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State legislatures move full steam ahead on AMC legislation

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Building up on the success achieved in 2009, the professional appraisal communities in at least 19 states are currently working to enact state legislation that would establish a regulatory framework for appraisal management companies (AMC). This action builds upon the success that was achieved in 2009, when six states enacted new AMC laws. Most of the legislation that is being considered is based upon model legislation that was developed in late 2008 by the Appraisal Institute, American Society of Appraisers, American Society of Farm Managers and Rural Appraisers, and National Association of Independent Fee Appraisers.

Over the last several years, there have been a number of issues with AMCs. There have been instances where appraisers who have had their license revoked have started an AMC. Several AMCs have accumulated significant liabilities to appraisers for unpaid fees, only to subsequently shut their doors. Some of these AMCs have opened up under different names, but with the same ownership structure. Appraisers have also complained about being removed from an AMC's panel without any notification.

And, of course, there are also general concerns with the AMC business model where the services that AMCs provide to lenders are funded on the backs of appraisers, rather than being paid for by the client that is actually receiving the primary benefit of the AMC's service. Some in the AMC industry, and some state appraiser regulators, have asked what is going to be accomplished through a registration and regulatory program for AMCs? The answer is simple.

AMCs are the only unregulated entity in the real estate valuation chain. Appraisers are highly regulated (at the state level), as are most AMC clients (at either the state or federal level). The state appraiser boards currently have no authority to take any action against an appraisal management company that operates in their state in an illegal or unethical manner. In fact, absent a state AMC registration law, the state appraiser board typically has no idea which AMCs are even operating in their state and who is running them.

The goal of state laws is not to punish AMCs, or to make it overly difficult for them to operate. Rather, the enactment of state AMC laws will provide a level of transparency into the ownership, management, and ownership of AMCs, and will give consumers, lenders, appraisers and other parties a meaningful oversight and enforcement system that does not currently exist.

To its credit, the AMC industry has been receptive to the enactment of reasonable state regulatory programs. Where the conflict occurs is with what is reasonable, and in particular, which firms are required to register and be regulated by the state appraisal board.

There are, however, several legislative proposals that the AMCs have consistently identified as being problematic for their industry. Specifically, the AMC industry is attempting to keep the cost of complying with state registration to an absolute minimum - this is understandable. Registration fees greater than \$1,000 per year will typically result in an objection from the AMC community.

Also of concern are provisions that place caps on the amount of the overall appraisal fee that the AMC can retain as an appraisal management fee. While they point (most likely correctly) to fee caps as a restraint of trade, the AMC industry has recently been more receptive to provisions in state legislation that require that they charge their clients, rather than appraisers, for any management fee separately from the amount that is collected from the client for the provision of the appraisal service. Further, the AMCs appear receptive to provisions that require the disclosure of appraisal management fees separately from appraisal fees on loan documents. Most likely, this is the result of similar requirements that were recently adopted by the Federal Housing Administration.

The AMCs are also attempting to extend the registration requirements to traditional appraisal firms that operate on the basis of an employer/employee arrangement and to small appraisal firms that may have only a few independent contractors, rather than only to larger AMCs that operate as third-party brokers of appraisal services using independent contractors.

Lastly, the AMCs would prefer to have the state bank regulators serve as their regulator, rather than the state appraiser boards. There are arguments that can be made in favor of, and arguments that can be made against, this request by the AMCs. To date, the appraiser community has successfully argued that the state appraiser regulatory authority is the most appropriate entity to regulate AMCs.

The AMC industry, and in particularly several large AMCs that are subsidiaries of large, national banks, has also argued that they are already subject to regulation by the federal government. This is likely a "red-herring" attempt to convince state legislators that additional regulation is unnecessary. To this point, it is worth pointing out that the U.S. Constitution assigns the "police" power to regulate businesses, occupations, and professions to the states. Congress recognized this fact when it passed FIRREA in 1989, and delegated the licensing of appraisers to the states. There is also precedent in other industries - particularly the insurance industry - where an entity's parent company may be regulated to some extent at the federal level, but the day to day oversight of the provision of a particular service is at the state level.

Some in the AMC industry have also argued that it would be more appropriate to have a single, federal registration and regulatory program, rather than a patchwork of fifty different state programs. Here too, the presence of state policing powers is strong, as there may only be one or two instances of direct federal regulation of an industry. Further, given the snail's pace at which the U.S. Congress operates, the likelihood that a federal regulatory program could be easily and quickly implemented is extremely remote. Further, there is the question of which federal agency would serve as the most appropriate regulatory for AMCs. AMCs continue to operate in an unregulated environment today, and implementation of a regulatory framework is needed now. The state legislative process moves much more rapidly than the federal process.

Instead of a federal regulatory program, the U.S. House of Representatives one again recognized state's rights when it passed a provision, twice, that will, if enacted into law, require that states adopt AMC regulatory programs within three years.

The professional appraiser community looks forward to continuing to work with state regulators and representatives of AMCs to enact reasonable and meaningful programs that will provide some insight and oversight into the operations of AMCs.

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