GAO

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

# Decision

**Matter of:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council – State Agency Fee Collection Practice for Appraisers under Title XI of FIRREA

**File:** B-279866.3

**Date:** February 28, 2000

## DIGEST

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council maintains a registry of appraisers eligible to perform appraisals for federally related transactions. Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. § 3338, requires state appraiser certifying and licensing agencies to collect an "annual registry fee" from each appraiser that wants to be listed on the federal registry. Section 1109 also requires the state agencies to transmit registry fees to the ASC on an annual basis. Id. The ASC did not apply the law unreasonably or otherwise abuse its discretion when it concluded that a state's policy for assessing fees for an appraiser's first period of coverage is not appropriate if the initial registry fee covers more than a 12-month period.

## DECISION

Pursuant to section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 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). The State of Georgia has a licensing and certification program that results in an appraiser's initial licensing period being as short as one month or as long as 23 months depending on the applicant's month of birth and the month the licensing period begins. Georgia collects from the appraiser and transmits to ASC an annual registry fee covering the initial licensing period regardless of its duration.

ASC asks whether Georgia's fee collection practice is consistent with section 1109 of FIRREA, which requires that state agencies collect and transmit registry fees to ASC

on an annual basis. ASC's position is that an annual registry fee covering more than a 12-month period would violate section 1109 of FIRREA. We conclude that ASC's interpretation of section 1109 of FIRREA reflects a reasonable exercise of its discretion in administering section 1109 of FIRREA.

BACKGROUND

As part of FIRREA, Congress established the ASC within the Federal Financial Institutions Examination Council. 12 U.S.C. § 3310. The ASC consists of 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 ASC's enabling legislation 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 appraisal 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.[1] 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).
The ASC has adopted ten Policy Statements to help the states comply with the applicable requirements of FIRREA. The ASC policy statement relevant here is

---

[1] The Treasury provided startup funding to ASC in 1989, which ASC repaid as required by law. 12 U.S.C. § 3337(a), (c) (Supp. III 1997). 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).

Statement 8: National Registry of State Certified and Licensed Appraisers, adopted September 22, 1997, as amended January 13, 1999.[2] In pertinent part, Statement 8 provides as follows:

> "C. Registry Fee Policies
>
> Each State must remit to the ASC a National Registry fee on an annual basis for each State certified or State licensed appraiser listed on the National Registry. The annual fee for each certified or licensed appraiser is $25. Fees will not be prorated or refunds granted for partial year registrations. If a State has not transmitted an appraiser's annual fee to the ASC, that individual is not recorded in the Registry and is not eligible to perform appraisals in connection with federally related transactions. If a State issues multiple-year certifications and licenses and collects multiple-year fees, the State may choose to remit to the ASC the total amount of the multiple year National Registry fees. The ASC can only record individuals on the National Registry for the number of years paid. . . ."

The State of Georgia, through the Georgia Real Estate Appraisers Board, uses a formula for determining an appraiser's initial licensing fee that results in an appraiser's initial licensing period being as short as one month or as long as 23 months. Georgia assesses the federal registry fee on the same basis it assesses the state licensing fee. Georgia's formula provides that whenever an individual applicant activates an original appraiser classification, that applicant shall pay an activation fee which will cover all fees due Georgia until the last day of the month of the applicant's month of birth in the calendar year following the calendar year in which the applicant first becomes classified. In a March 13, 1998 letter to ASC, Georgia provided the following examples to illustrate its formula:

> "1. An appraiser's whose birthday is in January applies for a classification in December of 1998. His initial fee (Georgia's fee and the Registry fee) covers the period only from the date of issuance in December until January 31 of 1999. In January of 1999 he will be required to pay a renewal fee and another Registry fee.

---

[2] ASC amended Statement 8 to reflect our decision in B-279866.2, November 3, 1998. In that decision we addressed how to treat registry fees covering more than one year that state agencies collect from appraisers. In analyzing that issue, the language and legislative history of 12 U.S.C. § 3338 convinced us that Congress intended appraisers to pay an annual registration fee in exchange for being listed on the registry for one year. We therefore concluded that ASC could not list appraisers on the registry for a year for which ASC has not received a fee. B-279866.2 at 6.

2. An individual whose birth month is December applies for a classification in January of 1998. His initial fee (Georgia's fee and the Registry fee) covers the period of January 1998 until December of 1999 at which time he will pay a renewal fee and another Registry fee."

ASC believes that section 1109 of FIRREA and its Policy Statements do not support assessing registry fees on such a basis. Georgia believes that its policy is consistent with federal law and does not result in any loss of revenue to the ASC. Georgia further argues that if it must adhere to ASC's policy, it will be costly, administratively burdensome, and unfair to appraisers.

ANALYSIS

In Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), the Supreme Court laid out an analytical framework for the review of an agency's construction of a statute it administers. In those cases where "Congress has [not] directly spoken to the precise question at issue," Chevron, 467 U.S. at 842, the question is "whether the agency's [interpretation] is based on a permissible construction of the statute." Id. at 843. If Congress has explicitly left a gap for the agency administering the statute to fill, there is in effect a delegation of authority to the agency to adopt a regulation or policy to elucidate the statute. Id. at 844. So long as the interpretation comports with the statutory objectives and is not arbitrary or capricious, the administering agency's reasonable policy choices are entitled to deference. Id. at 844-845, 864-866.

Neither section 1109 nor title XI of FIRREA defines "annual" as it is used in the context of the "annual registry fee" or the registry fee's submission "no less than annually." Our analysis of the language and legislative history of section 1109 in B-279866.2, Nov. 3, 1998, persuaded us that Congress intended appraisers to pay an annual registration fee in exchange for registry listing for one year. ASC has implemented section 1109, consistent with our decision, by permitting an appraiser to be listed effectively for a year long period starting with the State's submission of his name and the submission of the registry fee upon invoice. Statement 8 states that "the annual fee for each certified or licensed appraiser is $25. Fees will not be prorated or refunds granted for partial year registrations." In other words, ASC has interpreted the annual fee to be for a rolling, 12-month period.

Georgia argues that its policy is consistent with section 1109 of FIRREA and does not result in any loss of revenue to the ASC. In making its argument, Georgia does not address the fact that it's policy could result in an appraiser being on the registry for almost 2 years when the appraiser has paid only an annual $25 fee, a condition inconsistent with B-279866.2. Georgia's rebuttal to this point is that there ultimately would be no loss of revenue to ASC because of the appraiser's subsequent fee payments. This argument, however, does not address the possibility that an applicant would not renew his certification and therefore would have been on the registry without having paid a fee for the period of 13-23 months. Nor does Georgia's rebuttal take into account ASC's loss of the use of money when in a case like

Georgia's example 2 above, an appraiser pays his second registry fee at the end of the 23rd month rather than at the beginning of the 13th month.

Finally, Georgia argues that ASC's position is unfair to Georgia appraisers because it would result in applicants paying different fee amounts. For example, Georgia points out that if Georgia were to apply ASC's 12-month standard to its initial classification in Georgia's example 1 above, the applicant would pay $25 in December 1998 and $25 in January 1999. By comparison, Georgia points out that the applicant in example 2 would pay $50 in January 1998 and $25 in December 1999. Therefore, Georgia argues that using ASC's standard would unfairly result in one applicant paying $75 in two years while another pays only $50. We are not persuaded by Georgia's fairness argument. Although the two applicants pay different amounts during two calendar years, their period of coverage is different by 11 months. The applicant in example 1 pays $50 for the period December 1998 through December 1999. Example 2 applicant pays $75 for the period January 1998 through November 2000. The example 2 applicant pays $25 in higher fees during calendar years 1998 and 1999, but is on the registry for 11 months longer than the example 1 applicant is. Further, Georgia's current policy regarding its licensing period for appraisers already treats appraisers differently as evident by its own examples - an appraiser's licensing fee will cover as few as 1 and as many as 23 months depending on the relationship of the beginning of the appraiser's licensing period and the appraiser's birthday. Accordingly, 2 appraisers applying for a license on the same day and paying the same initial fee would receive a different initial period of coverage because they have different birthdays.

As the entity responsible for administering this legislation, ASC's interpretation of the statute is entitled to great weight and should ordinarily be followed unless there are strong indications from the legislative history or otherwise that its interpretation is arbitrary or inconsistent with the statutory purpose. Chevron, 467 U.S. at 844-845. See 58 Comp. Gen. 635, 638 (1979). Having examined the legislative history of 12 U.S.C. § 3338, we found nothing to indicate that ASC's interpretation of the annual fee requirement is inconsistent with Congress' intent. Further, ASC's interpretation appears rational and serves to ensure that appraisers are not listed on the registry for a period in which no fee has been paid.

We therefore have no objection to ASC's position concerning Georgia's policy for assessing registry fees.

Comptroller General
of the United States