



State regulation of AMCs causing confusion

Six states have passed laws that regulate appraisal management companies and require registration, four of them since Jan. 1. But what procedures and processes have been put in place for the registration of AMCs? How do they differ from state to state and what effect has that had on how AMCs do business? Read on for an investigation into how state level regulation of AMCs is causing confusion and leading to inconsistencies.

Just before the New Year, *Valuation Review* was contacted by an appraiser who worked at an appraisal management company (AMC). The appraiser had several questions about the impending regulations in various states for appraisal management companies. “I was hoping you could steer me in the right direction,” he said. “Which states have new laws affecting AMCs after Jan. 1? I am confused about the new rules. Are they only for AMCs that have physical offices in those states? Or for any AMC that orders an appraisal and pays an appraiser in that state? Am I interpreting the regulations wrong? If I do nothing different than I did in 2009, can I still do business in 50 states?”

The same questions are on the lips of every national or regional appraisal management company and appraisal firm. “The atmosphere in the industry right now is one of confusion,” said **Shawn Telford**, CMS product manager at mortgage technology provider FNC Inc. “The people affected by these laws are in the process of figuring them out. They’re watching; they’re waiting. All of this is new.”

As of Jan. 1, 2010, there were six states that had laws on their books that regulated AMCs and required registrations. Arkansas, California, Louisiana, New Mexico, Nevada and Utah had all passed laws that called for the regulation of AMCs, but not all were requiring registrations yet. But what procedures and

structures have been put into place by the state agencies responsible for the registration process? How do the states’ requirements differ from one another? And what are AMCs themselves doing to address this issue?

To begin with, it’s important to look at this issue on a federal level, before addressing each state. The demand for appraisal management company regulations has increased greatly since the introduction of the Home Valuation Code of Conduct (HVCC) in May 2009. The code eliminated the previous system of using mortgage brokers or loan officers to order an appraisal, forcing lenders to set up internal operations or contract out appraisal ordering to third-party services such as appraisal management companies.

The AMC business model is not a new one — it has been around for decades. However, the HVCC led to a huge rise in use of AMCs by lenders and mortgage servicers. This has not been without controversy: independent appraisers have been highly vocal about their concerns with fee splits, turnaround times and appraiser selection process. There have even been anecdotal reports of AMCs pressuring appraisers to “hit the numbers” and allegations that AMCs have altered appraisal reports.

While these reports remain unconfirmed, other



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appraisers have complained about not being paid in a timely manner when working with AMCs. In an article in *The Bend Bulletin*, an Oregon newspaper, local appraiser **Michael Read** is quoted as saying he is owed \$7,500 in unpaid payments from a Portland-based AMC. In a more extreme example, a former appraiser in Florida set up his own appraisal management company despite having his license permanently revoked a few years earlier.

There is no doubt that there are some bad actors in the AMC business, agreed **Jeff Schurman**, executive director of the Title Appraisal Vendor Management Association (TAVMA), and that regulation would help weed out those companies that are less than legitimate. “We’re not opposed to regulation because there are a lot of good reasons to have a registration process,” he said. “But nothing good can come of state-by-state registration. I’m not saying that regulation ought not to be done, but I am saying that it should be at the federal level, with one set of rules and requirements for these national and regional AMCs.”

At a federal level, there is already a piece of legislation that would cover AMC regulation. **HR 1728**, known as the Mortgage Reform and Anti-Predatory Lending Act and part of the larger overhaul of the country’s financial systems, passed through the House of Representatives and is sitting before the Senate.

Although HR 1728 covers a lot of ground in AMC regulation, including giving more power to the Appraisal Subcommittee, it leaves the door open for who would be in charge of enforcing AMC registration. It directs the Appraisal Subcommittee to “maintain a national registry of appraisal management companies that either are: registered with and subject to supervision of a state appraiser certifying and licensing agency; or are operating subsidiaries of a federally regulated financial institution.”

The problem of who enforces the regulations is relevant, says Schurman, because of the drain on time and resources. “[state-level regulation] puts a tremendous burden on the agency in the state that’s charged with regulating and executing the registration process,” he said. “There are between 200 and 300 AMCs. What if someone doesn’t register? How are they going to find out? What processes will they have in place? You’re going to have to have investigators, but a lot of states don’t have the funds to adequately investigate.”

Schurman has been providing guidance and information about AMC regulations to his members. The TAVMA Web site (www.tavma.org) has a comprehensive section on AMC state regulation with links to current and pending legislation as well as the forms needed to apply for operations in the affected states.

Not all of the six states that have AMC regulations passed into law have their processes in place yet, as **Jeff Dickstein**, Chief Appraiser for Waltham, Mass.-based valuation services provider Pro Teck, explained. “Arkansas, New Mexico, Utah and Nevada are the only states that have passed laws, completed rules and administrative hearings and provided applications for registration,” he said. “While each is different in terms of process and timing, Pro Teck is in compliance with all these states.”

The situation is different in Louisiana. The new law there is in effect from Jan. 1, 2011, or sooner if the Real Estate Appraisers Board is able to promulgate the rules before then. **Stephanie Boudreaux**, the public information officer for the board, told *Valuation Review*, “We’re working on the rules right now. We anticipate that they will be promulgated before Jan. 1, 2011, and that they will be effective mid-2010. I don’t think we’ll go all the way to 2011.”

Despite the rules not taking effect for another six months at the earliest, some AMCs were eager to get signed up as soon as possible. “We’ve had contact from some AMCs,” Boudreaux continued, “but we just directed them to our Web page and told them to monitor our progress in rule-making so they can keep abreast of how soon it will be before they have to apply.”

In California, the Office of Real Estate Appraisers (OREA) has had to propose emergency regulations in order to implement the state’s AMC bill as quickly as possible. From Jan. 11, OREA posted emergency documents on its Web site and opened a five-day public comment period. In the emergency documents, OREA states it is not accepting AMC applications at this time and that a certificate of registration “is not required at this time in order to operate as an AMC in California.” According to the division’s Web site, OREA is planning to begin establishing permanent regulations in February.

But for those states that do have registration in place, things are running as planned. Arkansas, Nevada, New Mexico and Utah all have downloadable forms on their Web sites for



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AMCs to begin the process. But each state has different terms and conditions for registrations.

For a start, each state has slightly different wording on what defines an AMC. In Utah, an AMC is any entity that “administers a network of appraisers to perform real estate appraisal activities for one or more clients.” Whereas in New Mexico, it is any, “corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that contracts with independent appraisers to perform real estate appraisal services for clients.”

Perhaps more pertinent is what is exempt from the definition of an AMC. In California, “an individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal services and that has the authority to enter into agreements with independent appraisers for the completion of appraisals” is exempt, meaning an appraisal firm working for an AMC wouldn’t be considered as a management company.

Bill Temple is the chief appraiser and information officer for Mich.-based appraisal firm Metro-West Appraisal Co. “One of the challenges we constantly face is the notion that we are an AMC, when in fact we are a staff appraisal company,” he explained. “All of our appraisers are employees that are subject to the same type of relationship any appraiser would have with an employer, whether an appraisal company, a bank staff relationship, or even an AMC.”

Jim Martin, executive director of the Arkansas Appraiser Board, has been dealing with applications for AMC registrations since October, when the board announced its rules and regulations were in place. A problem he has encountered has been with companies “doing business as” with different aliases. “There are firms that are registering as AMCs doing business as other names. I’ve had cases where there were two or more names for a company.”

Then there are the registration fees. In Utah, it costs just \$350 to submit an application for AMC registration, plus a

further \$35 charge for processing the fingerprinting. In Arkansas, that fee climbs to \$500. In California, the proposed fee (which will not be due until the emergency regulations are finalized) is \$1,600.

The number of applicants necessary for registration also varies, from one “controlling person” to potentially anyone with more than 10 percent stake in the AMC.

In Nevada, each principal, general partner, director, officer or trustee of the company must complete an individual application and attach it to the registration form for the company. In addition, the applicant and each principal, general partner, director, officer or trustee is required to submit fingerprints for a background check. Unless the applicant uses a Nevada-authorized electronic vendor, he or she will have to contact a law enforcement agency and enclose a money order for \$51.25 to the Nevada Department of Public Safety.

It’s an entirely different process in Arkansas. As Martin said, “We do not have all of the screening elements some states have put in. That is not inherent in our act. We’re registering on the basis of good faith.”

Arkansas, however, requires something unique: a surety bond of \$20,000 in the form of cash or securities. Martin, who estimated that his board has registered 40 AMCs since the procedures were put in place in October 2009, said that the surety bond issue needed further guidance from state attorneys. “We’ve got a lot of applications still pending. We’ve had some questions about that and we’ve tried to get some answers from our attorneys.”

Martin recognizes that it will take time for some AMCs to come to grips with the new regulations. “We’re going to try to give a grace period,” he said. “We’re not going to go out and clobber anybody just because they don’t get registered.” But he suggested this grace period would be no more than 30 days. After that, he said, “Anytime we find somebody who’s doing business in the state and they have not made overtures to us, the law is pretty explicit. We’ll ask them to get registered or cease and desist.”



Another issue that varies from state to state is fee disclosure. Many of the state regulations are requiring disclosure of the fee structures that an AMC uses, including allowing appraisers to disclose information about fees in the actual appraisal report itself.

According to FNC's Telford, this has created additional burdens for all those involved. "It is unclear whether the AMC is to be held accountable for appraisal compliance in this regard or if the responsibility falls to the appraiser or both," he said.

Indeed, the requisite in some states that the appraiser has to be paid within a timely manner could have potential ramifications. "A good example would be states like Minnesota or elsewhere, where AMCs have to guarantee to pay the appraiser within X amount of days after completion," said Schurman. "When you look at it, you say, wait a second – doesn't that set a precedent for other trades? What other real estate trade in Minnesota or anywhere else has that protection?"

That's not the only philosophical problem, said Schurman. Some states require the AMC's controlling person to ensure USPAP compliance. This is not usually a practical problem for appraisers developing and reporting the results of an appraisal under USPAP Standards 1 and 2.

But Schurman argues that since an AMC is performing non-appraisal administrative duties, if anything, it should have to be USPAP compliant with something other than Standards 1 and 2. "Certainly, AMCs can take steps to promote USPAP compliance by appraisers and require appraisers and supervisory appraisers to deliver USPAP compliant reports. However, an AMC or lender-client must rely on the appraiser to comply with USPAP," he said. "Otherwise, wouldn't the lender need to be complaint with USPAP too?"

Another problem lies in putting enforcement duties in the hands of state boards that are often already overstretched with limited resources. "If a state goes after an AMC to prove a point, what will happen if the AMC decides to defend itself? If the state is not prepared financially, it's putting taxpayers into a bad position. Suing corporate entities is different than suing individuals against known license requirements. If their reputation with lender clients is at risk, they'll fight back." argued Schurman.

Schurman reiterated that he was not opposed to legislation at a federal level, but that disparate state level regulations

would be a burden for all involved and could potentially throw some smaller AMCs out of business.

"The way the laws are set up now, a lot of the smaller AMCs can't operate economically," he said. "A lot of appraisers might say, so what? They deserve it. But realistically, we're all trying to work in the same mortgage lending ecosystem. You can't impose something like this on a state level and expect it to go smoothly. Whether you're a regulator or legislator, AMC or appraiser, it's not an easy or effective process."

In addition to the six states highlighted in this article, legislation is close to passing in a few other states, including North Carolina and Hawaii, where legislation that was almost passed into law was bought back to committee. In Florida, Kentucky and Missouri, AMC legislation has already been introduced and is awaiting further discussion.

According to the Appraisal Institute, there are 30 more states that have legislation pending this year. Every AMC that is planning to do business across the country will be watching state legislatures very closely over the coming months.

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