



## Decision

**Matter of:** Appraisal Subcommittee of the Federal Financial Institutions  
Examination Council—Treatment of Multiple-Year Registry Fees  
Collected By States

**File:** B-279866.2

**Date:** November 3, 1998

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### DIGEST

1. The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council maintains a registry of appraisers eligible to perform appraisals for federally related transactions. Federal law requires state appraiser certifying and licensing agencies to collect an annual fee from each appraiser that wants to be listed on the federal registry. The law requires the state agencies to transmit the fees to the ASC on an annual basis. Whether state agencies collect registry fees from appraisers for more than 1 year, and hold or transmit fees for other than the current year, is a matter of state law.

2. The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council may accept registry fees covering more than 1 year and list the affected appraisers on its registry for the years covered by the fees. ASC may not list an appraiser on the registry for a year for which it did not receive a fee.

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### DECISION

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council maintains a registry of appraisers qualified and eligible to perform appraisals in federally related transactions. 12 U.S.C. § 3338(b)(1). To be eligible, the appraiser must pay an annual registry fee to a state appraiser certifying and licensing agency, which must transmit collected fees to ASC on an annual basis. 12 U.S.C. § 3338(a)(2). ASC faces the issue of how to treat registry fees covering more than 1 year that state agencies collect from appraisers.

Federal law requires state agencies only to collect and transmit registry fees to ASC on an annual basis. Whether state agencies collect registry fees from appraisers for more than 1 year, and hold or transmit to ASC the fees for other than the current year, is a matter of state law. Should state agencies assess and collect registry fees for more than a year, ASC may accept the fees the state agencies transmit to ASC and identify the affected appraisers on ASC's registry as eligible for the years covered by the transmitted fees. ASC may not, however, identify an appraiser on

the registry as eligible for a year for which the state agency did not transmit a registry fee.

## BACKGROUND

As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Congress established the ASC within the Federal Financial Institutions Examination Council. 12 U.S.C. § 3310. The ASC consists of the designees of the heads of the federal financial institutions regulatory agencies, namely, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration Board. 12 U.S.C. §§ 3310, 3350. Shortly after FIRREA became law, Congress added the Secretary of the Department of Housing and Urban Development, or his designee, to the ASC. 12 U.S.C. § 1708(e).

The purpose of the legislation establishing ASC is to "provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." 12 U.S.C. § 3331. To accomplish these objectives, ASC (1) monitors the requirements established by the states for certifying and licensing individuals qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; (2) monitors appraisal standards of the Federal financial institutions regulatory agencies; and (3) maintains a national registry of state certified and licensed appraisers eligible to perform appraisals in federally related transactions. 12 U.S.C. § 3332.

ASC's funding comes from registry fees paid by certified and licensed appraisers.' Each state agency is required to transmit to ASC no less than annually a roster of individuals who have received a state certification or license. 12 U.S.C. § 3338(a)(1). For each certified or licensed appraiser who performs or seeks to perform appraisals in federally related transactions, the state agency is to collect an annual registry fee of not more than \$25, and transmit the fees to ASC on an annual basis. 12 U.S.C. § 3338(a)(2).

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'The Treasury provided startup funding to ASC in 1989, Which ASC repaid as required by law. 12 U.S.C. § 3337(a), (c) (Supp. II 1996). Also, the Council may provide supplemental funding to ASC. Otherwise, ASC may receive additional funds only if authorized and appropriated by law. 12 U.S.C. § 3337(b).

Some states certify and license appraisers, and collect certifying or licensing fees, for more than a year. Rather than assessing appraisers for the federal registry fee annually, some states assess the registry fee for a longer period corresponding to the state's licensing period. For example, the Office of Real Estate Appraisers for the State of California certifies and licenses appraisers for 4 years and collects from appraisers, in addition to state fees, \$100 in registry fees for the 4 year period.

California does not, however, transmit to ASC the registry fee California collects for the 4 year period. Instead, California transmits to ASC only the current year's fee for each appraiser. ASC advised California to transmit all the registry fees it collects, maintaining that the fees are federal funds. California responded that ASC may legally require states only to transmit annual fees on an annual basis and urged ASC to modify the registry to show that California has licensed appraisers for periods for which ASC has not received a registry fee. ASC has advised California that ASC would adjust California appraisers' period of eligibility to perform appraisals for federally related transactions to reflect the registry fees paid to ASC. The eligibility period on the registry would therefore be different than the licensing period maintained in state records. ASC staff informally advises that the California Office of Real Estate Appraisers is now the only state agency that collects registry fees for more than a year but transmits fees to ASC for only the current year.

ASC asks whether registry fees collected by state agencies are federal funds that the agencies must promptly transmit to ASC. After reviewing the record before us and discussing the matter with ASC staff, we agreed also to address how ASC may treat registry fees covering more than 1 year that state agencies collect from appraisers.

## ANALYSIS

### Status of Registry Fees

FIRREA does not characterize the status of the registry fees or the state's role in collecting them. State agencies must transmit to ASC, no less than annually, a roster listing individuals who have received a state certification or license. 12 U.S.C. § 3338(a)(1). Those state certified or licensed appraisers who perform or wish to perform appraisals in federally related transactions must pay a fee to be on ASC's registry. FIRREA simply describes the fees as annual and requires the state agencies to transmit them on an annual basis. 12 U.S.C. § 3338(a)(2).

As reflected in its policy for the national registry, ASC views the section 3338(a)(2) reference to states transmitting fees "on an annual basis" as a requirement that states transmit fees commensurate with each appraiser's annual licensing period rather than once a year for all its appraisers. Appraisers may receive their state certificates and licenses, and pay their registry fees, at various times throughout the

year. If state agencies submitted registry fees only once a year and ASC entered an appraiser on the registry upon receipt of the appraiser's fee, a significant mismatch between the appraiser's license period and registry period would result. ASC therefore requires states to submit appraiser data at least monthly. ASC submits registry fee invoices to states based on the data the states submit for the prior month and requires the states to remit the fees within 45 days of the invoice date.<sup>2</sup> ASC's policy reflects a reasonable attempt to ensure that the registry reflects current information and to reconcile the no less than annual period for submitting rosters in subsection (a)(1) with the annual period for transmitting registry fees in subsection (a)(2).

The status of the registry fees would not be an issue if states charged only annual fees for the current year. ASC maintains that for those states collecting registry fees for more than the current year, the registry fees for future years paid by appraisers become federal funds when the state agencies collect them. ASC views each state agency as a collection agent of the United States government. If ASC is correct, the state agencies must promptly transmit to ASC future years' registry fees they collect. See 31 U.S.C. § 3302. On this point, we believe that the language and legislative history of section 3338(a) supports a contrary conclusion.

Much of FIRREA's provisions on appraisals found their origin in H.R. 3675, the Real Estate Appraisal Reform Act of 1988.<sup>3</sup> As reported by the Committee on Government Operations, H.R. 3675 provided for a federal agency to approve and monitor state appraiser certifying agencies and to directly certify and supervise appraisers in states that did not have approved appraiser certifying agencies. H.R. 3675 also provided for appraisers to pay a \$100 annual fee directly to the federal agency but did not provide for a national registry. H.R. Rep. No. 100-1001, Part 1 (1988). In the next Congress, the Senate version of FIRREA provided for states establishing appraiser certifying and licensing agencies but, unlike H.R. 3675, eliminated the idea of having a federal agency directly certify and supervise appraisers. The Senate bill provided for ASC to maintain a national registry, authorized ASC to collect an "annual registration fee of not more than \$25," and, like H.R. 3675, required appraisers to pay the fee directly to ASC. S. Rep. No. 101-

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<sup>2</sup> ASC maintains the registry to reflect the data the states submit, but if the invoiced fee is not timely transmitted, ASC changes the status for unpaid appraisers to inactive.

<sup>3</sup> H.R. Rep. No. 101-54, Part 4, at 6 (1989) (report of the Committee on Rules, House of Representatives, on H.R. 1278, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989); See also S. Rep. No. 101-19, at 36 (1989) (report of Committee on Banking, Housing, and Urban Affairs, United States Senate, on S. 774, Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

19 at 395. The House version of FIRREA retained most of the appraisal provisions of the Senate bill but added to the state agencies' responsibilities the roster and fee transmittal provisions now found in 12 U.S.C. § 3338(a), with one difference. The House bill provided for the state agencies to transmit the annual fees on a semiannual basis, but the bill adopted in conference provided for transmitting the fees on an annual basis. Compare H.R. Rep. No. 101-54, pt I, at 270 with H.R. Conf. Rep. No. 101-209, at 348 (1989). Consistent with the language of the Senate bill, the conference report referred to the annual fees as "annual registration fees." H.R. Conf. Rep. No. 101-209, at 395.

Congress clearly viewed the registry fee as an annual registration fee for listing an appraiser on the registry for 1 year. Certainly fees paid by appraisers directly to the federal government for registration on the registry would not be federal funds until the federal government received the fees. Subsequent versions of the bill that led to FIRREA increasingly emphasized the state agencies' role and deemphasized the federal government's role in overseeing appraisers, and the increasing role of state agencies explains, in part, the eventual requirement for state agencies to collect the registry fees and transmit them to the federal government. There is no evidence that Congress contemplated state agencies collecting multiple year fees from appraisers. There also is no indication that when Congress added toward the end of its development of F71RREA the requirement for state agencies to collect and transmit registry fees, Congress believed it was making the fees federal funds as soon as the states collected them.

The language and legislative history of 12 U.S.C. § 3338 convinces us that Congress legislated a requirement that appraisers pay an annual registration fee in exchange for being listed on the registry for 1 year. Congress inserted the state agencies as the vehicle for collecting and transmitting those fees to the federal government. Arguably, the state agencies are as much if not are more so an agent for appraisers within their jurisdiction that wish to be listed on the registry as they are the federal government's collection agent. The federal statute does not address the state agency's authority to collect fees beyond the current year or the state agency's responsibility for holding or transmitting the fees collected other than on an annual basis. Accordingly, whether state agencies collect registry fees from appraisers for more than 1 year and hold or transmit the fees for other than the current year is a matter of state law governing the agency's regulation of appraisers under its jurisdiction.

#### Treatment of Registry Fees


Having concluded that 12 U.S.C. § 3338 does not speak to periods beyond the current year, the issue then is how may ASC treat future year registry fees collected by state agencies. ASC informally advises us that other than California, the states collecting registry fees for more than the current year transmit to ASC all the fees

collected. In return, ASC's policy is to identify the affected appraisers on the registry as eligible to perform appraisals for federally related transactions for the entire period covered by the transmitted fees.

For those states deciding to assess a registry fee that covers all the years of an appraiser's certifying or licensing period, ASC and the states may agree that the states will transmit the fees to ASC and that ASC will maintain the registry accordingly. There is nothing in 12 U.S.C. § 3338 or its legislative history that compels us to conclude that the statute's reference to annual fees transmitted on an annual basis precludes ASC from accepting the future year, in addition to the current year, fees a state assesses under state law, or from including the corresponding future year information on the registry.

Having previously concluded that ASC may not require states to assess or transmit registry fees for other than the current year, ASC and California's relationship presents a different question. May ASC identify California appraisers on the registry as eligible to perform appraisals in federally related transactions for years for which California has collected registry fees, but not transmitted them to ASC?

We conclude that the answer clearly is no. The statute refers to annual rosters and annual registry fees. 12 U.S.C. § 3338(a). As previously discussed, Congress viewed the registry fee as a registration fee. The registry ASC maintains is to identify individuals "qualified and eligible" to perform appraisals in federally related transactions. 12 U.S.C. § 3338(b)(1). One element of eligibility under the statute is paying the required registry fee. Until California transmits fees for future years, the fees have not been paid and the affected appraisers are not eligible for the future years. ASC's recent decision to identify California appraisers on the registry as eligible to perform appraisals in federally related transactions only for the years in which California has transmitted registry fees is consistent with our view of its authority.

  
for Comptroller General  
of the United States