

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 927	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Real Estate Appraisers	115	Y's 0	N's
<b>SPONSOR(S):</b>	Commerce Committee, Careers & Competition Subcommittee and Rommel	<b>GOVERNOR'S ACTION:</b>	Approved	
<b>COMPANION BILLS:</b>	CS/CS/SB 716			

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**SUMMARY ANALYSIS**

CS/CS/HB 927 passed the House on April 20, 2017, and subsequently passed the Senate on April 26, 2017.

In order to meet state requirements established by the federal government in the Dodd-Frank Act related to appraisers and appraisal management companies (AMC), the bill adopts provisions set out by recently adopted federal rules relating to state regulation of AMCs. The bill:

- Defines the following terms: "appraisal panel," "covered transaction," "secondary mortgage market participant," "federally regulated appraisal management company," "order file," "evaluation," and "appraisal management company."
- Requires the Florida Real Estate Appraisal Board (FREAB) to annually report to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council a roster listing individuals or companies that hold a valid state registration as an AMC.
- Requires FREAB to collect an annual fee from AMCs that perform or seek to perform appraisal management services in covered transactions in the state, and from federally regulated AMCs, and transmit the annual fee to the Appraisal Subcommittee.
- Eliminates an exemption that allowed an unqualified person deemed by FREAB not to endanger the public to be qualified to manage an AMC.
- Provides that state registration requirements for AMCs do not apply to federally regulated AMCs.
- Provides that appraisers may perform evaluations for federally regulated real estate transactions.
- Provides that FREAB may adopt additional standards of practice.
- Requires appraisers to follow the Appraisal Foundation's ethics rules for non-federal appraisals.
- Provides that appraisal assignments that use standards of practice that are not adopted by FREAB do not count towards the experience requirement for licensure.
- Repeals certain postlicensure educational requirements for a registered trainee appraiser.
- Repeals the option for real estate schools to teach initial licensure courses by video-tape.
- Provides that AMCs may not require or attempt to require clients to sign indemnification agreements requiring the client to hold an AMC harmless for the services provided by an appraiser.

The bill does not have a fiscal impact on local or state government. The bill may have an indeterminate fiscal impact on AMCs.

The bill was approved by the Governor on May 23, 2017, ch. 2017-30, L.O.F., and will become effective on October 1, 2017.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

The Florida Real Estate Commission (FREC), within the Division of Real Estate (Division), within the Department of Business and Professional Regulation (DBPR) administers and enforces the real estate license law, ch. 475, Part I, F.S. FREC is also empowered to adopt rules that enable it to implement its statutorily authorized duties and responsibilities.<sup>1</sup>

FREAB, within the Division, administers and enforces the real estate appraiser license law within Florida, in conjunction with standards promulgated by the Appraisal Foundation. FREAB establishes standards for professional practice which must meet or exceed nationally recognized standards including the standards adopted by the Appraisal Foundation.<sup>2</sup>

The Appraisal Foundation is composed of over eighty organizations, corporations, and government agencies that provide guidelines for uniform standards for appraisers and appraisals. The Appraisal Standards Board within the Foundation adopts the Uniform Standards of Professional Appraisal Practice (USPAP) which is recognized throughout the nation as generally accepted standards of professional appraisal practice.<sup>3</sup>

The rules and licensing requirements of FREAB, and the standards of USPAP, provide guidance for appraisers, appraisals, and AMCs throughout the state.

#### *Appraisers*

Real estate appraisers specialize in estimating the value of real property. Appraisals are made when property is bought, sold, assessed, taxed, condemned, insured, or mortgaged. Real estate appraisers:

- Prepare a written description of the property and make an estimate of its value;
- Obtain land values from county sources and sales information about nearby properties;
- Estimate building replacement costs using building valuation manuals and professional cost estimators;
- Verify legal descriptions of property by county records, measure the property and compare the measurements with the legal descriptions;
- Draw land diagrams and note conditions and special features of buildings; and
- Analyze and evaluate the data and prepare a written report outlining methods by which the fair-market value was estimated.

Individual real estate appraisers are regulated under ch. 475, Part II, F.S., by FREAB. Appraisers are classified as a registered trainee real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser.<sup>4</sup>

Prior to 2010, an appraiser received an order directly from a real estate agent, lender, or mortgage broker to inspect a property. Based on an inspection of the home and comparable sales in the area, the appraiser developed an estimated value for the property used by banks to set the home's value as collateral for the mortgage loan. Appraisers are required to arrive at a value that is unbiased.<sup>5</sup>

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<sup>1</sup> The rules are contained in ch. 61J2, F.A.C.

<sup>2</sup> s. 475.628, F.S.

<sup>3</sup> The Appraisal Foundation, *What is USPAP?*,

[http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal\\_Standards/Uniform\\_Standards\\_of\\_Professional\\_Appraisal\\_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbf4-41b3-9878-fac35923d2af](http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbf4-41b3-9878-fac35923d2af) (last visited March 12, 2017).

<sup>4</sup> Section 475.611(1)(h), F.S.

<sup>5</sup> s. 475.6111(1)(a)1, F.S.

However, during the 2005-2007 real estate boom, pressure was placed on real estate appraisers to inflate home values which sometimes led to valuations in support of loans that were more than buyers could afford.

In 2010, the Legislature changed this process so that real estate agents, lenders, and mortgage brokers can no longer directly hire an appraiser.

### *Appraisal Management Companies (AMCs)*

In 2010, the Legislature created Appraisal Management Companies. AMCs are business entities that administer networks of independent appraisers to fulfill real estate appraisal assignments. AMCs have groups of appraisers from which they hire appraisers, which are called appraiser panels.<sup>6</sup> A real estate agent, lender, or mortgage broker is able to contract with an AMC who will provide an independent appraiser to estimate the value of the property.

In 2015, in an effort to comply with pending federal rules under the Dodd-Frank Act, legislation was enacted that required each AMC prepare and retain an order file for each appraisal, appraisal review, or appraisal consulting assignment. Order files must contain:

- Original or true copies of any contracts engaging the appraiser's services;
- Appraisal reports;
- Any engagement material or instructions from the client; and
- All documents required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as established by rule of FREAB.

General contracts and materials pertaining to the impaneling of an appraiser are required to be retained but are not required to be maintained in the order file. The work file and order file must be maintained for at least 5 years, or for a greater period if specified by USPAP. Additionally, in accordance with administrative rules adopted by FREAB, an AMC must also retain:

- Company accounts;
- Correspondence;
- Memoranda;
- Papers;
- Books; and
- Other records.<sup>7</sup>

Any person who possesses the authority to direct the management or policies of the AMC must be competent and qualified to engage in appraisal management services with safety to the general public and those with whom the person may undertake a relationship of trust and confidence.<sup>8</sup>

A person shall be deemed not to be qualified to direct the management or policies of an AMC if any person's license to practice any profession, business, or vocation has been revoked or suspended because of any conduct that would have warranted discipline by FREAB, or if the person has been guilty of conduct that would have been grounds for disciplining the person's appraisal license. However, if because of lapse of time, subsequent good conduct, and reputation, or other sufficient reason, it appears to FREAB that the public is not likely to be endangered, then the person can be qualified by FREAB to direct the management or policies of an AMC.<sup>9</sup>

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<sup>6</sup> s. 475.611(1)(c)(i), F.S.

<sup>7</sup> s. 475.629, F.S.

<sup>8</sup> s. 475.6235(2)(f) and (5), F.S.

<sup>9</sup> *Id.*

FREAB also requires postlicensure educational requirements in order for a registered trainee appraiser to maintain a valid registration.<sup>10</sup> The postlicensure requirements are in addition to required continuing education.<sup>11</sup>

### *Appraisal Subcommittee*

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council was created in 1989, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended several sections of Title 11 of FIRREA.<sup>12</sup> The Appraisal Subcommittee is the federal agency charged with oversight of the states' appraisal regulatory programs. It is responsible for monitoring and reviewing the activities of the Appraisal Foundation and its three boards. The Appraisal Subcommittee oversees Florida's appraiser regulatory program.<sup>13</sup>

DBPR reports annually to the ASC a roster listing the individuals who hold valid state appraiser license or certification. DBPR also collects an annual fee from all individuals who perform or seek to perform appraisals in federally related transactions. DBPR submits the annual fee to the ASC.<sup>14</sup>

A federally related transaction is any real estate-related financial transaction which a federal financial institution, regulatory agency or the Resolution Trust Corporation is involved in, and which requires the services of a state-licensed or state-certified appraiser.<sup>15</sup>

### *The Dodd-Frank Act*

On July 21, 2010, Congress passed the Dodd-Frank Act to "promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail,' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes."<sup>16</sup>

Dodd-Frank established minimum requirements for the registration and supervision of AMCs that apply to the states.<sup>17</sup> As a result, federal agencies promulgated rules to implement these requirements. The final rules became effective on August 10, 2015.

States have 36 months to implement the minimum requirements established by the rules. States are not required to meet the requirements of the rules, and no penalty will be imposed on a state that does not establish the requirements in the rules. However, AMCs will be barred from providing AMC services for federally related transactions in that state. This does not apply to individual appraisers, federally regulated AMCs, and AMCs that have 15 or less appraisers in a state or less than 25 appraisers in multiple states.

Federally regulated AMCs differ from regular AMCs because federally regulated AMCs are owned and controlled by banks, and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.<sup>18</sup>

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<sup>10</sup> s. 475.6175, F.S.

<sup>11</sup> Department of Business & Professional Regulation, Agency Analysis of 2017 Senate Bill 716, p. 2 (Feb. 28, 2017).

<sup>12</sup> See Appraisal Subcommittee Federal Financial Institutions Examination Council, *ASC History*, <https://www.asc.gov/About-the-ASC/ASCHistory.aspx> (last visited on March 11, 2017). See also s. 475.611(1)(b), F.S.

<sup>13</sup> 12 U.S.C. s. 3332(b).

<sup>14</sup> s. 475.621, F.S.

<sup>15</sup> s. 475.611(1)(p), F.S.

<sup>16</sup> 124 U.S.C. §1376 (2017).

<sup>17</sup> 12 C.F.R. 34.210 (2017).

<sup>18</sup> 12 C.F.R. 34.211 (2017).

States are required by Dodd-Frank to require AMC's to:

- Register with, and be subject to supervision by, the state appraiser certifying and licensing agency in the state or states in which the AMC operates;
- Verify that only state-certified or state-licensed appraisers are used for federally related transactions.
- Require that appraisals comply with USPAP; and
- Require that appraisals are conducted in accordance with the statutory valuation independence standards pursuant to the Truth in Lending Act and its implementing regulations.<sup>19</sup>

As a result, of these minimum requirements federal agencies promulgated federal rules 12 C.F.R. §34.210-§34.216. The final rules require states to:

- Determine whether an AMC oversees an appraiser panel of more than 15 state certified or state licensed appraisers or 25 or more state-certified or state-licensed appraisers in two or more states.
  - States determine AMC size by deeming an appraiser is part of an AMC panel on the earliest date on which the AMC:
    - Accepts the appraiser for the AMC's consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or
    - Engages the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary mortgage market participant in connection with covered transactions.
  - An appraiser who is deemed part of the AMC's appraiser panel is deemed to remain on the panel until the date on which the AMC:
    - Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or
    - Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.
  - If an appraiser is removed from an AMC's appraiser panel, but the AMC subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.
  - The period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each state with which the AMC is required to register.<sup>20</sup>
- Establish and maintain within the state appraiser certifying and licensing agency a licensing program with the authority to:
  - Review and approve or deny an AMC's application for initial registration.
  - Review and renew or deny an AMC's registration periodically.
  - Examine the books and records of an AMC operating in the state and require the AMC to submit reports, information, and documents.
  - Verify that the appraisers on the AMC's appraiser panel hold valid state certifications or licenses.
  - Conduct investigations of AMC's to assess potential violations of applicable appraisal-related laws, regulations, or orders.
  - Discipline, suspend, revoke, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders.

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<sup>19</sup> Federal Register/ Vol. 80, No. 110, Minimum Requirements for Appraisal Management Companies, June 9, 2015, available at <https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited March 11, 2017).

<sup>20</sup> 12 C.F.R. § 34.212 (2017).

- Report an AMC's violation of applicable appraisal related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations to the ASC.
- Impose requirements on AMCs that are not owned and controlled by an insured depository institution and not regulated by a federal financial institutions regulatory agency to:
  - Register with and be subject to supervision by the state appraiser certifying and licensing agency;
  - Engage only state-certified or state-licensed appraisers for federally related transactions in conformity with any federally related transaction regulations;
  - Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to complete the appraisal assignment for the particular market and property type;
  - Direct the appraiser to perform the assignment in accordance with USPAP; and
  - Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of s. 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. §1639e(a) through (i), and regulations thereunder.<sup>21</sup>
- An AMC subject to state registration 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.
  - An AMC subject to state registration pursuant to 12 C.F.R. § 34.213 is not barred 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.
  - An AMC shall not be registered by a state if any person that owns more than 10 percent of the AMC is determined by the state appraiser certifying and licensing agency not to have good moral character; or fails to submit to a background investigation carried out by the state appraiser certifying and licensing agency.<sup>22</sup>
- A federally regulated AMC shall not be 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 Appraisal Subcommittee.
  - A federally regulated AMC is not barred by § 34.215(b) from being 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.
  - A federally regulated AMC must report to the state or states in which it operates the information required to be submitted by the state to the Appraisal Subcommittee, pursuant to the Appraisal Subcommittee's policies regarding the determination of the AMC National Registry fee, including but not necessarily limited to the collection of information related to the limitations set forth in 12 C.F.R. § 34.215, as applicable.<sup>23</sup>
- Evaluations rather than appraisals by state licensed appraisers are required by banks for all real estate financial transactions that are:
  - \$250,000 or less in value;

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<sup>21</sup> 12 C.F.R. § 34.213 (2017).

<sup>22</sup> 12 C.F.R. § 34.214 (2017).

<sup>23</sup> 12 C.F.R. § 34.215 (2017).

- A business loan with a value of less than \$1 million, and the primary source of repayment is not dependent on the sale of or rental income derived from the real estate; or
- Involve an existing extension of credit at the bank where there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the bank's real estate collateral protection after the transaction.<sup>24</sup>
- Each state electing to register AMC's for purposes of permitting AMC's to provide appraisal management services relating to covered transactions in the state must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMC's that operate in the state.<sup>25</sup>

### *Hold Harmless Contract Provisions*

Current law provides that an AMC may not require or attempt to require an appraiser to sign an indemnification agreement requiring the appraiser to hold the AMC, including its owners, agents, employees, or independent contractors, harmless from any liability, damage, loss, or claim arising from the services performed by the AMC, including its owners, agents, employees, or independent contractors. FREAB may discipline an AMC's license if it determines the AMC violated this provision.<sup>26</sup>

AMCs are not prohibited from requiring or attempting to require clients to sign indemnification agreements requiring a client to hold an AMC, including its owners, agents, employees, or independent contractors, harmless from any liability, damage, loss, or claim arising from the services performed by an appraiser.

A client is defined to mean any person who contracts with an appraiser or AMC for the performance of appraisal services.<sup>27</sup>

### *Real Estate Schools*

A real estate school is any person, school, institution which offers or conducts any course of study in real estate practice, teaches any course as a condition precedent to licensure or renewal of licensure as a broker or sales associate, or teaches any course designed or represented to enable or assist applicants for licensure as brokers or sales associates to pass examinations for licensure.<sup>28</sup>

A real estate school that teaches courses for initial licensure for a broker or sales associate license may be taught in any real estate school through the use of a video tape by a currently permitted instructor. Any such video tape course may be required to have a single 3 hour session of live instruction by a currently permitted instructor from any real estate school.<sup>29</sup>

### **Effect of the Bill**

The bill amends the "Appraisers" part of Florida Statutes, Part II of ch. 475, F.S. in order to meet the federal rule requirements of Dodd-Frank and ensure AMC's are able to perform federally related transactions in the state of Florida.

The bill defines the following terms to mirror federal definitions:

- "Appraisal panel" means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. An appraiser is an independent contractor for purposes of this

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<sup>24</sup> 12 C.F.R. §34.43 (2017).

<sup>25</sup> 12 C.F.R. § 34.216 (2017).

<sup>26</sup> s. 475.6245(1)(v), F.S.

<sup>27</sup> s. 475.611(1)(m), F.S.

<sup>28</sup> s. 475.451(1), F.S.

<sup>29</sup> s. 475.451(6), F.S.

paragraph if the appraiser is treated as an independent contractor by the appraisal management company for federal income tax purposes. The term "appraiser panel" includes:

- Appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or secondary mortgage market participants in connection with covered transactions.
- Appraisers employed by, contracted with, or otherwise retained by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions.
- "Covered transaction" means a consumer credit transaction secured by the consumer's principal dwelling;
- "Federally regulated AMC" means an appraisal management company that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. § 1813, and regulated by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation; and
- "Secondary mortgage market participant" means a guarantor, insurer, underwriter, or issuers of mortgage-backed securities. The term includes an individual investor in a mortgage-backed security only if such investor also serves in the capacity of a guarantor, an insurer, an underwriter, or an issuer for the mortgage-backed security;

The bill also provides a definition for "order file" and "evaluation:"

- "Evaluation" means a valuation permitted by any federal financial institutions regulatory agency appraisal regulations for transactions that do not require an appraisal, as they qualify for an applicable exemption under federal law. The FREAB shall adopt rules, as necessity, to define evaluations and the applicable exemptions under federal law.
- "Order file" means the documentation necessary to support the performance of appraisal management services.

The bill defines AMC similarly to the federal definition:

- "Appraisal management company" means a person who oversees an appraiser panel of more than 15 licensed appraisers in a state, or 25 or more licensed appraiser in two or more states within a 12 month period, and performs appraisal management services regardless of the use of the term "appraisal management company," "appraiser cooperative," "appraiser portal," "mortgage technology company," or other term.

The bill:

- Requires FREAB to, at least annually, report to ASC a roster listing individuals or companies that hold a valid state registration as an AMC.
- Requires DBPR to collect an annual fee, established by FREAB, from AMCs that perform or seek to perform appraisal management services in covered transactions, and transmit the annual fee to ASC.
- Requires that registration requirements for AMCs not apply to federally regulated AMCs.
- Requires FREAB to deny a renewal registration for an AMC in addition to denying an application for an AMC based on certain grounds.
- Removes the exemption that allows an unqualified person who does not appear to FREAB to endanger the public to be deemed qualified to possess the authority to direct the management or policies of an AMC.
- Allows Appraisers to perform evaluations of real property connected with real estate related financial transactions that are regulated by a federal financial institutions regulatory agency.
- Allows FREAB to promulgate rules adopting standards of practice other than the standards of practice adopted by the Appraisal Foundation for non-federally related transactions.
- Requires Appraisers to comply with the ethics and competency rules adopted by the Appraisal Foundation for any appraisal other than a federally related transaction.
- Prohibits appraisals that use alternate standards from satisfying experience requirements for licensure.

- Prohibits AMCs from requiring or attempting to require clients to sign indemnification agreements requiring a client to hold an AMC, including its owners, agents, or employees, harmless from any liability, damage, loss, or claim arising from the services performed by an appraiser. The FREAB may discipline an AMC's license if it determines an AMC violated this provision.
- Repeals the required postlicensure educational requirements in order for a registered trainee appraiser to maintain a valid registration.
- Repeals the ability of a real estate school to teach a course for initial licensure by video tape. DBPR indicated the video tape option is obsolete and no longer needed.<sup>30</sup>

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

AMCs will be able to continue participating in federally related transactions. AMCs will be required to pay an additional fee to DBPR, which will be transmitted to the ASC.

### D. FISCAL COMMENTS:

None.

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<sup>30</sup> Department of Business & Professional Regulation, Agency Analysis of 2017 Senate Bill 716, p. 2 (Feb. 28, 2017).