

Department of Consumer Affairs
TITLE 10. PROFESSIONAL AND VOCATIONAL REGULATIONS
CHAPTER 6.5
BUREAU OF REAL ESTATE APPRAISERS

INITIAL STATEMENT OF REASONS CONCERNING:
Controlling Person

Subject Matter of Proposed Regulations: Controlling Person Requirements

Sections Affected: Amend Section 3576 of Article 4 of Chapter 6.5 of Title 10 of the California Code of Regulations (CCR).¹

Introduction: The Bureau of Real Estate Appraisers (Bureau) regulates appraisers and Appraisal Management Companies (AMC). The Appraisal Subcommittee (ASC) provides federal oversight of all State appraiser and appraisal management company regulatory programs.

The ASC monitors State Appraiser and AMC Programs for compliance with Title XI of the Financial Institutions Reform Recovery and Enforcement Act (Title XI).² The monitoring of state programs is largely accomplished through on-site visits known as a Compliance Review (Review). The ASC conducted its most recent Review of the Bureau in 2018, at which time it found the Bureau was not compliant with the Code of Federal Regulations (CFR) as it relates to AMC ownership limitations. (Page 3, ASC Compliance Review of California's Appraisal Management Company (AMC) Regulatory Program dated January 17, 2019).

“An AMC shall not be registered or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause. The State limits the requirement to owners of 10% or more.”

Participating States must enforce and document ownership limitations for State-registered AMCs. (12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26; Policy Statement 8).” The Bureau proposes to clarify AMC ownership requirements in CCR Section 3576 to ensure the Bureau remains in compliance with federal rules regarding AMCs.

¹ All CCR references are to Title 10 unless otherwise noted.

² Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989 mandates the Appraisal Subcommittee to oversee all State appraiser licensing regulatory agencies to ensure compliance with federal real estate appraiser law. (12 U.S.C. 3331-3351).

Specific Purpose, Rationale, and Benefits of Each Adoption, Amendment, or Repeal

Business and Professions Code Section 11314 requires BREAs comply with all applicable federal laws, including the requirement to comply with mandates set forth by ASC.

Further, Business and Professions Code Section 11345.2 sets forth the requirement below:

B&P 11345.2. Licensing and Certification of Real Estate Appraisers

(a) No individual may act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

In addition to the requirements under the Business and Professions Code referenced above, Section 3576 of Article 4 of Chapter 6.5 of Title 10 of the California Code of Regulations (CCR) states that:

Section 3576. Background Requirements for Controlling Persons in Appraisal Management Companies

(a) No individual can act as a Controlling Person of an Appraisal Management Company who has had a license or certificate to act as an appraiser, or to engage in any activities related to real estate lending or the transfer of real property refused, denied, canceled, or revoked in California or any other state.

(b) A Controlling Person of an Appraisal Management Company that holds a Certificate of Registration who has entered a plea of guilty or no contest to, or been convicted of, a felony, or who has had a real estate appraiser's license or real estate sale's license revoked, surrendered, or denied in California or any other state must report this occurrence to the Bureau within 10 days of the date he or she has knowledge of that fact.

The issue is that CCR 3576(b) only addresses the good moral character of “controlling persons” as currently narrowly defined by California. (Note, CCR 3500 defines a “Controlling Person” as an individual that holds 10% or greater ownership interest in an AMC (CCR 3500 Subsection (9)(A)).) For the Bureau’s regulations to be consistent with Title XI requirements, modifications are necessary to Section 3576 in order for the Bureau to be compliant with federal law.

Specifically, the CFR addresses AMC ownership limitations for states. An AMC subject to State registration shall not be registered by a State or included on the AMC Registry if such AMC, in whole or in part, directly or indirectly, is owned by **any person** who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the State appraiser certifying and licensing agency.

Notably, 12 C.F.R. § 34.214(a)(1)) states:

(a) Appraiser certification or licensing of owners.

(1) An AMC subject to State registration pursuant to §34.213 shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.

(2) An AMC subject to State registration pursuant to §34.213 is not barred by paragraph (a)(1) of this section from being registered by a State or included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(b) Good moral character of owners. An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

Therefore, California's regulations do not comply with the Code of Federal Regulations because CCR § 3576(b) only pertains to owners of more than 10 percent. Thus, to correct this deficiency the Bureau has determined that adding the language "in lieu of revocation" is needed to conform with 12 C.F.R. § 34.214(a)(1).

Proposed amendments to CCR section 3576, Minimum Experience Requirements:
subsection (b)

"A Controlling Person of an Appraisal Management Company that holds a Certificate of Registration who has entered a plea of guilty or no contest to, or been convicted of, a felony, must report this occurrence to the Bureau within 10 calendar days of the date of the action above. Any owner of any Appraisal Management Company that holds a certificate of registration, without regard to the percentage owned, or who has had a real estate appraiser's license or real estate sale's license certificate refused, denied, cancelled, revoked, or surrendered in lieu of revocation, or denied in California or any other state must report the action this occurrence to the Bureau within 10 calendar days of the date he or she has knowledge of that fact the action."

The Bureau proposes to add "Any owner of any Appraisal Management Company that holds a certificate of registration, without regard to the percentage owner" and "certificate refused, denied, cancelled" to clarify that all owners, regardless of percentage owned, must report any of the above delineated action related to their real estate appraiser's license or certificate in accordance with CFR § 34.214(a). In regard to "controlling persons" (i.e. owners of more than 10%), these owners must meet the "good moral character" requirement set forth in CFR § 34.214(b) as it currently states in 3576(b).

These changes clarify the distinction between "controlling persons" (i.e. owners of more than 10%) and owners of 10% or less and their respective ownership limitations.

Currently, a Controlling Person must report to the Bureau within 10 days of its registration being refused, denied, canceled, suspended, or revoked in any state. This 10-day reporting requirement is due to B&P, Section 11345.2(b). The Bureau proposes to add "calendar" to this requirement to clarify between calendar and business days. For consistency, the Bureau proposes to add "must report this occurrence to the Bureau within 10 calendar days of the date of the action above" to ensure the same reporting timeline is established for both "controlling persons" and owners of 10% or less.

The Bureau proposes to add “in lieu of revocation” and remove “real estate sale’s license” to further conform with C.F.R. § 34.214(a)(1).

The Bureau proposes to replace “this occurrence” and “that fact” with “the action” to add clarity; and remove “denied” eliminating redundancy as a non-substantive correction.

Underlying Data

The Bureau relied on the following underlying data.

1. ASC Compliance Review of California’s Appraisal Management Company (AMC) Regulatory Program dated January 17, 2019.
2. Workload chart.

Duplication or Conflict with Federal Regulations

None.

Business Impact

This regulation will not have a significant adverse economic impact on businesses.

Registrants are anticipated to comply with the regulations within normal business operations without incurring additional costs.

Economic Impact Assessment

The Bureau has made the initial determination that the proposed regulatory action would have no statewide adverse economic impact directly affecting California because the amendments conform to existing law, remove unnecessary language, or make minor changes that do not have a significant impact.

- **Analysis of creation/elimination of jobs:** There will be no creation or elimination of jobs because the amendments do not affect jobs.
- **Analysis of creation/elimination of businesses:** There will be no creation or elimination of businesses because the amendments do not affect businesses. The addition of a document retention period is minor and will not create or eliminate businesses.
- **Analysis of expansion of business:** The proposed regulations are not expected to, directly or indirectly, lead to the expansion of new businesses within California because the amendments will not have a significant effect on businesses.

- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:** Any owner of a registered AMC in California, regardless of ownership percentage, must report certain discipline and felony conduct to the Bureau within a prescribed period. This will benefit the health and welfare of Californians by ensuring only AMC owners of good moral character are registered in California.

Fiscal Impact Assessment

The proposed regulation is anticipated to increase workload and costs to the Bureau.

The Bureau estimates up to 6 additional AMC registrants will be required to report to the Bureau, as specified, per year, which will result in workload costs of \$750 (6 applicants @ \$125 per applicant) in year-one of implementation and up to approximately \$8,600 over a ten-year period as follows:

| Bureau of Real Estate Appraisers Controlling Person Requirements (CCR 3356) - Fiscal Impact (costs) | | | | | | | | | | | | |
|--|-------|----------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|
| Item | Costs | Years Ongoing* | | | | | | | | | | Total |
| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| | | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 6 | 60 |
| AMC Notification | \$125 | \$750 | \$773 | \$796 | \$820 | \$844 | \$869 | \$896 | \$922 | \$950 | \$979 | \$8,598 |
| Total Costs: | | \$750 | \$773 | \$796 | \$820 | \$844 | \$869 | \$896 | \$922 | \$950 | \$979 | \$8,598 |

*Includes 3% annual growth factor

The regulations do not result in costs or savings in federal funding to the state.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.