

264 CMR 13.00: APPRAISAL MANAGEMENT COMPANIES

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13.01: Governing Law, Definitions

(1) This regulation 264 CMR 13.00 shall be construed consistent with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act as amended, 12 U.S.C. 3331 *et seq.* and regulations issued thereunder, 80 Fed. Reg. 32657; 12 CFR 34, 208, 225, 226, 323, 390, 1026, 1102, and 1222 (together, "applicable federal law"), as well as M.G.L. c. 112, §§ 173-195, M.G.L. c. 112, §§ 276-289, 264 CMR 1.00-12.00, and the Uniform Standards of Professional Appraisal Practice; where inconsistencies are found between this regulation and either applicable federal law or the Uniform Standards of Professional Appraisal Practice, then applicable federal law and the Uniform Standards of Professional Appraisal Practice shall control.

(2) For purposes of 264 CMR 13.00, the following terms shall have the following meanings:

AMC. An appraisal management company.

Applicant. A person who applies to be registered as an appraisal management company in the Commonwealth.

Appraisal Foundation or TAF. The nonprofit organization congressionally-authorized to develop standards and qualifications for real estate appraisers under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and overseen by the Appraisal Subcommittee.

Appraisal Management Company. An entity that:

- (a) provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;
- (b) provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and
- (c) within a given 12-month period, oversees an appraiser panel of 16 or more certified or licensed appraisers in the Commonwealth or 25 or more certified or licensed appraisers in two or more states; provided, however, that an appraisal management company shall not include a department or division of an entity that provides appraisal management services only to that entity.

Appraisal Management Services. Any of the following performed by an appraisal management company:

- (a) recruiting, selecting and retaining appraisers;
- (b) contracting with certified or licensed appraisers to perform appraisal assignments;
- (c) managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided and paying appraisers for services performed; or
- (d) reviewing and verifying the work of appraisers.

Appraisal Services. The services required to perform an appraisal, including defining the scope of work, inspecting the property, reviewing necessary and appropriate public and private data sources including, but not limited to, multiple listing services, tax assessment records and public land records, developing and rendering an opinion of value and preparing and submitting the appraisal report.

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Appraisal Subcommittee or ASC. A subcommittee of the Federal Financial Institutions Examination Council established pursuant to Title XI of FIRREA to oversee The Appraisal Foundation.

Appraiser Panel. A network, list or roster of licensed or certified appraisers approved by an appraisal management company who perform appraisals as independent contractors for appraisal management companies; provided, however, that such licensed or certified appraisers shall include:

- (a) appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; and
- (b) appraisers engaged by an appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions; and provided further, that an appraiser shall be considered an independent contractor if the appraiser is treated as an independent contractor by the appraisal management company for federal income tax purposes.

Board. The Commonwealth of Massachusetts Board of Registration of Real Estate Appraisers.

Commonwealth. The Commonwealth of Massachusetts.

Controlling Person. A person who is designated and has accepted the designation of controlling person under the procedure established by the Board and who is:

- (a) an officer or director of an appraisal management company or an individual who holds an ownership interest of not less than 10% in an appraisal management company;
- (b) employed, appointed or authorized by an appraisal management company who has authority to enter into a contractual relationship with clients to perform appraisal services and who has the authority to enter into agreements with independent appraisers for the completion of appraisals; or
- (c) authorized to direct or cause the direction of the management, policies or procedures of an appraisal management company.

Covered Transaction. An extension of consumer credit that is or will be secured by the consumer's principal dwelling.

Division. The Division of Occupational Licensure.

Employee in Charge. A designated employee of an appraisal management company who holds a valid license as an appraiser and who has the responsibilities and obligations to the board as set forth in M.G.L. c. 112, § 281.

Managing Principal. A Controlling Person or Employee in Charge.

National AMC Registry. The national registry maintained by the Appraisal Subcommittee, of companies that meet the federal definition of AMC in 12 U.S.C. 3350(11); are registered by a state or are federally regulated; and have paid the annual national AMC registry fee.

National AMC Registry Fee. The fee that the Board is mandated to collect from each appraisal management company that either has registered with the Board or operates as a subsidiary of a federally regulated financial institution and transmit to the national AMC registry in accordance with 12 U.S.C. § 3338(a)(4)B).

Person. A natural person or an organization, including a sole proprietorship, partnership, limited liability company, limited partnership, corporation, association or other group engaged in joint business activities, however organized.

Uniform Standards of Professional Appraisal Practice and USPAP. The appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

13.02: Registration, Qualifications, and Exemption

(1) All appraisal management companies shall register with and be subject to supervision by the Board of Registration of Real Estate Appraisers in compliance with all rules, regulations and orders duly issued and with all registrations, licenses and approvals duly granted by the Board.

Each AMC that operates as a subsidiary of a federally regulated financial institution shall provide identifying information, information related to ownership, panel size and the number of appraisers used to calculate the AMC registry fee, submitted on a form prescribed by the board

(2) In addition, every appraisal management company shall:

(a) Make the certifications required by 264 CMR 13.02(2)(b) through (f) in original applications for registration, renewal forms and upon request of the Board;

(b) Certify that only persons who hold Massachusetts appraiser licenses or certifications in good standing pursuant to M.G.L. c. 112, §§ 173 through 195 are added to its appraiser panel for appraisal services on real property located in Massachusetts after verifying the status of the appraiser by contacting the Board or utilizing the national AMC registry;

(c) Certify that the AMC requires appraisers completing appraisal services at its request to comply with the Uniform Standards of Professional Appraisal Practice;

(d) Certify that the company periodically reviews the work of all appraisers performing appraisal services for the appraisal management company to confirm that those services are conducted in compliance with the Uniform Standards of Professional Appraisal Practice;

(e) Certify that the company maintains a detailed record of each request for appraisal services that it receives; the name of the appraiser who performs those appraisal services for the appraisal management company; and a complete digital copy of every version of each appraisal report completed by the appraiser; and all information required by 264 CMR 13.04(3);

f. Certify that appraisals are conducted independently and are free from inappropriate influence or coercion, and that appraisers are not encouraged in any manner to misstate or misrepresent the value of a subject property and that the company complies with Sections 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder 12 CFR 226 and 1026; and

g. Designate one controlling person who shall be the primary point of contact for all communication between the Board and the appraisal management company.

1. The application shall also designate an employee in charge, who may be the same person as the controlling person.

2. The application shall include a signed acceptance of the responsibility of controlling person and employee in charge.

(3) Each person who directly or indirectly owns 10% or more of an appraisal management company or is an officer, controlling person or employee in charge of an appraisal management company shall be of good moral character as determined by the Board. Each such person may be required to provide a certified copy of the criminal history record check conducted in the applicant's home state, which shall have been performed within 12 months of the date the completed application for registration or amendment is received by the Board.

(4) The Board may conduct criminal history background checks using information reasonably identified by the board to determine the suitability of all persons who directly or indirectly own more than 10% of an appraisal management company, and all officers, controlling persons, and employees in charge of appraisal management companies.

a. The Board may conduct fingerprint-based checks of state and national criminal history databases only as authorized by U.S. Public Law 92-544 and M.G.L. c. 112, §§ 279(c) and 289, to determine the suitability of persons who directly or indirectly own more than 10% of an appraisal management company, and officers, controlling persons, and employees in charge of appraisal management companies.

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- (5) An AMC shall not be registered by the Board if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had a license or certificate to act as an appraiser or to engage in any activity related to the transfer of real property refused, denied, cancelled, surrendered in *lieu* of revocation, or revoked in any state for substantive cause as determined by the Board.
- (6) Each applicant shall submit the name and address of the applicant's registered agent located in the Commonwealth.
- (7) An individual operating an appraisal management company as a sole proprietorship shall be a state-certified general real estate appraiser or state-certified residential real estate appraiser and shall be considered the controlling person of the AMC.
- (8) Exemptions. The provisions of 264 CMR 13.00 do not apply to the following entities:
  - a. An AMC that operates as a subsidiary of a federally regulated financial institution, except as provided in 264 CMR 13.02(1)(a) and 13.05(3)-(4);
  - b. A person that performs appraisals, appraisal reviews or appraisal consulting and that, at all times during a 12 month calendar year, engages as independent contractors fewer than 16 appraisers licensed or certified in Massachusetts and fewer than 25 appraisers licensed or certified in Massachusetts and other states for the performance of appraisals.

13.03: Application Procedure

- (1) An appraisal management company must register with the Corporations Division of the Secretary of the Commonwealth before submitting an application for registration with the Board.
- (2) An application for registration as an appraisal management company shall be submitted on a form prescribed by the Board and the applicant must certify, under the pains and penalties of perjury, that the information provided in the application is truthful and accurate.
- (3) With the application, each applicant shall submit to the Board:
  - (a) The applicable application and registration fees as determined by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B, together with the national AMC registry fee calculated as \$25 or other amount determined by the federal Appraisal Subcommittee under 12 CFR 1102.403, multiplied by the number of appraisers who have performed an appraisal for the AMC in connection with a covered transaction in Massachusetts during the 12 month period preceding the date of the submitted application, and that number of appraisers shall be calculated in accordance with 264 CMR 13.05(4);
  - (b) A true and complete copy of the Business Entity Summary for the applicant issued by the Secretary of the Commonwealth, dated not fewer than ten business days prior to the date the application is submitted;
  - (c) The name and address of the applicant's registered agent located in the Commonwealth;
  - (d) Irrevocable Uniform Consent to Service of Process;
  - (e) A surety bond in the amount of \$20,000.00 to secure the faithful performance of the company's obligations, in a form prescribed or approved by the Board, to accrue to the Commonwealth for the benefit of a claimant against the appraisal management company;
  - (f) A completed, signed and notarized Criminal Offender Record Information (CORI) Authorization Form for every person who owns more than 10% or is an officer, controlling person, or employee in charge of the applicant; and
  - (g) Other information reasonably required by the Board.
- (4) Prior to an application being considered complete, each applicant for registration as an AMC must submit a list of all persons who directly or indirectly own more than 10% of the applicant and all officers, controlling persons, and employees in charge of the applicant, and information for each natural person identified in said list, including:
  - (a) The person's full legal name and any aliases;
  - (b) The person's address;
  - (c) The person's date of birth;
  - (d) A photocopy of the person's driver's license or other government-issued identification card;

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- (e) A CORI Acknowledgment Form, pursuant to 803 CMR 2.11: *Requirements for Requestors to Request CORI*, provided by the Commission, signed by the person and notarized;
- (f) Authorization to obtain a full set of fingerprints, if required by the board, in accordance with U.S. Public Law 92-544 and M.G.L. c. 112, §§ 279(c) and 289, submitted in a form and manner as determined by the board; and
- (g) Any other information, authorization or disclosure deemed necessary by the Board for the purposes of conducting a background check.

(5) Any and all persons required to submit fingerprints shall pay a fee to be established by the Massachusetts Secretary of Administration and Finance, in consultation with the Massachusetts Secretary of Public Safety and Security and the board, to offset the costs of operating and administering a fingerprint-based criminal background-check system.

Any fees collected from fingerprinting activity under 264 CMR 13.00 shall be deposited into the Fingerprint-based Background Check Trust Fund established in M.G.L. c. 29, § 2HHHH.

(6) The Board may return to the applicant any application that is incomplete or is not accompanied by the required fee or documentation. Applications shall be valid for one year from the date of receipt by the board, and the one-year period shall not be extended.

(7) The application shall be submitted using the name or names of the legal entity under which the appraisal management company offers or provides appraisal management services in Massachusetts and in other states, and must include in the application any and all trade names or assumed business names under which it operates in any manner in Massachusetts.

(8) The Board may refuse to register or renew the registration of an appraisal management company that fails to comply with any provision of M.G.L. c. 112, §§ 276 through 289 and 264 CMR 13.00.

13.04: Operational Requirements for Appraisal Management Companies

Appraisal management companies shall take action to implement in full the certifications made under 264 CMR 13.02 to obtain registration, and in addition shall do all of the following:

- (1) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite license, education, expertise and experience necessary to competently complete the appraisal assignment for the particular market and property type;
- (2) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company conducts its appraisal management services in accordance with the requirements of Section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder 12 CFR 226 and 1026;
- (3) Create all of the following records for each request for appraisal services and preserve such records in accordance with the recordkeeping rule of the Uniform Standards of Professional Appraisal Practice:
  - (a) Date of receipt of the request;
  - (b) Name of the person from whom the request was received;
  - (c) Name of the client for whom the request was made, if different from the name of the person from whom the request was received;
  - (d) The appraiser or appraisers assigned to perform the requested service;
  - (e) Date of delivery of the appraisal product to the client;
  - (f) Client contract;
  - (g) Engagement letter; and
  - (h) A complete digital copy of every version of each appraisal report completed by the appraiser;

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- (4) Notify the Board of any change in the designated controlling person or employee in charge not later than 21 days after making the change, and shall submit such change on a form prescribed by the Board and with the fee prescribed by M.G.L. c. 112, § 283 and determined by the secretary of administration and finance under M.G.L. c. 7, § 3B;
- (5) Notify the Board of any change in the persons who directly or indirectly own more than ten per cent of an appraisal management company not later than 21 days after making the change, and shall submit such change on a form prescribed by the Board;
- (6) Provide the board with information sufficient to verify that the appraisers on its appraiser panel hold valid certifications or licenses as applicable; and
- (7) At least once every two registration renewal periods, review a representative sample of appraisals performed by each independent appraiser who is performing real estate appraisal services for the appraisal management company for real property located in Massachusetts, to validate that the real estate appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice ("USPAP") and the standards of the Board.
- (8) An appraisal management company shall cooperate with all inquiries by the board and its agents who are investigating to assess compliance of the AMC, its agents and members of its appraiser panel with applicable appraisal-related laws, regulations and orders, and shall make its books and records of operations in the Commonwealth available to the Board upon request.
- (9) An appraisal management company's controlling person or employee in charge who has a good faith belief that an appraiser licensed in Massachusetts has violated applicable law or the USPAP or engaged in unethical conduct shall file a complaint with the Board not more than 45 days after identifying the violation or unethical conduct.

13.05: Renewal Procedure, National Registry Fee, and Calculation of Appraiser Panel Size

- (1) All appraisal management company registrations shall expire on the date that is one year after the original registration with the Board and shall be known as the "registration expiration date."
- (2) An AMC must renew its Board-issued registration by submitting to the Board a completed renewal form prescribed by the Board with the required renewal fees, including the national AMC registry fee for an AMC, no earlier than 60 days before the registration expiration date.
- (3) Each AMC and AMC that operates as a subsidiary of a federally regulated financial institution shall pay to the Board an annual national AMC registry fee calculated as \$25 multiplied by the number of appraisers on the AMC's appraiser panel who performed appraisals in connection with a covered transaction in Massachusetts for the 12-month period ending on the registration expiration date.
- (4) For purposes of determining whether, within the twelve-month period ending on the registration expiration date, an appraisal management company oversees an appraiser panel of 16 or more state-certified or state-licensed appraisers in one state or 25 or more state-certified or state-licensed appraisers in two or more states under 264 CMR 13.05, the following rules shall be applied:
  - a. An appraiser is deemed part of the AMC's appraiser panel if the AMC has engaged the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary market participant in connection with covered transactions at any time during the twelve-month period ending on the registration expiration date.
  - (b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to 264 CMR 13.05(4)(a) is deemed to remain on the panel until the date on which the AMC:
    1. Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or
    2. Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

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3. If an appraiser is removed from an AMC's appraiser panel pursuant to 264 CMR 13.05(4)(b)(ii), but the AMC subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the 12 months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

13.06: Duties and Authority of the Board

- (1) In addition to the powers necessary to implement and enforce these regulations, the Board shall have the authority to:
  - (a) Discipline, suspend, terminate or deny renewal of the registration of an appraisal management company that violates applicable appraisal-related laws, regulations or orders;
  - (b) Report an appraisal management company's violation of applicable appraisal-related laws, regulations or orders, as well as disciplinary and enforcement actions and other relevant information about the operations of an appraisal management company, to the Appraisal Subcommittee;
  - (c) Submit to the Appraisal Subcommittee, in writing, the following information:
    1. Information regarding registered appraisal management companies requested by the Appraisal Subcommittee for inclusion in the national AMC registry;
    2. Information received from an AMC that operates as a subsidiary of a federally regulated financial institution related to determination of that AMC's annual national AMC registry fee;
    3. As soon as practicable, notice that an AMC is no longer registered with the Commonwealth;
    4. Timely reports of supervisory activities involving AMCs, including investigations resulting in disciplinary action against an AMC;
    5. Within five business days after it becomes final, disciplinary action taken against an AMC; and
    6. Remit the annual national AMC registry fee received from each appraisal management company and each AMC that operates as a subsidiary of a federally regulated financial institution.
- (2) Nothing in 264 CMR 13.00 shall diminish the authority of the Board to regulate natural persons licensed as appraisers under M.G.L. c. 112, §§ 173 through 195 and 264 CMR 1.00 through 12.00.

REGULATORY AUTHORITY

264 CMR 13.00: M.G.L. c. 13, § 92; c. 112, §§173 through 195, and c. 112, §§276 through 289.