMC Final Rule on Minimum Requirements for Appraisal Management Companies, 80 *Federal Register* 32658 (June 9, 2015) (AMC Final Rule).

These requirements relate to the State's authority to: examine the books and records of an appraisal management company (AMC); require AMCs to submit information for inclusion on the National Registry of AMCs; collect and remit AMC registry fees; and report disciplinary action and violations of appraisal-related law, regulations and orders. The Board should address these areas in the final regulation or explain why it is unnecessary to do so.

#### 2. Section 36.401. Definitions. – Whether the regulation is in the public interest.

*In good standing--*

The term's definition includes an individual who has an active unrestricted certificate or license, or a certificate or license that is on probation or subject to a restriction order by the Board. The Board explains that this phrase was not part of the temporary rulemaking and is being added at the request of stakeholders who asked for clarification and specificity regarding certification and licensure.

The phrase as used in § 36.404(b)(2) (relating to content of application) requires the compliance person to certify that the applicant has a system in place to verify that an appraiser is certified

and in good standing under the Real Estate Appraisers Certification Act (63 P.S. §§ 457.1-457.19) (REACA).

We ask the Board to explain in the Preamble of the final-form regulation how allowing an appraiser who is on probation or subject to a restriction ordered by the Board to be designated as “in good standing” is in the public interest.

### **3. Section 36.404 Content of Application. – Consistency with statute; and Reasonableness.**

This section provides for the content of the application to register as an AMC. The Appraisal Management Company Registration Act (63 P.S. §§ 457.21 - 457.31) (AMCRA) requires a certification that the applicant has a system in place for the performance of appraisal reviews with respect to the work of all appraisers to determine whether the appraisals are being conducted in conformance with the minimum standards under REACA both on a periodic basis and whenever requested by a client. (§ 457.25 (b)(5)(ii)) The Board has incorporated this requirement into the proposed rulemaking and has added the phrase “unless otherwise limited by the terms of a contract between the client and the appraisal management company.”

We understand the Board’s intent is to address stakeholder concerns that “an AMC should not be obligated to perform uncompensated appraisal reviews at the whim of a client.” However, our concern is that the amendment could restrict the right of a client to request an appraisal review to a specified number of times or only under certain conditions set by the AMC. The Board should explain in the Preamble of the final form regulation how this language is consistent with the AMCRA.

Also, we ask the Board to consider whether the issue relating to compensation for appraisal reviews would be more appropriately included in Standards of Practice § 36.433 (relating to appraisal review) instead of § 36.404 (relating to content of application)

### **4. Section 36.434. Broker price opinions and evaluations. -- Whether the regulation is in the public interest.**

The Board proposes that an AMC may not order or solicit broker price opinions (BPOs) or evaluations. Commentators submit that in many states BPOs are used in circumstances where an appraisal is not required such as default collections, loan modifications, foreclosure bidding, home equity lines of credit and refinancing. The commentators request the Board to reconsider the prohibition on BPOs in these circumstances.

The Pennsylvania Association of Realtors (PAR) questions the need for the Board to address BPOs in the proposed rulemaking based on the fact that BPOs are not within the permissible scope of practice under the Real Estate Licensing and Registration Act (RELRA). The Board should clarify the reasonableness of and need for Section 36.434 as it relates to state and federal law.

**5. Section 36.435. Recordkeeping. – Consistency with Federal rules.**

*Subsection (a)(3)*

The Appraisal Subcommittee expressed concern that the proposed language in this subsection may be interpreted as being narrower than the definition of an “appraiser panel” in the AMC Final Rule, which includes not only appraisers used by an AMC but also those accepted by the AMC for future appraisals. The Board should amend this section to ensure it is consistent with the AMC Final Rule or explain why it is unnecessary to do so.

**6. Section 36.451. Requirements for surety bond or letter of credit. -- Clarity.**

*Subsection (d)*

This subsection defines “claimant” and “faithful performance of the registrant’s obligations under AM CRA.” However, these terms are not used in the body of the regulation. We recommend the Board either delete the terms or revise the text of the final-form regulation to include them.

**7. Miscellaneous Clarity.**

- We recommend the Board amend § 36.401 (relating to definitions) to include the following terms and definitions that are included in AM CRA: “Mortgage Bankers and Brokers and Consumer Equity Protection Act” and “Registrant”;
- In section § 36.411(c)(3), the acronym “USPAP” should be explained and defined in the definitions section;
- We recommend the Board amend § 36.453 and § 36.454 to include lower case letter (a) at the beginning of the introductory paragraphs to be consistent with formatting and to improve readability;
- The Board’s response in Regulatory Analysis Form (RAF) question #24(a) should be revised to replace “. . . all of these are AM Cs” with “all of these are small businesses”; and
- In RAF questions #29 and #30, the Board should delete references to the Board meetings in 2014 and revise the expected date of promulgation.