

**Supporting Statement for the  
Reporting and Recordkeeping Requirements of Regulation H and Regulation Y  
Associated with Minimum Requirements for Appraisal Management Companies  
(FR HY-5; OMB No. to be obtained)**

*Minimum Requirements for Appraisal Management Companies  
(Docket No. R-1486) (RIN 7100-AE15)*

**Summary**

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to implement the mandatory Reporting and Recordkeeping Requirements of Regulation H and Regulation Y Associated with Minimum Requirements for Appraisal Management Companies (AMCs) (FR HY-5; OMB No. to be obtained). The Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and Federal Housing Finance Agency (FHFA) are separately submitting the requirements to OMB for approval under section 3507(d) of the Paperwork Reduction Act (PRA) and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The PRA classifies reporting, recordkeeping, or disclosure requirements of a regulation as an "information collection."<sup>1</sup>

On June 9, 2015, the OCC, Board, FDIC, National Credit Union Administration (NCUA), Bureau of Consumer Financial Protection (Bureau), and FHFA (collectively, the agencies) published a joint final rule in the *Federal Register* (80 FR 32658). This final rule implements the minimum requirements in section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>2</sup> to be applied by States in the registration and supervision of AMCs; and for AMCs that are subsidiaries owned and controlled by an insured depository institution and regulated by a Federal financial institutions regulatory agency (Federally regulated AMCs). Under the final rule, these Federally regulated AMCs do not need to register with a State, but are subject to the same minimum requirements as State-regulated AMCs. The final rule also implements the requirements for States to report to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) the information required by the ASC to administer the new national registry of AMCs (AMC National Registry). In conjunction with this implementation, the FDIC is integrating its appraisal regulations for State nonmember banks and State savings associations. The final rule is effective on August 10, 2015.

The Board's reporting and recordkeeping requirements of Regulation H and Regulation Y associated with minimum requirements for AMCs are found in sections 225.192 through 225.196. The Board estimates the total annual burden for the information collection to be 1,545 hours. There are no required reporting forms associated with this information collection.

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<sup>1</sup> See 44 U.S.C. § 3501 *et seq.*

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

## **Background and Justification**

Section 1473 of the Dodd-Frank Act added a new section 1124 to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) that established minimum requirements to be applied by States in the registration and supervision of AMCs. An AMC is an entity that serves as an intermediary for, and provides certain services to creditors. These minimum requirements apply to States that have elected to establish, pursuant to section 1117 of FIRREA, an appraiser certifying and licensing agency with authority to register and supervise AMCs (participating States). Section 1473 of the Dodd-Frank Act also requires the ASC to maintain an AMC National Registry, which will include AMCs that are either registered with, and subject to supervision by, a State appraiser certifying and licensing agency or are subsidiaries owned and controlled by Federally regulated insured depository institution and regulated by a Federal financial institution regulatory agency. Section 1124(e) further requires the agencies to promulgate regulations for the reporting of the activities of AMCs to the ASC in determining the payment of the annual fee for the AMC National Registry.

Pursuant to FIRREA section 1124, the agencies must establish, by rule, minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on AMCs doing business in the State. Specifically, pursuant to section 1124(a), participating States must require that AMCs (1) register with, and be subject to supervision by, the State appraiser certifying and licensing agency in the State or States in which the company operates; (2) verify that only State-certified or State-licensed appraisers are used for Federally related transactions; (3) require that appraisals comply with the Uniform Standards of Professional Appraisal Practice (USPAP); and (4) require that appraisals are conducted in accordance with the statutory valuation independence standards pursuant to the Truth in Lending Act (TILA) (15 U.S.C. § 1639e) and its implementing regulations. An AMC that is a subsidiary owned and controlled by an insured depository institution and regulated by a Federal financial institutions regulatory agency is subject to all of the minimum requirements, except the requirement to register with a State.

In participating States, the minimum requirements apply to any AMC that provides appraisal management services, as defined in the final rule, and meets the statutory panel size threshold, which is that the AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more appraisers in two or more States in a calendar year or 12- month period under State law. States may establish requirements for AMC registration and supervision that are in addition to these minimum requirements.

Pursuant to section 1124(f), beginning 36 months from the effective date of the final rule, an AMC that meets the statutory size threshold may not provide services for a Federally related transaction in a State unless the AMC is registered with the State or is subject to oversight by a Federal financial institutions regulatory agency. This provision effectively allows each State up to three years to establish registration and supervision systems that meet the requirements of the final rule before AMCs in the State will be subject to the aforementioned restriction in the absence of such a regime. The ASC, with the approval of the FFIEC, may delay the restriction for an additional year if the ASC makes a written finding that a State has made substantial progress toward implementation of a system that meets the criteria in Title XI of FIRREA. Even

after the three-year implementation period has passed, a State may still elect to establish a regime, at which point AMCs operating in the State would be able to provide appraisal management services for Federally related transactions.

Section 1124 does not compel a State to establish an AMC registration and supervision program, nor is a penalty imposed on a State that does not establish a regulatory structure for AMCs within 36 months of issuance of the final rule. However, in a State that has not adopted the AMC minimum requirements established by this rule, AMCs are barred by section 1124 from providing appraisal management services for Federally related transactions, unless they are owned and controlled by a Federally regulated depository institution. Thus, appraisal management services may still be provided for Federally related transactions in non-participating States by individual appraisers, by AMCs that are below the minimum statutory panel size threshold, and as noted previously, by Federally regulated AMCs.

### **Description of Information Collection**

The Board's reporting and recordkeeping requirements of Regulation H and Regulation Y associated with minimum requirements for AMCs are found in sections 225.192 through 225.196. There are no required reporting forms associated with these information collections. Compliance with the information collections is mandatory and no other federal law mandates these reporting and recordkeeping requirements.

**AMC Reporting Requirements** - Section 225.195(b) requires that a Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State pursuant to the ASC's policies, including (1) information regarding the determination of the AMC National Registry fee and (2) the information listed in section 225.194.

Section 225.194 provides that an AMC may not be registered by a State or included on the AMC National Registry if such company is owned, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Each person that owns more than 10 percent of an AMC shall submit to a background investigation carried out by the State appraiser certifying and licensing agency. While section 225.194 does not authorize States to conduct background investigations of Federally regulated AMCs, it would allow a State to do so if the Federally regulated AMC chooses to register voluntarily with the State.

**State Reporting Requirements to the ASC** - Section 225.196 requires that 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 ASC the information required to be submitted under this Subpart and any additional information required by the ASC concerning AMCs.

**Written Notice of Appraiser Removal from Network or Panel** - Section 225.192(b) provides that an appraiser in an AMC's network or panel is deemed to remain on the network or panel until (1) the AMC sends a written notice to the appraiser removing the appraiser with an explanation or (2) receives a written notice from the appraiser asking to be removed or a notice of the death or incapacity of the appraiser. The AMC would retain these notices in its files.

**Establish and Maintain a Registration and Supervision Program** - States seeking to register AMCs must have an AMC registration and supervision program. Section 225.193(a) requires each participating State to establish and maintain within its appraiser certifying and licensing agency a registration and supervision program with the legal authority and mechanisms to (1) review and approve or deny an application for initial registration; (2) periodically review and renew, or deny renewal of, an AMC's registration; (3) examine an AMC's books and records and require the submission of reports, information, and documents; (4) verify an AMC's panel members' certifications or licenses; (5) investigate and assess potential law, regulation, or order violations; (6) discipline, suspend, terminate, or deny registration renewals of, AMCs that violate laws, regulations, or orders; and (7) report violations of appraisal-related laws, regulations, or orders, and disciplinary and enforcement actions to the ASC.

Section 225.193(b) requires each participating State to impose requirements on AMCs not owned and controlled by an insured depository institution and regulated by a Federal financial institution regulatory agency to (1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which the AMC operates; (2) engage only State-certified or State-licensed appraisers for Federally regulated transactions in conformity with any Federally regulated transaction regulations; (3) establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type; (4) direct the appraiser to perform the assignment in accordance with the USPAP; and (5) establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with section 129E(a)-(i) of TILA.

### **Time Schedule for Information Collection**

The Board's reporting and recordkeeping requirements of Regulation H and Regulation Y associated with minimum requirements for AMCs are event-generated. There are no required reporting forms associated with this information collection. There is no mandatory retention period for the information collection.

### **Legal Status**

Section 1473 of the Dodd-Frank Act specifically provides that the agencies "shall jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies" (12 U.S.C. § 3353(a)). The agencies also "shall jointly promulgate regulations for the reporting of the activities of AMCs to the Appraisal Subcommittee in determining the payment of the registry fee" (12 U.S.C. § 3353(e)). In addition, each State

appraiser certifying and licensing agency must “transmit reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee ... including investigations initiated and disciplinary actions taken” (12 U.S.C. § 3338(a)(2) and (a)(3)). Accordingly, these reporting and recordkeeping requirements are legally authorized and mandatory.

While State appraiser certifying and licensing agencies may conduct background or other investigations regarding AMC's or their principals, the Board believes that any confidential information would be retained by the States, and information transmitted to the ASC and the AMC National Registry would be at such a high level as not to warrant confidential treatment. The Board further believes there is a possibility that the agencies will come into possession of confidential information in their oversight of Federally regulated AMC's and their compliance with the rule. In supervising their compliance with the rule (particularly the ownership limitations), it is possible that the agencies will investigate Federally regulated AMC's' ownership chains and any appraiser-related disciplinary actions taken against the owners. Further, they expect that this information may be collected during examinations and could appear in examination reports. Should such information be obtained by the Board in the course of an examination, it would be exempt from disclosure under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(8)).

Such information also may be exempt from disclosure under one or more other FOIA exemptions. The most likely case for confidential treatment will be based on FOIA exemption 4, which permits an agency to exempt from disclosure “trade secrets and commercial or financial information obtained from a person and privileged and confidential” (5 U.S.C. § 552(b)(4)). To the extent the AMC can establish the potential for substantial competitive harm, such information would be protected from disclosure under the standards set forth in National Parks & Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974).

Exemption 6 of FOIA might also apply with regard to non-public personal information of owners, shareholders, directors, officers and employees of the AMC's. Exemption 6 covers “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy” (5 U.S.C. § 552(b)(6)). All requests for confidential treatment would need to be reviewed on a case-by-case basis and in response to a specific request for disclosure.

### **Consultation Outside the Agency**

On April 9, 2014, the agencies published a joint notice of proposed rulemaking in the *Federal Register* (79 FR 19521) requesting public comment on the proposed information collection. The comment period for this notice expired on June 9, 2014. The agencies received no public comments regarding the information collection. On June 9, 2015, the agencies published a final rule in the *Federal Register* (80 FR 32658) and is effective on August 10, 2015.

## Estimate of Respondent Burden

The total annual burden for the Board’s reporting and recordkeeping requirements of Regulation H and Regulation Y associated with minimum requirements for AMCs is estimated to be 1,545 hours. These reporting and recordkeeping requirements represent less than 1 percent of the total Federal Reserve System paperwork burden.

| <b>Reg HY-5</b>   | <i>Number of respondents<sup>3</sup></i> | <i>Annual frequency</i> | <i>Estimated average hours per response</i> | <i>Estimated annual burden hours</i> |
|---|--|-------------------------|---|--------------------------------------|
| AMC reporting requirements (Sections 225.194 and 225.195)                     | 150                                      | 6                       | 1   | 900                                  |
| State reporting requirements to the ASC (Section 225.196)                     | 13                                       | 1                       | 1   | 13                                   |
| Written notice of appraiser removal from network or panel (Section 225.192)   | 6,150                                    | 1                       | 0.08  | 492                                  |
| Establish and maintain registration and supervision program (Section 225.193) | 4  | 1                       | 35  | <u>140</u>                           |
| <i>Total</i>  |  |                         |   | 1,545                                |

The total cost to the public for this information collection is estimated to be \$82,117.<sup>4</sup>

## Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

## Estimate of Cost to the Federal Reserve System

The annual cost to the Federal Reserve System for collecting this information is negligible.

<sup>3</sup> The Federal Reserve’s estimated number of respondents is based on a percentage of the total estimated number of respondents for the agencies.

<sup>4</sup> Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$17, 45% Financial Managers at \$65, 15% Lawyers at \$66, and 10% Chief Executives at \$89). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2015*, published March 30, 2016 [www.bls.gov/news.release/ocwage.t01.htm](http://www.bls.gov/news.release/ocwage.t01.htm). Occupations are defined using the BLS Occupational Classification System, [www.bls.gov/soc/](http://www.bls.gov/soc/).