

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

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2014 AUG -1 P 4: 46

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Real Estate Appraiser Licensing and Certification Board TITLE NUMBER: 190

CITE AUTHORITY: W.Va. Code §§30-38-7, 30-38-9, 30-38-1, 30-38A-1 et seq

AMENDMENT TO AN EXISTING RULE: YES  NO

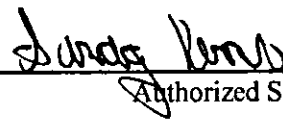
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Requirements for Registration and Renewal of Appraisal Management Companies

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: August 1, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Real Estate Appraiser Licensing & Certification Board  
2110 Kanawha Boulevard, East, Suite 101  
Charleston, WV 25311  
304-558-3919

LEGISLATIVE RULE TITLE: Requirements for Registration and Renewal of Appraisal Management Companies

1. Authorizing statute(s) citation W.Va. Code §§ 30-38-7, 30-38-9, 30-38A-1 et seq

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 6, 2014

b. What other notice, including advertising, did you give of the hearing?  
Sent postcards to all licensees stating proposed rules would be posted on Board's website. Proposed rules were (are) posted on Board's website.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 9, 2014 at 4pm.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached XXX No comments received \_\_\_\_\_

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 1, 2014

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Sandy Kerns, Executive Director and Darlene Ratliff-Washington, Board Attorney  
WV Real Estate Appraiser Licensing & Certification Board  
2110 Kanawha Boulevard, East, Suite 101  
Charleston, WV 25311  
304-558-3919 phone, 304-558-3983 fax  
kernss@mail.wvnet.edu  
Darlene.R.Washington@wvago.gov

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

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b. Date of hearing or comment period:

NA \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA \_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached NA \_\_\_\_\_

## BRIEF SUMMARY OF THE RULE

### Title 190 Series 5 – Requirements for Registration and Renewal of Appraisal Management Companies

Title 190 Series 5 establishes the requirements for an appraisal management company to be registered and to perform appraisal management services in the state of West Virginia. It further establishes procedures and requirements for registration renewals and regulation of Appraisal Management Companies.

§ 190-5-1. General. Section 5-1. describes the scope (see above), statutory authority and eventual filing and effective date of the proposed rule.

§ 190-5-2. Definitions. Section 5-2. establishes four definitions not included under W.Va. Code, § 30-38A-3, specifically broker price opinion, completed appraisal, National Registry and Truth in Lending Act.

§ 190-5-3. Registration Requirements. Section 5-3. establishes specific registration requirements for appraisal management companies, such as the required form and certifications.

§ 190-5-4. Exemptions to Registration Requirement. Sections 5-4. rephrases exemptions to registration stated in W.Va. Code § 30-38-A-5.

§ 190-5-5. Surety Bond Requirements. Section 5-5. establishes the form, amount, notification and restoration requirements of the surety bond to be maintained by an appraisal management company. The proposed rule also states the policy regarding claims against a surety bond.

§ 190-5-6. Renewal and Reinstatement. Section 5.6. establishes requirements for renewals, explanation and policy regarding delinquent registrations, as well as handling of expired registrations and reinstatement of same.

§ 190-5-7. Schedule of Fees. Section 5.7. establishes the fees necessary for registering and regulating appraisal management companies. The proposed rule also sets board policies regarding type of payment accepted, deposits and request for additional information.

§ 190-5-8. Responsibilities and Duties of Appraisal Management Companies. Section 5-8. establishes the specific actions appraisal management companies must follow for:

- Verifying the status of an appraiser being added to its panel;
- Certifying professional and geographic competence of utilized appraisers;
- Ascertaining the work of utilized appraisers conforms with the Uniform Standards of Professional Appraisal Practice (USPAP);
- Designating a controlling person;
- Maintaining a registered agent for service of process;
- Disclosure of fees to clients; and
- Informing the board of change in name, contact information and/or owner who is an employee of or consultant for the appraisal management company and contact information for said person.

§ 190-5-9. Retention of Records. Section 5-9. establishes the retention requirements for records of service and appraiser fee schedules. In addition the rule restates the board's authority to inspect records at any time without notice (W.Va. Code § 30-38A-13 (b)).

§ 190-5-10. Payment of Fees to Appraisers. Section 5-10. clarifies W.Va. Code § 30-38A-13 (a) (5) by establishing guidelines for payment of fees to appraisers within 45 days and in regards to requests for additional information from the appraiser. The rule also proposes a procedure for appraisal management companies to notify appraiser if it decides It will not pay the appraiser.

§ 190-5-11. Temporary Authority to Conduct Business. Section 5-11. establishes the requirements to allow appraisal management companies which began operating in West Virginia prior to July 1, 2014 to continue offering services without first being registered. It appears that due to several reasons the Board will not be able to fully license appraisal management companies prior to July 1, 2014, such as:

- The Board learned it needed separate authorization to order background checks for individuals under W.Va. Code § 30-38A than it does under W.Va. Code§ 30-38. On April 30, 2014, the Board requested that the West Virginia State Police give permission to background individuals affiliated with appraisal management companies utilizing our current ORI access control number. We are waiting on that decision or assignment of a second ORI access control number.
- The Board, through conversations with a staff person at the Division of Banking also learned that both all forms for surety bonds and all individual surety bonds must be approved the Attorney General's Office. This was confirmed by the AG's Office. The procedure may be time-consuming as they handle the process for numerous state agencies.

Facts and Circumstances Constituting the Emergency  
Related to the Filing of Emergency Rule for Title 9 Series 5  
"Requirements for Registration and Renewal of Appraisal Management Companies"

Statutory Authority:

- "Minimum Requirements for Appraisal Management Companies," *Federal Register*; April 9, 2014
- "Sunrise Report, Appraisal Management Companies;" West Virginia Legislative Auditor, Performance and Research Division; July 2012
- "Title XI of FIRREA, Real Estate Appraisal Reform {12 U.S.C. 3331-3351} as Amended by the Dodd Frank Reform Act (Unofficial Appraisal Subcommittee Staff "Redlined" Version); October 26, 2010
- W.Va. Code §§ 30-38-7, 30-38-9, 30-38A-1 et seq.

The Dodd Frank Act was signed into law on July 21, 2010, adding a new section to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). This new section, Section 1124, established minimum requirements to be applied by States in the registration and supervision of appraisal management companies (AMCs). It also gave authority to establish an AMC National Registry.

Section 1124 called for six agencies (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the Federal Housing Finance Agency and the National Credit Union Administration) to jointly issue rules implementing these minimum requirements. States would then have thirty- six months after the effective date to implement the minimum requirements. Proposed rules were issued by the Agencies in the April 9, 2014 *Federal Register*.

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) provided appraiser regulatory boards throughout the United States an "Unofficial Appraisal Subcommittee Staff 'Redlined' Version Title XI of FIRREA, Real Estate Appraisal Reform {12 U.S.C. 3331-3351} as Amended by the Dodd-Frank Reform Act." (October 26, 2010) Appraiser regulatory boards were "officially" notified of upcoming requirements to register and regulate AMCs.

On November 30, 2011, the West Virginia Real Estate Appraiser Licensing and Certification Board submitted a Sunrise Review Application to the Joint Standing Committee on Government Organization requesting licensure of AMCs in order to comply with the upcoming federal law.

The July 2012 Sunrise Report by the West Virginia Legislative Auditor's Performance Evaluation and Research Division recommended that the Legislature establish registration of AMCs by the Board in order to comply with federal law. (The Legislative Auditor's report includes a discussion regarding the distinctions between the three regulatory designations – registration, certification and licensure.)

W.Va. Code § 30-38A, the Appraisal Management Companies Registration Act, was passed by the 2013 West Virginia Legislature, giving the Board further authority to promulgate rules under this act. (W.Va. Code § 30-38-7 of the West Virginia Real Estate Appraiser Licensing and Certification Act was amended to include powers and duties related to appraisal management companies during the same legislative session.

W.Va. Code § 30-38A-1 makes it unlawful for appraisal management companies to operate in West Virginia after July 1, 2014 without a registration issued by this Board. Federally-related (mortgage) transactions secured by the consumer's principal dwelling utilize AMCs in the mortgage loan process. Most mortgages made in the United States are federally-related transactions. The inability of AMCs to operate in West Virginia would substantially harm the mortgage industry and consumers in West Virginia.

**Estimated Expenditures Appraisal Management Companies**

Category	Explanation	Estimated Annual Amount	Estimated One-Time Amount	Current FY2014 Budget
Per Serv - Staff (001)	3 current employees adding additional responsibilities. Hire 4th PTE in future if needed.	\$ 40,000.00	NA	\$ 104,102.00
Per Serv - Board (002)	add AMC Board member, increased standards meetings	\$ 5,000.00	NA	\$ 16,500.00
Ann Incr (004)	NA	NA	NA	\$ 1,560.00
PEIA PERS (010)	NA	NA	NA	\$ -
Soc Sec Match (011)	wage increase	\$ 3,442.00	NA	\$ 9,345.00
PEIA Emp Ins (012)	PTE insurance plan	\$ 1,380.00	NA	\$ 3,301.00
Workers Comp (014)	add employee/board member	\$ 100.00	NA	\$ 408.00
Pens & Ret (016)	wage increase	\$ 5,800.00	NA	\$ 15,094.00
WV OBEB (110)	?	?	NA	\$ 948.00
<b>Total Personnel</b>		<b>\$ 55,722.00</b>	<b>NA</b>	<b>\$ 151,258.00</b>
Uncategorized	moving expenses	NA	\$ 3,000.00	\$ -
Office Exp (020)	NA	\$ 1,500	NA	\$ 3,000.00
Print & Bind (021)	NA	\$ 1,000.00	NA	\$ 1,000.00
Rent (022)	larger office	\$ 8,400.00	NA	\$ 15,696.00
Telecomm (024)	additional phone service	\$ 1,200.00	NA	\$ 4,200.00
Contracts (025)				
Contracts Services AG (025)	AG assigned FT due to increased legal need; fees to AG office to approve surety bonds.	\$ 76,000.00		\$ 72,000.00
Contracts Services (025C) - FY 2014 Contracts amended (increased) to include scanning costs, etc., therefore do not need to increase annual cost.		NA		\$ 30,000.00
Contracts Reviews (025R)	increased complaints/reviews	\$ 6,000.00		\$ -
Contracts Educ Instruc (025E)	NA	NA	NA	\$ -
Travel (026)	add. standards meetings, AMC board member likely to reside out of state requiring increased travel reimbursement	\$ 6,000.00	NA	\$ 8,300.00
Computer/ISC (027) FY 2015 ISC amended to include additional computer cost, therefore do not need to further increase for AMC budget. AMC registration will add to need to improve internet capability (currently use DSL) with 2 meg up/down.	one time acquisition cost for equipment to improve internet service \$1,000/ one-time cost acquisition cost of new database. (attribute 50% of cost to AMC and \$25,000		\$ 26,000.00	\$ 16,400.00
Rentals (Mach & Misc) (030)	NA	NA	NA	\$ -
Assoc. Dues & Mem. (031)	NA	NA	NA	\$ 630.00
Insurance (032)				\$ 2,000.00
Advertising (035)	NA	NA	NA	\$ -
Maintenance Contracts (038)	NA	NA	NA	\$ 294.00
Hospitality (042)	increased meetings (and people)	\$ 500.00	NA	\$ 2,182.00
Misc, Furn & Equip (051)	additional employee and additional files		\$ 6,000.00	\$ 2,045.00
Train & Dev (052)	NA	NA	NA	\$ 1,281.00
Postage (053)	NA	\$ 3,000.00	NA	\$ 6,178.00
Computer Equip (054)	additional employee	\$ 2,000.00	NA	\$ 1,461.00
Misc Equip (058)	misc.	\$ 200.00	NA	\$ 600.00
Books & Periodicals (077)	NA	NA	NA	\$ -
Penalties (096)	NA	NA	NA	\$ -
1% PEIA Transfer (160)	?	?	NA	\$ 4,224.00
<b>Total Other</b>		<b>\$ 105,800.00</b>	<b>\$ 35,000.00</b>	<b>\$ 171,491.00</b>
<b>TOTAL ESTIMATED EXPENDITURES</b>		<b>\$ 161,522.00</b>	<b>\$ 35,000.00</b>	<b>\$ 322,749.00</b>

**Estimated Revenues Appraisal Management Companies**

Fee	Fee Amount	Estimated FY 2015	Estimated FY 2016	Estimated FY 2017
Application Fee	\$ 500.00	\$ 45,000.00	\$ 7,500.00	\$ 7,500.00
Registration Fee	\$ 2,000.00	\$ 180,000.00	\$ 30,000.00	\$ 30,000.00
Renewal Fee	\$ 2,000.00		\$ 128,000.00	\$ 128,000.00
Delinquent Renewal Fee (monthly)	\$ 250.00	\$ -	\$ -	\$ -
Change of Address, Etc	\$ 100.00	\$ -	\$ -	\$ -
Change of Contact	\$ 100.00	\$ 600.00	\$ 600.00	\$ 600.00
Change of Controlling Person	\$ 200.00	\$ 600.00	\$ 600.00	\$ 600.00
Change of 50% Owner	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00
Certificate of Good Standing	\$ 25.00	\$ 200.00	\$ 200.00	\$ 200.00
Copy Fee	\$ 0.50	\$ -	\$ -	\$ -
Duplicate Wall Certificate	\$ 25.00	\$ 50.00	\$ 50.00	\$ 50.00
<b>TOTAL ESTIMATED REVENUE</b>		<b>\$ 226,650.00</b>	<b>\$ 167,150.00</b>	<b>\$ 167,150.00</b>
		est 90 new AMCs	est 15 new AMCs	est 15 new AMCs
			est loss of 13 AMCs	est loss of 13 AMCs
		70 AMCs pre-registered, which is not required		

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

TITLE 190  
LEGISLATIVE RULE  
WEST VIRGINIA REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD

SERIES 5  
REQUIREMENTS FOR REGISTRATION AND RENEWAL  
OF APPRAISAL MANAGEMENT COMPANIES

**§190-5-1. General.**

1.1. Scope. -- This legislative rule establishes the requirements for an appraisal management company to be registered and to perform appraisal management services in the state of West Virginia. It further establishes procedures and requirements for registration renewals and regulation of Appraisal Management Companies.

1.2. Authority. -- W. Va. Code §§ 30-38-7, 30-38-9, 30-38-1, 30-38A-1 *et seq.*

1.3. Filing Date. --

1.4. Effective Date. --

**§190-5-2. Definitions.**

As used in this rule, the words or terms have the same meaning as the definitions provided in W.Va. Code § 30-38A-1.

2.1. Broker price opinion" or "BPO" means an estimate prepared by a real estate broker, agent or sales person that details the probably selling price of particular piece of real estate property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable sales, but does not include an AVM, as defined by section 1126(b) of FIRREA ((12 U.S.C.A. § 3355 (b))).

2.2. "Completed appraisal" means delivery of the signed appraisal report that is in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) to the appraisal management company.

2.3. "National Registry" means a database, maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, containing selected information about the Nation's State certified and licensed real estate appraisers.

2.4. "Truth in Lending Act" or "TILA" means the Truth in Lending Act of 1968 (15 U.S.C. 1631 et seq.) and any amendments thereto. It is an act to safeguard the consumer in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit; by restricting the garnishment of wages; and by creating the National Commission of Consumer Finance to study and make recommendations on the need for further regulation of the consumer finance industry; and for other purposes.

### **§190-5-3. Registration Requirements.**

3.1. Every person or firm who desires to be registered as an appraisal management company in this State shall comply with the provisions of W. Va. Code § 30-38A-1 *et seq.* and submit a written application on a form prescribed by the board setting forth the following:

3.1.a. The legal name of the applicant, the name under which the applicant will do business in West Virginia, the physical and mailing address, telephone number, website, facsimile, and email address of the appraisal management company;

3.1.b. The name, the physical and mailing address and the contact information, including telephone number and e-mail address, of the controlling person of the appraisal management company seeking registration;

3.1.c. The name, the physical and mailing address and the contact information, including telephone number and e-mail address, of an individual that will be the initial point of contact or register agent for all communications with the board, if it is not the controlling person;

3.1.d. If the applicant is a domestic firm, the designation of an agent for service of process; or if the applicant is a foreign firm, documentation that the foreign firm is authorized to do business in this State and that an agent for service of process has been designated and the following has been submitted:

3.1.d.1. A copy of the filing with the Secretary of State's Office appointing an agent for service of process;

3.1.e. A certificate of authority issued by the Secretary of State;

3.1.f. Every appraisal management company shall file with the board a copy of the annual report required to be filed with the Secretary of State under W. Va. Code § 59-1-2a on or before the 30<sup>th</sup> day of June on an annual basis; and

3.1.g. Each application for registration shall be accompanied by the fees required pursuant to W. Va. Code § 30-38A-10 and this rule. The board shall reject and return to the applicant any application which is incomplete or not accompanied by the required fees.

3.2. Every person or firm seeking to be registered as an appraisal management company in this State shall certify on a form prescribed by the board the following:

3.2.a. That the appraisal management company has written policies and procedures demonstrating compliance with W. Va. Code § 30-38A-7 et seq., and such policies and procedures shall be provided to the board upon request;

3.2.b. That the appraisal management company will have a system in place to require appraisals are conducted independently and without inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act and the rules and regulations issued pursuant to the Appraisal Act;

3.2.c. That the appraisal management company requires the appraisers completing appraisals at the company's request to comply with USPAP;

3.2.d. That the appraisal management company shall not compensate an employee, a real estate broker or real estate agent to perform a BPO or comparative market analysis pursuant to W.Va. Code § 30-38-1;

3.2.e. That the appraisal management company shall maintain records required records per WV Code § 30-38A-13 for a minimum period of five years, or at least two years after final disposition of any judicial proceeding related to the assignment, whichever period expires last;

3.2.f. That the appraisal management company provide proof of valid and sufficient surety bond as required by W. Va. Code § 30-38A-9; and

3.2.g. That individuals required by W.Va. Code §30-38A-8 shall submit to required state and national criminal history record checks.

#### **§190-5-4. Exemptions to Registration Requirement.**

This rule does not apply to a financial institution, including a department or unit within an institution that is regulated by an agency of this state or the United States government; or an appraisal management company that is a subsidiary wholly owned and controlled by a financial institution regulated by a federal financial institution regulatory agency.

#### **§190-5-5. Surety Bond Requirements.**

5.1. All appraisal management companies must maintain surety bonds that confirm to W. Va. Code § 30-38A-9 to secure the faithful performance of its obligations.

5.2. Be in conformance with all relevant West Virginia statutory requirements.

5.3. The applicant or appraisal management company shall post with the board at the time of application a \$50,000 surety bond. The board may in its discretion accept an appropriate deposit of cash or security in lieu of a surety bond.

5.4. Any claims reducing the face amount of the bond, cash or securities shall be restored to \$50,000 within ten (10) business days of being drawn down.

5.5. The board shall be notified immediately, if the surety bond is cancelled or terminated.

5.6. The appraisal management company shall notify the board in writing of any claims made on the bond, cash or securities.

5.7. The surety bond shall remain in place for no less than one year after the appraisal management ceases operations in this state.

5.8. Claims against a surety bond:

5.8.a. The surety accrues to the state for the benefit of a claimant against the appraisal management company.

5.8.b. The board may bring suit on behalf of the party having a claim against the appraisal management company.

5.8.c. Consumer claims shall be given priority in recovering from the surety bond.

5.8.d. Claimants may make claims under the bond up to one year after the appraisal management company ceases to do business in this state.

#### **§190-5-6. Renewal and Reinstatement.**

6.1. Renewals.

6.1.a. Registrations are renewed for the period from July 1 to June 30 of the following year.

6.1.b. The board shall send a renewal notice to the controlling person identified by the appraisal management company by May 1 of each year.

6.1.c. Failure to receive a renewal notice from the board shall not relieve the appraisal management company of the responsibility to timely apply for renewal.

6.1.d. A holder of an appraisal management company registration desiring the renewal of such registration shall apply in writing upon the form provided by the board and shall forward the renewal fee. Forms are available upon request to the board.

6.1.e. Any company who acts or holds itself out as a registered appraisal management company while its appraisal management company registration is delinquent or expired is subject to disciplinary action and penalties as prescribed in W. Va. Code § 30-38A-16 and these rules.

6.1.f. Fees for renewals or reinstatement shall not be refundable.

## 6.2. Delinquent Registrations.

6.2.a. Registrations not renewed in a timely manner are delinquent. Registration renewals are due 30 days prior to June 30 of the renewal licensing year. Renewals received after that date will be subject to a delinquent license fee pursuant to W.Va. Code §30-38A-4 and Subdivision 6.2.b. of this rule.

6.2.b. Delinquent renewal fees are two hundred fifty dollars (\$250) per month for each delinquent month.

6.2.c. Delinquent registrations may be reinstated within three months after expiration upon proper application and payment to the board of the renewal fee of two thousand dollars (\$2,000) and appropriate delinquent fee(s).

## 6.3. Expired Registrations and Reinstatement of an Expired Registration.

6.3.a. A registration that has been delinquent for more than three months shall be considered expired and a new application for registration is required.

6.3.b. Reinstatement of an expired registration is not retroactive.

## §190-5-7. Schedule of Fees.

7.1. All fees for registration and application are non-refundable.

7.2. The fees charged by the board are as follows:

7.2.a. Application fee of five hundred dollars (\$500);

7.2.b. Registration fee of two thousand dollars (\$2,000);

7.2.c. Registration renewal fee of two thousand dollars (\$2,000);

7.2.d. Delinquent renewal fee of two hundred fifty dollars (\$250) per month for each delinquent month;

7.2.e. Change of address or business name fee of one hundred dollars (\$100);

- 7.2.f. Change of contact person fee of one hundred dollars (\$100);
- 7.2.g. Change of controlling person fee of one hundred dollars (\$100);
- 7.2.h. Change of 50% ownership application fee of two hundred dollars (\$200);
- 7.2.i. Certificate of good standing: twenty five dollars (\$25);
- 7.2.j. Copy fees: fifty cents (\$.50) per page;
- 7.2.k. A duplicate wall registration certificate: twenty five dollars (\$25); and

7.3. The board shall collect from each appraisal management company an annual registry fee established by the Appraisal Subcommittee and shall annually submit the registry fees to the Federal Financial Institutions Examination Council.

7.4. Payment of application fees shall be made by certified check, bank check or money order payable to the board.

7.5. The board shall deposit all fees and revenues collected pursuant to this rule in a special fund that the board shall use solely for the purposes of administration and enforcement of its duties pursuant to W.Va. Code §§ 30-1-10 and 30-38A-1 et seq.

7.6. In the event that the board asks an applicant to provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the board's request, the board shall cancel the applicant's application and the application fee shall be retained by the board.

#### **§190-5-8. Responsibilities and Duties of Appraisal Management Companies.**

An appraisal management company registered under the provisions of this article shall:

8.1. Have a system in place to verify that any appraiser being added to its appraiser panel to appraise properties in West Virginia is licensed or certified and in good standing by this state. The appraisal management company shall verify the status of the appraiser by:

8.1.a. Contacting the West Virginia Real Estate Appraiser Licensing and Certification Board; or

8.1.b. Utilizing the National Registry of the Appraisal Subcommittee.

8.2. Require each appraiser being added to the panel to certify in writing the appraiser's areas of geographic competency, the types of properties the appraiser is competent to appraise, and the methodologies the appraiser is competent to perform;

8.2.a. An appraisal management company shall require the appraiser to update this information annually.

8.3. Have a system in place to review the work of utilized appraisers who perform appraisal services for the appraisal management company in this state to validate that the services were conducted in conformity with the USPAP;

8.3.a. An appraisal management company is not required to review all appraisals performed by each appraiser, but may choose a representative sample of each appraiser's reports.

8.3.b. An appraisal management company shall review each appraiser's work at least once a year and shall keep records of such reviews for a period of five (5) years from the date they are done.

8.3.c. Any employee or independent contractor appraiser of an appraisal management company that performs an appraisal review shall:

8.3.c.1. Be licensed in this state or any state;

8.3.c.2. At a minimum hold the same certification level for the property type as the appraiser who performed the appraisal;

8.3.c.3. Verify the work of the appraisers performing appraisals for the appraisal management company is being conducted in accordance with the minimum USPAP standards;

8.3.c.4. Inform the board, when there is reasonable belief, that an appraiser is in violation of the laws, rules, or uniform standards regarding appraisers, including but not limited to grounds for disciplinary action as prescribed in W. Va. Code § 30-38-12.

8.4. Designate a controlling person, who will be responsible for compliance with W. Va. Code § 30-38A-13 and the provisions of this rule, and notify the board, in writing within ten (10) business days, of any change in its controlling person;

8.5. Maintain a registered agent for service of process and provide the board with the same information for the agent that is provided to the Secretary of State; and notify the board, in writing, within ten (10) business days, of change of a registered agent;

8.6. Disclose to its client the actual fees paid to an appraiser for appraisal services, separate from any other fees or charges for appraisal management services, and make the information available to the board upon request;

8.7. Inform the board in writing within ten (10) business days of the effective date to any change to:

8.7.a. Business name;

8.7.b. Any change of physical and mailing address, change of company name, telephone number, website, facsimile, or email address;

8.7.c. Change of owner who is an employee of or consultant for the appraisal management company and contact information for said person.

**§190-5-9. Retention of Records.**

An appraisal management company registered under the provisions of W. Va. Code § 30-38A-1 *et seq.*, and this rule shall retain the following records:

9.1. A detailed record of each service request that it receives for appraisals of real property located in this state, which shall include, but is not limited to, the following:

9.1.a. Letter of engagement with the appraiser;

9.1.b. Appraisal report received from the appraiser, including the original report, any revised reports, and any addenda or other material furnished subsequent to the delivery of the original report;

9.1.c. Any and all assignment related correspondence sent to and received from the appraiser;

9.1.d. Letter of engagement with any independent review appraiser for the purpose of reviewing the requested appraisal if an appraisal review assignment is commissioned by the AMC;

9.1.e. Review of the requested appraisal, including the original review report, any and all correspondence sent to and received from the reviewing appraiser, and each subsequent revised review report;

9.1.f. Requests received from the client, all documentation supplied to that client, and any and all correspondence sent to and received from the client; and

9.1.g. Fees paid to utilized appraisers and the fees received from the client;

9.2. Copies of all appraiser fee schedules maintained and used by the appraisal management company including:

9.2.a. Beginning and ending effective dates of the schedules;

9.2. b. Fees paid for a defined service;

9.2.c. Documentation to support that the fee schedule is customary and reasonable and complies with TILA.

9.2.d. Copies of rosters of appraiser fee panels used for assignments, including the name of the appraiser, each appraiser's West Virginia credential number, the date the appraiser was placed on the panel and the date and reason the appraiser was removed from the panel.

9.3. Records must be retained for a minimum of five years. However if, within the five-year period, an appraisal or report is involved in an investigation, litigation, or state or federal review,

the records must be retained for two years after the date of the final disposition of that investigation, litigation, or state or federal review whichever is later. Records may be retained as a photocopy or electronic copy type of media.

9.4. The board may inspect the records of appraisal management companies at any time without prior notice, provided that such inspection is conducted within the normal business hours of the AMC.

#### **§190-5-10. Payment of Fees to Appraisers**

10.1. Except in cases of breach of contract or substandard performance, appraisal management companies shall pay an independent appraiser for the completion of an appraisal within forty five (45) days after the appraiser provides the completed appraisal to the appraisal management company unless otherwise agreed to by the parties.

10.1.a. Subsequent request by the appraisal management company to the appraiser for additional support of valuation or correction of factual and objective data shall not extend the payment date beyond the 45 days from initial delivery of assigned appraisal.

10.2. If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal, the appraisal management company shall notify the appraiser in writing of the reason for non-payment within thirty (30) days after the appraiser transmits the appraisal to the appraisal management company. The notice shall state the address of the subject property of the appraisal, the name of the appraiser(s) signing the report, and the reason why the fee shall not be paid.

10.3. In cases where the appraisal management company does not pay the appraiser for an appraisal, the appraisal shall not be utilized by the appraisal management company for any purpose.

#### **§190-5-11. Temporary Authority to Conduct Business.**

11.1. An appraisal management company that is not exempt from W.Va. Code §30-38A, which began offering appraisal management services in this state before July 1, 2014, and has continued to offer appraisal management services in this state since then without interruption, may continue to offer appraisal management services after July 1, 2014, without first being registered if:

11.1.a. An application has been filed with the Board;

11.1.b. The appropriate fees have been paid;

11.1.c. The individual who signed the application in the capacity of the controlling person continues to act as controlling person until the application is approved, deemed withdrawn, provisionally denied or denied by final order;

11.1.d. The application has not been:

- 11.1.d.1. Deemed withdrawn;
- 11.1.d.2. Provisionally denied;
- 11.1.d.3. Denied by final order;
- 11.1.d.4. Approved;

11.2. An appraisal management company that is not exempt from, W.Va. Code §30-38A, which has not started offering appraisal management services in this state by July 1, 2014, may not offer appraisal management services in this state until registered.

11.3. Authority to conduct business temporarily without registration under this section terminates on the date that an application has been:

- 11.3.a. Deemed withdrawn;
- 11.3.b. Provisionally denied;
- 11.3.c. Denied by final order;
- 11.3.d. Approved.

11.4. For purposes of this section, an appraisal management company has continued to offer appraisal management services in this state without interruption if it has made at least one appraisal assignment in each calendar month for real property in this state and has maintained records required under this subchapter for each appraisal assignment made.

**RESPONSES TO THE COMMENTS**  
**TITLE 190**  
**LEGISLATIVE RULE**  
**WEST VIRGINIA REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD**  
  
**SERIES 5**  
**REQUIREMENTS FOR REGISTRATION AND RENEWAL**  
**OF APPRAISAL MANAGEMENT COMPANIES**

On June 6, 2014, the West Virginia Real Estate Appraiser Licensing and Certification Board (hereinafter "Board") filed proposed legislative rule §190-5, Requirements for Registration and Renewal of Appraisal Management Companies (hereinafter "AMC") to comply with the statutory mandate in W. Va. Code § 30-38-9 that the Board promulgate rules pertaining to registration and renewals of AMCs. The comment period was concluded on July 9, 2014 at 4:00 p.m.. If similar or redundant comments were received, the comments were consolidated. There were 11 comments received from a combination of individuals and companies.

The Board thanks the public for its comments regarding §190-5, requirements and renewals for AMCs. Public comment is a valuable part of the rulemaking process. All comments have been given careful consideration.

Comments were received by and/or on behalf of the following individuals, groups and organizations: 1. Kathy Bowles; 2. Mark Clark; 3. Pamela G. Wyant; 4. Michelle L. Shumate; 5. Debra Hoffman, Hoffman Appraisals; 6. Carolyn Ragan, Ragan Realty & Appraisal; 7. Real Estate Valuation Advocacy Association; 8. Stars, Speedy Title & Appraisal Review Services, LLC; 9. Clear Capital; 10. Servicelink and 11. DataQuick

As a result of the public comments received, the Board made several amendments to the proposed rule. The amendments and the reasons for those amendments are fully described in a document entitled "Amendments Made to Rule as a Result of Comments" included with the filing of this agency approved rule. Such document constitutes, in part, the Board's response to a number of the comments received. Such document summarizes certain comments, discusses the issues involved, explains the changes made to the rule as a result of the comments and explains the reasons for such changes.

Other comments that were received that are not addressed in "Amendments Made to Rule as a Result of Comments" were carefully considered by the Board, but did not cause the Board to make changes to the proposed amendments to the legislative rule.

In particular, the Board received comments in which it disagreed with the comment or the comment exceeded its statutory authority and therefore no amendments were made based on that comment received. Those comments are addressed below:

### §190-5-3 Registration Requirements

**3.2.b. That the appraisal management company will have a system in place to require appraisals are conducted independently and without inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act and the rules and regulations issued pursuant to the Appraisal Act.**

Comment:

"It's good to see continued appraiser protection from undue influence or coercion of value from an AMC. However, over the past year I have had work assignments reassigned by an AMC after I called the borrower to schedule the appointment. Because of the circumstances surrounding the reassignment, I know that it is because the AMC received pressure from the lender to reassign to another appraiser that the builder/borrower preferred, and the builder/borrower placed pressure on the lender. It seems to me that ALL parties should be exempt from inappropriate influence of value. I realize this is not addressed for the AMC's, but that undue influence is still being exerted within the real estate transaction. I feel the AMC should not be able to reassign an order once placed unless the appraiser has an issue or conflict.

Board Response:

Influence exerted upon an AMC is beyond the scope of the Board's authority. Reassignment of an appraisal in the early stages of the appraisal process seems a business practice as opposed to a regulatory practice and therefore beyond the scope of the Board's authority. The Board does not agree with this comment.

**3.2.d. That the appraisal management company shall not hire an employee, or in any way contract with or pay a real estate broker or real estate agent to perform a BPO or comparative market analysis pursuant to W. Va. Code § 30-38-1;**

Comments:

1. Section 190-5-3.2.d. requires that "the appraisal management company shall not hire an employee or in any way contract with or pay a real estate broker or real estate agent to perform a BPO or comparative market analysis pursuant to W. Va. Code § 30-38-1." We believe this provision is beyond the scope of the Appraisal Management Companies Regulation Act and we do not see any language in W. Va. Code § 30-38-1 that suggests it should be applied specifically to appraisal management companies and not to other providers of real estate services. In the event that an appraisal management company desired to sell property in West Virginia and obtain a BPO (for no fee) in compliance with W. Va. Code § 30-38-1, this provision would unfairly prevent the AMC from "contracting with a real estate

broker or real estate agent" to complete this permissible service. More problematic, in our view, is that Section 190-5-3.2.d would continue to apply to AMCs, but not other entities, in the event that W. Va. Code § 30-38-1 were repealed or amended. For these reasons we respectfully request that Section 190-5-3.2.d be removed from the Proposed Regulations. The provisions of W. Va. Code § 30-38-1 would continue in force nonetheless.

2. Section 190-5-3.2d is intended to work in conjunction with 30-38-1 which puts restrictions on when a BPO may be prepared by a person without being licensed or certified as an appraiser. That provision overlaps an existing provision in 30-38-1(c)(6). However, the language proposed here is not consistent with the language in 30-38-1, especially language in (c)(6) of that section circumstances. The proposed language would not allow an AMC to order such a valuation under any circumstances even though their Lender/clients could order such products. Importantly, there is no provision in 30-38A-1 AMC Registration Act, that enables the Board to include such a provision related to BPOs in the AMC Legislative Rules. Thus, we suggest the language in 190-5-3.2d be removed from the Rules.
3. My first comment is in regard to Section 190-5-3 3.2d where it states that an AMC shall not hire a Realtor to perform a BPO for compensation. Since the appraisal board really doesn't have authority over Realtors as it is the responsibility of the Real Estate Commission to oversee the actions of Realtors and it is apparent that this practice continues regularly, it would appear that it will be necessary to penalize the AMC for seeking this type of product. At this time, it appears that the responsibility for acting lawfully falls solely on the Realtor. We, as appraisers, assume a tremendous amount of liability in performing appraisals and we must carry individual E&O insurance as well as complete a significantly larger number of continuing education hours each year that Realtors do not complete. As I am also a Realtor, I frequently receive calls from AMC's (Five Brothers called Thursday (07/03/2014), 1-586-619-3000) seeking my agreement to complete a BPO. Since the appraisal board cannot oversee the Realtors, can we provide some sort of control over the AMC's who participate in this practice?

Board Response:

Comment #1 incorrectly reads the rule, as it does not prevent an AMC from obtaining a BPO for no fee, which is a permissible service. It prevents compensation for BPOs, which is illegal in WV. This rule would be repealed if W. Va. Code § 30-38-1 were repealed or amended.

Comment #2 appears to be referring to the Evaluation of Collateral Form, which is a form designed to be used by non-licensed individuals for internal bank use only where federal guidelines allow for its use. It may be used by licensed individuals but should be signed as an individual rather than as an appraiser and does not comply with USPAP.

The Evaluation of Collateral Form is one page and very limited in scope (see attached). It does not allow for market or sale comparisons. As such, it would appear that AMCs would not often utilize the Evaluation of Collaterals Form. Additionally, any entity can utilize such valuations when allowed by law.

Comment #3 states she holds both an appraisal and a realtor license. She succinctly states the issue the Board is seeking to address. The Board received three such complaints in the period April 2013- April 2014. The Board is using statutory authority already in place (W . Va. §30-38-1) to address this problem.

The Board does not agree with the majority of the comments. However, the Board agrees and conforms the rule to comply with the comments in that some rewording will be allowed for better clarification of the rule.

#### **§190-5-4. Exemptions to Registration Requirement.**

**This rule does not apply to a financial institution, including a department or unit within an institution that is regulated by an agency of this state or the United States government; or an appraisal management company that is a subsidiary wholly owned and controlled by a financial institution regulated by a federal financial institution regulatory agency.**

Comment:

Section 190-5-4 indicates that the AMC regulation would not apply to an AMC that is owned or controlled by a financial institution regulated by a federal financial institution regulatory agency. The language as presented, however, does not track with the language used in FIRREA. It is suggested that the language be modified to mirror the exemptions as defined in Sec 1124©: "An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State."

Board Response:

This language is taken from directly from W. Va. Code § 30-38A-5. The Board finds no reason to change the proposed rule based on the comments received.

#### **§190-5-6. Renewal and Reinstatement.**

##### **6.1. Renewals.**

**6.1.a. Registrations are renewed for the period from July 1 to June 30 of the following year**

**6.1.b.** The board shall send a renewal notice to the controlling person identified by the appraisal management company by May 1 of each year.

**6.2. Delinquent Registrations.**

**6.2.a.** Registrations not renewed in a timely manner are delinquent. Registration renewals are due 30 days prior to June 30 of the renewal licensing year. Renewals received after that date will be subject to a delinquent license fee pursuant to W. Va. Code § 30-38A-4 and Subdivision 6.2.b. of this rule.

Comment:

Section 190-5-6.1 indicates that renewal notices will be sent 60 days prior to renewal. Section 190-5-6.2 would require that renewal registrations be submitted 30 days prior to the renewal date. Renewals received after that date would be considered delinquent and subject to a delinquent license fee.

We are concerned that this timeline will not provide adequate time to respond to the renewal notice. If sent 60 days prior to renewal, it will be received a few days or a week after that. And the completed renewal application must be received at least 30 days prior to renewal. Again, allowing a few days or a week for delivery, the AMC will be left with only 2 to 3 weeks to actually complete and send the renewal application.

Appraisers (under 30-38-11(e)) are allowed to submit renewal applications up to 120 days in advance but also must have applied at least 30 days in advance. We would like to suggest this AMC provision be modified to require that renewal notices be sent to AMCs 120 days in advance of the renewal date to provide adequate time to respond.

We would also like to suggest that categorizing a renewal application as delinquent not begin until the renewal date, rather than categorizing an AMC with a valid license still in place as being delinquent 30 days prior to that renewal date

Board Response:

The rule does not state when renewals will be sent to AMCs. The Board currently mails appraiser renewals approximately 60 days prior to the renewal deadline. If AMCs believe it would be helpful to receive their renewal notice early, the Board would likely be able to comply, for example mailing 90 days prior to the renewal deadline.

The Board is following the same rules for AMCs as it does for appraisers in requiring renewals to be due 30 days prior to expiration of their registration. This allows for timely processing of all paperwork and any necessary corrections prior to the expiration of licenses. The Board does not agree with this comment.

**§190-5-7. Schedule of Fees.**

**7.2.e. Change of address or business name fee of one hundred dollars (\$100);**

**7.2.f. Change of contact person fee of one hundred dollars (\$100);**

**Comments:**

1. Schedule of fees - not sure if this is the maximum for AMC companies, but based on the \$\$\$ they make, it seems pretty light. I would recommend the highest fee the State can charge.
2. The fees for registration and especially for changes to information in the registration seem pretty high. I wonder if this is consistent with other states? My worry is that these increased costs to the AMC will result in them wanting to pay the appraiser less.
3. These fees (190- 7.2.e. , 7.2.f. , .2.g. and 7.2.h) appear to be high in relation to the cost associated with processing each item. 30-1-4 states in part, "Boards may set by rule fees relating to the licensing or registering of individuals, which shall be sufficient to enable the boards to carry out effectively their responsibilities of licensure or registration and discipline of individuals subject to their authority . . ." Also in Chapter §30, Section 30-1-10 (a) states in part, " . . . this money shall be used exclusively by each board for the purposes of administration and enforcement of its duties pursuant to this chapter." Additionally in Chapter 30, Section 30-38-7 states in part, "The board shall: q) Deposit all fees collected by the board to the credit of the West Virginia appraiser licensing and certification board fund established in the office of the State Treasurer. The board shall disburse moneys from the account to pay the cost of board operation . . . "

**Board Response:**

The Board researched fees charged by other states. WV fees are in line with other states. In addition, WV Appraiser Board fees appear higher in relation to many states, e.g., licensing fees. This may be attributed to the several reasons, such as the fact the Board is a stand-alone, self-funded board and has lower number of licensees. It is anticipated it will also have a lesser number of AMC registrants than other states. The Board does not agree to these comments.

**7.3. The board shall collect from each appraisal management company an annual registry fee established by the Appraisal Subcommittee and shall annually submit the registry fees to the Federal Financial Institutions Examination Council.**

Comments:

1. Section 190-5-7.3. states that the Board "shall collect from each appraisal management company an annual registry fee established by the Appraisal Subcommittee and shall annually submit the registry fees to the Federal Financial Institutions Examination Council.
2. The Appraisal Subcommittee recently suggested that it would be several years before the AMC registry fees are put into place, and the exact provisions and requirements for that have not yet been established. Because they are not sure how this will be structured we respectfully request that the Board wait and see how the AMC Registry will be established at the federal level prior to incorporating the rule at the state level. Therefore, we respectfully request that the proposed removing Section 190-5-7.3 at this time.
3. Section 190-5-7.3 would require the Board to collect an annual registry fee established by the Appraisal Subcommittee from AMCs. We suggest that this provision should be removed for the present time. The Appraisal Subcommittee (ASC) recently advised the Virginia Appraiser Board that it would be several years before the AMC registry fees are put into place, and the exact provisions and requirements for that have not yet been established. The recommendation was that, because of the uncertainties involved in how the fees and collections would be structured, the State would be advised to wait and see how the AMC Registry Fee topic plays out before including such requirements. We recommend that the West Virginia Appraiser Board contact either the Board staff in Virginia or contact the ASC directly for confirmation and we suggest removing (7.3) from the Regulations until such time as the structure and procedures related to the Registry Fee are established.

Board Response:

Although, the AMC registry fee is not yet required, it is a certainty it will be required when the ASC adopts final rules. Because it will be a known requirement, the Board sought to be proactive in its language, as opposed to having to come before the legislature for another rule change.

Additionally, the rule's language states "an annual registry fee established by the Appraisal Subcommittee," which indicates there will be no fee collected until the fee is established by the Appraisal Subcommittee. Additionally, other states such as California, Mississippi, Oklahoma, Tennessee, and Texas have incorporated proactively incorporated this language. The Board does not agree with these comments. The Board finds no reason to change the proposed rule based on the comments received.

**§190-5-8. Responsibilities and Duties of Appraisal Management Companies.**

**8.2.a. An appraisal management company shall require the appraiser to update this information annually.**

Comments:

1. Currently most AMC's require appraisers to attest to their geographic and product competency upon acceptance of each and every assignment. This ensures that an appraiser has the requisite knowledge and experience at the time each assignment is accepted, which is especially important given the dynamic nature of the solicitations an appraiser might receive and each appraiser's unique professional growth through training and experience. We believe that ensuring an appraiser's competency on each assignment, rather than applying a static set of information gathered in advance, provides an AMC with the greatest level of certainty that it is engaging a competent appraiser for each unique assignment. Therefore, we respectfully request removing Section 190-5-8.2. We believe this is consistent with the Appraisal Management Companies Registration Act which, in Section 30-38A-13 clarifies that information relating to an appraiser's competency can be gathered when the appraiser is "receiving work or being placed on an appraiser panel."
2. The specific areas of geographic competency, property type, and methodologies in which an appraiser is qualified to perform are typically designated in the independent contractor agreement between appraisers and AMCs at the time the appraiser is added to the AMC panel. The contractual agreements between the appraiser and the AMC require the appraiser to update this information in the event it changes. That being said, these competency factors do not generally change unless the appraiser *gains* competency in an additional geographic market, property type, or methodology. Gaining competency and reporting this information to the AMC benefits the appraiser in that their profile can be changed to allow expansion of their work products. In the event these changes are not reported, it has no consequences for the AMC or the consumer as appraisers are only considered for those assignments where they have previously demonstrated competency. Therefore, requiring an annual update of this information is unnecessary and burdensome. Recommendation: Delete section 8.2.a. as it is unnecessary and burdensome.
3. Section 190-5-8.2 would require that the AMC obtain a statement from each appraiser joining the panel regarding geographic and property type competency, and that the AMC must obtain an updated statement from each appraiser annually. An appraiser's geographic and property type competency is unlikely to change significantly on a year over year basis. Furthermore, it is unlikely that an appraiser's competency will reduce over time, but rather increase or expand over time. If an

appraiser has developed new competencies, they are likely to be sure to notify their clients and AMCs of that new competency to attract additional business. For these reasons, we do not see any advantage or purpose for requiring annual updates on this information. The additional burden it would impose on both appraisers and AMCs would not be offset by any significant benefit to consumers. Thus, we suggest that the annual renewal of the competency statement be removed.

4. Annual updates of an appraiser's territory, fees, etc. gets to be burdensome, and typically does not change much from year to year. How about every other year? We often get asked throughout the year in discussions with clients trying to place orders if we will go into other areas, and if we wish to make that a permanent change. I prefer the AMC websites that allow for simple and straightforward paths to make changes to my profile when necessary at any time throughout the year. It benefits me to be able to do that quickly and easily, and the AMC's remain updated.

#### Board Response:

Although it is correct, W. Va. Code §30-38A-13 addresses professional and geographic competency to some degree, W. Va. Code § 30-38A-7(a)(2) requires written certification that an AMC "has set requirements to verify appraisers are geographically competent and can perform the appraisals assigned." This certification will be required both on the AMC registration form and renewal form, thus an annual certification. It seems the AMC could not honestly certify such without annually updating this information.

Additionally, complaints include statements from consumers and clients the appraiser is not geographically competent, whereas appraisers may state they are forced to choose between being forced to accept assignments for which they are not competent or be dropped from an AMCs panel. The Board believes that a minimum annual update will best protect consumers, clients and appraiser independence. The Board does not agree with these comments.

**8.3.a. An appraisal management company is not required to review all appraisals performed by each appraiser, but may choose a representative sample of each appraiser's reports.**

#### Comments:

The concern with the "each appraiser" requirement is that an AMC would need to complete reviews on every appraiser utilized on its panel even if many of the appraisers only completed one report. Completing reviews on each appraiser as opposed to a sampling of

all appraisals will greatly increase the number of review appraisals and AMCs will either need to pass on the increased costs, ultimately to the consumer, or restrict its panel size which will negatively affect panel coverage for rural and under served markets and have appraisers cover a larger territory to manage the costs. Recommend the Board adjust the language to require either an annual review percentage for all appraisals completed by the AMC or if the Board wishes to keep the appraiser requirement, provide that a minimum of five appraisals be completed by an appraiser before a review is required.

Board Response:

A review of other states indicates some utilize language similar to, "representative sample," while others require a specific percentage. Regulatory boards are cognizant of the fine line between regulatory duties and business practices. The Board does not agree with this comment.

**8.4. Designate a controlling person, who will be responsible for compliance with W. Va. Code § 30-38A-13 and the provisions of this rule, and notify the board, in writing within ten (10) days, of any change in its controlling person;**

**8.5. Maintain a registered agent for service of process and provide the board with the same information for the agent that is provided to the Secretary of State; and notify the board, in writing, within ten (10) days, of change of a registered agent;**

**8.7. Inform the board in writing within ten (10) days of the effective date to any change to:**

Comments:

Section 190-5-8.4 would require the AMC to provide notice of any changes in its controlling person or changes in business name, address, or owner who is an employee within 10 days. It is suggested that the period of 10 days is insufficient. We suggest that a 60 day period would be more appropriate to allow time to identify an appropriate replacement, obtain any necessary background checks, and provide the necessary notice to the State.

This provision does not clarify whether the period to respond or report information to the Board is in calendar days or business days. The Board has made such a clarification in other areas of the Proposed Rules. For example, proposed §190-5-5.4 requires an AMC to restore the surety bond amount within ten (10) business days.

Board Response:

The Board believes ten business (10) days is adequate for AMCs to submit such notice. The Controlling Person is responsible for the operation of the AMC in the State. Research indicates most states fall within this range, while others are more stringent. North Carolina requires submission of an application for approval of a new compliance manager at least ten (10) business days in advance before the effective date of such change. Colorado requires a three (3) day notification and notification of a replacement controlling appraiser or temporary controlling appraiser. The Board does not agree with the comments to enlarge time.

The Board believes it would be helpful to further define ten days as ten "business" days. The Board agrees and conforms the rule to comply with the comment.

**8.6. Disclose to its client the actual fees paid to an appraiser for appraisal services, separate from any other fees or charges for appraisal management services, and make the information available to the board upon request;**

Comment:

Finally! It has long been my belief that the actual fee paid to an appraiser should be disclosed from the beginning, and not lumped in with other fees under the umbrella of "appraisal fees." The public has always believed that we get the full amount of the check they write to the lender, and I feel they should not be deceived. I have noticed that it has put a bad taste in their mouths, and it is just better to be direct about payment of all fees, to whom, and for what. Non-disclosure of "appraisal fees" has not helped the image of appraisers in the public eye. Sometimes I think we need all the help we can get.

Board Response: The comment agrees with the rule as written. The Board agrees and no amendment is needed.

**8.7.c. Change of owner who is an employee of or consultant for the appraisal management company and contact information for said person.**

Comments:

As demonstrated by the reference in §30-38A-6 of the Appraisal Management Companies Registration Act, the contact information required of owners is limited to those with "more than ten percent" ownership. Therefore, the ownership change information in the rules should clarify it applies to those owners of ten percent or more only. Recommendation: To

be consistent with the statute, after "owner," add "who owns more than ten percent of the company."

Board Response: W. Va. Code §30-38A-6 and 7 requires both "each owner of more than ten percent of the firm" and "each owner who is an employee of or consultant for the applicant" to submit registration and certification information. This comment exceeds the board's statutory authority. Therefore, the Board does not agree with this comment.

#### **§190-5-9. Retention of Records.**

**An appraisal management company registered under the provisions of W. Va. Code § 30-38A-1 *et seq.*, and this rule shall retain the following records:**

**9.1. A detailed record of each service request that it receives for appraisals of real property located in this state, which shall include, but is not limited to, the following:**

**9.1.c. Any and all assignment related correspondence sent to and received from the appraiser;**

**9.1.d. Letter of engagement with any reviewing appraiser for the purpose of reviewing the requested appraisal;**

**9.1.e. Review of the requested appraisal, including the original review report, any and all correspondence sent to and received from the reviewing appraiser, and each subsequent revised review report;**

**9.1.f. Requests received from the client, all documentation supplied to that client, and any and all correspondence sent to and received from the client; and**

Comment:

1. Section 190-5-9 specifies records that are to be retained by the AMC. We have concerns that the language proposed for 9.1.d and 9.1.e could be misconstrued to imply that an Appraisal Review is to be performed for each appraisal provided to an AMC. It is suggested that the language be modified to make it clear that IF an Appraisal Review assignment is commissioned by an AMC, that a copy of the letter of engagement, copy of the Appraisal Review report, copy of the original appraisal report, copies of any subsequent revised Appraisal Review reports, and copies of all correspondence with the reviewing appraiser should all be retained

2. We note that Section 190-5.9.d requires that a letter of engagement be retained for review appraisers completing required review assignments. As the rule allows for employee appraisers to complete these assignments (who would be completing the assignment as part of their employment and not pursuant to a specific engagement), we request that this language be revised to clarify that such a letter of engagement would only be required for review appraisers who are independent contractors. We suggest the language be revised as follows: "Letter of engagement with the reviewing appraiser for the purpose of reviewing the requested appraisal, in the event that the reviewing appraiser is an independent contractor and not an employee of the appraisal management company";
3. Is overly broad and should be clarified to apply only to client communications related to a specific West Virginia appraisal order. We would suggest rewording this section as follows: "Requests received from the client, all documentation supplied to that client, and any and all correspondence sent to and received from the client in connection with appraisals of real property located in this state";

Board Response:

Additional language will be added to clarify Rule 190.9.1.d. as suggested in comments #1 and 2. The Board agrees and conforms 9.1.d of this rule to comply with the comment. However, Comment #3 could apply throughout the Rule, making it necessary to change many items to clarify "in this state." It is to be assumed requirements of this rule apply only to transactions within this state. The Board does not agree and no further amendments will be made to the remaining sections of 9.1.

**9.2. Copies of all appraiser fee schedules maintained and used by the appraisal management company including:**

**9.2.c. Documentation to support that the fee schedule is customary and reasonable and complies with TILA.**

Comments:

1. My concern with this comment is that one AMC that I work for recently notified me that effective immediately they was reducing my fee because they have done a study of the area and other appraiser's fees which disregarded the current fee schedule that I had in place with this company. They have not produced documentation proving that this reduction is warranted. Other lending institutions have not proposed reducing my fee and have (without discussing numbers) verified that my fees are comparable with other appraiser's fees in this area. I suggest that the AMCs are required to review their fee schedules with the appraisers each year. I also think that the AMC

should have to notify the appraiser when they are removing the appraiser from their approved panel and the reason for the removal.

2. I realize that this sub-section relates directly to retention of an AMC's documentation for support of customary and reasonable appraisal fees. I want to comment, though, that those customary and reasonable fees require flexibility because of complex assignments, difficult areas to appraise, or lender requirements that translate to more layered reports than what is required by other lenders. Appraisers must retain the ability to negotiate fees when necessary.

**Board Response:**

AMCs will be required to maintain copies of all appraiser fee schedules and documentation to support that the fee schedule is customary and reasonable and complies with TILA. AMCs must allow the Board to inspect these documents upon its request. The Board does not agree with these comments.

W. Va. Code § 30-38A-12 Requirements for Removal from an Appraiser Panel are not addressed in this series, however, they will be addressed in procedural rules governing investigation and hearing procedures for AMC. The Board does not agree with the comment.

**§190-5-10. Payment of Fees to Appraisers**

**10.1. Except in cases of breach of contract or substandard performance, appraisal management companies shall pay an independent appraiser for the completion of an appraisal within forty-five (45) days after the appraiser provides the completed appraisal to the appraisal management company unless otherwise agreed to by the parties.**

**Comments:**

1. A completed appraisal is defined as the "delivery of the signed appraisal report to the appraisal management company." This provision would require AMC's to pay the appraiser regardless of whether the appraisal has been completed in a satisfactory manner, and would limit an AMC's ability to ask for corrections and or additional commentary or specific lending requirements for the closing of a loan. If the appraisal is paid for prior to being delivered in an approved format, the appraiser would not have an incentive to complete the report. This would

ultimately put the consumer at a disadvantage when the appraisal is not delivered in a timely and satisfactory manner. Most services are not paid for prior to delivery of the final, approved product. Therefore, we respectfully request that the proposed Payment of Fees to Appraisers be changed to provide that appraisal management companies shall pay an independent appraiser for the completion of an appraisal within forty five (45) days after final completion of the appraisal, unless otherwise agreed to by the parties.

2. While the intent may be to add protection for the appraiser against inappropriate pressure or coercion, this may not be the best way to achieve that goal. The language in TILA Sec 129e that spells out the Appraisal Independence Requirements and related penalties may provide the better option. Those same prohibitions that protect appraiser independence are also included in the West Virginia regulations. If a request for changes in an appraisal rises to the level of pressure on the appraiser, there are substantial fines and penalties that can be levied upon the AMC or the Lender which go far beyond the value of one appraisal fee. On the other hand, that appraisal fee for the Borrower can be a substantial amount and one they would be concerned about if the appraisal became unusable because the necessary corrections are not forthcoming. Most consumers would not pay fully for a service until the goods are delivered in acceptable condition. What reason would there be to regulate the Consumer / Lender / AMC into the position of being forced to pay for a product that was unusable? Perhaps this definition of Completed Appraisal should be removed and leave Section 190-5-10 on Payment of Fees to Appraisers as it is so the payment period begins with Completion of the Assignment as agreed to by the parties. Or, perhaps the definition language might be modified to say that once the appraisal report has been accepted by the AMC (not just delivered to the AMC) and that later subsequent requests for changes shall not delay payment.
3. My suggestion is that the appraisal must be paid within 30 days, rather than 45 as stated in the proposed legislation.
4. It is my opinion that the AMC should have to send payment for the completed appraisal within 15 working days of receiving the report.
5. I believe the words "in cases of breach of contract or substandard performance" should be added into this section, such as "If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal due to breach of contract or substandard performance, the appraisal management company shall

notify the appraiser in writing of the reason for non-payment within thirty (30) days after the appraiser transmits the appraisal to the appraisal management company. Also I believe this should contain a clause such as "Any report that the Appraisal Management Company has notified the appraiser that it will not pay a fee for may not be utilized."

6. To me this is over the top. Even appraisers who do not accept work directly from AMC's unfortunately have involvement with them. To say that an AMC has 45 days to pay an appraiser is ludicrous. The lenders collect the fee up-front so basically you are allowing an appraisers fee to be in someone else's bank account, collect interest, pay their bills, etc. for 45 days — major wrong. In a 45 day time frame, the loan and the file could be closed and the appraiser forgotten. An appraiser should be paid on receipt of their appraisal product —period. No one receives a service of any kind with delayed payment.
7. 45 days for payment of a completed appraisal would be an improvement from some companies, but I think 30 days is reasonable. The time requirements placed on appraisers by the AMC's for order acceptance, scheduling, report delivery, and handling of revision requests are measured in hours and days, not months. They should follow suit.

#### Board Response:

Most comments requested that the time period be shorten to fifteen or thirty days for payment from AMC to appraiser. The period of forty-five days is the exact language contained in the AMC Practice Act, W. Va. § 30-38A-13(a)(5). To change the time period in the rules would exceed the statutory authority of the Board. The Board does not agree with these comments.

**10.2. If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal, the appraisal management company shall notify the appraiser in writing of the reason for non-payment within thirty (30) days after the appraiser transmits the appraisal to the appraisal management company. The notice shall state the address of the subject property of the appraisal, the name of the appraiser(s) signing the report, and the reason why the fee shall not be paid.**

#### Comments

1. In regard to Section 190-5-10 10.2 in regard to an appraisal management company deciding NOT to pay a fee to an appraiser for an appraisal. It goes on to state that the AMC must notify the appraiser, in writing, of the reason for non-payment within thirty days after the transmission of the appraisal. As an appraiser, this

provision makes me somewhat nervous. Under what specific circumstances can an AMC decide not to pay me? Does this allow an opportunity for non-payment in the event that I do not reach a specific value? Can they decide that they simply do not like my appraisal and therefore refuse to pay for it? An appraisal is, at its core, an opinion of value and a detailed expression of that opinion. If an AMC disagrees with my opinion, can they withhold payment after I, as an appraiser, have worked for many hours on this product?

2. My opinion is that there should not be an instance where the appraiser is not compensated for submitting a completed appraisal report unless there is proven fraud confirmed by the WV Appraisal Board. If the fee is not paid for an appraisal report, it is thought that the appraisal should not be able to be used by that institution or the subsequent lender for any reason.
3. If an AMC decides to not pay' — how crazy is that? That shouldn't exist. If the AMC orders a report, the appraiser accepts and provides the service, then the appraiser should be paid. If the AMC has an issue with the report, then the AMC should file a complaint with the Appraiser Board.
4. This paragraph on its face is alarming. It implies that an AMC can refuse to pay an appraiser for any reason. Logically, I believe this is not the intent, but what is the intent? Is it stated previously in sub-section 10.1 - "breach of contract or substandard performance"? I would like to think that for an AMC to not pay for a completed report, there would have to have been an egregious offense. Also, if the AMC does not pay for a report, they should not be able to USE that report.
5. The 'breach of contract' phrase I feel is too broad and could be used against appraisers for non-payment. In explanation, many engagement letters state revision requests to be addressed within 2-4 hours of receipt. Of course, we go along with this, but when that revision request comes when an appraiser is in the field, and that appraiser gets back to the office 5 hours later, addresses or clarifies issues in as timely a manner as was possible that day, was there a breach of contract?

Board Response:

Only comment #1 specifically addresses W. Va. Code §190-5-10.2., notification to appraisers in writing with the reasons why the appraiser is not being paid. One Comment ask, "Does this allow an opportunity for non-payment in the event that I do not reach a specific value?" W. Va. Code § 30-38A will allow appraisers the opportunity to file complaints against AMCs. W. Va. Code § 30-38A-14 and 15 address unprofessional conduct and prohibited acts, such requiring appraisers to "hit" certain values before receiving payment of services.

All other comments are addressed in §190-10-2.1. The Board does not agree these comments.

**§190-5-11. Temporary Authority to Conduct Business.**

**11.1. An appraisal management company that is not exempt from W. Va. Code §30-38A which began offering appraisal management services in this state before July 1, 2014, and has continued to offer appraisal management services in this state since then without interruption, may continue to offer appraisal management services after July 1, 2014, without first being registered if:**

Comment:

Section 190-5-11 would allow existing AMC's to keep working after July 1 2014 even though the West Virginia licensing system is not yet up and functioning, as long as the application has been filed along with the appropriate fee payment. We appreciate the allowance for existing AMC's to continue in operation while the system is deployed. The one question here is Section 190-5-11.1.c which makes continued operation dependent on the same one individual remaining as Controlling Person during the period. We would like to suggest that there needs to be some flexibility allowed on that point, since sometimes changes in a Controlling Person may occur for reasons beyond the AMC's control.

Board Response:

The Board does not agree with this comment.

# AMENDMENTS MADE TO RULE AS A RESULT OF PUBLIC COMMENTS

## TITLE 190 LEGISLATIVE RULE WEST VIRGINIA REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD

### SERIES 5 REQUIREMENTS FOR REGISTRATION AND RENEWAL OF APPRAISAL MANAGEMENT COMPANIES

**The following amendment was made to the rule as a result of the public comments received:**

#### **§190-5-2. Definitions.**

2.2. The Board agrees that rewording could add more clarity and conforms the rule to apply accordingly.

“Completed appraisal” means delivery of the signed appraisal report that is in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) to the appraisal management company.

#### **§190-5-3. Registration Requirements.**

§3.2.d. The Board does not agree with the majority of the comments. Comment #1 incorrectly reads the rule, as it does not prevent an AMC from obtaining a BPO for no fee, which is a permissible service. It prevents compensation for BPOs, which is illegal in WV. This rule would be repealed if W. Va. Code § 30-38-1 were repealed or amended. Comment #2 appears to be referring to the Evaluation of Collateral Form, which is a form designed to be used by non-licensed individuals for internal bank use only where federal guidelines allow for its use. It may be used by licensed individuals but should be signed as an individual rather than as an appraiser and does not comply with USPAP. The Evaluation of Collateral Form is one page and very limited in scope (see attached). It does not allow for market or sale comparisons. As such, it would appear that AMCs would not often utilize the Evaluation of Collaterals Form. Additionally, any entity can utilize such valuations when allowed by law.

Commenter #3 states she holds both an appraisal and a realtor license. She succinctly states the issue the Board is seeking to address. The Board received three such complaints in the period April 2013-April 2014. The Board is using statutory authority already in place (W. Va. §30-38-1) to address this problem.

However, the Board agrees that some rewording allowed for better clarification of the rule and conforms the rule accordingly.

That the appraisal management company shall not ~~hire~~ compensate an employee, ~~or in any way contract with or pay~~ a real estate broker or real estate agent to perform a BPO or comparative market analysis pursuant to W. Va. Code § 30-38-1;

§3.2.g. The rule can be clarified by rewording. The Board agrees and conforms the rule to comply with the comment

Individuals required by W. Va. Code § 30-38A-8 ~~The appraisal management company shall submit to required state and national criminal history record checks pursuant to W. Va. Code § 30-38A-8.~~

#### §190-5-7. Schedule of Fees.

7.2.g. Although the Board's research indicates states commonly charge more for a change of controlling person, it is agreeable to reducing this fee to \$100. The Board agrees and conforms the rule to comply with the comment.

Change of controlling person fee of ~~two hundred dollars (\$200)~~ one hundred dollars (\$100);

7.6. The Board believes the commenter may have misinterpreted the proposed rule. CSR190-7.6. applies to AMCs seeking registration. The AMC is not under the Board's regulatory authority until after it is fully registered. The Board will clarify the rule by striking through three words that may confuse the reader. The Board agrees and conforms the rule to comply with the comment.

In the event that the board asks an applicant to ~~submit updated information or~~ provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the board's request, the board shall cancel the applicant's application and the application fee shall be retained by the board.

#### §190-5-8. Responsibilities and Duties of Appraisal Management Companies.

8.2.b. The Board agrees with the comment. In fact, §190-5-8.2.b. can be deleted as all record keeping is covered under §30-38A-13(a)(9), "Keep all records, including, but not limited to, appraisals ordered by the appraisal management company, for a minimum of five years after an appraisal is completed or two years after final disposition of a judicial proceeding related to the assignment, whichever period expires later; and." The Board agrees and conforms the rule to comply with the comment.

~~8.2.b. An appraisal management company shall keep copies of all such declarations for a minimum of two (2) years.~~

**8.3.c.** The addition of "appraisal" clarifies the rule. The Board agrees and conforms the rule to comply with the comment.

Any employee or independent contractor appraiser of an appraisal management company that performs an appraisal review shall:

**8.3.c.1.**

The Board agrees with the comment that a review appraiser maybe licensed in any state and conforms the rule to comply with the comment.

Be licensed in this state or any state;

**8.4, 8.5, and 8.7** The Board agrees that days should be defined as business days and conforms the rule to comply with the comment.

**8.4.** Designate a controlling person, who will be responsible for compliance with W. Va. Code § 30-38A-13 and the provisions of this rule, and notify the board, in writing within ten (10) business days, of any change in its controlling person;

**8.5.** Maintain a registered agent for service of process and provide the board with the same information for the agent that is provided to the Secretary of State; and notify the board, in writing, within ten (10) business days, of change of a registered agent;

**8.7.** Inform the board in writing within ten (10) business days of the effective date to any change to:

**§190-5-9. Retention of Records.**

**9.1.d.** The Board agrees with this comment and conforms the rules as follows:

Letter of engagement with any independent reviewing- appraiser for the purpose of reviewing the requested appraisal if an appraisal review assignment is commissioned by the AMC;

**9.4.** The Board agrees and conforms the rule to comply with the comment.

The board may inspect the records of appraisal management companies at any time without prior notice, provided that such inspection is conducted within the normal business hours of the AMC.

**§190-5-10. Payment of Fees to Appraisers**

**10.3** The Board agrees with the comment that if the AMC does not pay for the appraisal report, the appraisal should not be used by the institution or the subsequent lender for any reason. Therefore the board concurs with the comment and amends this section as follows:

10.3 In cases where the appraisal management company does not pay the appraiser for the appraisal, the appraisal shall not be utilized by the appraisal management company or their clients for any purpose.

**Sandy Kerns**

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**From:** Debra Hoffman <hoffmanappraisals@hotmail.com>  
**Sent:** Wednesday, July 09, 2014 3:14 PM  
**To:** kernss@mail.wvnet.edu  
**Subject:** Title 190 Legislative Rule - Comments  
**Attachments:** IMG.pdf

*Dear Ms. Kerns,*

*Please see attached comments on the Title 190 Legislative Rule. Thank You for the opportunity to express these to you.*

*Debra Hoffman  
Hoffman Appraisals  
WVLR0781*

RE: Title 190 Legislative Rule  
Series 5

Dear Ms. Kerns,

Thank you for posting the Title 190 Legislative Rule and for making it available for comments. After reviewing it I would like to register the following comments:

190-5-8; 8.6 – I was so glad to read that the actual fee paid to the appraiser will be disclosed. This has been very misleading in the past to the public as they assume that the fee's designated as "appraiser fee's" are being paid to us. We, as appraisers, have heard statements to the effect that they can't believe we get so much money for doing an appraisal and we aren't permitted to correct this misleading information due to the non-disclosure of fee's.

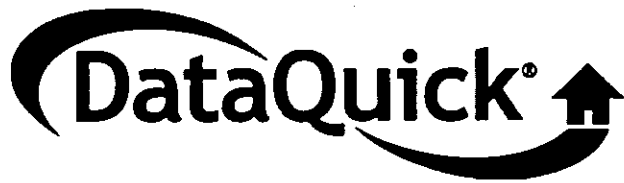
190-5-9; 9.2c – Our fee's should not be a "one size fit's all". In the rural areas that we work, complexity of assignments vary and each appraisal completed requires individual attention, and time, resulting oftentimes in fee increases from what is considered normal in the eyes of the AMC. These additional fee's are still customary and reasonable for the area, and the time required, for a credible report.

190-5-10; 10.1 – I feel that 30 days is more than reasonable for the payment of completed appraisals. The demand they expect us to meet is much less.

190-5-10; 10.2 – Would you want to work for hours and not get paid just because someone felt that it was substandard? I'm concerned the AMC will use this to opt out of payment of services for any reason they might come up with. I think the term "substandard" should be specifically defined and stated as to what constitutes a substandard appraisal prior to the acceptance of the assignment. The same for "breach of contract". It needs to be more specific as to what guidelines they expect us to adhere. As appraiser's we all do the best that we can to meet their criteria but oftentimes this is somewhat vague with time factors that are impossible to meet. "Substandard" and "Breach of Contract" needs to be more specifically defined. Also on the rare occasion that the AMC will withhold payment for an appraisal, the AMC should be required to notify the appraiser in writing of the reason for non-payment with a clause that the appraisal **will not** be utilized.

Thank You,

Debra K Hoffman  
WVLR0781



Page | 7  
July 8, 2014

Thank you for allowing us to submit these comments on the proposed regulations. If you would like to discuss any of these points in greater detail, please feel free to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank O'Neill, Jr." with a stylized flourish at the end.

Frank O'Neill, Jr, SRA  
Chief Appraiser  
[foneill@dataquick.com](mailto:foneill@dataquick.com)  
302-433-8940

Cc: Mr. Bill Sullivan, SVP, DataQuick  
Don Kelly, Executive Director, Real Estate Valuation Advocacy Association (REVAA)



July 7, 2014

West Virginia Appraiser Board  
2110 Kanawha Boulevard, East, Suite 101  
Charleston, WV 25311



Re: Comments Regarding Proposed Title 190, Series 5  
"Requirements for Registration and Renewal of Appraisal Management Companies"

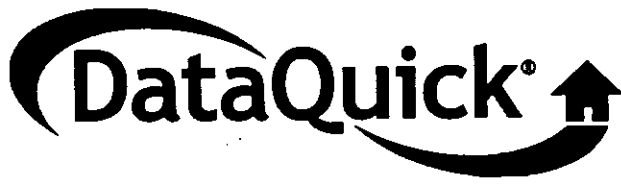
DataQuick wishes to thank the State of West Virginia for the opportunity to offer our comments and suggestions regarding the proposed Requirements for Registration and Renewal of Appraisal Management Companies.

DataQuick is a national provider of appraisals and a range of other services across all 50 states. We support appraiser independence standards and work each day to preserve and improve public trust in the appraisal process.

Appraisal Management Companies like DataQuick provide a market based solution to ensuring appraiser independence for our clients, for the appraisal community, and ultimately for the protection of consumers by providing an important degree of independence in the appraiser selection and oversight process which is a critical compliance concern under both state and federal law.

DataQuick supports responsible legislation and regulation that benefits the consumer and the market participants in the mortgage lending industry. Regulations implementing the existing law can provide AMCs, appraisers, and consumers proper guidance and direction to ensure consumer protection and responsible business practices

We appreciate the opportunity to offer comments regarding the proposed regulations and offer the following comments for your consideration.



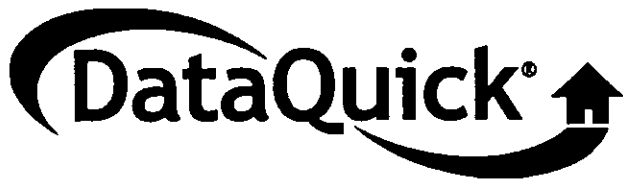
## Payment of Fees to Appraisers

**Section 190-5-10** on Payment of Fees to Appraisers would require payment for appraisals within a 45 day time frame beginning with the first submission of a completed appraisal to the AMC, unless otherwise agreed to by the parties. This language by itself would not be an issue. However, in Section 190-5-2.2 includes a proposed Definition indicating "Completed Appraisal means delivery of the signed appraisal report to the appraisal management company." This would require payment within the time frame regardless of whether requests for corrections or additional commentary have been fulfilled. This provision would put Appraisal Management Companies, their Lender Clients, and ultimately the Borrowing Public, in a position of being required to pay for what may well be an incomplete appraisal service that cannot be used for the loan underwriting purposes that it was intended for.

While the intent may be to add protection for the appraiser against inappropriate pressure or coercion, this may not be the best way to achieve that goal. The language in TILA Sec 129e that spells out the Appraisal Independence Requirements and related penalties may provide the better option. Those same prohibitions that protect appraiser independence are also included in the West Virginia regulations. If a request for changes in an appraisal rises to the level of pressure on the appraiser, there are substantial fines and penalties that can be levied upon the AMC or the Lender which go far beyond the value of one appraisal fee. On the other hand, that appraisal fee for the Borrower can be a substantial amount and one they would be concerned about if the appraisal became unusable because the necessary corrections are not forthcoming. Most consumers would not pay fully for a service until the goods are delivered in acceptable condition. What reason would there be to regulate the Consumer / Lender / AMC into the position of being forced to pay for a product that was unusable?

Perhaps this definition of Completed Appraisal should be removed and leave Section 190-5-10 on Payment of Fees to Appraisers as it is so the payment period begins with Completion of the Assignment as agreed to by the parties. Or, perhaps the definition language might be modified to say that once the appraisal report has been accepted by the AMC (not just delivered to the AMC) and that later subsequent requests for changes shall not delay payment.

**Section 190-5-10.1a** There is a similar concern regarding Section 190-5-10.1a requiring an AMC to provide notice to the appraiser if the AMC decides it will not pay. This sets a shorter 30 day window of time that again is to begin with the date of first submission. Since it may be that the appraisal report submitted might never reach the point of being considered "completed" it may



be that the date of initial submission may need to stand as the start date. It is suggested, however, that the need to allow the AMC time to attempt to remediate the situation to obtain a completed appraisal, the same 45 day time frame be applied.

#### **Registration Requirements.**

**Section 190-5-3.2d** is intended to work in conjunction with 30-38-1 which puts restrictions on when a BPO may be prepared by a person without being licensed or certified as an appraiser. That provision overlaps an existing provision in 30-38-1(c)(6). However, the language proposed here is not consistent with the language in 30-38-1, especially language in (c)(6) of that section where a financial institution regulated by the FDIC may order such valuations under specified circumstances. The proposed language would not allow an AMC to order such a valuation under any circumstances even though their Lender/clients could order such products.

Importantly, there is no provision in 30-38A-1 AMC Registration Act, that enables the Board to include such a provision related to BPOs in the AMC Legislative Rules.

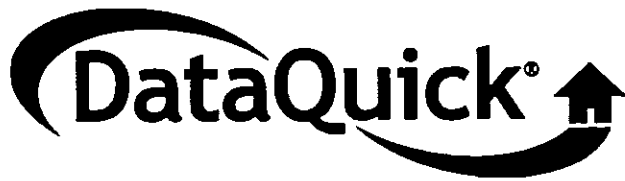
Thus, we suggest the language in 190-5-3.2d be removed from the Rules.

**Section 190-5-3.2g** would require that "the appraisal management company shall submit to required state and national criminal history record checks". However, those criminal history checks can only be applied to natural persons, not to business entities. If background checks are to be required, it is suggested that the Regulation should define which natural persons representing the AMC the requirement would apply to.

#### **Exemptions to Registration Requirement.**

**Section 190-5-4** indicates that the AMC regulation would not apply to an AMC that is owned or controlled by a financial institution regulated by a federal financial institution regulatory agency. The language as presented, however, does not track with the language used in FIRREA. It is suggested that the language be modified to mirror the exemptions as defined in Sec 1124(c):

"An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State."



### **Renewal and Reinstatement – Delinquent Registrations**

**Section 190-5-6.1** indicates that renewal notices will be sent 60 days prior to renewal. Section 190-5-6.2 would require that renewal registrations be submitted 30 days prior to the renewal date. Renewals received after that date would be considered delinquent and subject to a delinquent license fee.

We are concerned that this timeline will not provide adequate time to respond to the renewal notice. If sent 60 days prior to renewal, it will be received a few days or a week after that. And the completed renewal application must be received at least 30 days prior to renewal. Again, allowing a few days or a week for delivery, the AMC will be left with only 2 to 3 weeks to actually complete and send the renewal application.

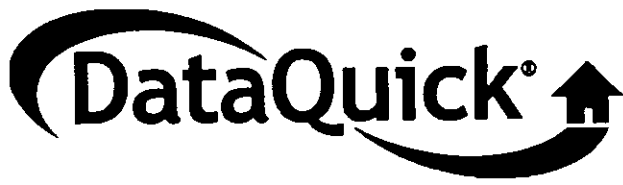
Appraisers (under 30-38-11(e)) are allowed to submit renewal applications up to 120 days in advance but also must have applied at least 30 days in advance. We would like to suggest this AMC provision be modified to require that renewal notices be sent to AMCs 120 days in advance of the renewal date to provide adequate time to respond.

We would also like to suggest that categorizing a renewal application as delinquent not begin until the renewal date, rather than categorizing an AMC with a valid license still in place as being delinquent 30 days prior to that renewal date.

### **Schedule of Fees.**

**Section 190-5-7.2.g** would impose a fee for change of controlling person that is double the amount indicated for a change of address or for change of a contact person. It is suggested that all three should be equal in amount.

**Section 190-5-7.3** would require the Board to collect an annual registry fee established by the Appraisal Subcommittee from AMCs. It is suggested that this provision should be removed for the present time. The Appraisal Subcommittee (ASC) recently advised the Virginia Appraiser Board that it would be several years before the AMC registry fees are put into place, and the exact provisions and requirements for that have not yet been established. The recommendation was that, because of the uncertainties involved in how all that would be structured, the State would be better off waiting to see how the AMC Registry Fee topic plays out before trying to include anything in that regard in the regulations.



We suggest that the W Appraiser Board contact either the Board Staff in Virginia or contact the ASC directly for confirmation and then strongly consider removing (7.3) from the Regulations until the actual structure and procedures related to the Registry Fee are established.

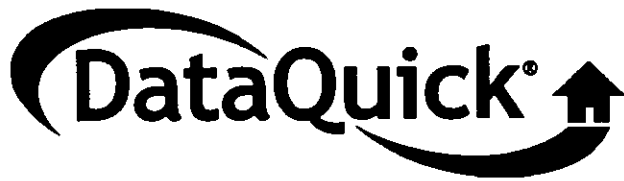
#### **Responsibilities and Duties of Appraisal Management Companies.**

**Section 190-5-8.2** would require that the AMC obtain a statement from each appraiser joining the panel regarding geographic and property type competency, and that the AMC must obtain an updated statement from each appraiser annually. An appraiser's geographic and property type competency is unlikely to change significantly on a year over year basis. It is not expected that an appraiser's competency is likely to be reduced over time, but rather that it would increase or be expanded over time. If an appraiser has developed new competencies, they are likely to be sure to notify their clients and AMCs of that new competency to attract additional business. So we do not see any advantage or purpose for requiring annual updates on this information. The additional burden it would impose on both appraisers and AMCs would not be offset by any significant benefit to consumers. Thus, we would suggest that the annual renewal of the competency statement should be removed.

**Section 190-5-8.3** would require Appraisal Reviews of each appraiser's work at least once a year. We would like to request clarification in Section 190-5-8.3.c that "Any employee or independent contractor appraiser of an appraisal management company that performs an Appraisal Review shall:..." This would clarify that the requirement applies to an appraiser who is performing an Appraisal Review as defined in USPAP.

**Section 190-5-8.4 and 190-5-8.7** would require the AMC to provide notice of any changes in its controlling person or changes in business name, address, or owner who is an employee within 10 days. It is suggested that the period of 10 days is insufficient. We suggest that a 60 day period would be more appropriate to allow time to identify an appropriate replacement, obtain any necessary background checks, and provide the necessary notice to the State.

**Section 190-5-8.8.c** would apply to someone who is both an owner and an employee of an AMC. We suggest that an employee of an AMC might own a small amount of stock in a corporation and thus be an "owner", but not have any control over the operation of the business. It is suggested that the threshold of 10% ownership in the company be applied here.



**Retention of Records.**

**Section 190-5-9** specifies records that are to be retained by the AMC. We have concerns that the language proposed for 9.1.d and 9.1.e could be misconstrued to imply that an Appraisal Review is to be performed for each appraisal provided to an AMC. It is suggested that the language be modified to make it clear that **IF** an Appraisal Review assignment is commissioned by an AMC, that a copy of the letter of engagement, copy of the Appraisal Review report, copy of the original appraisal report, copies of any subsequent revised Appraisal Review reports, and copies of all correspondence with the reviewing appraiser should all be retained.

**Section 190-5-9.4** proposes that the board may inspect the records of the AMC without any prior notice. While we do not object to the State performing an audit, we strongly believe the Board should provide adequate notice of a pending audit or on-site visit to ensure the AMCs are able to properly respond to the Board's request, and that such access should be limited to normal business hours.

**Temporary Authority to Conduct Business.**

**Section 190-5-11** would allow existing AMCs to keep working after July 1 2014 even though the West Virginia licensing system is not yet up and functioning, as long as the application has been filed along with the appropriate fee payment. We appreciate the allowance for existing AMCs to continue in operation while the system is deployed. The one question here is Section 190-5-11.1.c which makes continued operation dependent on the same one individual remaining as Controlling Person during the period. We would like to suggest that there needs to be some flexibility allowed on that point, since sometimes changes in a Controlling Person may occur for reasons beyond the AMC's control.

Addressee	Start Time	Time	Prints	Result	Note
Mary Beth Aliveto	07-09 01:20	00:01:20	000/007	NG	

Note TMR:Timer TX, POL:Polling, ORG:Original Size Setting, FME:Frame Erase TX, DPG:Page Separation TX, MIX:Mixed Original TX, CALL:Manual TX, CSAC:CSAC, FWD:Forward, PC:PC-FAX, BND:Double-Sided Binding Direction, SP:Special Original, FCODE:F-code, RTX:Re-TX, RLV:Relay, MBX:Confidential, BUL:Bulletin, SIP:SIP Fax, IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF, TEL: RX from TEL, NG: Other Error, Cont: Continue, No Ans: No Answer, Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full, LOVR:Receiving length Over, POVR:Receiving page Over, FIL:File Error, DC:Decode Error, MDN:MDN Response Error, DSN:DSN Response Error.



July 7, 2014

West Virginia Appraiser Board  
 2110 Kanawha Boulevard, East, Suite 101  
 Charleston, WV 25311



Re: Comments Regarding Proposed Title 190, Series 5  
 "Requirements for Registration and Renewal of Appraisal Management Companies"

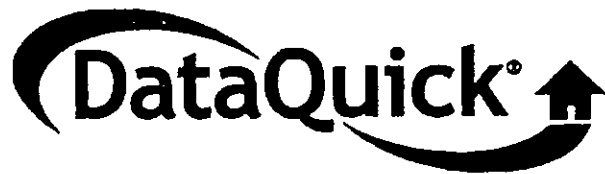
DataQuick wishes to thank the State of West Virginia for the opportunity to offer our comments and suggestions regarding the proposed Requirements for Registration and Renewal of Appraisal Management Companies.

DataQuick is a national provider of appraisals and a range of other services across all 50 states. We support appraiser independence standards and work each day to preserve and improve public trust in the appraisal process.

Appraisal Management Companies like DataQuick provide a market based solution to ensuring appraiser independence for our clients, for the appraisal community, and ultimately for the protection of consumers by providing an important degree of independence in the appraiser selection and oversight process which is a critical compliance concern under both state and federal law.

DataQuick supports responsible legislation and regulation that benefits the consumer and the market participants in the mortgage lending industry. Regulations implementing the existing law can provide AMCs, appraisers, and consumers proper guidance and direction to ensure consumer protection and responsible business practices

We appreciate the opportunity to offer comments regarding the proposed regulations and offer the following comments for your consideration.



July 7, 2014

West Virginia Appraiser Board  
2110 Kanawha Boulevard, East, Suite 101  
Charleston, WV 25311



Re: Comments Regarding Proposed Title 190, Series 5  
"Requirements for Registration and Renewal of Appraisal Management Companies"

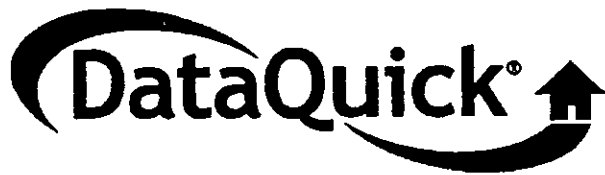
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We appreciate the opportunity to offer comments regarding the proposed regulations and offer the following comments for your consideration.



## Payment of Fees to Appraisers

**Section 190-5-10** on Payment of Fees to Appraisers would require payment for appraisals within a 45 day time frame beginning with the first submission of a completed appraisal to the AMC, unless otherwise agreed to by the parties. This language by itself would not be an issue. However, in Section 190-5-2.2 includes a proposed Definition indicating "Completed Appraisal means delivery of the signed appraisal report to the appraisal management company." This would require payment within the time frame regardless of whether requests for corrections or additional commentary have been fulfilled. This provision would put Appraisal Management Companies, their Lender Clients, and ultimately the Borrowing Public, in a position of being required to pay for what may well be an incomplete appraisal service that cannot be used for the loan underwriting purposes that it was intended for.

While the intent may be to add protection for the appraiser against inappropriate pressure or coercion, this may not be the best way to achieve that goal. The language in TILA Sec 129e that spells out the Appraisal Independence Requirements and related penalties may provide the better option. Those same prohibitions that protect appraiser independence are also included in the West Virginia regulations. If a request for changes in an appraisal rises to the level of pressure on the appraiser, there are substantial fines and penalties that can be levied upon the AMC or the Lender which go far beyond the value of one appraisal fee. On the other hand, that appraisal fee for the Borrower can be a substantial amount and one they would be concerned about if the appraisal became unusable because the necessary corrections are not forthcoming. Most consumers would not pay fully for a service until the goods are delivered in acceptable condition. What reason would there be to regulate the Consumer / Lender / AMC into the position of being forced to pay for a product that was unusable?

Perhaps this definition of Completed Appraisal should be removed and leave Section 190-5-10 on Payment of Fees to Appraisers as it is so the payment period begins with Completion of the Assignment as agreed to by the parties. Or, perhaps the definition language might be modified to say that once the appraisal report has been accepted by the AMC (not just delivered to the AMC) and that later subsequent requests for changes shall not delay payment.

**Section 190-5-10.1a** There is a similar concern regarding Section 190-5-10.1a requiring an AMC to provide notice to the appraiser if the AMC decides it will not pay. This sets a shorter 30 day window of time that again is to begin with the date of first submission. Since it may be that the appraisal report submitted might never reach the point of being considered "completed" it may



be that the date of initial submission may need to stand as the start date. It is suggested, however, that the need to allow the AMC time to attempt to remediate the situation to obtain a completed appraisal, the same 45 day time frame be applied.

#### **Registration Requirements.**

**Section 190-5-3.2d** is intended to work in conjunction with 30-38-1 which puts restrictions on when a BPO may be prepared by a person without being licensed or certified as an appraiser. That provision overlaps an existing provision in 30-38-1(c)(6). However, the language proposed here is not consistent with the language in 30-38-1, especially language in (c)(6) of that section where a financial institution regulated by the FDIC may order such valuations under specified circumstances. The proposed language would not allow an AMC to order such a valuation under any circumstances even though their Lender/clients could order such products.

Importantly, there is no provision in 30-38A-1 AMC Registration Act, that enables the Board to include such a provision related to BPOs in the AMC Legislative Rules.

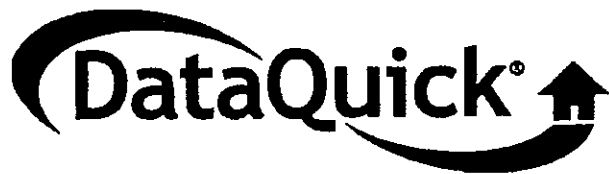
Thus, we suggest the language in 190-5-3.2d be removed from the Rules.

**Section 190-5-3.2g** would require that "the appraisal management company shall submit to required state and national criminal history record checks". However, those criminal history checks can only be applied to natural persons, not to business entities. If background checks are to be required, it is suggested that the Regulation should define which natural persons representing the AMC the requirement would apply to.

#### **Exemptions to Registration Requirement.**

**Section 190-5-4** indicates that the AMC regulation would not apply to an AMC that is owned or controlled by a financial institution regulated by a federal financial institution regulatory agency. The language as presented, however, does not track with the language used in FIRREA. It is suggested that the language be modified to mirror the exemptions as defined in Sec 1124(c):

"An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State."



### **Renewal and Reinstatement – Delinquent Registrations**

Section 190-5-6.1 indicates that renewal notices will be sent 60 days prior to renewal. Section 190-5-6.2 would require that renewal registrations be submitted 30 days prior to the renewal date. Renewals received after that date would be considered delinquent and subject to a delinquent license fee.

We are concerned that this timeline will not provide adequate time to respond to the renewal notice. If sent 60 days prior to renewal, it will be received a few days or a week after that. And the completed renewal application must be received at least 30 days prior to renewal. Again, allowing a few days or a week for delivery, the AMC will be left with only 2 to 3 weeks to actually complete and send the renewal application.

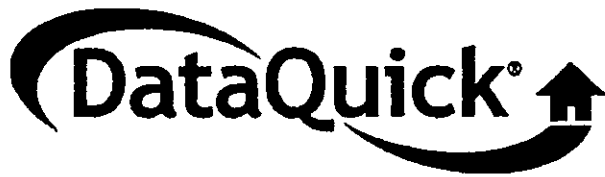
Appraisers (under 30-38-11(e)) are allowed to submit renewal applications up to 120 days in advance but also must have applied at least 30 days in advance. We would like to suggest this AMC provision be modified to require that renewal notices be sent to AMCs 120 days in advance of the renewal date to provide adequate time to respond.

We would also like to suggest that categorizing a renewal application as delinquent not begin until the renewal date, rather than categorizing an AMC with a valid license still in place as being delinquent 30 days prior to that renewal date.

### **Schedule of Fees.**

Section 190-5-7.2.g would impose a fee for change of controlling person that is double the amount indicated for a change of address or for change of a contact person. It is suggested that all three should be equal in amount.

Section 190-5-7.3 would require the Board to collect an annual registry fee established by the Appraisal Subcommittee from AMCs. It is suggested that this provision should be removed for the present time. The Appraisal Subcommittee (ASC) recently advised the Virginia Appraiser Board that it would be several years before the AMC registry fees are put into place, and the exact provisions and requirements for that have not yet been established. The recommendation was that, because of the uncertainties involved in how all that would be structured, the State would be better off waiting to see how the AMC Registry Fee topic plays out before trying to include anything in that regard in the regulations.



We suggest that the W Appraiser Board contact either the Board Staff in Virginia or contact the ASC directly for confirmation and then strongly consider removing (7.3) from the Regulations until the actual structure and procedures related to the Registry Fee are established.

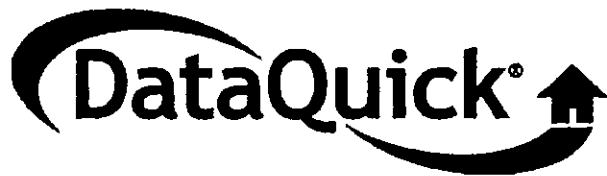
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Section 190-5-9 specifies records that are to be retained by the AMC. We have concerns that the language proposed for 9.1.d and 9.1.e could be misconstrued to imply that an Appraisal Review is to be performed for each appraisal provided to an AMC. It is suggested that the language be modified to make it clear that **IF** an Appraisal Review assignment is commissioned by an AMC, that a copy of the letter of engagement, copy of the Appraisal Review report, copy of the original appraisal report, copies of any subsequent revised Appraisal Review reports, and copies of all correspondence with the reviewing appraiser should all be retained.

Section 190-5-9.4 proposes that the board may inspect the records of the AMC without any prior notice. While we do not object to the State performing an audit, we strongly believe the Board should provide adequate notice of a pending audit or on-site visit to ensure the AMCs are able to properly respond to the Board's request, and that such access should be limited to normal business hours.

**Temporary Authority to Conduct Business.**

Section 190-5-11 would allow existing AMCs to keep working after July 1 2014 even though the West Virginia licensing system is not yet up and functioning, as long as the application has been filed along with the appropriate fee payment. We appreciate the allowance for existing AMCs to continue in operation while the system is deployed. The one question here is Section 190-5-11.1.c which makes continued operation dependent on the same one individual remaining as Controlling Person during the period. We would like to suggest that there needs to be some flexibility allowed on that point, since sometimes changes in a Controlling Person may occur for reasons beyond the AMC's control.



Page | 7  
July 8, 2014

Thank you for allowing us to submit these comments on the proposed regulations. If you would like to discuss any of these points in greater detail, please feel free to contact me directly.

Sincerely,

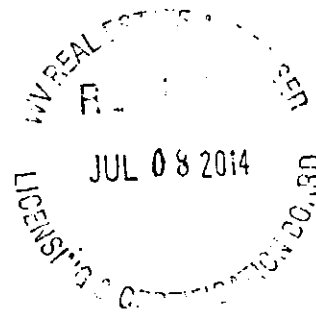
A handwritten signature in black ink, appearing to read "Frank O'Neill, Jr." with a stylized flourish at the end.

Frank O'Neill, Jr, SRA  
Chief Appraiser  
[foneill@dataquick.com](mailto:foneill@dataquick.com)  
302-433-8940

Cc: Mr. Bill Sullivan, SVP, DataQuick  
Don Kelly, Executive Director, Real Estate Valuation Advocacy Association (REVA)

Michelle Shumate  
400 Parkway Ave.  
Bluefield, WV 24701

West Virginia Appraiser Board  
2110 Kanawha Blvd, East, Suite 101  
Charleston, WV 25311



July 5, 2014

Dear Sir,

After reviewing the proposed "Requirements for Registration and Renewal of Appraisal Management Companies" document found on the website, I would like to submit a couple of comments and observations:

1. My first comment is in regard to Section 190-5-3 3.2d where it states that an AMC shall not hire a Realtor to perform a BPO for compensation. Since the appraisal board really doesn't have authority over Realtors as it is the responsibility of the Real Estate Commission to oversee the actions of Realtors and it is apparent that this practice continues regularly, it would appear that it will be necessary to penalize the AMC for seeking this type of product. At this time, it appears that the responsibility for acting lawfully falls solely on the Realtor. We, as appraisers, assume a tremendous amount of liability in performing appraisals and we must carry individual E&O insurance as well as complete a significantly larger number of continuing education hours each year that Realtors do not complete. As I am also a Realtor, I frequently receive calls from AMC's (Five Brothers called Thursday (07/03/2014), 1-586-619-3000) seeking my agreement to complete a BPO. Since the appraisal board cannot oversee the Realtors, can we provide some sort of control over the AMC's who participate in this practice?
2. My second comment is in regard to Section 190-5-10 10.2 in regard to an appraisal management company deciding NOT to pay a fee to an appraiser for an appraisal. It goes on to state that the AMC must notify the appraiser, in writing, of the reason for non-payment within thirty days after the transmission of the appraisal. As an appraiser, this provision makes me somewhat nervous. Under what specific circumstances can an AMC decide not to pay me? Does this allow an opportunity for non-payment in the event that I do not reach a specific value.? Can they decide that they simply do not like my appraisal and therefore refuse to pay for it? An appraisal is, at its core, an opinion of value and an detailed expression of that opinion. If an AMC disagrees with my opinion, can they withhold payment after I, as an appraiser, have worked for many hours on this product?

Thank you very much for your time and effort in preparing this legislation and for the fine job you, as a board, do in protecting the interests of appraisers. I am very proud to be an appraiser in West Virginia and, again, I thank you for taking the time to read this letter.

Sincerely,

*Michelle L. Shumate*

## Sandy Kerns

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**From:** Sandy Kerns <kernss@mail.wvnet.edu>  
**Sent:** Tuesday, July 08, 2014 9:50 AM  
**To:** 'Kathy Bowles'  
**Subject:** RE: Comments on Title 190 Legislative Rule

Kathy,

Thank you for submitting comments. I will print and include your submission to the Board.

Sandy

**From:** Kathy Bowles [<mailto:blueridge@hotmail.com>]  
**Sent:** Tuesday, July 08, 2014 1:27 AM  
**To:** [kernss@mail.wvnet.edu](mailto:kernss@mail.wvnet.edu)  
**Subject:** Comments on Title 190 Legislative Rule

Dear Sandy,

I have some comments I wanted to make regarding the requirements for registration and renewal of appraisal management companies. I trust this format is acceptable since the time is drawing near for closure of comments.

1. Section 190-5-3; 3.2b - It's good to see continued appraiser protection from undue influence or coercion of value from an AMC. However, over the past year I have had work assignments reassigned by an AMC after I called the borrower to schedule the appointment. Because of the circumstances surrounding the reassignment, I know that it is because the AMC received pressure from the lender to reassign to another appraiser that the builder/borrower preferred, and the builder/borrower placed pressure on the lender. It seems to me that ALL parties should be exempt from inappropriate influence of value. I realize this is not addressed for the AMC's, but that undue influence is still being exerted within the real estate transaction. I feel the AMC should not be able to reassign an order once placed unless the appraiser has an issue or conflict.

2. Section 190-5-8; 8.2a - Annual updates of an appraiser's territory, fees, etc. gets to be burdensome, and typically does not change much from year to year. How about every other year? We often get asked throughout the year in discussions with clients trying to place orders if we will go into other areas, and if we wish to make that a permanent change. I prefer the AMC websites that allow for simple and straightforward paths to make changes to my profile when necessary at any time throughout the year. It benefits me to be able to do that quickly and easily, and the AMC's remain updated.

3. Section 190-5-8; 8.6 - Finally! It has long been my belief that the actual fee paid to an appraiser should be disclosed from the beginning, and not lumped in with other fees under the umbrella of "appraisal fees". The public has always believed that we get the full amount of the check they write to the lender, and I feel they should not be deceived. I have noticed that it has put a bad taste in their mouths, and it is just better to be direct about payment of all fees, to whom, and for what. Non-disclosure of "appraisal fees" has not helped the image of appraisers in the public eye. Sometimes I think we need all the help we can get.

4. Section 190-5-9; 9.2c - I realize that this sub-section relates directly to retention of an AMC's documentation for support of customary and reasonable appraisal fees. I want to comment, though, that those customary

and reasonable fees require flexibility because of complex assignments, difficult areas to appraise, or lender requirements that translate to more layered reports than what is required by other lenders. Appraisers must retain the ability to negotiate fees when necessary.

5. Section 190-5-10; 10.1 - 45 days for payment of a completed appraisal would be an improvement from some companies, but I think 30 days is reasonable. The time requirements placed on appraisers by the AMC's for order acceptance, scheduling, report delivery, and handling of revision requests are measured in hours and days, not months. They should follow suit.

6. Section 190-5-10; 10.2 - This paragraph on its face is alarming. It implies that an AMC can refuse to pay an appraiser for any reason. Logically, I believe this is not the intent, but what is the intent? Is it stated previously in sub-section 10.1 - "breach of contract or substandard performance"? I would like to think that for an AMC to not pay for a completed report, there would have to have been an egregious offense. Also, if the AMC does not pay for a report, they should not be able to USE that report.

The 'breach of contract' phrase I feel is too broad and could be used against appraisers for non-payment. In explanation, many engagement letters state revision requests to be addressed within 2-4 hours of receipt. Of course, we go along with this, but when that revision request comes when an appraiser is in the field, and that appraiser gets back to the office 5 hours later, addresses or clarifies issues in as timely a manner as was possible that day, was there a breach of contract?

In conclusion, I appreciate the mailing giving us notice of the proposed rule. Thank you. My hope is that my comments are useful to the legislative process. Please feel free to contact me with any questions, or comments.

Regards,

Kathy Bowles  
WVLR #0625

Comments on: 190CSR5, TITLE 190 LEGISLATIVE RULE  
WEST VIRGINIA REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD  
SERIES 5 REQUIREMENTS FOR REGISTRATION AND RENEWAL OF APPRAISAL MANAGEMENT  
COMPANIES

I would like to register the following comments: in section 190-5-8, item 8.2a, I believe that the information requested from the appraiser should not change often. I believe it would be less onerous for both the Appraisal Management Company (AMC) and the appraiser to update this information every 5 years, and this should still protect the public interest of insuring the appraiser is competent.

In section 19-5-8, item 8.2 b, I believe the records should be maintained for 5 years, the same as other required record keeping, which would also make it sensible to require the information updated every 5 years.

The fees for registration and especially for changes to information in the registration seem pretty high, I wonder if this is consistent with other states? My worry is that these increased costs to the AMC will result in them wanting to pay the appraiser less.

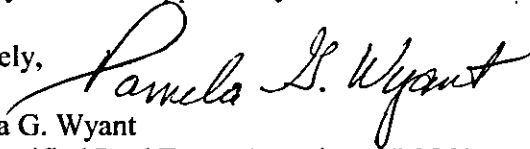
Nothing is mentioned about complexity of reports or geographical area in determining if the fee is customary and reasonable. Often the requirements of some lenders/AMCs result in a greater scope of work, which translates into the appraisal fee being higher. My concern is that the AMCs will use the requirement of maintaining fee schedules to try to lower fees for those of us who do more complex work.

190-5-10, 10.1 – My suggestion is that the appraisal must be paid within 30 days, rather than 45 as stated in the proposed legislation.

190-5-10 I believe the words "in cases of breach of contract or substandard performance" should be added into this section, such as "If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal due to breach of contract or substandard performance, the appraisal management company shall notify the appraiser in writing of the reason for non-payment within thirty (30) days after the appraiser transmits the appraisal to the appraisal management company. Also I believe this should contain a clause such as "Any report that the Appraisal Management Company has notified the appraiser that it will not pay a fee for may not be utilized."

Thank you for the opportunity for comments, and for your consideration of those I have made.

Sincerely,

  
Pamela G. Wyant  
WV Certified Real Estate Appraiser CR0564



## Sandy Kerns

---

**From:** Mark Clark <mclark3565@suddenlink.net>  
**Sent:** Wednesday, July 09, 2014 10:08 AM  
**To:** kernss@mail.wvnet.edu  
**Subject:** AMC rules  
**Attachments:** AMC rules.wps

July 9, 2014

Mrs. Sandy Kerns,

I have some comments I wanted to make regarding the requirements for registration and renewal of appraisal management companies. They are as follows:

1. Section 190-5-9.9.2 - My concern with this comment is that one AMC that I work for recently notified me that effective immediately they were reducing my fee because they have done a study of the area and other appraiser's fees which disregarded the current fee schedule that I had in place with this company. They have not produced documentation proving that this reduction is warranted. Other lending institutions have not proposed reducing my fee and have (without discussing numbers) verified that my fees are comparable with other appraiser's fees in this area. I suggest that the AMCs are required to review their fee schedules with the appraisers each year. I also think that the AMC should have to notify the appraiser when they are removing the appraiser from their approved panel and the reason for the removal.
2. Section 190-5-10.10.1 - It is my opinion that the AMC should have to send payment for the completed appraisal within 15 working days of receiving the report.
3. Section 190-5-10.10.2 - My opinion is that there should not be an instance where the appraiser is not compensated for submitting a completed appraisal report unless there is proven fraud confirmed by the WV Appraisal Board. If the fee is not paid for an appraisal report, it is thought that the appraisal should not be able to be used by that institution or the subsequent lender for any reason.

These are a few of the comments that I believed should be further reviewed or elaborated upon.

Thank you,  
Mark Clark

June 25, 2014

West Virginia Appraiser Board  
2110 Kanawha Boulevard, East, Suite 101  
Charleston, WV 25311

RE: Proposed Rule for Appraisal Management Companies

Ladies and Gentlemen:

Speedy Title & Appraisal Review Services LLC ("STARS"), an appraisal management company ("AMC"), thanks the West Virginia Appraiser Board for the opportunity to provide comments regarding the Proposed Rule for Appraisal Management Companies, Title 190, Series 5 ("Proposed Rule").

AMCs provide essential services in the valuation process. STARS not only provides the administrative process in obtaining and compensating an appraiser for an appraisal, but also works to ensure quality standards from vetting potential panel members to quality control of completed appraisals. Further, AMCs serve to insulate appraisers from "interested parties" helping to ensure appraiser independence and promoting the safety and soundness of the valuation process. In short, Lenders and ultimately the consumer, rely on AMCs like STARS to provide accurate, timely and affordable appraisal products.

STARS supports the Proposed Rule, but ask that the West Virginia Appraisal Board consider modifying the requirements surrounding the appraisal review requirements to avoid negatively affecting the appraisal process and ultimately the consumer. The appraisal review requirements in the West Virginia Real Estate Appraiser Licensing and Certification Act in Section 30-38A-7, provide:

- (a) The certification for registration shall be in writing, on a form prescribed by the board and signed by the applicant or controlling person. The certification shall include statements that the applicant:
  - (3) Has set procedures for an appraiser, licensed or certified in this state or in any state with a minimum of the same certification level for the property type as the appraiser who performed the appraisal, to review the work of the appraisers performing appraisals for the applicant to verify that the appraisals are being conducted in accordance with the minimum USPAP standards.

The legislature provided that the reviews could be completed by an appraiser in any state as long as the appraiser completing the review had the minimum of the same certification level for the property type as the appraiser who performed the appraisal. The Proposed Rule in Section 190-5-8, provides that the person who performs the appraisal review must be a licensed West Virginia appraiser. This is in direct contrast to the legislation and will add additional costs to the process.

The Proposed Rule also further defines the requirement by requiring a "representative sample of each appraiser's report" 190-5-8.3.a. In order to ensure appropriate coverage for its customers, an AMC will often have a very large panel and utilize a variety of appraisers. Consequently appraisers on the panel may only receive an order once or twice a year because

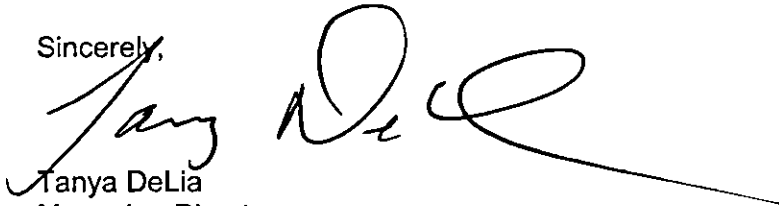


of the limited demand for appraisals in their local area. The concern with the "each appraiser" requirement is that an AMC would need to complete reviews on every appraiser utilized on its panel even if many of the appraisers only completed one report. Completing reviews on each appraiser as opposed to a sampling of all appraisals will greatly increase the number of review appraisals and AMCs will either need to pass on the increased costs, ultimately to the consumer, or restrict its panel size which will negatively affect panel coverage for rural and underserved markets and have appraisers cover a larger territory to manage the costs.

STARS recommend the Board adjust the language to require either an annual review percentage for all appraisals completed by the AMC or if the Board wishes to keep the each appraiser requirement, provide that a minimum of five appraisals be completed by an appraiser before a review is required. Such a definition would allow AMCs to maintain panels large enough to accommodate anticipated business without incurring expense for appraisers who have completed only a few appraisals for the AMC. These recommendations would help minimize the likelihood that appraisers in rural or underserved areas would be negatively affected by being eliminated from panels in order to control costs. A reduction in panel sizes will likely drive up consumer expenses, delay turn times and decrease quality.

We appreciate this opportunity to offer comments and are available to answer any questions the Agencies may have regarding our feedback.

Sincerely,



Tanya DeLia  
Managing Director

## Sandy Kerns

---

**From:** Tanya Alexander <tanya.alexander@clearcapital.com>  
**Sent:** Wednesday, July 09, 2014 2:21 PM  
**To:** kernss@mail.wvnet.edu  
**Cc:** Helge Hukari  
**Subject:** Clear Capital Comment Letter to Proposed AMC Regulation 190CRS5  
**Attachments:** Clear Capital Comment Letter to Proposed Regulations 190CRS5.pdf

Hi Sandy,

Attached is Clear Capital's comment letter regarding the proposed AMC Regulation 190CRS5. I will overnight the original, but wanted to send this to the Board today per your July 9, 2014 deadline.

Please let me know if I need to forward elsewhere.

Thanks,

Tanya Alexander

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Tanya Alexander  
Manager, Compliance  
Clear Capital

office: 530.550.2500, ext. 2665  
[tanya.alexander@clearcapital.com](mailto:tanya.alexander@clearcapital.com)

[www.ClearCapital.com](http://www.ClearCapital.com)

Bloomberg Ticker: CLCA

Clear Capital is a trade name of ClearCapital.com, Inc. The information contained in this email is for the exclusive use of its intended recipient(s) and may contain confidential information. All parties other than the intended recipient(s) should refrain from disseminating or otherwise using this information. If you have received this information in error, please immediately notify the sender, delete this information from your computer, and destroy all copies of the information. Clear Capital reserves the right to delete consumer non-public information from the contents of any email to which it responds.



July 8, 2014

Via e-mail

West Virginia Real Estate Appraiser Board  
2110 Kanawha Blvd E Suite 101  
Charleston, WV 25311

Re: Proposed Regulations 190CSR5 Concerning Appraisal Management Companies

Dear Board Members,

We are writing in response to the Proposed Regulations 190CSR5 Appraisal Management Company Regulations ("Proposed Regulations"). Clear Capital is a premium provider of data and solutions for real estate asset valuation and risk assessment for financial services companies. Our services include the delivery of appraisal reports. Clear Capital is headquartered in Truckee, California.

We appreciate the opportunity to offer our comments on the Proposed Regulations. While we firmly support the registration of AMCs, we believe it is important that regulations appropriately reflect the important role that AMCs play in the mortgage lending and default servicing process. We would therefore like to express our thoughts on certain aspects of the Proposed Regulations:

Section 190-5-3.2d - Registration Requirements.

Section 190-5-3.2.d. requires that "the appraisal management company shall not hire an employee or in any way contract with or pay a real estate broker or real estate agent to perform a BPO or comparative market analysis pursuant to W.Va. Code § 30-38-1." We believe this provision is beyond the scope of the Appraisal Management Companies Regulation Act and we do not see any language in W.Va. Code § 30-38-1 that suggests it should be applied specifically to appraisal management companies and not to other providers of real estate services. In the event that an appraisal management company desired to sell property in West Virginia and obtain a BPO (for no fee) in compliance with W.Va. Code § 30-38-1, this provision would unfairly prevent the AMC from "contracting with a real estate broker or real estate agent" to complete this permissible service. More problematic, in our view, is that Section 190-5-3.2.d would continue to apply to AMCs, but not other entities, in the event that W.Va. Code § 30-38-1 were repealed or amended.

For these reasons we respectfully request that Section 190-5-3.2.d be removed from the Proposed Regulations. The provisions of W.Va. Code § 30-38-1 would continue in force nonetheless.

Section 190-5-7.3 Renewal and Reinstatement – Delinquent Registrations



Section 190-5-7.3. states that the Board "shall collect from each appraisal management company an annual registry fee established by the Appraisal Subcommittee and shall annually submit the registry fees to the Federal Financial Institutions Examination Council."

The Appraisal Subcommittee recently suggested that it would be several years before the AMC registry fees are put into place, and the exact provisions and requirements for that have not yet been established. Because they are not sure how this will be structured we respectfully request that the Board wait and see how the AMC Registry will be established at the federal level prior to incorporating the rule at the state level.

Therefore, we respectfully request that the proposed removing Section 190-5-7.3 at this time.

#### Section 190-5-8 Responsibilities and Duties of Appraisal Management Companies.

Section 190-5-8.2 requires "each appraiser being added to the panel to certify in writing the appraiser's areas of geographic competency, the types of properties the appraiser is competent to appraise, and the methodologies the appraiser is competent to perform." Subsection 8.2.a. further requires that the AMC "shall require the appraiser to update this information annually."

Currently most AMC's require appraisers to attest to their geographic and product competency upon acceptance of each and every assignment. This ensures that an appraiser has the requisite knowledge and experience at the time each assignment is accepted, which is especially important given the dynamic nature of the solicitations an appraiser might receive and each appraiser's unique professional growth through training and experience. We believe that ensuring an appraiser's competency on each assignment, rather than applying a static set of information gathered in advance, provides an AMC with the greatest level of certainty that it is engaging a competent appraiser for each unique assignment.

Therefore, we respectfully request removing Section 190-5-8.2. We believe this is consistent with the Appraisal Management Companies Registration Act which, in Section 30-38A-13 clarifies that information relating to an appraiser's competency can be gathered when the appraiser is "receiving work or being placed on an appraiser panel."

Further, Section 190-5-8.c.1 requires that any employee or independent contractor appraiser performing a required review of a panel appraiser's work must be licensed in West Virginia. However, this is contradictory to Section 30-38A-7(a)(3) of the Appraisal Management Companies Registration Act, which specifies that an appraiser performing a required review must be "licensed or certified in this state or in any state with a minimum of the same certification level for the property type as the appraiser who performed the appraisal."

Many AMCs are located outside of the West Virginia, and a requirement that review appraisers be licensed in West Virginia would require working with independent contractors at great additional expense to such AMCs.



Section 190-5-8.c.1 should be revised to comply with the Appraisal Management Companies Registration Act to read as follows: "Be licensed in this state or in any state;"

Section 190-5-9. Retention of Records.

We further note that Section 190-5.9.d requires that a letter of engagement be retained for review appraisers completing required review assignments. As the rule allows for employee appraisers to complete these assignments (who would be completing the assignment as part of their employment and not pursuant to a specific engagement), we request that this language be revised to clarify that such a letter of engagement would only be required for review appraisers who are independent contractors. We suggest the language be revised as follows: "Letter of engagement with the reviewing appraiser for the purpose of reviewing the requested appraisal, in the event that the reviewing appraiser is an independent contractor and not an employee of the appraisal management company;"

Further, Section 190-5-9.f. is overly broad and should be clarified to apply only to client communications related to a specific West Virginia appraisal order. We would suggest rewording this section as follows: "Requests received from the client, all documentation supplied to that client, and any and all correspondence sent to and received from the client in connection with appraisals of real property located in this state;"

Section 190-5-10 – Payment of Fees to Appraisers

Proposed Rule 190-5-10 states as follows:

"10.1. Except in cases of breach of contract or substandard performance, appraisal management companies shall pay an independent appraiser for the completion of an appraisal within forty five (45) days after the appraiser provides the completed appraisal to the appraisal management company unless otherwise agreed to by the parties."

Further, a completed appraisal is defined as the "delivery of the signed appraisal report to the appraisal management company."

This provision would require AMC's to pay the appraiser regardless of whether the appraisal has been completed in a satisfactory manner, and would limit an AMC's ability to ask for corrections and or additional commentary or specific lending requirements for the closing of a loan. If the appraisal is paid for prior to being delivered in an approved format, the appraiser would not have an incentive to complete the report. This would ultimately put the consumer at a disadvantage when the appraisal is not delivered in a timely and satisfactory manner. Most services are not paid for prior to delivery of the final, approved product.

Therefore, we respectfully request that the proposed Payment of Fees to Appraisers be changed to provide that appraisal management companies shall pay an independent appraiser for the completion of an appraisal within forty five (45) days after final completion of the appraisal, unless otherwise agreed to by the parties.

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10/10/2014 10:10:10 AM  
10/10/2014 10:10:10 AM

www.clearcapital.com



We appreciate the opportunity to provide suggestions relating to Proposed Regulations. Please do not hesitate to contact me at 530-550-5900 to discuss any of these points in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helge Hukari'.

Helge Hukari  
Chief Administrative Officer and General Counsel  
Clear Capital

office: (530) 550-5900  
helge.hukari@clearcapital.com

Ragan Realty & Appraisal  
1330 Mercer Street  
Princeton, WV 24740



Telephone - 304-425-6400 - fax - 304-425-6378  
Carolyn Ragan, Broker  
e-mail [cragan1@frontiernet.net](mailto:cragan1@frontiernet.net)  
[www.raganrealtyandappraisal.com](http://www.raganrealtyandappraisal.com)

June 11, 2014

WV Appraiser Board  
2110 Kanawha Blvd., East  
Suite 101  
Charleston, WV 25311

RE: Proposed AMC legislation

Dear Sandy,

Enclosed please find my email which I sent to you with my comments AMC proposed regulation. I trust this will be sufficient for the Board's review. If not, please advise.

Respectfully,

C Ragan Realty & Appraisal

A handwritten signature in cursive script, appearing to read "Carolyn Ragan". The signature is written in dark ink and is positioned above a horizontal line.

Carolyn Ragan

**Sandy Kerns**

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**From:** Cogburn, Linda <lcogburn@lsi-lps.com>  
**Sent:** Wednesday, July 09, 2014 1:36 PM  
**To:** 'kernss@mail.wvnet.edu'  
**Cc:** Buell, Beth  
**Subject:** West Virginia Proposed Rules Comment Letter  
**Attachments:** WV Proposed Rules Comment letter 140709.pdf

**Importance:** High

Dear Ms. Kern:

Attached for your review is ServiceLink's comment letter relating to Title 190, Legislative Rule, West Virginia Real Estate Appraiser Licensing & Certification Board, Series 5, "Requirements for Registration and Renewal of Appraisal Management Companies". Please feel free to contact me should you require any clarification of ServiceLink's position in this important matter.

Thank you,

**Linda Cogburn**  
Compliance Specialist – Regulatory Oversight  
Valuation Services  
ServiceLink, A Black Knight Company

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O: 412.776.1530 | M: 724.407.0791 |  
[Linda.Cogburn@bkfs.com](mailto:Linda.Cogburn@bkfs.com) || [www.BKFS.com](http://www.BKFS.com)  
1400 Cherrington Parkway, Moon Township, PA 15108



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Carolyn Ragan

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From: Carolyn Ragan [cragan1@frontiernet.net]  
Sent: Wednesday, June 11, 2014 9:54 AM  
To: 'Sandy Kerns'  
Subject: proposed AMC

Sandy,

I am assuming I am to email you my thoughts on the proposed AMC legislation? If not, please advise so that I can email to the correct person.

I printed off the proposed legislation (11 pages) from the WV Appraiser Board's website.

Page 1 – Definition – 2.1 – BPO – I didn't see anywhere else within the 11 pages anything with regard to BPO's. I think there should be further comments within the definition that states BPO providers CANNOT be paid a fee. AMC's currently do this as the norm – not the rarity. It's rampant in the industry.

Page 5 – Schedule of Fees – not sure if this is the maximum for AMC companies, but based on the \$\$\$ they make, it seems pretty light. I would recommend the highest fee the State can charge.

Page 6 – 7.6 – '90 days' seems too long a period to cancel the AMC – they could do tons of work within that time frame. Should be 30 days or less in my opinion. I don't think an appraiser has 90 days to be in compliance with Appraiser Board request, nor, if anyone files a suit or a complaint – the individual has a short time frame to comply or they are in contempt.

Page 9 – Payment of Fees to Appraisers – 10.1: to me this is over the top. Even appraisers who do not accept work directly from AMC's unfortunately have involvement with them. To say that an AMC has 45 days to pay an appraiser is ludicrous. The lenders collect the fee upfront so basically you are allowing an appraiser's fee to be in someone else's bank account, collect interest, pay their bills, etc. for 45 days – major wrong. In a 45 day time frame, the loan and the file could be closed and the appraiser forgotten. An appraiser should be paid on receipt of their appraisal product – period. No one receives a service of any kind with delayed payment. Substandard should be defined. What if the appraiser's value is under the purchase agreement or the refinance amount needed and refi/purchase doesn't happen? The AMC could walk from the appraiser's fee and the appraiser never collect. If the AMC has a legitimate issue with the appraiser's appraisal product, then the AMC should file a written complaint with the Appraiser Board – not withhold payment. Neither should payment of an appraiser's fee be held up for additional data. This could be construed that the appraiser was under pressure to comply with whatever the AMC wanted and conformed to insure payment.

10.2 – 'If an AMC decides to not pay' – how crazy is that? That shouldn't exist. If the AMC orders a report, the appraiser accepts and provides the service, then the appraiser should be paid. If the AMC has an issue with the report, then the AMC should file a complaint with the Appraiser Board.

I did not see in the 11 pages if the AMC is required to provide to the appraiser that they are registered/licensed, etc. and in compliance with the Appraiser Board when ordering an appraisal from an appraiser.

Should you/others have questions about my thoughts/comments, I'd be more than happy to discuss.

Respectfully,

Carolyn Ragan ([cragan1@frontiernet.net](mailto:cragan1@frontiernet.net) – 304-425-6400)

Carolyn Ragan

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**From:** Carolyn Ragan [cragan1@frontiernet.net]  
**Sent:** Wednesday, June 11, 2014 1:33 PM  
**To:** 'Sandy Kerns'  
**Subject:** RE: proposed AMC

Thanks I am going to leave my comments as is – I don't think the appraiser should have to be responsible for checking out the AMC – it should be AMC responsibility

**From:** Sandy Kerns [mailto:kernss@mail.wvnet.edu]  
**Sent:** Wednesday, June 11, 2014 1:10 PM  
**To:** 'Carolyn Ragan'  
**Subject:** RE: proposed AMC

You are right. That is not a requirement of the statute (code) and therefore we cannot make them. However, the Board is required to maintain a roster, just as we do an appraiser roster. Guess you guys will check that until the ASC has a fed registry for them.

By the way, Karen and I just added a sentence to the website that suggests that readers should read the codes to help understand the rule. Thanks for submitting these questions.

**From:** Carolyn Ragan [mailto:cragan1@frontiernet.net]  
**Sent:** Wednesday, June 11, 2014 1:00 PM  
**To:** 'Sandy Kerns'  
**Subject:** RE: proposed AMC

Will mail to the Board – thanks – I'm not sure I am looking at the same document you are – 190-5-3.2a doesn't say anything about the AMC providing anything to the appraiser – just the Appraiser Board

**From:** Sandy Kerns [mailto:kernss@mail.wvnet.edu]  
**Sent:** Wednesday, June 11, 2014 12:50 PM  
**To:** 'Carolyn Ragan'  
**Subject:** RE: proposed AMC

Carolyn,

Your formal comments must be mailed to the Board office as directed on the website. The Board as a entirety is required to answer formally to all comments and attach to the Secretary of State filing.

I will respond to some of your questions informally.

Please keep in mind the rules can only be written from the framework of the two codes – Chapter 30-38 and Chapter 30-38A.

Chapter 30-38A is very inclusive. We were directed *to not just repeat in the rule what is already contained in the Code.*

I've tried to answer some of your question in red, below. However, please still submit in your formal comments if you feel I haven't adequately addressed.

Thanks.

Sandy

**From:** Carolyn Ragan [mailto:cragan1@frontiernet.net]  
**Sent:** Wednesday, June 11, 2014 9:54 AM  
**To:** 'Sandy Kerns'  
**Subject:** proposed AMC

Sandy,

I am assuming I am to email you my thoughts on the proposed AMC legislation? If not, please advise so that I can email to the correct person.

I printed off the proposed legislation (11 pages) from the WV Appraiser Board's website.

Page 1 – Definition – 2.1 – BPO – I didn't see anywhere else within the 11 pages anything with regard to BPO's. I think there should be further comments within the definition that states BPO providers CANNOT be paid a fee. AMC's currently do this as the norm – not the rarity. It's rampant in the industry. It does, see page 3, 190-5-3.2.d.

Page 5 – Schedule of Fees – not sure if this is the maximum for AMC companies, but based on the \$\$\$ they make, it seems pretty light. I would recommend the highest fee the State can charge.

Page 6 – 7.6 – ‘90 days ‘ seems too long a period to cancel the AMC – they could do tons of work within that time frame. Should be 30 days or less in my opinion. I don’t think an appraiser has 90 days to be in compliance with Appraiser Board request, nor, if anyone files a suit or a complaint – the individual has a short time frame to comply or they are in contempt.

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I did not see in the 11 pages if the AMC is required to provide to the appraiser that they are registered/licensed, etc. and in compliance with the Appraiser Board when ordering an appraisal from an appraiser. It does. 190-5-3.2.a.

Should you/others have questions about my thoughts/comments, I’d be more than happy to discuss.

Respectfully,

Carolyn Ragan ([cragan1@frontiernet.net](mailto:cragan1@frontiernet.net) – 304-425-6400)



July 9, 2014

Delivered Via Email  
[kernss@mail.wvnet.edu](mailto:kernss@mail.wvnet.edu)

Sandy Kerns, Executive Director  
West Virginia Appraisal Board  
2110 Kanawha Blvd East, Suite 101  
Charleston, WV 25311

**RE: Title 190, Legislative Rule, West Virginia Real Estate Appraiser Licensing & Certification Board; Series 5, "Requirements for Registration and Renewal of Appraisal Management Companies"**

Dear Ms. Kerns:

I am writing to provide comments on the proposed legislative rules establishing the requirements for the registration and regulation of appraisal management companies. I am a Compliance Specialist for ServiceLink, A Black Knight Company (ServiceLink) based in Moon Township, Pennsylvania.

ServiceLink has been an active market participant in the mortgage settlement services industry for decades. We are dedicated to preserving a high level of public trust in the appraisal process and support appraiser independence standards. We are not opposed to the registration of Appraisal Management Companies (AMCs) and believe that responsible legislation and correlating regulations can benefit both consumers and market participants in the mortgage lending industry. We appreciate the opportunity to offer comments to the West Virginia Real Estate Appraiser Licensing and Certification Board (the Board) regarding the AMC rule-writing process in your state. I have reviewed the proposed regulations and offer the following comments for your consideration:

***§190-5-2. Definitions.***

***As used in this rule, the words or terms have the same meaning as the definitions provided in W.Va. Code § 30-38A-1.***

***2.2. "Completed appraisal" means delivery of the signed appraisal report to the appraisal management company.***

Periodically, signed appraisals are received from appraisers that are incomplete or contain errors. Appraisers are promptly notified; the report is completed, corrected, and resubmitted. Upon verification that the report is complete and errors have been corrected, the report is deemed to be complete and is accepted by the AMC.

**Recommendation:** Add to the definition of "Completed appraisal" as follows: "Completed appraisal" means delivery of the signed appraisal report, complete, with corrections addressed, and accepted by the appraisal management company.



### **§190-5-3. Registration Requirements.**

**3.2. Every person or firm seeking to be registered as an appraisal management company in this State shall certify on a form prescribed by the board the following:**

**3.2.d. That the appraisal management company shall not hire an employee or in any way contract with or pay a real estate broker or real estate agent to perform a BPO or comparative market analysis pursuant to W.Va. Code § 30-38-1;**

There is no statutory authority for rule 3.2.d in Article 1, 38, and 38A of Chapter 30. Although the "exception" section in §30-38-1 (c) references real estate brokers and sales persons, there is nothing that prohibits an Appraisal Management Company (AMC) from ordering a BPO or comparative market analysis for a client when appropriate. Consequently, the intent of this rule is unclear, anti-competitive and inhibits the AMC's right to conduct business.

**Recommendation:** Delete 3.2.d in its entirety.

### **§190-5-7. Schedule of Fees.**

**7.2.e. Change of address or business name fee of one hundred dollars (\$100);**

**7.2.f. Change of contact person fee of one hundred dollars (\$100);**

**7.2.g. Change of controlling person fee of two hundred dollars (\$200);**

**7.2.h. Change of 50% ownership application fee of two hundred dollars (\$200);**

These fees appear to be high in relation to the cost associated with processing each item.

In chapter 30 of the West Virginia Code titled, "Professions and Occupations," Section 30-1-4 states in part, "Boards may set by rule fees relating to the licensing or registering of individuals, which shall be sufficient to enable the boards to carry out effectively their responsibilities of licensure or registration and discipline of individuals subject to their authority...." Also in Chapter 30, Section 30-1-10 (a) states in part, "...this money shall be used exclusively by each board for the purposes of administration and enforcement of its duties pursuant to this chapter." Additionally in Chapter 30, Section 30-38-7 states in part, "The board shall: q) Deposit all fees collected by the board to the credit of the West Virginia appraiser licensing and certification board fund established in the office of the State Treasurer. The board shall disburse moneys from the account to pay the cost of board operation...."

**Recommendation:** We request that the Board reduce these fees to better correlate with the cost associated with processing each item.

### **§190-5-8. Responsibilities and Duties of Appraisal Management Companies.**

**8.2. Require each appraiser being added to the panel to certify in writing the appraiser's areas of geographic competency, the types of properties the appraiser is competent to appraise, and the methodologies the appraiser is competent to perform;**

**8.2.a. An appraisal management company shall require the appraiser to update this information annually.**



The specific areas of geographic competency, property type, and methodologies in which an appraiser is qualified to perform are typically designated in the independent contractor agreement between appraisers and AMCs at the time the appraiser is added to the AMC panel. The contractual agreements between the appraiser and the AMC require the appraiser to update this information in the event it changes. That being said, these competency factors do not generally change unless the appraiser *gains* competency in an additional geographic market, property type, or methodology. Gaining competency and reporting this information to the AMC benefits the appraiser in that their profile can be changed to allow expansion of their work products. In the event these changes are not reported, it has no consequences for the AMC or the consumer as appraisers are only considered for those assignments where they have previously demonstrated competency. Therefore, requiring an annual update of this information is unnecessary and burdensome.

**Recommendation:** Delete section 8.2.a. as it is unnecessary and burdensome.

***§190-5-8. Responsibilities and Duties of Appraisal Management Companies.***

***8.4. Designate a controlling person, who will be responsible for compliance with W. Va. Code § 30-38A-13 and the provisions of this rule, and notify the board, in writing within ten (10) days, of any change in its controlling person;***

***8.5. Maintain a registered agent for service of process and provide the board with the same information for the agent that is provided to the Secretary of State; and notify the board, in writing, within ten (10) days, of change of a registered agent;***

***8.7. Inform the board in writing within ten (10) days of the effective date to any change to:***

This provision does not clarify whether the period to respond or report information to the Board is in calendar days or business days. The Board has made such a clarification in other areas of the Proposed Rules. For example, proposed §190-5-5.4 requires an AMC to restore the surety bond amount within ten (10) business days.

**Recommendation:** We recommend that notification periods be revised to clarify that business days are referenced in Sections 190-5-8.4, 8.5, and 8.7.

***8.7.c. Change of owner who is an employee of or consultant for the appraisal management company and contact information for said person.***

As demonstrated by the reference in §30-38A-6 of the Appraisal Management Companies Registration Act, the contact information required of owners is limited to those with "more than ten percent" ownership. Therefore, the ownership change information in the rules should clarify it applies to those owners of ten percent or more only.

**Recommendation:** To be consistent with the statute, after "owner," add "who owns more than ten percent of the company."

**SERVICELINK**



Thank you for allowing us to submit our comments on the proposed regulations in West Virginia. Please feel free to contact me at any time as you consider these issues.

Respectfully submitted,

*Linda Cogburn*

**Linda Cogburn**  
Compliance Specialist  
Operational Audit and Compliance  
ServiceLink, A Black Knight Company  
Office: 412.776.1530  
Email: [linda.cogburn@bkfs.com](mailto:linda.cogburn@bkfs.com)

## Sandy Kerns

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**From:** Don Kelly <don.kelly@revaa.org>  
**Sent:** Wednesday, July 09, 2014 12:52 PM  
**To:** 'Sandy Kerns'  
**Subject:** Proposed Rule on AMC Comment  
**Attachments:** WV Proposed Reg Comments 2014 dk.docx

Hello Sandy,

Attached are our comments regarding the proposed rule on AMCs. I hope all is well with you and I look forward to continuing to work with you on this and other important matters.

Sincerely,  
Don Kelly

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## **REAL ESTATE VALUATION ADVOCACY ASSOCIATION**

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July 8, 2014

### **West Virginia Proposed Regulation re Appraisal Management Companies**

#### **Comments**

The Real Estate Valuation Advocacy Association (REVAA) is pleased to comment on the proposed regulations regarding Appraisal Management Companies (AMCs). REVAA is a Trade Association representing AMCs and as such has a keen interest in the regulatory structure in West Virginia affecting our industry.

#### **Payment of Fees to Appraisers**

Section 190-5-10 on Payment of Fees to Appraisers requires payment for appraisals within 45 days beginning with the first submission of a completed appraisal to an AMC, unless otherwise agreed to by the parties. While such a provision alone is not objectionable, Section 190-5-2 includes a proposed Definition indicating "Completed Appraisal means delivery of the signed appraisal report to the appraisal management company." Apparently, this would require payment within the time frame regardless of whether requests for corrections or additional commentary have been requested or fulfilled. This provision, as drafted, puts Appraisal Management Companies, their Lender Clients, and ultimately the Borrowing Public, in a position of being required to pay for what may well be an incomplete appraisal service that cannot be used for the intended loan underwriting purposes.

While the intent may be to add protection for the appraiser against inappropriate pressure or coercion, we believe that this is not the best way to achieve that goal. In our view, the language in TILA Sec 129e regarding Appraisal Independence Requirements and related penalties provides a better option. Those same (TILA) prohibitions that protect appraiser independence are also included in the West Virginia regulations. If a request for changes in an appraisal rises to the level of pressure on the appraiser, there are substantial fines and penalties that can be levied upon the AMC or the Lender which go far beyond the value of one appraisal fee. On the other hand, that appraisal fee for the Borrower can be a substantial amount and one they would be concerned about if the appraisal became unusable because the necessary corrections are not forthcoming. Most consumers would not pay fully for a service until the goods are delivered in acceptable condition. We see no rationale for regulating or pushing the Consumer / Lender / AMC into the position of being forced to pay for a product that is unusable.

We suggest that the definition of "Completed Appraisal" should be removed and leave Section 190-5-10 on Payment of Fees to Appraisers as it is so the payment period begins with Completion of the Assignment as agreed to by the parties. Alternatively, the definition might be modified to indicate that once the appraisal report has been accepted by the AMC (not just delivered to the AMC) that later subsequent requests for changes shall not delay payment.

**Section 190-5-10.1a** We have a similar concern regarding Section 190-5-10.1a requiring an AMC to provide notice to the appraiser if the AMC decides it will not pay. This sets a shorter 30 day window of time that again is to begin with the date of first submission. Since it may be that the appraisal report submitted might never reach the point of being considered “completed” it may be that the date of initial submission may need to stand as the start date. Nonetheless, we believe the AMC should be allowed the same 45 day time frame to attempt to remediate the situation and obtain a completed appraisal.

#### **Registration Requirements.**

**Section 190-5-3.2d** is intended to work in conjunction with 30-38-1 which puts restrictions on when a BPO may be prepared by a person without being licensed or certified as an appraiser. That provision overlaps an existing provision in 30-38-1(c) (6). However, the language proposed is not consistent with the language in 30-38-1, especially the language in (c) (6) of that section where a financial institution regulated by the FDIC may order such valuations under specified circumstances. The proposed language would not allow an AMC to order such a valuation under any circumstances even though their Lender/clients might be able to order such products.

Importantly, there is no provision in 30-38A-1 Appraisal Management Companies Registration Act that enables the Board to include such a provision related to BPOs in the AMC Legislative Rules.

Thus, we suggest the language in 190-5-3.2d be removed from the proposed rule.

**Section 190-5-3.2g** would require that “the appraisal management company shall submit to required state and national criminal history record checks”. However, those criminal history checks can only be applied to natural persons, not to business entities. If background checks are to be required, it is suggested that the Regulation should define which natural persons representing the AMC the requirement would apply to.

#### **Exemptions to Registration Requirement.**

**Section 190-5-4** indicates that the AMC regulation would not apply to an AMC that is owned or controlled by a financial institution regulated by a federal financial institution regulatory agency. The language as presented, however, does not track with the language used in FIRREA. It is suggested that the language be modified to mirror the exemptions as defined in Sec 1124(c):

“An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State.”

#### **Renewal and Reinstatement – Delinquent Registrations**

**Section 190-5-6.1** indicates that renewal notices will be sent 60 days prior to renewal. Section 190-5-6.2 would require that renewal registrations be submitted 30 days prior to the renewal date. Renewals received after that date would be considered delinquent and subject to a delinquent license fee.

We are concerned that this timeline will not provide adequate time to respond to the renewal notice. If sent 60 days prior to renewal, it will be received a few days or a week after that. And the completed renewal application must be received at least 30 days prior to renewal. Again, allowing a few days or a week for delivery, the AMC will be left with only 2 to 3 weeks to actually complete and send the renewal application.

Appraisers (under 30-38-11(e)) are allowed to submit renewal applications up to 120 days in advance but also must have applied at least 30 days in advance. We suggest this provision be modified to require that renewal notices be sent to AMCs 120 days in advance of the renewal date to provide adequate time to respond.

We also suggest that categorizing a renewal application as delinquent not begin until the renewal date, rather than categorizing an AMC with a valid license still in place as being delinquent 30 days prior to that renewal date.

#### **Schedule of Fees.**

**Section 190-5-7.2.g** would impose a fee for change of controlling person that is double the amount indicated for a change of address or for change of a contact person. We suggest that all three should be equal in amount.

**Section 190-5-7.3** would require the Board to collect an annual registry fee established by the Appraisal Subcommittee from AMCs. We suggest that this provision should be removed for the present time. The Appraisal Subcommittee (ASC) recently advised the Virginia Appraiser Board that it would be several years before the AMC registry fees are put into place, and the exact provisions and requirements for that have not yet been established. The recommendation was that, because of the uncertainties involved in how the fees and collections would be structured, the State would be advised to wait and see how the AMC Registry Fee topic plays out before including such requirements.

We recommend that the West Virginia Appraiser Board contact either the Board Staff in Virginia or contact the ASC directly for confirmation and we suggest removing (7.3) from the Regulations until such time as the structure and procedures related to the Registry Fee are established.

#### **Responsibilities and Duties of Appraisal Management Companies.**

**Section 190-5-8.2** would require that the AMC obtain a statement from each appraiser joining the panel regarding geographic and property type competency, and that the AMC must obtain an updated statement from each appraiser annually. An appraiser's geographic and property type competency is unlikely to change significantly on a year over year basis. Furthermore, it is unlikely that an appraiser's competency will reduce over time, but rather increase or expand over time. If an appraiser has developed new competencies, they are likely to be sure to notify their clients and AMCs of that new competency to attract additional business. For these reasons, we do not see any advantage or purpose for requiring annual updates on this information. The additional burden it would impose on both

appraisers and AMCs would not be offset by any significant benefit to consumers. Thus, we suggest that the annual renewal of the competency statement be removed.

**Section 190-5-8.3** would require Appraisal Reviews of each appraiser's work at least once a year. We suggest language in Section 190-5-8.3.c that "Any employee or independent contractor appraiser of an appraisal management company that performs an Appraisal Review shall:..." This would clarify that the requirement applies to an appraiser who is performing an Appraisal Review as defined in USPAP.

**Section 190-5-8.4 and 190-5-8.7** would require the AMC to provide notice of any changes in its controlling person or changes in business name, address, or owner who is an employee within 10 days. We believe the period of 10 days is insufficient. We suggest that a 60 day period would be more appropriate to allow time to identify an appropriate replacement, obtain any necessary background checks, and provide the necessary notice to the State.

**Section 190-5-8.8.c** would apply to someone who is both an owner and an employee of an AMC. We observe that an employee of an AMC might own a small amount of stock in a corporation and thus be an "owner", but not have any control over the operation of the business. We suggest that a threshold of 10% ownership in the company be applied here.

#### **Retention of Records.**

**Section 190-5-9** specifies records that are to be retained by the AMC. We have concerns that the language proposed for 9.1.d and 9.1.e could be misconstrued to imply that an Appraisal Review is to be performed for each appraisal provided to an AMC. We suggest that the language be modified to make it clear that **IF** an Appraisal Review assignment is commissioned by an AMC, that a copy of the letter of engagement, copy of the Appraisal Review report, copy of the original appraisal report, copies of any subsequent revised Appraisal Review reports, and copies of all correspondence with the reviewing appraiser should be retained.

**Section 190-5-9.4** proposes that the board may inspect the records of the AMC without any prior notice. While we do not object to the State performing an audit, we strongly believe the Board should provide reasonable notice of a pending audit or on-site visit to ensure the AMC is able to properly respond to the Board's request, and that such access should be limited to normal business hours.

#### **Temporary Authority to Conduct Business.**

**Section 190-5-11** would allow existing AMCs to keep working after July 1 2014 even though the West Virginia licensing system is not yet fully functioning, as long as the application has been filed along with the appropriate fee payment. We appreciate the allowance for existing AMCs to continue in operation while the system is deployed. However, Section 190-5-11.1.c makes continued operation dependent on the same individual remaining as "Controlling Person" during the period. We suggest that there needs to be some flexibility allowed on that point, since changes in a Controlling Person may occur from time to time for reasons beyond the AMC's control.

Thank you for this opportunity to comment, we look forward to working with the Board on these and other matters as the process continues. For further information, I can be reached at [Don.Kelly@REVAA.org](mailto:Don.Kelly@REVAA.org) or 202-942-9461.

Respectfully Submitted,

Donald E. Kelly, Executive Director

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