



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 130-30 – Appraisal Management Company Regulations
Department of Professional and Occupational Regulations
August 12, 2013

Summary of the Proposed Amendments to Regulation

As permitted by Chapter 405 of the 2012 Acts of the Assembly, the Real Estate Appraisal Board (Board) proposes to promulgate new regulations for the licensure of real estate appraisal management companies.

Result of Analysis

There is insufficient information to ascertain whether benefits will outweigh costs for these proposed regulations.

Estimated Economic Impact

Legislative History:

In 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). This act, among other things, requires states to register appraisal management companies and also requires a group of governmental entities to jointly establish minimal requirements that states must apply to such registration.¹ Dodd-Frank mandates that regulations promulgated by these federal entities:

- 1) Require that appraisal management companies register with, and be supervised by, a state appraiser certifying and licensing agency in each state in which companies operate,
- 2) Verify that only licensed or certified appraisers are used for federally related transactions,

¹ The Board of Governors for the Federal Reserve System, the Comptroller of the Currency, representatives of the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, representatives of the Federal Housing Finance Agency and representatives of the Bureau of Consumer Financial Protection (that was

- 3) Require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice and
- 4) Require that appraisals are conducted independently and free from inappropriate influence and coercion.

Dodd-Frank states that no appraisal management company may perform services that are related to federal transactions in a state that has not set up a registration program that complies with Dodd-Frank 36 months after federal regulations are promulgated and in their final form. Dodd-Frank also allows a 12 month extension to the 36 month time limit for states that have made substantial progress in establishing an appraisal management company registration program. Board staff reports that, to their knowledge, the federal entities tasked with promulgation of federal regulations have not yet begun to write them.

In 2012, the Virginia General Assembly passed H210 which amended some rules for appraisers and appraisal management companies and added §54.1-2021.1 to the Code of Virginia. §54.1-2021.1 states that “(b)eginning July 1, 2014, the Board may issue a license to do business as an appraisal management company...” and goes on to list required information for an application for licensure and some requirements for bond that are conditioned upon companies applying for licensure. Neither Chapter 405 nor any other part of the Code of Virginia requires appraisal management companies to be licensed by the Board to do business. Additionally, the Code of Virginia does not currently make unlicensed practice for appraisal management companies a crime with punishments attached. Given the permissive but not mandatory nature of the language that allows licensure, the lack of other licensure requirements in the Code of Virginia and the Board’s lack of authority to punish unlicensed individuals or companies, the Board sought counsel from the Attorney General’s office which advised that the licensure program proposed by the Board in these regulations cannot be enforced against companies that decide not to be licensed. This program will be, in effect, voluntary.

Although Chapter 405 does not create or authorize a mandatory licensure program, other parts of the Code do meet three of the four requirements that Dodd-Frank lays out for federal regulations. Licensure for real estate appraisers is mandatory and, since 1992, §54.1-2011 has

newly formed by the Dodd-Frank Act) are jointly tasked with establishing minimum registration requirements for appraisal management companies.

explicitly stated that only licensed appraisers may perform appraisals in connection with a federally related transaction (#2 on the list above). §54.1-2022 appears to require that appraisal management companies follow the Uniform Standards of Professional Appraisal Practice as required by #3 on the list. §54.1-2022 also explicitly states that “(n)o employee, director, officer, or agent of an appraisal management company shall influence or attempt to influence the development, reporting, result or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or in any other manner...” and goes on to list some, but not all, specific acts that are prohibited; this language in Code would seem to handily satisfy the requirements in #4 on the list above.

If three of the four requirements for appraisal management companies that are explicitly listed in Dodd-Frank are already in the Code of Virginia, and absent the federal regulating agencies adding any other requirements in the yet to be promulgated federal regulations, Virginia might only have to require registration of appraisal management companies, similar to what is currently required for appraisal companies formed by independent licensed appraisers, in order to meet all requirements of Dodd-Frank.

Proposed Regulatory Requirements:

As allowed by Chapter 405 of the 2012 Acts of the Assembly, the Board now proposes to promulgate new regulations for licensure of appraisal management companies that operate in Virginia. These regulations will:

- 1) Define terms that are not already defined in the statute,
- 2) Create application procedures to list qualifications for appraisal management company licensure including requiring:
 - A listing of the company’s designated responsible person and controlling person information,
 - A \$25,000 bond or letter of credit requirements (as required of licensees in §54.1-2021.1) and
 - Disclosure of any past felony conviction, any misdemeanor convictions in the five years immediately prior to application for licensure and any disciplinary action information for responsible persons, controlling persons and any individual who owns 10% or more of an appraisal management company.

- 3) Establish a licensure fee of \$490 plus the National Registry fee of \$50 per appraiser employed by or contracting with a firm, a renewal fee of \$300 plus the National Registry fee of \$50 per appraiser, and a reinstatement fee of \$790 plus the National Registry fee of \$50 per appraiser,
- 4) Describe requirements for biennial renewal and reinstatement, including qualifications, procedures and fees, status of license during the time prior to reinstatement, and board discretion to deny renewal or reinstatement,
- 5) List grounds for disciplinary action, license maintenance requirements, and prohibited acts,
- 6) Specify that a change of business entity requires a new license and that licenses may not be transferred from one entity to another,
- 7) Clarify that licensees are required to notify the board of certain adverse actions, like criminal convictions or regulatory disciplinary actions, taken against any individual who is required to report such adverse actions on an application for licensure and
- 8) Mandate that licensees respond to the board's requests for information and provide records within certain timeframes.

All proposed regulatory requirements will only apply to licensees. As noted above, licensure under these proposed regulations will, in effect, be voluntary absent some changes to the Code of Virginia. Absent those changes, appraisal management companies will likely not have an incentive to become licensed until at least 36 months after federal regulations are promulgated when they would lose the right to perform services related to federal transactions if they are not registered with the state.

Individuals who choose to be licensed under these proposed regulations will incur time and possibly copying costs on account of having to compile and send information required as a part of the initial and renewal application processes. Companies who choose to be licensed will incur costs for the \$25,000 bond or letter of credit that legislation requires they carry as security against claims due to poor service or non-payment of monies owed for contracted appraisal services. Companies will also incur costs for licensure fees listed above plus payment of a National Registry fee for each appraiser that works for or with them. Board staff reports that the Board does not have information about how many appraisers, on average, work for any particular appraisal management company but that they would estimate that 90% of appraisers work in

some capacity for such companies. Information available on the Department of Professional and Occupational Regulation's (DPOR) website indicates that there are approximately 3,390 real estate appraisers that hold a current active license from the Board; 90% of this would be approximately 3,055. This number multiplied by \$50 (or \$152,730) will approximate the total biennial costs for fees paid to the National Registry if all 150 appraisal management companies in the Commonwealth chose to be licensed (approximately \$1,018 per firm). These costs would need to be weighed against any benefit that accrues to the public if appraisal management firms act in a more ethical, less profligate manner on account of licensure.

Businesses and Entities Affected

Board staff reports that there are approximately 150 appraisal management companies in the Commonwealth, all of which would qualify as small businesses. Any of these companies that choose to be licensed will be affected by these proposed regulations.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

Right now, firms are unlikely to choose licensure unless the benefits of being licensed outweigh its costs. Accordingly, these proposed regulations are unlikely to have an adverse impact on employment. In the future, if licensure is required by the state or when Dodd-Frank bans firms from performing services relating to federal transactions if they are not registered with the state, the costs of licensure may cause appraisal management companies to hire or contract with fewer appraisers. At that time, appraisal management firms that are only marginally attached to the market place may choose to stop working in appraisal management altogether.

Effects on the Use and Value of Private Property

As a voluntary program, these proposed regulations are unlikely to affect the use or value of private property in the Commonwealth. If licensure becomes required or when Dodd-Frank bans firms from performing services relating to federal transactions if they are not registered with the state, the costs of licensure may have a negative effect on the value of private firms.

Small Businesses: Costs and Other Effects

Currently, small businesses that choose to be licensed under these proposed regulations will incur costs for licensure fees, National Registry fees and for gathering and transmitting information required for licensure applications. These businesses will also incur costs associated with getting and keeping the \$25,000 bond or letter of credit required by §54.1-2021.1.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Since it appears that most of the requirements for appraisal management companies in Dodd-Frank are already met by language in the Code of Virginia, the Board or the General Assembly may wish to consider only requiring registration with the Board rather than moving toward requiring licensure of all companies if such a registration program would be less costly for regulated entities.

Real Estate Development Costs

At this time, this regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small

businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.