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**UNITED STATES OF AMERICA**
**BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:** **Maureen K. Ohlhausen, Acting Chairman**
**Terrell McSweeny**

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**In the Matter of**

**Louisiana Real Estate Appraisers Board,**
**Respondent**

**Docket No. 9374**

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# REPLY IN SUPPORT OF RESPONDENT LOUISIANA REAL ESTATE APPRAISERS BOARD MOTION TO DISMISS

W. Stephen Cannon
Seth D. Greenstein
Richard O. Levine
James J. Kovacs
Kristen Ward Broz
Constantine Cannon LLP
1001 Pennsylvania Ave. NW, Ste. 1300N
Washington, DC 20004
Phone: 202-204-3500
scannon@constantinecannon.com

*Counsel for Respondent,*
*Louisiana Real Estate Appraisers Board*

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Federal Regulations**



**State Statutes**



**State Regulations**



**Other**

## TABLE OF EXHIBITS

## INTRODUCTION AND SUMMARY OF ARGUMENT

In its Motion to Dismiss, Louisiana Real Estate Appraisers Board ("LREAB") demonstrated State active supervision over promulgation and enforcement over "Replacement Rule 31101," which implements the "customary and reasonable" ("C&R") residential appraisal fee mandate of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and the Louisiana Appraisal Management Company Act ("AMC Act"). As required by the Governor's Executive Order and the Louisiana Administrative Procedures Act ("APA"), the Commissioner of Administration or his designee ("COA") and the Senate and House Commerce Committees examined the full promulgation record of Replacement Rule 31101, and approved the rule as final.[1] The Executive Order further requires prospective enforcement of Replacement Rule 31101 to be supervised at all stages by an independent Administrative Law Judge ("ALJ") of the Division of Administrative Law ("DAL"), and any LREAB hearings will be reviewed *de novo* on legal questions, a preponderance of the evidence standard as to facts, and as arbitrary, capricious, or abuse for LREAB discretion. Ex. 1 Section 1; Ex. 9. Both supervisory regimes permit adoption, rejection, or modification to safeguard the residential housing market by securing the integrity of residential home appraisals, consistent with State policy. Exs. 1, 3-8, 10-13.[2] LREAB further established it irrevocably eliminated any potential continuing harm from enforcement of Prior Rule 31101. Ex. 10.

[1] *See* Memorandum in Support of Motion to Dismiss ("MTD") at 7-11, 13-14; MTD Exhibit ("Ex.") 1. For clarity, the repealed rule will be referred to as "Prior Rule 31101," and the rule repromulgated pursuant to Section 2 of the Executive Order will be referred to as "Replacement Rule 31101."

[2] For completeness, LREAB submits Confidential Exhibit 15 to address Complaint Counsel questions concerning the material provided to the COA for its initial review of the proposed Replacement Rule.

Accordingly, none of the Contemplated Relief in the Complaint remains to be granted, and no meaningful remedy is available. Under federal court and Commission precedents, the Complaint should be dismissed as moot.

Complaint Counsel's Opposition ("CC Opp." or "Opposition") fails to contest, and thereby concedes, key elements of LREAB's Motion. First, the Opposition fails to dispute that LREAB has eliminated all further effects of its promulgation and enforcement of Prior Rule 31101. As such, Complaint Counsel concedes no remedy remains available for past LREAB conduct. Second, the Opposition fails to rebut LREAB's argument that Louisiana law clearly articulates the intent to regulate price competition through the C&R fee mandate.[3] Third, the Opposition agrees that the Commission may determine the existence of active supervision based on the record provided, without reviewing the ALJ's supervision over LREAB enforcement. CC Opp. at 14.

Complaint Counsel's remaining arguments are insufficient to challenge LREAB's proof of active supervision. By ignoring or mischaracterizing facts plain from the face of official State documents, or by asserting "facts" not in the Complaint, Complaint Counsel reveal their theory of the case to be implausible. For example:

- The requirement to use one of the three compliance methods—which the Opposition contends "prevents AMCs and appraisers from determining appraisal

[3] Complaint Counsel cannot preserve the issue based on a mere conclusory allegation on motion to dismiss, without presenting rebuttal argument. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

fees through *bona fide* negotiations" (CC Opp. at 5)—is mandated by federal and state law, not LREAB rules. *Infra* at 8-10.

- Contrary to CC Opp. 24, if Replacement Rule 31101 is "replaced yet again tomorrow," promulgation of its replacement must be actively supervised. Ex. 1 Section 2.
- The Complaint nowhere alleges that LREAB engages in "collective ratemaking," "coercion," or anything other than "effectively" setting rates by allowing some AMCs to settle on terms they could have used to comply under the federal Final Interim Rules. CC Opp. at 21, 29-30. *Infra* at 9-11.
- Contrary to CC Opp. at 27-30, the ALJ must review LREAB's enforcement conduct in light of State policies, and apply the broad scope of review required by the APA and by contract. Ex. 1 Section 1; Ex. 9.[4]
- It is nonsensical to force the COA and ALJ to create a duplicate factual record (CC Opp. at 23-24), where they are required to review the record assembled by LREAB and can adopt or reject the proposed action if the record is inadequate. and,
- It is contrary to principles of federalism for Complaint Counsel to contend, repeatedly, that the Commission should not only disregard but disbelieve

[4] LREAB publicly acknowledged that an ALJ will review every LREAB enforcement decision including the initiation of an investigation, issuance of complaints, formal or informal resolutions of investigations, and determinations of violations. Ex. 14.

> Louisiana State officials describing the discharge of legally-mandated duties in official State records.[5]

Complaint Counsel concedes that, where active supervision exists, this case should be dismissed:

> JUDGE CHAPPELL: So you're telling me that if respondent was actively supervised by the State of Louisiana, we wouldn't be here?
>
> COMPLAINT COUNSEL: That's correct.[6]

With active supervision in place for the Replacement Rule, and no continuing effects from the Prior Rule, the Complaint is moot. No relief sought by the Complaint is meaningful where there is no further controversy, and no future act to enjoin. Dismissal of the Complaint is consistent with past Commission practice and precedents, where post-Complaint State actions eliminated any need for the requested relief. Mootness cannot be evaded under the voluntary cessation exception where, as here, all future conduct is protected under State action immunity.

LREAB therefore asks the Commission, consistent with the express intent of the Governor's Executive Order, to allow the State to secure the integrity of its residential housing market as mandated by Dodd-Frank and State law. No violation can recur; there is no continuing effect from Prior Rule 31101; and active supervision must apply going forward. Therefore, the Complaint is moot and the Motion to Dismiss should be granted.

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[5] *See City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 377 (1991) (indicating such an inquiry is "the sort of deconstruction of the governmental process and the probing of the official 'intent' that we have consistently sought to avoid.") (footnote omitted).

[6] *See* Transcript of July 6, 2017 scheduling conference, at 16:23 –17:10.

## ARGUMENT

### I. The State's Active Supervision of LREAB's Promulgation of Replacement Rule 31101 is Irrefutably Established.

LREAB's Motion to Dismiss documented in detail the State's active supervision over the July-November 2017 promulgation of Replacement Rule 31101 – completion of the two additional levels of Executive and administrative supervision mandated by the Governor's Executive Order, in addition to satisfaction of the initial Legislative supervisory requirements under the APA. Complaint Counsel responds with inapposite ratemaking cases and mere assertions that official State records do not mean what they say. Neither argument rebuts LREAB's proof of mootness based on active supervision.

#### A. Louisiana Actively Supervises Promulgation and Enforcement of the C&R Fee Requirement.

LREAB's Motion established a complete multi-tiered structure for active supervision over all LREAB activities relating to Replacement Rule 31101:

- The Governor's Executive Order mandated that any C&R fee rule proposed by LREAB must be actively supervised by the COA.[7]
- The COA reviewed and approved LREAB's proposed rule and prior promulgation record before publishing the rule for public comment. Exs. 3, 15.

[7] Ex. 1. Complaint Counsel's suggestion that LREAB's future rules might not be supervised by the COA is flatly refuted by the Executive Order Section 2, which requires LREAB submission "for approval, rejection, or modification … *any proposed regulation* related to" the C&R requirement. *Id.* (emphasis added).

- The Louisiana Legislative Fiscal Office reviewed and approved the rule and proposed Financial and Economic Impact Statement (FEIS), finding no impact on competition or employment. Ex. 4
- The Louisiana Register reviewed and approved the Notice of Intent to promulgate the proposed rule for publication. *Id.*
- LREAB received public written comments and held a hearing on the proposed rule. Aside from the more than 70 comments from appraisers and AMCs, written comments from neutral affected parties – Louisiana REALTORS, Louisiana Banking Association, and Louisiana Home Builders Association –unequivocally supported the rule. Ex. 8
- LREAB approved the Rule, and sent the full promulgation record and prescribed report to the Louisiana House and Senate and the Commissioner of Administration for review. Exs. 5-8
- Official correspondence between LREAB and the Senate and House Commerce Committees exercising legislative oversight over LREAB confirmed that Committee members had no questions, required no information, found no hearing necessary, and allowed promulgation to proceed.[8] Exs. 12-13

[8] This is hardly surprising. These Committees held hearings in 2012 to add the C&R fee mandate to the AMC Act; reviewed and approved Prior Rule 31101 in 2013; and amended the AMC Act C&R provision in 2016 to refer specifically to federal laws and regulations that impose and define the C&R fee obligations. La. R.S. 37:3415.15(A). Communications between the Louisiana House and Senate Commerce Committee Chairmen and LREAB (Exs. 12-13) constitute official State public records, and are properly subject to judicial notice. La. R.S. 44:1 *et seq.*

- The COA issued a written determination thereafter, confirming his review of "a substantive history of Rule 31101, background information on Dodd-Frank and its requirements, the pertinent state and federal laws, the rulemaking record from the past promulgation of Rule 31101, as well as all documents and public comments related to the 2017 promulgation of the rule"; and, following his review, that "the proposed rules will further the public policy goals of the State of Louisiana by ensuring that real estate appraisers will be paid a customary and reasonable fee by AMCs. This, in turn, will strengthen the accuracy, integrity, and quality of real estate appraisals, which, among other benefits, can prevent a recurrence of the real estate bubble from the last decade."[9] Ex. 11
- On that basis, the Louisiana Register published Replacement Rule 31101 as final. Ex. 14

LREAB's Motion also demonstrated a dual-layer of active supervision over LREAB enforcement of Replacement Rule 31101:

- The Governor's Executive Order required LREAB to enter into a contract with the DAL whereby an ALJ will supervise LREAB's enforcement of any C&R rule, from initiating any administrative complaint against an AMC, to finalizing a settlement, or reaching determinations after an adversary hearing. Ex.1

[9] Complaint Counsel somehow neglect in their brief to mention this direct confirmation of active supervision by the COA, or to refute it. At most, they point to the COA's uncertainty whether the Executive Order required this second review. Nevertheless, there can be no dispute that the first and second supervisory reviews of the respective promulgation records occurred, and that LREAB based its right to proceed with promulgation on the COA's determinations. Ex. 3-5, 8, 11.

- Under the Executive Order, that review includes an assessment whether "the proposed action serves Louisiana's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs for such an appraisal are customary and reasonable." *Id.*
- Pursuant to the Executive Order, LREAB and DAL entered into a contract whereby initiation of enforcement actions will be reviewed by an administrative law judge for sufficiency of evidence and promotion of State policies; and settlements and informal resolutions will be reviewed for consistency with State policies. Exs. 1, 9. Any enforcement hearing and determination by LREAB will be reviewed under the APA standards of review: *de novo* review of questions of law; review of factfinding for substantial evidence; and remedy recommendations for consistency with State policies, as well as an arbitrary/capricious/abuse of discretion standard. Exs. 9, 14.[10]
- The decision of the Board may again be reviewed by the AMC as of right in State court. La. R.S. 37:3415.20(B).

Beyond cavil, the State of Louisiana has accepted political accountability for any anticompetitive effects of promulgation or enforcement of Replacement Rule 31101. *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101, 1111 (2015) ("*N.C. Dental*"). Each supervisory step grants State Executive officials, and Legislative and Judicial branch actors authority to

[10] The ALJ's obligation to supervise LREAB enforcement in light of State policy is imposed by the Executive Order. Ex. 1 Section 1. Thus, LREAB's Motion does not "mischaracterize" the requisite ALJ review. CC Opp. at 29, n.9.

approve, reject, or amend any LREAB action, and provides "realistic assurance" that LREAB's conduct will promote state policies rather than individual LREAB member interests. *See Patrick v. Burget*, 486 U.S. 94, 101 (1988); *N.*C. *Dental*, 135 S. Ct. at 1112. Each of these State supervisors has reviewed the promulgation of Rule 31101 (or is required to review future LREAB enforcement decisions), and has exercised its authority to approve, veto or modify them as prescribed by Louisiana law. *Id.* at 1116-17. Supreme Court precedent requires no more; indeed, the State, in its effort to allay any doubts and to resolve the allegations impeding LREAB's obligation to protect the integrity of Louisiana's housing market,[11] imposes greater active supervision than the law demands.

### B. Under Rule 31101, AMCs Set Prices, Not the State; Therefore, Rate-setting Cases are Inapposite.

The Opposition relies upon a fundamental misapprehension of what Dodd-Frank and Louisiana's AMC Act require, and what Rule 31101 does. In each case relied upon by Complaint Counsel, the statutory framework at issue gave private industry participants the ability to file tariffs that would become effective, subject to state review.[12] The question was whether board review was sufficient to turn collective private rate-setting into state action. But Dodd-Frank, the AMC Act, and Replacement Rule 31101 do not set the fees to be paid by AMCs; AMCs do.

[11] Ex. 1 (fifth "WHEREAS" clause).

[12] *See, FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992) (setting title insurance rates); *In the Matter of Kentucky Household Goods Carriers Ass'n, Inc.*, 139 F.T.C. 404 (2005) (establishing moving services rates); *In the Matter of Indiana Household Movers and Warehousemen, Inc.*, 135 F.T.C. 535 (2003) (conspiring to set unlawful collective rates by state tariff); *In the Matter of New England Motor Rate Bureau, Inc.*, 113 F.T.C. 1013 (1990) (filing collectively-set tariff service agreements); see *also, In the Matter of Alaska Healthcare Network*, 131 F.T.C. 893 (2001) (private rate-setting collective); *In the Matter of Texas Surgeons, P.A.*, 2000 WL 669997 (F.T.C. May 18, 2000) (private rate-setting collective).

Dodd-Frank requires residential appraisal fees to reflect the marketplace, but inherently constrains competition: ***each AMC's fees must be both "customary" and "reasonable," as determined according to one of the federally-prescribed methods of compliance***. The Interim Final Rules further constrain the marketplace. They define "customary" fees as "recent rates [charged within the prior year] for appraisal services in the relevant geographic market," with "reasonable" adjustments "as necessary to account for factors in addition to geographic market that affect the level of compensation appropriate in a given transaction."[13] These four elements – "customary," "reasonable," reference to "recent rates," and prescribed methods of compliance – do not set the rates, but constrain the range of fees that can be negotiated in the market.[14] Even negotiated volume-based discounts must comply with these C&R requirements. 75 Fed. Reg. at 66571.

Thus, the Opposition's assertion that *Respondent*'s requirement to use one of the three compliance methods "prevents AMCs and appraisers from determining appraisal fees through *bona fide* negotiations" (CC Opp. at 5) is dead wrong as a matter of law. Any constraints on such negotiation, including the three methods of compliance, are imposed by Dodd-Frank, the Interim Final Rules, and the Louisiana Legislature – not LREAB. Moreover, Dodd-Frank and the Interim Final Rules place the burden to enforce AMC compliance *precisely* on state boards like

[13] 75 Fed. Reg. 66554, 66569 (Oct. 28, 2010); Supplement I to Part 1026, Official Interpretations, 42(f)(2)(i) (2017).

[14] That was the express purpose of the C&R fee requirement: to ensure retention of independent qualified appraisers by assuring them payment commensurate with the knowledge, skill, and expertise needed for the appraisal. *See* Interim Final Rules, 75 Fed. Reg. 66554.

LREAB.[15] Indeed, Complaint Counsel's contrary assertions render the Complaint implausible, and ripe for dismissal on that basis as well. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

Rule 31101, in implementing the Interim Final Rules, requires only that an AMC prove use of a compliant method. AMCs unable to document their compliance violate the AMC Act and, therefore, Rule 31101. La. R.S. 37:3415.13-3415.14. That does not constitute "rate-setting" under any plausible interpretation.

### C. The State Exercised Active Supervision When Promulgating Replacement Rule 31101.

The Opposition offers two strawmen to rebut Louisiana's active supervision: First, that the same degree of active supervision over rate-setting boards is required here; and second, regardless, official statements and actions by Louisiana's Governor, Commissioner of Administration, Legislative Fiscal Office, Chairmen of the Senate and House Commerce Committees, and the Director of the Division of Administrative Law simply cannot be trusted. Neither argument prevents dismissal of the Complaint.

As to the first assertion, there is no reason to compel the State to supervise LREAB as it would a rate-setting board. LREAB does not set rates. AMCs set their own rates in accordance with the Dodd-Frank requirements embodied in the AMC Act. LREAB does not require AMCs to submit their rates for advance approval or official promulgation, as tariff commissions do. Rather, in response to stakeholder complaints, LREAB requires AMCs only to document how they complied with one of three federally-prescribed methods. The Complaint does not assert otherwise. It alleges that some non-compliant AMCs proposed to resolve enforcement actions by

[15] *See* 12 C.F.R. § 34.213.

using the most cost-effective of the three Dodd-Frank compliance methods, and that LREAB "effectively" set prices by accepting their proposal. To embellish that allegation, the Opposition asserts LREAB expected AMCs would use that method — an objective independent academic survey, funded as a courtesy to licensees by LREAB — *precisely because* it could be cost-effective. Even assuming allegations of such rational business behavior could pass the *Twombly/Iqbal* plausibility threshold for antitrust claims, they do not forbid LREAB from assisting AMCs in presumptively complying with a new rule.

Similarly, LREAB had no obligation to analyze the economic impact of a method expressly permitted by Dodd-Frank, or to compel AMCs, lenders, and appraisers to submit revenue, cost, and profit data for nine Louisiana geographic regions. Where there is no ratemaking, there is no justification for ratemaking-grade supervision. Likewise, there is no need for the COA to conduct hearings upon hearings just to receive the same stakeholder arguments already contained in the LREAB's promulgation records. Ex. 8; *see* also CC Opp. at 23-24.

"Realistic assurance" is not the nth degree. Active supervision requires a regime realistically tailored to the regulatory tasks and the State policies implicated by the regulation. Here, to eliminate further antitrust challenges, the Governor ordered two additional layers of supervision over LREAB rulemaking and enforcement. Ex. 1. The Governor's actions reflected the State's certitude that the new supervisory regime provided "realistic assurance," sufficient to lay those challenges to rest. That judgment should not be overruled without a commensurately greater showing that the law requires of the State even more. The Opposition's reliance on rate- and tariff-setting cases does not rise to the task.

To accept the Opposition's second argument essentially requires a finding that five categories of State officials ignored their official duties under an Executive Order and the strictures of the APA. This is not a case of "potential" supervision, as the Opposition asserts. Official opinions, transmittals, and contracts document that the required supervision actually occurred. Aside from mere gainsaying, the Opposition offers no plausible dispute that the COA, Legislative Fiscal Office, Louisiana Register, Senate and House Commerce Committees, and the Governor, did not properly exercise their supervisory responsibilities as evidenced by their official statements and actions. Moreover, the Executive Order requires any further rulemaking to be subject to the same supervisory review, and any enforcement to be supervised by an independent ALJ (in addition to a State court) to ensure that LREAB's enforcement actions serve State policies consistent with the law, the preponderance of evidence, and the proper exercise of discretion.

## II. The Actions of the State of Louisiana Render the Complaint Moot, and the Complaint Should be Dismissed.

LREAB's elimination of Prior Rule 31101 (and any further effects therefrom) coupled with continuing active State supervision of LREAB's promulgation and enforcement of Replacement Rule 31101 moot this case. As a result, the Commission "cannot grant effective relief," and the case should be dismissed. *Burlington N. R.R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1244 (9th Cir.1991) (citation omitted).

Ignoring these facts, the Opposition attempts to avoid mootness by contending (1) the creation of a fully-implemented state action regime post-complaint is not grounds for dismissal

and (2) the voluntary cessation exception to the mootness doctrine should be applied.[16] These arguments are unconvincing. No relief remains to be granted as it pertains to Prior Rule 31101, and the State's active supervision over C&R fee rule promulgation and enforcement precludes prospective relief under State action immunity.

### A. Where State Action Immunity is Shown, Prospective Enforcement is Prohibited and Prospective Relief is Moot.

If a defendant can demonstrate active supervision at any time during a proceeding, the case should be dismissed. Yet, the Opposition claims that the Commission does not "dismiss a case on the basis of a post-complaint change in the state's supervision procedures." CC Opp. at 12. That statement is incorrect. Under Commission precedent, a sufficient post-complaint change to a state's active supervision over the market participant requires the complaint be dismissed. In *Cabell Huntington Hospital*,[17] the Commission filed a complaint to prevent a merger of two healthcare providers, but dismissed the case *after* the State of West Virginia implemented a post-complaint, active supervision regime. *See* Statement of the Federal Trade Commission (July 6, 2016);[18] *see also* Deborah Feinstein, Dir. Bur. of Competition, Fed Trade Comm'n, Am. Bar Assoc. Antitrust in Healthcare Conference (May 12, 2016) (discussing *Cabell Huntington*, stating that "ultimately states are sovereign entities" and if they want to "exempt [entities] from the antitrust laws with active supervision, then that [is] the end of the discussion.").

[16] While Complaint Counsel does not use the phrase "voluntary cessation," their cited cases invoke that exception to the mootness doctrine. *See* CC Opp. at 20.
[17] *In the Matter of Cabell Huntington Hospital Med. Ctr.*, Dkt. No. 9366 (July 6, 2016).

[18] Available online at https://www.ftc.gov/system/files/documents/public_statements/969783/160706cabellcommstmt.pdf

Similarly, in *In the Matter of The City of New Orleans,* the Commission withdrew a complaint *after* the Louisiana Legislature passed a statute regulating "entry and control [of] fares for taxicabs," thus providing clear articulation of its intent to control fare competition. 105 F.T.C. 1, 5 (1985). Rather than proceed to a final order, the Commission held the Complaint should be withdrawn:

> Complaint counsel have moved for withdrawal of the complaint in this matter, on the ground that state legislation enacted after the complaint was issued makes effective relief impossible… After careful consideration, the Commission has determined that continuing this matter would not presently serve the public interest. We have therefore concluded that the complaint in this matter should be withdrawn.

*Id*.

Here, as in *Cabell Huntington* and *City of New Orleans,* the State of Louisiana has implemented sufficient, additional active supervision over the Board's promulgation and enforcement of Replacement Rule 31101. As a matter of Commission precedent, the case should be withdrawn or dismissed on mootness grounds.[19]

The cases cited by the Opposition do not hold to the contrary. Regarding *In re New England Motor Rate Bureau* ("NEMRB"), the Opposition claims that New Hampshire's statutory change post-complaint could not "immunize" the rate bureau's conduct. CC Opp. at 17

[19] Complaint Counsel argues that the documents produced demonstrating the procedures undertaken by the State of Louisiana to actively supervise the Board's promulgation and future enforcement of Replacement Rule 311101 are merely "facially satisfactory" and only allow the Commission to be "told" that active supervision has taken place. CC Opp. at 16. Complaint Counsel not only misstates the contents of the documents, *see discussion supra* at 4-6, but also fails to understand that the documents clearly show the processes and procedures undertaken by the state to actively supervise the Board. *See Ports Auth. v. Compania Panamena de Aviacion (Copa), S.A.*, 77 F. Supp. 2d 227, 236 (D.P.R. 1999) (finding active supervision because there was a "detailed structure" that include an "Agreement" and "mechanisms" to monitor the alleged anticompetitive conduct).

(citing 112 F.T.C. 200, 275 (1989)). But the Opposition neglects to note New Hampshire's active supervision was not yet in place at the time of the Commission's decision: "The decision of the FTC with regard to New Hampshire is not being appealed…[New Hampshire] is also now engaged in establishing policies and procedures to implement the revised statutory framework. NEMRB says that it may seek revision of the FTC order *as soon as the new regulatory framework is in place*." *New England Motor Rate Bureau v. F.T.C.*, 908 F.2d 1064, 1066, n.2 (1st Cir. 1990) (emphasis added). Moreover, the Opposition misinterprets the import of the Commission's final orders in that case. *NEMRB* does not stand for the proposition that existence of a "facially sufficient supervision scheme, adopted after the antitrust violation, does not obviate the need for an effective remedy." CC Opp. at 18. In fact, in *NEMRB* the Commission found "[t]he changed condition of fact make the state action doctrine applicable to NEMRB's collective rate making in New Hampshire," and thus deleted references to New Hampshire in the final order, including the requirement that the previously filed tariffs be withdrawn because New Hampshire now actively supervised the conduct. 114 F.T.C. 486, 540-41 (1991). Further, the Opposition incorrectly asserts that the First Order applied to the state of Rhode Island even though they had "robust active supervision." CC Opp. at 17-18. As the Commission's First Order clearly states, "[i]n deference to state action, the order does not extend to NEMRB's collective ratemaking activities in states, such as Rhode Island…." 112 F.T.C. at 288.

In *Texas Surgeons*, the Commission and the parties entered into a consent decree the day the complaint was filed, not post-complaint. 2000 WL 669997, at *7. Moreover, the Commission indicated that it would not give credence to a change in Texas law because "the conduct

described in the complaint would not necessarily have met the conditions for approval set forth in the Act."[20] Likewise, in *Kentucky Household Goods Carriers*, the Commission determined that post-complaint changes to the active supervision regime fell "significantly short of demonstrating that the KTC's new procedures satisfy the 'active supervision requirement articulated by the Supreme Court in *Ticor*, and other relevant decisions." 139 F.T.C. at 436-37. As a result, neither Commission decision stands for a "policy" that post-complaint changes to a state's active supervision cannot moot a case.

### B. Complaint Counsel Cannot Rely on the Voluntary Cessation Exception to Mootness.

As indicated above, the State of Louisiana's active supervision over the Board's promulgation of Replacement Rule 31101 and DAL's ability to accept, modify, or veto all enforcements, prevent the Board from continuing the conduct alleged in the Complaint. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 92 (2013). As a result, the voluntary cessation exception to mootness does not apply. *See e.g.*, *Cty. of L.A. v. Davis*, 440 U.S. 625, 631-33 (1979) (indicating that voluntary cessation exception did not apply because there was "no reasonable expectation" that the defendants could use an "unvalidated (sic) civil service examination" and that there remained no "discriminatory effects to redress.").

The Opposition attempts to argue that the voluntary cessation exception to mootness should be applied because (1) LREAB's cited cases addressed voluntary cessation in non-antitrust contexts; (2) "Prior Rule 31101 and Replacement Rule 31101 are identical" and the

[20] *In re Texas Surgeons, P.A.*, (Analysis to Aid Public Comment May 18, 2000) slip op. *available at* https://www.ftc.gov/sites/default/files/documents/cases/2000/04/ftc.gov-texasana.htm.

Board's "enforcement activity will not change"; and (3) the Board is a state agency controlled by market participants. CC Opp. at 20-21. Their argument fails on all three counts.

First, antitrust claims are not uniquely exempt from the mootness doctrine, and do not automatically allow a plaintiff to rely on the voluntary cessation exception to continue a mooted case. *In re Reformulated Gasoline (RFG) Antitrust & Patent Litig.*, 2006 U.S. Dist. LEXIS 101252, at *9-10 (C.D. Cal. June 21, 2006) (finding plaintiff's Clayton Act claim was moot because the voluntary cessation exception to mootness could not be applied). Second, regardless of the Prior Rule 31101 and Replacement Rule 31101's identical language, LREAB cannot return to its "old ways." As indicated above, the State of Louisiana requires additional COA supervision when promulgating any C&R fee rule, and DAL review of all LREAB enforcement activity. Ex. 1 Sections 1-2. These mandatory supervision requirements thus render the Complaint moot. *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 981 (6th Cir. 2012) (case mooted due to a change to an ordinance that "constitutes an entirely new statutory scheme"); *see also Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1111 (10th Cir. 2010) (citation omitted) (mootness due to a "new regulatory framework."). Finally, while LREAB disputes that it ever has been controlled by active market participants,[21] the dispute is irrelevant to mootness. LREAB currently is actively supervised by the State of

[21] *See* Answer, Response to ¶¶6, 11, 25, 53; Affirmative Defense 3.

Louisiana, and all future promulgation and enforcement relating to the C&R fee must be actively supervised by the State.[22] As a result, the voluntary cessation exception does not apply.

## CONCLUSION

Wherefore, the Motion to Dismiss should be granted.

Date: December 13, 2017

Respectfully submitted,

*/s/ W. Stephen Cannon*
W. Stephen Cannon
Seth D. Greenstein
Richard O. Levine
James J. Kovacs
Kristen Ward Broz
**Constantine Cannon LLP**
1001 Pennsylvania Ave. NW, Ste. 1300N
Washington, DC 20004
Phone: 202-204-3500
scannon@constantinecannon.com

*Counsel for Respondent,*
*Louisiana Real Estate Appraisers Board*

[22] Any contentions regarding the SLU Survey are entirely irrelevant because the Board will no longer "use the SLU Survey for any purpose." MTD at 24 and Ex. 10.

# EXHIBIT 15

**PUBLIC**

# State of Louisiana
## LOUISIANA REAL ESTATE APPRAISERS BOARD

JOHN BEL EDWARDS
GOVERNOR

Mr. Rick McGimsey, Executive Council
State of La. Division of Administration
1201 N. Third Street
Baton Rouge, La. 70802

July 26, 2017

Rick,

Pursuant to Governor Edwards' Executive Order and our commitment to protect the public interest through fair and consistent AMC regulation, the enclosed includes a brief narrative of what the Board is trying to accomplish and why this effort is being made. For background, a summary of federal mandates dating to 1989, and our Legislative and Board actions in response to same is provided. We have proactively interacted with the legislative fiscal office regarding re-adoption of the rule, and since the identical language is proposed, no additional fiscal impact is reported. The Louisiana Register has pre-approved the necessary language for advertising pursuant to APA requirements also included.

While the chronology and issues regarding the initial promulgation of Rule 31101 may not all be relevant, the entire record of our 2012-2013 effort are also attached for your reference in the event needed for your substantive review. Since we have requested a 120 day stay in the FTC proceedings to allow time to promulgate the new rule under our APA, we respectfully request consideration and approval of this re-adoption by Friday, August 4th. We must have all documentation and information formally submitted to the Louisiana Register by their August 10th deadline to be included in their August 20th publication. As you know, additional oversight by the legislature and the executive branch is provided by the APA and is in no way diminished by your additional oversight.

Thanks again for all past courtesies. We stand ready to answer any questions you or your staff may have that would expedite review of this matter.

Respectfully submitted,

**Bruce Unangst**
Executive Director
Louisiana Real Estate Appraisers Board

POST OFFICE BOX 14785 BATON ROUGE, LA 70898-4785
(225) 925-1923 1-800-821-4529 FAX (225) 925-4501
www.reab.state.la.us email: info@lrec.state.la.us

**RULE 31101 HAS BEEN A KEY CONSUMER PROTECTION COMPONENT TO AMC REGULATION**

**BACKGROUND:**

As detailed in Exhibit "A" and "B" in this submittal, the framers of the independence provisions of Dodd Frank and subsequent federal rulemaking recognized that the new federal mandates placed appraisal management companies in a position of dominance in the selection of appraisers to complete valuations for the residential mortgage market. During the period of 2012-2013 in which AMC's were virtually unregulated regarding the payment of customary and reasonable fees, negative systemic abusive practices impacting Louisiana consumers and other stakeholders were proliferating. Despite federal rules requiring appraiser selection be based foremost on the quality and experience of the fee appraiser, a common practice developed of certain AMC's engaging appraisers based strictly on price without regard to geographic competency, prior track record, or scope of work. This resulted in the delay or "blow up" of real estate transactions dependent on accurate and timely valuations.

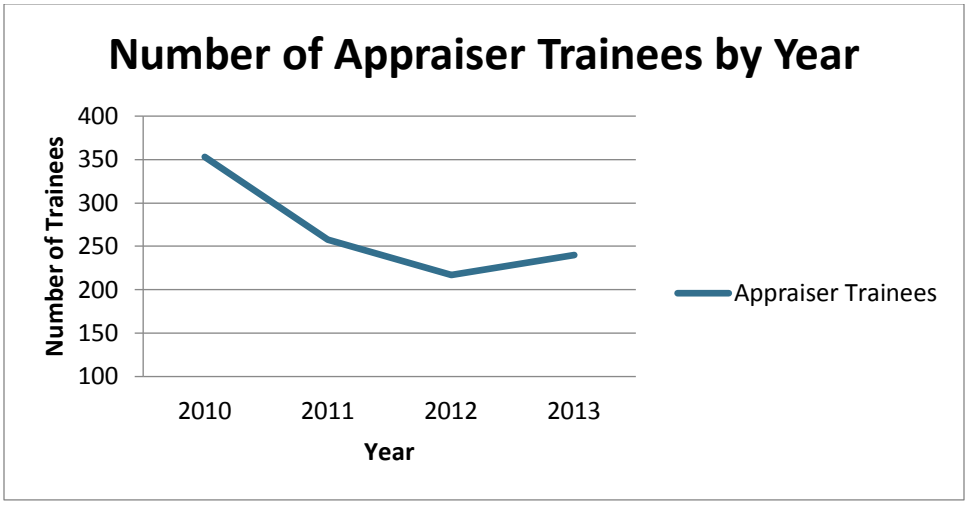
**REGULATING C & R FEE PROVISIONS OF DODD FRANK IS A CONSUMER PROTECTION ISSUE:**

To protect the integrity of the appraisal and mortgage industry, Congress through enactment of Dodd Frank and rulemaking by six (6) different federal agencies, reinforced total separation of consumers and lender loan production efforts from the selection of appraisers for valuations supporting mortgage loans. While required to pay for an appraisal up front in almost all residential mortgage applications, the consumer has no choice in the review and selection of a qualified appraiser for his/her application. Per federal law and our own statutes, the LREAB is charged with protecting consumer interest in this process by making certain that the AMC select appraisers for each assignment from a pool of qualified and experienced appraisers who possess the requisite geographic competence in the specific market of the property being appraised. Absent requirements to do so defeats this key consumer protection.

**UNREGULATED C & R FEE PROVISIONS WAS RAPIDLY LEADING TO APPRAISER SHORTAGE:**

During the period of 2010-2013 and prior to promulgation of Rule 31101, the number of new appraiser trainees entering the pipeline to become certified residential appraisers declined at an alarming rate. The exponential growth of the power and market dominance of AMC's, unrealistic demands on appraisers regarding turn times, scope of work, and fee compression resulted in the precipitous decline as depicted in the chart below. Of the 136 AMC's licensed in Louisiana, only five (5) small entities are based in Louisiana. Approximately twenty (20) of the largest out of state AMC's have banded together as members of the trade organization REEVA who boast of controlling over 60% of all residential appraisals nationwide. Unlike New York Los Angeles, or other major urban centers, Louisiana is comprised of small cities, towns, and rural areas. In many Louisiana markets, there may be only 1-3 geographically competent appraisers for a given assignment. While it is easy to say that these appraisers could simply refuse

unrealistic AMC demands, few of these appraisers would survive if blacklisted or removed from AMC consideration. Many of the most qualified and experienced appraisers did choose to decline AMC assignments based on unrealistic demands, leaving a pool of less qualified and less experienced appraisers to complete assignments. The potential of the looming appraiser shortage resulted in the Louisiana Bankers Association convening a summit including the Realtors Association, Homebuilders Association, Appraisal Institute, Appraiser Coalition, and the LREAB to craft solutions, which included enforcement of Rule 31101.




**PRACTICAL EFFECT OF THE APPLICATION OF RULE 31101 SINCE NOVEMBER 2013:**

The promulgation and enforcement of Rule 31101 that became effective in November 2013 has resulted in unquestioned success in stabilizing the integrity of the Louisiana appraisal and mortgage industry. While authorized by both federal and state law to "set" appraiser fees, the LREAB has chosen not to set fees, but to track federal language and provide different ways an AMC may establish their own customary and reasonable fee and enjoy a "presumption of compliance".

- An AMC may elect to utilize an existing government study or schedule such as that produced and updated by the federal Department of Veterans Affairs.
- An AMC may elect to use an alternate academic or independent third-party study such as the independent study developed and updated by Southeastern Louisiana University.
- An AMC may evaluate the six (6) factors relating to the experience and qualifications of the appraiser specified in federal rules and tracked in Rule 31101. They then would establish a fee based on the most recent compensation for similar assignments in the geographic market.

The above has provided clarity to all stakeholders and allowed each AMC options as to how they wish to establish their own C & R fee without the LREAB mandating any set fee. A comparison of appraisal fees paid noted in the 2014 Southeastern Louisiana University study and the most recent 2016 update demonstrates no appreciable increase in lender fees collected from consumers and paid by lenders. Administration and enforcement of Rule 31101 has established a level playing field where AMC's can now compete for qualified appraisers to complete quality assignments at a reasonable cost in a timely manner.

**LREAB INCORPORATED INPUT FROM ALL STAKEHOLDERS IN RULE 31101 PROMULGATION:**

Attachments included within this submittal document the chronology and substance of final promulgation of Rule 31101 as follows:

- Following months of deliberation and discussion by the LREAB, an initial proposed rule was advertised in the Louisiana Register on November 20, 2012 in accordance with our APA. See Attachment (C)
- A few written comments were received pursuant to this public comment period from a handful of large out of state AMC's and their trade organization REEVA. See Attachment (D)
- Following review of comments received, several of their comments were found to have merit and resulted in a Notice of Intent published in the Louisiana Register on February 20, 2013 alerting all stakeholders of proposed changes to the initial proposed rule. See Attachment (E)
- Additional stakeholder comments were then received from primarily the same entities in opposition to segments of the initial proposed rule. Attachment (F)
- Following review of these additional comments and further modification of the proposed rule, a Notice of Intent was published in the Louisiana Register on June 20, 2013 that an additional substantive change public hearing was scheduled for July 22, 2013. See Attachment (G)
- We have no record of further objections based on the 07/22/2013 final substantive change hearing and all revisions. The Final Notice of Promulgation of Rule 31101 was published on November 20, 2013. See Attachment (H)

The record summarized above clearly demonstrates the extraordinary efforts of the LREAB in minimizing or eliminating any undo regulatory burden on our AMC's while fulfilling the primary mission and mandate of protecting the public interest. The remaining issue of contention at that time was their contention that the LREAB lacked authority to regulate the customary and reasonable fee provisions of Dodd Frank per language within TILA section 129. The LREAB disagreed with this interpretation and the issue was finally clarified in the Final Federal Rules promulgated by the federal Consumer Financial Protection Bureau in 2015. The CFPB ruled that not only do state boards have the authority to regulate the C & R provision of Dodd Frank, but "MUST" have laws, rules, and enforcement mechanisms in place or face penalties from the Appraisal Subcommittee. In fact, the federal Appraisal Subcommittee is finalizing rules to now

punish any state board that does not have adequate rules and enforcement mechanisms in place.

**TRACK RECORD OF SUCCESS WITH NO UNINTENDED CONSEQUENCE:**

In 2013, Louisiana led the nation in providing for fair regulation of the federally mandated C & R fee provisions through promulgation of Rule 31101. Since we are proposing re-adoption of the identical language, our consumers and stakeholders will retain stability and equity in the appraisal and mortgage industry with no confusion or market disruption. Apart from a handful of "bad actors", the vast majority of Louisiana licensed AMC's, our mortgage & banking groups, rank and file appraisers, and other stakeholders applaud the efforts of the LREAB to bring stability and quality to the industry.

**LANGUAGE IN RULE 31101 SUPPORTED BY ALL LOUISIANA STAKEHOLDERS:**

From the original year-long study and promulgation effort in 2012-2013 through the administration and enforcement of Rule 31101 in 2017, all known Louisiana stakeholder groups have been fully supportive of LREAB efforts. While we have received a few appraiser complaints that the Board did not go far enough in regulating C & R provisions, the LREAB has earned wide support from diverse state and national groups including:

- Louisiana Realtors Association
- Louisiana Bankers Association
- Louisiana Homebuilders Association
- Louisiana Appraisal Institute
- Louisiana Property Coalition (Appraisers)
- National Appraisal Institute
- National Association of Appraiser Regulatory Officials

The LREAB is unaware of any substantive or organized opposition to the language in Rule 31101 apart from out of state REEVA members whose self-interest is in an unregulated environment. Governor Edwards' recent AMC appointee to the LREAB, Robert McKinnon (eAppraisal Network), is also in full support of the proposed re-adoption or Rule 31101.

## Attachment A – Federal and State Regulatory Framework

### THE FEDERAL AND STATE STATUTORY AND REGULATOY FRAMEWORK GOVERNING THE LOUISIANA REAL ESTATE APPRAISERS BOARD'S SUPERVISION OF THE CUSTOMARY AND REASONABLE FEE MANDATES

### I. THE DODD-FRANK ACT MANDATES STATE SUPERVISION OF THE FEES PAID TO APPRAISERS IN ORDER TO PROTECT THE FEDERAL INTEREST IN THE INTEGRITY OF THE APPRAISAL PROCESS.

Pursuant to Dodd Frank and subsequent federal rules, specific mandates required Louisiana to replace the free market in the determination of fees paid by Appraisal Management Companies ("AMCs") to appraisers through the customary and reasonable fee requirement. In turn, the purpose of the customary and reasonable fee requirement is to protect the public policy interests of the federal government in a sound mortgage marketplace, the lack of which would injure the public and put federally supervised financial institutions at risk.

#### A. The LREAB was Established in Response to the System of Federally Supervised Appraisal Licensing and Certification Agencies Created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Federal interventions in the state appraisal market have been the result of financial crises that implicated the mortgage lending procedures of federally insured financial institutions and their affiliates. The first such scandal of recent times was the savings and loan crisis of the 1980's which resulted in a bailout of such institutions. Congress's "never again" response was to adopt the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") which established a comprehensive federal oversight system of the state licensing and certification of appraisers. As set out in the Congressional statement of purposes of FIRREA Title XI, Real Estate Appraisal Reform:

> The purpose of this title 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[2] 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.

FIRREA section 1101, 12 USC § 3331.

To fulfill this purpose, Title XI created the Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council, which was charged with the oversight of state appraisal licensing agencies. In particular, the ASC was required to conduct periodic examinations of state agencies to assure compliance and enforcement of requirements related to appraiser qualifications that were compliant with dictates of the federal Appraisal Standards Board, and appraisal compliance with its Uniform Standards of Professional Appraisal Practice.

While state establishment of state appraiser agencies was nominally voluntary, the failure

of a state to establish a conforming appraiser licensing body would mean that, after December 31, 1992, there would have been no appraisers within the state who could conduct appraisals for federally related mortgage transactions. *See* FIRREA section 1191(a)(1), 1112 U.S.C. § 3348(a)(1).

Anticipating FIRREA's eventual enactment, in 1987 the Louisiana Legislature passed the Louisiana Real Estate Appraisers Law, which established the LREAB. In turn, the LREAB qualified as a state appraisal agency under FIRREA and has been the subject of ongoing evaluation and monitoring by the Appraisal Subcommittee (ASC) since the 1990's. Indeed, the LREAB's website states that "[t]he general purpose of the law was to bring the state into compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989." *See* http://www.reab.state.la.us/history.html.

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[2] Federally-related transactions include those that involve mortgage lending by a federally-regulated financial institution or its affiliates. *See* FIRREA section 1121(4), 12 U.S.C. § 3350(4).

### B. The AMC Provisions of the Dodd-Frank Act Reflected Congressional Concerns About Growth of AMCs Under the 2008 Home Valuation Conduct Code.

The appraiser independence and AMC supervision provisions of the Dodd-Frank Act had their roots in the next housing crisis, characterized, in part, by the use of appraisals that were manipulated to meet the desires of lenders for high home valuations. This time the "never again" Congressional response was initially incorporated in Title VI, Appraisal Activities, of the Mortgage Reform and Anti-Predatory Lending Act, H.R. 1728, which passed the House in May 2009. According to the House Financial Services Committee Report, the need for federal oversight of AMCs was an outgrowth of their increased use of AMCs as a result of the "Home Valuation Code of Conduct," ("HVCC"). The HVCC was an enforceable settlement of litigation between federal housing agencies and then NY Attorney General Andrew Cuomo, first announced in March 2008 and finalized later that year. The HVCC promoted, inter alia, separation of a lender's lending function and the appraisal function to avoid inappropriate influence over the appraisal process. However, according to the Report:

> In response to the implementation of the Home Valuation Code of Conduct, concerns about the oversight of the operations of appraisal management companies (AMCs) have also grown. Generally, AMCs are external third-party entities that manage the appraisal process for a mortgage originator. According to some estimates, AMCs are now involved in more than 60 percent of appraisals, and their market share is expected to grow as the Home Valuation Code of Conduct is implemented and mortgage originators seek outside parties to comply with the agreement's appraisal independence stipulations.
>
> AMCs, however, are subject to little direct oversight. Only in recent months have three States—Utah, Arkansas, and New Mexico—adopted laws requiring their registration and supervision. The ASC also currently has no explicit statutory authority with respect to AMCs. …
>
> In response to the growth of and concerns about AMCs, subsection (f) creates a State-by-State system for registering and supervising AMCs, with oversight of the States conducted by the ASC, and it generally requires the system to be in place within 3 years of enactment. The subsection provides for the establishment of minimum standards to be applied in the registration of AMCs. … The amendment additionally puts in place a parallel Federal system of oversight for an AMC that operates as a subsidiary of a financial institution overseen by a Federal banking regulator.

H. Rept. 111-94 at 59-60, 97.

The Report also noted that one witness had warned that "the growth of AMC's might lead to a decline in appraisal quality," but regulators had insufficient information on the point. According to a representative of the Appraisal Institute:

> "With many AMCs taking as much as 60 percent of the fee as their 'management' cost, many highly qualified appraisers are reluctant to perform mortgage appraisals for such entities." Because all appraisal fees are disclosed in a single line on closing documents, consumers and regulators currently lack the information needed to determine whether the growth of AMCs has led to low- cost, lower-quality appraisals.

### C. Dodd-Frank Established a Framework for State Appraisal Agencies to Regulate AMCs, Including the Customary and Reasonable Fee Requirements of the Truth in Lending Act.

When Dodd-Frank emerged from Conference Committee, H.R. 1728 had become Dodd-Frank Act Title XIV, and its Title VI, Appraisal Activities, had become Subtitle F. The two key sections relevant are section 1473, which amended the FIRREA to establish the minimum requirements for state regulation of AMCs and section 1472, which amended TILA section 129E.

As amended by Dodd-Frank section 1473, FIRREA section 1117, 12 USC § 3346, which sets out the goals of state appraisal licensing agencies, was expanded to include state regulation of AMC's:

> To assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State may establish a State appraiser certifying and licensing agency. *The duties of such agency may additionally include the registration and supervision of appraisal management companies and the addition of information about the appraisal management company to the national registry,*

In turn, under amended section 1118(a), 12 U.S.C. § 3346(a), the scope of the ASC's monitoring of state appraisal agencies was expanded to include ASC monitoring of states' AMC registration and supervision activities. That section further specified:

> The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analysis of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, *the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions*

> *against appraisers and appraisal management companies*. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency." (emphasis added).

Next, Dodd Frank section 1473(f)(2) added FIRREA section 1124 (12 USC § 3353), subsection (a) of which requires the federal financial regulatory agencies to establish "minimum requirements to be established by a state in the registration of appraisal management companies." Section 1124(a) requires that AMC oversight was to be conducted by a state's appraisal licensing agency, such as the LREAB. The state requirements were to "require that appraisals are conducted independently and free from inappropriate influence and coercion under the appraisal independence standard established under section 129E" of TILA. Section 1124(b) further notes, "[n]othing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a)."

On April 9, 2014, the federal financial agencies proposed regulations implementing Dodd-Frank minimum requirements to be applied to state agencies, 79 F.R. 19521. In so doing, the agencies noted that the minimum requirements were consistent with the monitoring requirements imposed on the ASC in their supervision of state AMC registration programs:

> For example, the ASC will monitor whether States have supervision systems in place that would allow a State to process complaints against an AMC and conduct investigations in connection with those complaints. The ASC will also monitor whether a State takes appropriate enforcement actions against an AMC that is found to have violated applicable laws and regulations.

79 F.R. at 19527.

Crucially, subsection 1124(f)(1) provides that "[n]o appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date on which the regulations required to be prescribed under subsection (a) are prescribed in final form unless such company is registered with such State or subject to oversight by a Federal financial institutions regulatory agency." (AMCs are subject to federal, rather than state, oversight if they are affiliates of federally supervised financial institutions.) Because the minimum requirements regulations became effective on August 10, 2015, this prohibition will take effect on August 10, 2018.

This effective death sentence for non-bank AMC's did not go unnoticed. In commenting on the proposed regulations, a key AMC trade association, the Real Estate Valuation Advocacy Association ("REVAA") , raised its fear that state agencies would stop regulating non-bank AMCs, leading to their exclusion from doing business in the state. REVAA also articulated the opposite concern, a fear that states would regulate too much by enforcing TILA requirements, which AMCs would prefer to see left to federal regulators.[3] As put in REVAA's June 9, 2014 letter:

> First, the Appraisal Subcommittee ("ASC") should serve as a federal regulatory backstop to register AMCs if a state states declines to adopt conforming

> regulations. The proposed rule fails to address the adverse consequences for consumers that will result if a state fails to adopt conforming regulations. AMCs would be barred from providing appraisal related services in such a state. The apparent assumption in the proposal is that all states will adopt required regulations and that no state with such regulations in place before the effective date of the final rule will repeal them. We believe this to be ill-considered, particularly if distinctions between AMCs and appraisal firms are not effectively addressed by the Agencies. By authorizing the ASC to serve as a backstop, consumers, home buyers, and lenders would not face a lack of competition and choice among entities performing appraisal related functions and be left with fewer choices for services. Consumer choice should be a driving factor in this proposal.
>
> Second, the proposed rule should not permit state appraiser certifying agencies to directly investigate, interpret and enforce the federal independence standards of the Truth in Lending Act and Regulation Z ("TILA"). Section 1124 of FIRREA does not mandate such authority, but obligates AMCs to require that appraisals are performed in compliance with the TILA appraisal independence standards. In addition, state regulatory enforcement of a federal banking law would undermine the authority of the CFPB to pre-empt such regulations that would interfere with the power the CFPB has to establish a single national standard in these areas.

Nevertheless, the proposed minimum requirements were adopted without change in the Final Rules, published on June 9, 2015. *See* 80 F.R. 32658, 32667-68. As set out at 12 C.F.R § 34.213[4]:

> Each State electing to register AMCs pursuant to paragraph (b)(1) of this section *must*:
>
> (a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 34.214 and with the legal authority and mechanisms to:
>
> (1) Review and approve or deny an AMC's application for initial registration;

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[3] The comments received by the financial agencies in this rulemaking can be found at regulations.gov under RIN 1557-AD64.

[4] The Office of the Comptroller of the Currency's regulations are the primary version of the rules and cross-referenced by the Consumer Financial Protection Bureau's TILA appraisal independence regulations, 12 C.F.R. § 1026.42(h).

(2) Review and renew or review and deny an AMC's registration periodically;

*(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;*

(4) Verify that the appraisers on the AMC's appraiser panel hold valid State certifications or licenses, as applicable;

*(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;*

*(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and*

(7) 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 Appraisal Subcommittee.

(b) 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:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency; …

(5) 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 section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder. (emphasis added).

Indeed, the financial agencies affirmed the proposed regulatory language and expressly rejected the AMCs' argument that the ASC could provide a fallback regulation in case of a state's failure to do so. They also rejected the premise that the financial agencies could prohibit an appraisal agency from enforcing the relevant provisions of TILA section 129E. *See* 80 F.R. at 32669, 32670.

### D. The Dodd-Frank Act Required AMCs to Compensate Appraisers at Customary and Reasonable Fees to Protect the Integrity of the Appraisal Process, not to Ensure That Transaction-Specific Appraisal Fees Were the Result of Competition Among Appraisers for That Engagement.

Dodd-Frank section 1472 added a new section 129E to TILA (15 U.S.C. § 1639e), Appraiser Independence Requirements. Subsection (i) set out the customary and reasonable fee requirement:

**(1) In general**

> Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies…
>
> **(3) Exception for complex assignments**
>
> In the case of an appraisal involving a complex assignment, the customary and reasonable fee may reflect the increased time, difficulty, and scope of the work required for such an appraisal and include an amount over and above the customary and reasonable fee for non-complex assignments.

The statutory exclusion of assignments ordered by AMCs from the third party studies indicated a presumption that direct lender-appraiser compensation was the best evidence of customary and reasonable fees and that subsection (i)(3) sought to ensure that customary and reasonable fees for complex assignments could include amounts "over and above" fees for non-complex assignments.

Subsection (g) authorized the federal financial regulatory agencies to promulgate regulations with respect to acts or practices that violate appraiser independence with respect to mortgage transactions that were consumer credit transactions secured by the principal dwelling of the consumer. The Federal Reserve Board ("FRB"), on behalf of all the federal agencies, was to issue interim final regulations no later than 90 days after enactment of this section.[5]

The FRB issued its Interim Final Rules on October 28, 2010, 75 F.R. 66554. Summarizing comments received, the FRB noted disagreement between appraiser and AMC commenters on the nature of consumer harm from the application of the customary and reasonable fee requirement as well as the ability to apply this requirement in the near term:

> According to some, appraisers willing to work for AMCs are often inexperienced in general or in the relevant geographic area *and produce poor quality appraisals, undermining consumers' well-being and creditors' safety and soundness.*
>
> On the other hand, representatives of AMCs expressed concerns that, depending on how the term "customary and reasonable" rate is interpreted, requiring AMCs to compensate fee appraisers at a rate that is customary and reasonable *may force them to raise overall costs charged to creditors—and ultimately to consumers—for appraisals ordered through AMCs.* …

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[5] Subsection 129E(j) provides that "[e]ffective on the date the interim final regulations are promulgated pursuant to subsection (g), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect."

> AMC representatives also *raised concerns that appropriate appraisal fee studies do not exist and argued that the costs of performing the appraisal itself and the various management functions associated with each appraisal can vary by transaction, complicating the process of determining a generally applicable customary and reasonable rate.* These parties argued that an interim final rule implementing TILA Section 129E's "customary and reasonable" rate provision is premature because *greater study of the issue is required to avoid a rule that will create undue compliance challenges and litigation risk.*

75 F.R. at 66570 (emphasis added).

The Interim Final Rules came down on the side of protecting the public policy interest in the integrity of federally-related real estate transactions by adopting rules governing the customary and reasonable fee provision that established requirements for demonstrating compliance that could involve recordkeeping and documentation of an AMCs transaction- specific pricing decisions. Moreover, the rules were concerned with—and anticipated—potential antitrust violations by AMCs that would void "safe harbors" for compliance with the reasonable and customary requirement.

Crucially, while the FRB's explanatory statement found a Congressional intent that the primary determinant of the reasonable and customary rate for a particular type of appraisal and geography be "the marketplace," 75 F.R. at 66569, the adopted rules recognized that the mere fact that an appraiser and an AMC agreed to the fee was not determinative of the whether a transaction-specific fee was customary and reasonable. Indeed, the transaction price could be *below* what would be customary and reasonable:

> In the Board's view, a fee appraiser's agreement that a fee is "customary and reasonable" is insufficient to establish that the fee meets the statutory "customary and reasonable" standard. Objective factors or information such as that set forth in § 226.42(f)(2) and (f)(3) (discussed below) generally should support the creditor's or agent's determination of the appropriate amount of compensation to pay a fee appraiser for a particular appraisal assignment. *In theory, the fact that an appraiser is willing to accept a particular fee for an appraisal assignment may bear on whether the fee is customary, reasonable, or both. However, an appraiser may be willing to accept a low fee because the appraiser is new to the industry and wishes to establish herself, or simply because the appraiser needs any work he can obtain in a slow housing market*. In addition, the Board understands that some AMCs have begun requiring fee appraisers to agree that the fee is "customary and reasonable" as a condition of obtaining the appraisal assignment. In these situations, the Board believes that *an appraiser's agreement that a fee is "customary and reasonable" is an unreliable measure of whether the fee in fact meets the statutory standard.*

75 F.R. at 66751 (emphasis added). Rather, the FRB established two optional safe harbors of presumptive compliance. Failure by an AMC to use either of these safe harbors neither proves, nor disproves compliance. Rather it requires that compliance with the customary and reasonable

requirement be determined "based on all the facts and circumstances without a presumption of either compliance or non-compliance." Official Comment 42(f)(2) at 75 F.R at 65586.

**First safe harbor.** As set out in § 236.42(f)(6) (now § 1026.42(f)(6) after recodification by the CFPB), a creditor and its AMC shall be presumed to be in compliance if:

> (i) The creditor or its agents compensate the fee appraiser in an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised. In determining this amount, a creditor shall review the factors below and make any adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable:
>
> (A) The type of property,
>
> (B) The scope of work,
>
> (C) The time in which the appraisal services are required to be performed,
>
> (D) Fee appraiser qualifications,
>
> (E) Fee appraiser experience and professional record, and
>
> (F) Fee appraiser work quality….

In the FRB's view, "customary" and "reasonable" have differing definitions that are to be evaluated separately in making this determination:

> The first presumption of compliance … reflects the Board's interpretation of the statutory requirement that fees paid to fee appraisers be "customary": to be "customary," the fee must be reasonably related to recent rates for appraisal services in the relevant geographic market. This first presumption of compliance also reflects the Board's interpretation of the statutory requirement that the fee be "reasonable": to be "reasonable," the fee should be adjusted as necessary to account for factors in addition to geographic market that affect the level of compensation appropriate in a given transaction, such as the type of property and the scope of work.

75 F.R. at 66569.

Demonstrating compliance with these considerations reflects the need to ensure that the fees paid reflect factors affecting the integrity of the appraisal process. On one hand, "the Board recognizes that each of these factors may not in all transactions determine the quality of an appraisal and the value of appraisal services. For example, an appraiser with 20 years of experience appraising properties may not necessarily provide a higher quality appraisal than an appraiser with five years of experience." 75 F.R. at 66572. On the other: "In the Board's view,

a fee for appraisal services may reasonably be higher when the fee appraiser has been state-licensed or state-certified for 15 years and has been appraising properties in the relevant geographic area during all that time than when the fee appraiser is more recently licensed and has appraised properties in that area for only six months." *Id.* at 66573. Consequently, to carry out its express enforcement obligations under the final FIRREA regulation, an appraisal agency, such as the LREAB, would need to require AMCs to maintain sufficient records to assess an application of these varying considerations and to inspect those records to assess compliance.

Finally, demonstrating the FRB's concern for anticompetitive acts by AMCs, the Interim Rules state that an AMC would not qualify for use of this presumption if it engages in:

> any anticompetitive acts in violation of state or federal law that affect the compensation paid to fee appraisers, including—
>
> (A) Entering into any contracts or engaging in any conspiracies to restrain trade through methods such as price fixing or market allocation, as prohibited under section 1 of the Sherman Antitrust Act, 15 U.S.C. 1, or any other relevant antitrust laws; or
>
> (B) Engaging in any acts of monopolization such as restricting any person from entering the relevant geographic market or causing any person to leave the relevant geographic market, as prohibited under section 2 of the Sherman Antitrust Act, 15 U.S.C. 2, or any other relevant antitrust laws.

§ 226.42(f)(2)(ii), (ii). Specifically, the FRB was concerned that AMCs might collude to keep appraiser compensation low: "For example, if appraisal management company A and appraisal management company B agreed to compensate fee appraisers at no more than a specific rate or range of rates, neither appraisal management company would qualify for the presumption of compliance." Official Comment 42(f)(2)(ii), 75 F.R. at 66586.

**Second safe harbor.** The Interim Final Rules also adopted an "alternative presumption of compliance," that incorporated the use of independent studies, as had been expressly set out in the Dodd-Frank Act. A lender and an AMC:

> [S]hall be presumed to comply with paragraph (f)(1) if the creditor or its agents determine the amount of compensation paid to the fee appraiser by relying on information about rates that:
>
> (i) Is based on objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms;
>
> (ii) Is based on recent rates paid to a representative sample of providers of appraisal services in the geographic market of the property being appraised or the fee schedules of those providers; and

> (iii) In the case of information based on fee schedules, studies, and surveys, such fee schedules, studies, or surveys, or the information derived therefrom, excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies….

§ 226.42(f)(3).

However, the FRB did not provide further guidance on the studies that could be utilized and asked for comment on these issues:

> In discussions with Board staff, concerned parties argued that existing appraisal fee schedules, surveys and studies have various flaws and thus may not be reliable indicators of customary and reasonable rates for appraisals in all home-secured consumer credit transactions. In preparing this interim final rule, the Board did not identify appraisal fee schedules, surveys or studies that would be appropriate to designate as a "safe harbor" for creditors and their agents to comply with § 226.42(f)(1). The Board solicits comment on whether and on what basis the final rule should give creditors or their agents a safe harbor for relying on a fee study or similar source of compiled appraisal fee information. The Board also requests comment on what additional guidance may be needed regarding third- party rate information on which a creditor and its agents may appropriately rely to qualify for the presumption of compliance.

To date, the Interim Final Rules have not been updated, but merely recodified by the CFPB, unchanged as to substance, from 12 C.F.R. Title II, Part 226 to 12 C.F.R. Title X, Part 1026. *See* 76 F.R. 79768. In effect, the Interim Final Rules left it up to enforcement agencies, such as state appraisal agencies, to refine the parameters of studies that would be acceptable to meet this alternative presumption. Thus, state agencies are left to make reasonable interpretations of the second safe harbor to be consistent with these regulations.

## II. THE PROMULGATION OF THE LREAB'S CUSTOMARY AND REASONABLE RULE WAS IN ACCORDANCE WITH DODD-FRANK MANDATES AND RESPONSIVE TO LOUISIANA LAW AND TO AMC CONCERNS.

Louisiana's passage and amending of the Appraisal Management Company Licensing and Regulation Act and the subsequent promulgation of Louisiana Administrative Code Title 46, § 31101 (hereinafter "C&R rule") by the LREAB is a direct response to the federal government's mandate that states choosing to register and license AMCs were required to create and enforce price supervision rules that would regulate the customary and reasonable fees paid by AMCs to appraisers within the state. Under this mandate, Louisiana, tracking the rules and guidance of the federal government, passed laws empowering the LREAB to not only promulgate the C&R rule, but also to create effective procedural and enforcement mechanisms, prescribed by federal agencies, to ensure compliance with the C&R rule.

### A. The Dodd-Frank Act Effectively Mandates That the Louisiana Legislature Empower the LREAB to Supervise AMC Payment to Appraisers.

As part of the growing national trend,[6] in 2009 Louisiana passed the Louisiana Appraisal Management Company Licensing and Regulation Act ("AMC Act"), La. R.S. 37:3415. FTC-LAB-00000007. Pertinent to this investigation, the 2009 AMC Act required (1) that AMCs obtain a license in the state of Louisiana; (2) empowered the Board to adjudicate complaints by appraisers against AMCs; (3) granted the Board enforcement authority over AMCs for "committing any act in violation of this Chapter" including the ability to revoke an AMC license or levee a civil monetary penalty; and (4) granted the Board "the power to adopt any rules and regulations in accordance with the Administrative Procedure Act necessary for the enforcement of this Chapter." *See* La. R.S. §§ 37:3415.3, 3415.18, 3415.19, 3415.21. Nowhere in the 2009 Louisiana AMC Act did the law authorize the regulation or enforcement of customary and reasonable payment of appraiser's fees..

However, in 2010, Congress passed Dodd-Frank. As detailed above, Dodd-Frank created numerous, mandatory requirements for states that *choose to register and license* AMCs within their state. *Since Louisiana had already passed the AMC Act in 2009, and thus had elected to license and supervise AMCs, it was obligated to follow Dodd-Frank's mandates.* Specifically, Dodd-Frank amended both FIRREA and TILA Section 129E. The amended FIRREA sections mandated *minimum* requirements be established to regulate AMCs, and the amended TILA Section 129E, 15 U.S.C. § 1639e, *required* appraisal services be paid at a customary and reasonable rate.

In response, and pursuant to Act 429 of the 2012 Regular Session of the Louisiana Legislature, Louisiana amended the AMC Act to comply with federal law. Specifically, La. R.S. §3415.15(A) was added requiring that "an appraisal management company shall compensate appraisers at a rate that is *customary and reasonable* for appraisals being performed in the market area of the property being appraised, consistent with the requirements under federal law." (emphasis added).

To eliminate any confusion and to comport with numerous final federal rules, in 2016, Louisiana amended La. R.S. §3415.15(A) to read as follows: "an appraisal management company shall compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the requirements of 15 U.S.C. 1639(e) and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222." FTC-LAB-00037322. According to the legislative history, the changes to §3415.15(A) were for clarification purposes. ("Proposed law *retains present law* consistent with the final federal rules…") (emphasis added). As a result, the amended AMC Act removes any potential confusion regarding the "requirements of federal law" and tracks the *specific federal mandates* and requirements of AMC regulation by the states.

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[6] As previously noted, in the May 4, 2009 House Financial Services Committee Report (H. Rept. 111-94), identified a growing trend by states to regulate AMCs. *See* page 3 citing AMC laws passed in Utah, Arkansas, and New Mexico.

### B. Promulgation of Section 31101 was Done in Accordance with Federal Mandates and State Law.

On January 1, 2011, under the authority of the 2009 AMC Act, the Board promulgated the initial AMC rules – Chapters 301 through 309. Along with a host of requirements on AMCs, the initial set of AMC rules granted the Board the ability to regulate, censure, and suspend or revoke licensure of AMCs through a variety of means. Nowhere in the 2011 initial rules does the Board address customary and reasonable fees.

However, in response to the 2012 Louisiana Legislature's amendments to the AMC Act, authorizing and requiring the Board to fulfill the Dodd-Frank mandates, the LREAB filed a November 20, 2012 "notice of intent" in the Louisiana Register to amend its AMC rules, which included the promulgation of Chapter 311, which contains §31101, the C&R rule. As set out in the initial notice, the purpose of these proposed rules was to "establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in *Act 429 of the 2012 Regular Session* and the requirements of the federal *Dodd-Frank Wall Street Reform and Consumer Protection Act*, and to further clarify investigative procedures." (emphasis added). As discussed above in Section I(C), the addition of 12 U.S.C. § 3353 required that the new compliance and enforcement procedures regulating AMCs be carried out by the "state's appraisal licensing agency." In Louisiana, that agency is the LREAB, which has been the subject of ongoing evaluation and monitoring by the ASC since the 1990's.

The evolution of §31101 through the Louisiana rule making process not only demonstrates the Board's effort to be consistent with the scope of the Dodd-Frank requirements, but also to be responsive to AMC concerns. The initial proposed C&R rule mandated that "[l]icensees *shall use* the elements found in the first or second presumption of compliance prescribed by Dodd-Frank Wall Street Reform and Consumer Protection Act, to determine the customary and reasonable rate of compensation for a fee appraiser in a specific geographic market." (emphasis added). The initial proposed rule sets out the presumptions of compliance with C&R, including reliance on the six factors as articulated in
§ 31101(A)(1) or reliance on objective information from an independent third-party as stated in § 31101(C). *Id.* Each of these presumptions tracks the FRB's October 28, 2010 Interim Final Rules. *See* Section I(D). In addition, the initial proposed rule gave the Board the ability to establish a compensation schedule.[7]

In accordance with Louisiana law, the LREAB invited interested parties to submit public comments on the proposed regulations. The Board received comments from AMCs CoreLogic and Rels Valuation, as well as from the REVAA. As a result of the concerns posed by the AMCs, on February 20, 2013, the LREAB retracted its previous notice of intent and published a *new* notice of intent in the Louisiana Registry to promulgate the C&R rule.

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[7] While the Board has the power to establish a fee schedule under §31101(A)(2), the Board has never adopted such a schedule.

The second proposed C&R rule contained a significant number of changes:

- Language in §31101(A) changed from "shall use" to "*may use* the element found in the presumptions of compliance prescribed by the Dodd-Frank Wall Street Reform and Consumer Protect Act, and as prescribed by R.S. 37:1515(A)." (emphasis added).
- It required that AMCs must "maintain written documentation" in order for the AMC to provide substantive details on its reliance on the six factors outlined in §31101(B)(1-6).
- The Board eliminated the 30-day pre-approval requirement for an AMC's use of a third-party fee schedule, and instead required the AMC only maintain "written documentation" of the third-party study.

After the second proposed rule, LREAB received additional comments from market participants, including AMCs. As indicated in the June 20, 2013 Louisiana Register, LREAB amended §31101 for a *second time* in response to the substantive comments:

> The Louisiana Real Estate Appraisers Board published a Notice of Intent in the Louisiana Register, on February 20, 2013, to amend Chapters 303, 305 and 309, and to promulgate Chapters 304 and 311. The notice invited interested parties to submit written comments. *After a thorough review and careful consideration of the received comments*, the board proposes to amend certain portions of the proposed rules:
>
> Amend Subsection 31101.A to provide for appraiser compensation at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised and to identify how the market area shall be identified.
>
> Amend Subsection 31101.A.1 to provide that evidence for fees may be established by third-party information and to provide for examples and exclusions thereof.
>
> Amend Subsection 31101.A.2 to allow the board, at its discretion, to establish a customary and reasonable rate of compensation for licensee use.
>
> Amend Subsection 31101.A to include A.3 to provide for factors that shall be considered to ensure that reasonable compensation is made, if an appraiser is compensated on any basis other than an established fee schedule…
>
> 31101.C [] is amended to provide how records relative to the methods, factors, variations, and differences used to determine customary and reasonable rate of compensation for each appraisal assignment shall be maintained.

> 31101.D [] is amended to provide for appraiser payment guidelines and exceptions thereto.

Additionally, due to these significant and substantive changes to the proposed rule, the Board gave notice of a July 22, 2013 public hearing "to receive additional comments and testimony on these substantive amendments to the proposed rule."

On July 22, 2013, the Board held the public hearing. Along with LREAB members, Robert L. Rieger of Adams and Reese, L.L.P offered testimony on behalf of the Real Estate Valuation Advocacy Association ("REVAA"), Dave Cherner offered testimony for the AMC Rels Valuation, and Kim Drake Loy for the AMC CoreLogic. Both AMCs are members of REVAA. Statements by those individuals at the hearing included:

- Mr. Dave Cherner, Page 12, Line 1-5, 15-17: "As all of you know, REVAA worked with the Board in 2012. Act 429 created new language that requires the AMCs to pay fee appraisers a customary and reasonable rate of compensation with the requirements under federal law… So the first point that I would like to make is that state law absolutely requires the AMCs to comply with the federal law, and that was our intent…"
- Mr. Dave Cherner, Page 34, Line 25 to Page 35, Line 9: "As the Board knows, Dodd-Frank in requiring states adopt licensing framework for appraisal management companies, federal banking regulators and the CFPB are supposed to promulgate minimum requirements for AMC registration. That is indeed where the FAIR coalition is primarily involved as well as other federal appraisal and compliance issues, and that is why we believed it was important to continue to submit comments on this ruling."
- Ms. Drake Loy, Page 37, Line 24 to Page 38, Line 7: "We are here because we are concerned with the proposed rules, but we are also here because we want to be a continuing partner with the Board to work on reasonable regulations that interpret and enforce the state's statutes. We do support the Board's effort to enforce those statutes and rules…"

On September 26, 2013, the Board submitted its findings to both the Speaker of the House and President of the Senate. In both letters, the LREAB indicated the purpose of the promulgation of the rule:

> The basis for the proposed rules is twofold. First and foremost, they are based on a mandate within the federal Dodd-Frank Act, wherein each state is authorized to register and regulate Appraisal Management Companies and to adopt rules and regulations that meet or exceed federal requirements. Additionally, they are intended to serve, in part, as an extension of the Louisiana Appraisal Management Company Licensing and Regulation Act (R.S 37:3415.1, et seq.).

*Id.*

On November 13, 2013, the Senate Commerce Committee elected not to hold a hearing on the proposed rule. *See* FTC-LAB-00003838. As a result, the proposed rule was deemed final, and pursuant to the Administrative Procedures Act, was published in the Louisiana Registry on November 20, 2013.

In sum, the LREAB's November 20, 2013 promulgated version of § 31101, as set out in Appendix A, fulfills the LREAB's mandate. First, under 12 C.F.R, § 24.2l3(a) to, *inter alia*:

> (3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents; …
>
> (5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;
>
> (6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders…

and, second, under 12 C.F.R, § 24.2l3(b) to:

> 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:
>
> … (5) 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 section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder.

Further, the promulgated version of § 31101 grants an AMC the ability to use presumptions of compliance set out in 12 C.F.R. 1026.42(f) in a manner consistent with those federal presumptions as required by amended La. R.S. §3415.15(A).

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**Appendix A:**

**Chapter 311. Compensation of Fee Appraisers**
**§31101. General Provisions; Customary and Reasonable Fees; Presumptions of Compliance**

A. Licensees shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised and as prescribed by R.S. 37:3415.15(A). For the purposes of this Chapter, market area shall be identified by zip code, parish, or metropolitan area.

1. Evidence for such fees may be established by objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by appraisal management companies.
2. The board, at its discretion, may establish a customary and reasonable rate of compensation schedule for use by any licensees electing to do so.
3. Licensees electing to compensate fee appraisers on any basis other than an established fee schedule as described in Paragraphs 1 or 2 above shall, at a minimum, review the factors listed in §31101.B.1-6 on each assignment made, and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

B. A licensee shall maintain written documentation that describes or substantiates all methods, factors, variations, and differences used to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. This documentation shall include, at a minimum, the following elements:

1. the type of property for each appraisal performed;
2. the scope of work for each appraisal performed;
3. the time in which the appraisal services are required to be performed;
4. fee appraiser qualifications;
5. fee appraiser experience and professional record; and
6. fee appraiser work quality.

C. Licensees shall maintain records of all methods, factors, variations, and differences used to determine the customary and reasonable rate of compensation paid for each appraisal assignment in the geographic market of the property being appraised, in accordance with Section §30501.C.

D. Except in the case of breach of contract or substandard performance of real estate appraisal activity, an appraisal management company shall make payment to an independent contractor appraiser for the completion of an appraisal or appraisal review assignment:

1. within 30 days after the appraiser provides the completed appraisal report to the appraisal management company.

**Attachment B – Louisiana Real Estate Appraiser Board Investigations**

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## CONTENTS



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II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on state or local governmental revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Pursuant to Act 185 of the 2012 Regular Legislative Session, the proposed administrative rule will likely have an indeterminable cost savings to the vendor because the vendor will be managing fewer bids/contracts with the Office of State Purchasing because the software or hardware purchase, necessary software configuration and even training associated with new hardware or software can be bid out with one RFP as opposed to three different RFPs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact upon competition and employment resulting from the proposed rule.

Denise Lea
Assistant Commissioner
1211#054

Evan Brasseaux
Staff Director
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor
### Real Estate Appraisers Board

Real Estate
(LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101)

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Appraisers Board has initiated procedures to amend Chapters 303, 305 and 309, and to promulgate Chapters 304 and 311. The purpose of the proposed action is to establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Session and the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, and to further clarify investigative procedures.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LXVII. Real Estate**
**Subpart 3. Appraisal Management Companies**
**Chapter 303. Forms and Applications**
**§30302. Surety Bond Required; Amount and Conditions; Filing**

A. Applicants for licensing as an appraisal management company shall submit proof of a surety bond in the amount of $20,000 with a surety company qualified to conduct business in Louisiana.

B. Bonds shall be in favor of the state of Louisiana and conditioned for the benefit of a claimant against the licensee for a violation of the AMC law and/or rules.

C. Bonds shall remain effective and in force throughout the license period of the appraisal management company.

D. Proof of surety bond renewal shall be provided to the board in conjunction with, and at the time of an AMC annual renewal of registration.

E. Failure to maintain a surety bond shall be cause for revocation or suspension of a license.

F. A licensee who elects to submit a cash deposit or security in lieu of a surety bond, as provided in R.S. 37:3515.3(D)(5), shall restore the cash deposit or security annually upon license renewal, if a claim has reduced the deposit amount or security below $20,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Chapter 304. Competency**
**§30401. Appraiser License Verification**

A. Prior to making an assignment to a real estate fee appraiser, licensees shall verify that the appraiser holds a license in good standing in this state pursuant to the Louisiana Real Estate Appraisers Law, R.S. 37:3391, et seq. Licensees may rely on the National Registry of the Appraiser Foundation for purposes of appraiser license verification, and shall obtain a written certification from the appraiser that he or she:

1. is competent in the property type of the assignment;
2. is competent in the geographical area of the assignment;
3. has access to appropriate data sources for the assignment;
4. will immediately notify the licensee in writing if the appraiser later determines that he or she is not qualified to complete the assignment; and
5. is aware that misrepresentation of competency is subject to the mandatory reporting requirement in the Uniform Standards of Professional Appraisal Practice (USPAP) 2012.

B. Subsequent to a completed appraisal being submitted to the assigning licensee, any request for additional information that may impact or alter the opinion of value stated therein shall be made by the certified appraiser completing the appraisal review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Chapter 305. Responsibilities and Duties**
**§30501. Record Keeping**

A. - A.4. …

B. In addition to the records that shall be maintained in Subpart A of this Section, licensees shall maintain a complete list of all real estate fee appraisers approved by the licensee to receive appraisal assignments. The list shall include, but is not limited to, the following information on each fee appraiser:

1. name, license status, and qualifications;
2. errors and omission insurance status, including the carrier, the policy number, the dollar limits of the coverage and the dates covered in the policy;
3. experience and professional record;
4. the areas in which each fee appraiser considers him/herself geographically competent broken down by parish and/or zip code;
5. the type of property;
6. the scope of work;

7. the time frame in which the appraisal services are required to be performed;

8. fee appraiser work quality;

9. the number and type of assignments completed per year; and

10. the fee or remuneration or monitory compensation for each report or assignment.

C. All records shall be kept properly indexed and readily available to the board for review upon request and without prior notice. Duly authorized representatives of the board shall be authorized to inspect such records at the offices of licensees between the hours of 9 a.m. and 4 p.m., Saturdays, Sundays, and legal holidays excluded, and to subpoena any of the said records.

D. All records specified in this Chapter shall be retained for a period of five years; however, records that are used in a judicial proceeding, in which the appraiser provided testimony related to the appraisal assignment, shall be retained for at least two years after disposition, whichever period expires last.

E. At any time that a document or information on file with the board becomes inaccurate or incomplete, the appraisal management company shall notify the board in writing within five days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 37:2407 (August 2011), amended LR 39:

## Chapter 309. Investigations; Disciplinary Authority; Enforcement and Hearing

### §30900. Investigations

A. The board may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of a licensee or certificate holder, or any person who assumes to act as such. Written complaints shall bear the signature of the complainant or that of his legal representative before any action will be taken thereon by the board.

B. The executive director of the board may issue written authorization to investigate apparent violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board.

C. Investigations shall be conducted by the staff of the Louisiana Real Estate Appraisers Board and/or the Louisiana Real Estate Commission.

D. If, during the course of an investigation, information is established indicating that violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board have been committed by any licensee other than the licensee against whom the original complaint was made, the additional licensee may be added as a respondent to the investigation in the absence of any written complaint alleging such violations.

E. The board may file suit in the Nineteenth Judicial District Court in the parish of East Baton Rouge to enforce a subpoena against any person that does not comply with a subpoena issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

## Chapter 311. Compensation of Fee Appraisers

### §31101. General Provisions; Customary and Reasonable Fees; Presumptions Of Compliance

A. Licensees shall use the elements found in the first or second presumption of compliance prescribed by the Dodd-Frank Wall Street Reform and Consumer Protection Act, to determine the customary and reasonable rate of compensation for a fee appraiser in a specific geographic market.

1. Licensees shall disclose to the selected fee appraiser which presumption of compliance was used to determine the customary and reasonable rate of compensation in a geographic market before or at the time an appraisal assignment is made. The disclosure made by licensees using the first presumption of compliance shall provide documentation to the selected fee appraiser that substantiates the method used, the basis for, and the details of the elements listed in Paragraphs B.1-6 of this Section.

2. An agreement between a licensee and a fee appraiser, written or otherwise, shall not create a presumption of compliance, nor shall it satisfy the requirements of R.S. 37:3415.15, which mandate the payment of a customary and reasonable rate of compensation to fee appraisers.

B. A licensee using the first presumption of compliance shall maintain written documentation that describes or substantiates all methods, factors, variations, and differences used to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. This documentation shall include, at a minimum, the following elements:

1. the type of property;

2. the scope of work;

3. the time in which the appraisal services are required to be performed;

4. fee appraiser qualifications;

5. fee appraiser experience and professional record; and

6. fee appraiser work quality.

C. A licensee using the second presumption of compliance may establish a customary and reasonable rate of compensation based on objective third-party information prepared by independent third parties such as government agencies, academic institutions, and private research firms. Third-party information shall be based on recent rates paid to a representative sample of appraisal service providers in the geographic market of the appraisal assignment, or the fee schedule of those providers. Written documentation that describes and substantiates third-party information shall be maintained by the licensee.

1. A licensee that elects to use third-party fee schedule information developed by an independent third party shall submit such information to the board for approval 30 days prior to its use.

2. The board, at its discretion, may establish a customary and reasonable rate of compensation schedule for use by any licensees that elects to do so.

D. In accordance with the record keeping responsibilities prescribed in Chapter 305 of the board rules and regulations, licensees shall maintain records on each presumption of compliance that is used to determine a customary and reasonable rate of compensation. Licensees shall submit

these records to the board upon request no later than 10 calendar days after the request is made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the November 20, 2012 *Louisiana Register:* The proposed rules have no known impact on family, formation, stability, or autonomy.

**Public Comments**

Interested parties are invited to submit written comments on the proposed regulations through December 11, 2012 at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT**
**FOR ADMINISTRATIVE RULES**
**RULE TITLE: Real Estate**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs (savings) to state or local governmental units as a result of the proposed rule change. The purpose of the proposed rule change is to establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Legislative Session and the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Any cost associated with meeting the surety bond requirement of Act 429 will be determined by the Appraisal Management Company, depending on the independent decision to either purchase a bond, the cost of which will be determined by the bonding company or to submit a $20,000 cash deposit or security in lieu of the bond. The purpose of the bond, deposit, or security is to ensure that the Appraisal Management Company conducts business in accordance with all license laws and rules, which provides the benefit of protection to the customer.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment as a result of the proposed rule change.

Bruce Unangst
Executive Director
1211#048

Evan Brasseaux
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor**
**Real Estate Appraisers Board**

Real Estate—Peer Review Committees and Valuation Services (LAC 46:LXVII.10309 and 10701)

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Appraisers Board has initiated procedures to amend Chapter 103, Section 10309 (Application for Experience Credit), which provides for the appointment of a peer review committee, and to promulgate Chapter 107 (Appraisal Management Companies), which will enact requirements and prohibitions related to valuation services performed by a licensed real estate fee appraiser for an appraisal management company.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LXVII. Real Estate**
**Subpart 2. Appraisers**
**Chapter 103. License Requirements**
**§10309. Application for Experience Credit**

A. - C. …

D. The board shall have the authority to appoint a peer review committee to provide assistance to the board in the performance of its functions and duties in pre-license and post license review and regulation, which shall include direct appraiser mentoring to applicants for a trainee or certified appraiser license and investigator assistance.

1. Committee members shall serve at the discretion of the board and may be removed at anytime, with or without cause, upon written notice from the board.

2. The initial term of each committee member shall be for a period of two years, which shall automatically extend for successive two year terms, until such time that the member resigns from the committee, is replaced by a new board appointee, or is removed by the board.

3. Committee members shall be certified residential or certified general real estate appraisers that have been licensed in good standing for a minimum of five years.

4. Committee members shall have completed the supervisory appraiser course, or its equivalent, as determined by the board.

5. Committee members may decline any request for direct mentoring without prejudice.

6. Duties of the peer review committee shall not require committee meetings or reports to the board, as each member shall operate independent of the other members; however, members shall be subject to oversight by the board and shall respond accordingly to any board inquiry.

7. Committee members shall be available to licensed trainees and certified appraisers via telephone or e-mail for direct mentoring, which may include one or more of the following:

a. examination of appraisals or other work samples;

b. feedback to mentored appraiser regarding examined work samples;

c. help with appraisal methodology; and

d. answering queries on specific appraisal assignments.

8. Committee members assigned to assist investigators shall provide the following assistance, as needed:

a. specific appraisal methodology insight;

b. Uniform Standards of Professional Appraisal Practice insight;

c. benefit of competency and experience in appraisal practice; and

d. any other available assistance, as requested.

9. Committee members assigned to assist investigators shall remove themselves from any investigation where there may be an actual or perceived conflict of interest.

E. Applicants may submit appraisals to the peer review committee for review prior to submission of the application for experience credit.

F. Only those real property appraisals consistent with the Uniform Standards of Professional Appraisal Practice will be accepted by the board for experience credit.

G. The board may require an applicant to successfully complete additional educational training consisting of not less than 15 or more than 30 instructional hours of course work approved by the board, which shall not be used to satisfy the continuing education requirement.

AUTHORITY NOTE:Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisers Board of Certification, LR 25:1426 (August 1999), amended by the Office of the Governor, Real Estate Appraisers Board, LR 31:1333 (June 2005), LR 37:333 (January 2011), LR 39:

**Chapter 107. Appraisal Management Companies**

**§10701. Appraiser Requirements and Prohibitions**

A. It shall be unlawful for a licensee or certificate holder to enter into an agreement to perform valuation services, written or otherwise, with an appraisal management company, or a person, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that engages, or attempts to engage, in the activities of an appraisal management company, as defined in R.S. 37:3415.2(a)-(b), unless the appraisal management company, person, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity is licensed in accordance with the Louisiana Appraisal Management Company Licensing and Regulation Act.

B. A licensee or certificate holder that performs valuation services for an appraisal management company may include the license number of the appraisal management company in all appraisal reports or other instruments used by the licensee or certificate holder in conducting real property appraisal activities for the appraisal management company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the November 20, 2012 *Louisiana Register:* This proposed Rule has no known impact on family, formation, stability, or autonomy.

**Public Comments**

Interested parties are invited to submit written comments on the proposed regulations through December 11, 2012 at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Real Estate—Peer Review Committees and Valuation Services**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs (savings) to state or local governmental units as a result of the proposed rule change. The proposed rule change is taken at the discretion of the Real Estate Appraisers Board and is based, in part, on the requirements of Act 429 of the 2012 Regular Session and the federal Dodd-Frank Wall Street Reform and Consumer Protection Act. The purpose of the proposed rule change is to enact requirements and prohibitions related to valuation services performed by a licensed real estate fee appraiser for an appraisal management company and to establish guidelines for the board appointment of a Peer Review Committee.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The peer review committee will provide direct appraiser mentoring to applicants for a trainee or certified appraiser license and will serve to develop the skills and proficiency of the appraiser. This will benefit both the appraiser and the customers that utilize this service.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment as a result of the proposed rule change.

| | |
|---|---|
| Bruce Unangst | Evan Brasseaux |
| Executive Director | Staff Director |
| 1211#049 | Legislative Fiscal Office |

## CONTENTS



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II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on state or local governmental revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Pursuant to Act 185 of the 2012 Regular Legislative Session, the proposed administrative rule will likely have an indeterminable cost savings to the vendor because the vendor will be managing fewer bids/contracts with the Office of State Purchasing because the software or hardware purchase, necessary software configuration and even training associated with new hardware or software can be bid out with one RFP as opposed to three different RFPs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact upon competition and employment resulting from the proposed rule.

Denise Lea
Assistant Commissioner
1211#054

Evan Brasseaux
Staff Director
Legislative Fiscal Office

## NOTICE OF INTENT

**Office of the Governor**
**Real Estate Appraisers Board**

Real Estate
(LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101)

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Appraisers Board has initiated procedures to amend Chapters 303, 305 and 309, and to promulgate Chapters 304 and 311. The purpose of the proposed action is to establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Session and the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, and to further clarify investigative procedures.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LXVII. Real Estate**
**Subpart 3. Appraisal Management Companies**
**Chapter 303. Forms and Applications**
**§30302. Surety Bond Required; Amount and Conditions; Filing**

A. Applicants for licensing as an appraisal management company shall submit proof of a surety bond in the amount of $20,000 with a surety company qualified to conduct business in Louisiana.

B. Bonds shall be in favor of the state of Louisiana and conditioned for the benefit of a claimant against the licensee for a violation of the AMC law and/or rules.

C. Bonds shall remain effective and in force throughout the license period of the appraisal management company.

D. Proof of surety bond renewal shall be provided to the board in conjunction with, and at the time of an AMC annual renewal of registration.

E. Failure to maintain a surety bond shall be cause for revocation or suspension of a license.

F. A licensee who elects to submit a cash deposit or security in lieu of a surety bond, as provided in R.S. 37:3515.3(D)(5), shall restore the cash deposit or security annually upon license renewal, if a claim has reduced the deposit amount or security below $20,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Chapter 304. Competency**
**§30401. Appraiser License Verification**

A. Prior to making an assignment to a real estate fee appraiser, licensees shall verify that the appraiser holds a license in good standing in this state pursuant to the Louisiana Real Estate Appraisers Law, R.S. 37:3391, et seq. Licensees may rely on the National Registry of the Appraiser Foundation for purposes of appraiser license verification, and shall obtain a written certification from the appraiser that he or she:

1. is competent in the property type of the assignment;
2. is competent in the geographical area of the assignment;
3. has access to appropriate data sources for the assignment;
4. will immediately notify the licensee in writing if the appraiser later determines that he or she is not qualified to complete the assignment; and
5. is aware that misrepresentation of competency is subject to the mandatory reporting requirement in the Uniform Standards of Professional Appraisal Practice (USPAP) 2012.

B. Subsequent to a completed appraisal being submitted to the assigning licensee, any request for additional information that may impact or alter the opinion of value stated therein shall be made by the certified appraiser completing the appraisal review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Chapter 305. Responsibilities and Duties**
**§30501. Record Keeping**

A. - A.4. …

B. In addition to the records that shall be maintained in Subpart A of this Section, licensees shall maintain a complete list of all real estate fee appraisers approved by the licensee to receive appraisal assignments. The list shall include, but is not limited to, the following information on each fee appraiser:

1. name, license status, and qualifications;
2. errors and omission insurance status, including the carrier, the policy number, the dollar limits of the coverage and the dates covered in the policy;
3. experience and professional record;
4. the areas in which each fee appraiser considers him/herself geographically competent broken down by parish and/or zip code;
5. the type of property;
6. the scope of work;

7. the time frame in which the appraisal services are required to be performed;

8. fee appraiser work quality;

9. the number and type of assignments completed per year; and

10. the fee or remuneration or monitory compensation for each report or assignment.

C. All records shall be kept properly indexed and readily available to the board for review upon request and without prior notice. Duly authorized representatives of the board shall be authorized to inspect such records at the offices of licensees between the hours of 9 a.m. and 4 p.m., Saturdays, Sundays, and legal holidays excluded, and to subpoena any of the said records.

D. All records specified in this Chapter shall be retained for a period of five years; however, records that are used in a judicial proceeding, in which the appraiser provided testimony related to the appraisal assignment, shall be retained for at least two years after disposition, whichever period expires last.

E. At any time that a document or information on file with the board becomes inaccurate or incomplete, the appraisal management company shall notify the board in writing within five days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 37:2407 (August 2011), amended LR 39:

## Chapter 309. Investigations; Disciplinary Authority; Enforcement and Hearing

### §30900. Investigations

A. The board may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of a licensee or certificate holder, or any person who assumes to act as such. Written complaints shall bear the signature of the complainant or that of his legal representative before any action will be taken thereon by the board.

B. The executive director of the board may issue written authorization to investigate apparent violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board.

C. Investigations shall be conducted by the staff of the Louisiana Real Estate Appraisers Board and/or the Louisiana Real Estate Commission.

D. If, during the course of an investigation, information is established indicating that violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board have been committed by any licensee other than the licensee against whom the original complaint was made, the additional licensee may be added as a respondent to the investigation in the absence of any written complaint alleging such violations.

E. The board may file suit in the Nineteenth Judicial District Court in the parish of East Baton Rouge to enforce a subpoena against any person that does not comply with a subpoena issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

## Chapter 311. Compensation of Fee Appraisers

### §31101. General Provisions; Customary and Reasonable Fees; Presumptions Of Compliance

A. Licensees shall use the elements found in the first or second presumption of compliance prescribed by the Dodd-Frank Wall Street Reform and Consumer Protection Act, to determine the customary and reasonable rate of compensation for a fee appraiser in a specific geographic market.

1. Licensees shall disclose to the selected fee appraiser which presumption of compliance was used to determine the customary and reasonable rate of compensation in a geographic market before or at the time an appraisal assignment is made. The disclosure made by licensees using the first presumption of compliance shall provide documentation to the selected fee appraiser that substantiates the method used, the basis for, and the details of the elements listed in Paragraphs B.1-6 of this Section.

2. An agreement between a licensee and a fee appraiser, written or otherwise, shall not create a presumption of compliance, nor shall it satisfy the requirements of R.S. 37:3415.15, which mandate the payment of a customary and reasonable rate of compensation to fee appraisers.

B. A licensee using the first presumption of compliance shall maintain written documentation that describes or substantiates all methods, factors, variations, and differences used to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. This documentation shall include, at a minimum, the following elements:

1. the type of property;

2. the scope of work;

3. the time in which the appraisal services are required to be performed;

4. fee appraiser qualifications;

5. fee appraiser experience and professional record; and

6. fee appraiser work quality.

C. A licensee using the second presumption of compliance may establish a customary and reasonable rate of compensation based on objective third-party information prepared by independent third parties such as government agencies, academic institutions, and private research firms. Third-party information shall be based on recent rates paid to a representative sample of appraisal service providers in the geographic market of the appraisal assignment, or the fee schedule of those providers. Written documentation that describes and substantiates third-party information shall be maintained by the licensee.

1. A licensee that elects to use third-party fee schedule information developed by an independent third party shall submit such information to the board for approval 30 days prior to its use.

2. The board, at its discretion, may establish a customary and reasonable rate of compensation schedule for use by any licensees that elects to do so.

D. In accordance with the record keeping responsibilities prescribed in Chapter 305 of the board rules and regulations, licensees shall maintain records on each presumption of compliance that is used to determine a customary and reasonable rate of compensation. Licensees shall submit

these records to the board upon request no later than 10 calendar days after the request is made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the November 20, 2012 *Louisiana Register:* The proposed rules have no known impact on family, formation, stability, or autonomy.

**Public Comments**

Interested parties are invited to submit written comments on the proposed regulations through December 11, 2012 at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT**
**FOR ADMINISTRATIVE RULES**
**RULE TITLE: Real Estate**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs (savings) to state or local governmental units as a result of the proposed rule change. The purpose of the proposed rule change is to establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Legislative Session and the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act.

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IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment as a result of the proposed rule change.

Bruce Unangst
Executive Director
1211#048

Evan Brasseaux
Staff Director
Legislative Fiscal Office

# PUBLIC
## NOTICE OF INTENT

**Office of the Governor**
**Real Estate Appraisers Board**

Real Estate—Peer Review Committees and Valuation Services (LAC 46:LXVII.10309 and 10701)

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Appraisers Board has initiated procedures to amend Chapter 103, Section 10309 (Application for Experience Credit), which provides for the appointment of a peer review committee, and to promulgate Chapter 107 (Appraisal Management Companies), which will enact requirements and prohibitions related to valuation services performed by a licensed real estate fee appraiser for an appraisal management company.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LXVII. Real Estate**
**Subpart 2. Appraisers**
**Chapter 103. License Requirements**
**§10309. Application for Experience Credit**

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D. The board shall have the authority to appoint a peer review committee to provide assistance to the board in the performance of its functions and duties in pre-license and post license review and regulation, which shall include direct appraiser mentoring to applicants for a trainee or certified appraiser license and investigator assistance.

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E. Applicants may submit appraisals to the peer review committee for review prior to submission of the application for experience credit.

F. Only those real property appraisals consistent with the Uniform Standards of Professional Appraisal Practice will be accepted by the board for experience credit.

G. The board may require an applicant to successfully complete additional educational training consisting of not less than 15 or more than 30 instructional hours of course work approved by the board, which shall not be used to satisfy the continuing education requirement.

AUTHORITY NOTE:Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisers Board of Certification, LR 25:1426 (August 1999), amended by the Office of the Governor, Real Estate Appraisers Board, LR 31:1333 (June 2005), LR 37:333 (January 2011), LR 39:

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A. It shall be unlawful for a licensee or certificate holder to enter into an agreement to perform valuation services, written or otherwise, with an appraisal management company, or a person, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that engages, or attempts to engage, in the activities of an appraisal management company, as defined in R.S. 37:3415.2(a)-(b), unless the appraisal management company, person, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity is licensed in accordance with the Louisiana Appraisal Management Company Licensing and Regulation Act.

B. A licensee or certificate holder that performs valuation services for an appraisal management company may include the license number of the appraisal management company in all appraisal reports or other instruments used by the licensee or certificate holder in conducting real property appraisal activities for the appraisal management company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the November 20, 2012 *Louisiana Register:* This proposed Rule has no known impact on family, formation, stability, or autonomy.

**Public Comments**

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Bruce Unangst
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**
**RULE TITLE: Real Estate—Peer Review Committees and Valuation Services**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs (savings) to state or local governmental units as a result of the proposed rule change. The proposed rule change is taken at the discretion of the Real Estate Appraisers Board and is based, in part, on the requirements of Act 429 of the 2012 Regular Session and the federal Dodd-Frank Wall Street Reform and Consumer Protection Act. The purpose of the proposed rule change is to enact requirements and prohibitions related to valuation services performed by a licensed real estate fee appraiser for an appraisal management company and to establish guidelines for the board appointment of a Peer Review Committee.

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There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule change.

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IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment as a result of the proposed rule change.

| | |
|---|---|
| Bruce Unangst | Evan Brasseaux |
| Executive Director | Staff Director |
| 1211#049 | Legislative Fiscal Office |

150 W Civic Center Drive
Suite 500
Sandy, Utah 84070

Direct 801-303-2431
corelogic.com

December 11, 2012

Stephanie Boudreaux
Public Information Director
Louisiana Real Estate Commission
9071 Interline Avenue
Baton Rouge, Louisiana 70809

**VIA ELECTRONIC MAIL**
sboudreaux@lrec.state.la.us

**RE: Louisiana Appraisal Management Company Licensing and Regulation Act (the "Act")—Comments to Proposed Regulations**

Dear Ms. Boudreaux:

On behalf of CoreLogic Collateral Solutions, LLC, ("CoreLogic") a licensed appraisal management company ("AMC") in the state of Louisiana, thank you for the opportunity to submit comments regarding proposed regulations concerning the oversight of AMCs. CoreLogic appreciates the efforts taken by the Louisiana Real Estate Commission and the Louisiana Real Estate Appraisers Board ("Board") to propose regulations as part of the continued implementation of the Act.

CoreLogic respectfully requests to comment on the proposed regulations under LAC Title 46, Part LXVII, Chapters 304, 305, and 311.

**Chapter 304. Section 30401. Appraisal License Verification**

CoreLogic recognizes and agrees with the need for the Board to require that licensed AMCs engage in a system of appraiser license verification. Under Section 30401 (A), clarification needs to be made with respect to the group of appraisers that must be vetted by a licensed AMC. CoreLogic respectfully requests that language be added to this section requiring that licensed AMCs are only responsible for vetting the licenses for members of their respective panel.

CoreLogic also respectfully requests that language be added specifying the timing in which a written certification from an appraiser is due, such as prior to making an assignment to an appraiser. By adding such language, the requirement as to the timing for obtaining this written certification is clear. Further, due to the fact that the Uniform Standards of Professional Appraisal Practice ("USPAP") is an evolving

document, language is needed to specify that the appraiser certify that he or she is aware that misrepresentation as to competency is subject to the version of USPAP that is/or was in effect as of the date of the value conclusion.

**Chapter 305. Section 30501. Record Keeping**

Under Section 30501 (B), the Board proposed that AMCs maintain detailed records on each fee appraiser approved to receive appraisal assignments. While CoreLogic does not object to keeping such records, the requisite amount of detail that must be maintained needs clarifying. For example under Section 30501 (B), further detail is required as to:

- Item 1—the type of qualifications that must be disclosed by the appraiser to the AMC; and
- Item 3—the type of information concerning experience and professional records that must be disclosed to by the appraiser to the AMC.

Further under Sections 30501 (B) 5, 6, and 7, this information needs to be provided by the appraiser for each appraisal performed, especially with regard to time frames for completing appraisal assignments.

Finally, under Section 30501 (C), CoreLogic respectfully requests that the Board provide at least ten (10) business days prior notice when it requests access to such records. Additionally, CoreLogic respectfully requests that the Board remove the requirement that AMCs must properly index their records. These proposed regulations provide no guidance as to the meaning of "properly index."

**Chapter 311. Section 31101. General Provision; Customary and Reasonable Fees; Presumption of Compliance**

CoreLogic respectfully asserts that the proposed regulations set forth under Section 31101 are inconsistent with the federal requirements set forth in the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act") and requests that the entire section be removed. Under the Dodd Frank Act, the Federal Reserve Board ("FRB") specifically was tasked with promulgating regulations to implement "customary and reasonable" fee requirements.

Under Section 31101 (A), the Board mandates that AMCs rely on either the first or second presumption of compliance when determining "customary and reasonable" fees. Commentary to the Dodd Frank Act regulations, as set forth by the FRB, is clear in that AMCs are not required to use either of these presumptions when formulating customary and reasonable fees. Instead, use of either the first or second presumption creates a presumption that the AMC has complied with the requirement to pay customary and reasonable fees. 75 Fed. Reg. 66572 (Oct. 28, 2010).

Under Section 31101 (A) (1), the Board requires that the AMC disclose to the appraiser the particular presumption of compliance used. Again, under the Dodd Frank Act, AMCs are not required to rely on any presumption in developing their customary and reasonable fees. Accordingly, there is not a need for an AMC to disclose this information to the appraiser. Further, disclosure of this information creates significant business privacy concerns for AMCs.

Finally, per Section 31101 (C) (1) and (2), the Board has authority to approve and establish a customary and reasonable fee schedule. While the Act requires that appraisers are compensated in a customary and reasonable fashion, the Act did not give the Board specific authority to approve or establish appraiser fees.

CoreLogic appreciates the opportunity to respond to the proposed regulations and looks forward to further discussion.

Sincerely,

Robert M. Danehy
Director, Chief Appraiser
CoreLogic Collateral Solutions, LLC
801-303-2431
*bdanehy@corelogic.com*

**PUBLIC**

LSI DIVISION
A LENDER PROCESSING SERVICES COMPANY

**700 Cherrington Parkway**
**Coraopolis, PA 15108**

Fax Cover Sheet

**Date:** December 10, 2012

**To:** Ms. Stephanie Boudreaux
Louisiana Real Estate Commission **Fax:** (225) 925-4501

**From:** Laura Raposo **Phone:** 800-722-0300 ext. 74049
Compliance Specialist III
lraposo@lsi-lps.com

**RE:** Request for public hearings regarding the Notice of Intent to Amend Chapters 303, 305, 309, and to promulgate Chapters 304-311 of the Louisiana Administrative Code

**Number of pages including cover sheet:** 2

**PUBLIC**


REGULATORY AND LICENSING
DEPARTMENT
legaldept@lsi-lps.com

December 10, 2012

**VIA EXPRESS MAIL**

**VIA FAX**

Ms. Stephanie Boudreaux
Louisiana Real Estate Commission
P.O. Box 14785
Baton Rouge, LA 70898-4785

RE: Request for public hearings regarding the Notice of Intent to Amend Chapters 303, 305, 309, and to promulgate Chapters 304-311 of the Louisiana Administrative Code

Dear Ms. Boudreaux:

I am a Compliance Specialist for LSI Appraisal, LLC ("LSI"). LSI is a registered appraisal management company ("AMC") in the state of Louisiana, license number AMC 0082. I am writing to request that a public hearing be held regarding the proposed rules contained within the Notice of Intent to Amend chapters 303, 305, 309, and to promulgate Chapters 304-311 of the Louisiana Administrative Code.

In addition, please add me to any mailing lists that you may have pertaining to actions taken or proposed by the Louisiana Real Estate Commission, such as notice of hearings and meeting minutes. My contact information is as follows:

Laura Raposo
LSI Appraisal, LLC
700 Cherrington Parkway
Coraopolis, PA 15108
E-mail: Lraposo@lsi-lps.com
Telephone: (800) 722-0300 extension 74049

Thank you for your assistance.

Sincerely,

Laura Raposo

Laura Raposo
Regulatory Compliance Specialist, III

**PUBLIC**

**Rels Valuation**
8009 34th Avenue South / Suite 1300
Bloomington MN 55425
**Rels.info**

Rels

December 6, 2012

**VIA ELECTRONIC MAIL**

Stephanie Boudreaux
Louisiana Real Estate Commission
P.O. Box 14785
Baton Rouge, LA 70898-4785

RE: Request for public hearings regarding the Notice of Intent to Amend Chapters 103, 107, 303, 305, 309 and 309 and to promulgate Chapters 304-311 of the Louisiana Administrative Code.

Dear Ms. Boudreaux:

Please allow this letter to serve as a formal request for public hearings in the above mentioned proposed rulemakings to amend Title 46, Chapters 103, 107, 303, 305, 309 and 309 and to promulgate Chapters 304-311 of the Louisiana Administrative Code. Additionally, I request an opportunity for oral presentation or argument at such hearings. Lastly, I request to be placed on notice via U.S. mail and electronic mail of any and all actions taken by the Louisiana Real Estate Commission in these rulemakings, including but not limited to notice of hearings. Please mail all notifications to:

David Cherner
Compliance Director
Rels Valuation
8009 34th Ave S #1300
Bloomington, MN 55425
*david.cherner@rels.info*

Thank you for your assistance in this matter.

Sincerely,

David D. Cherner
Compliance Director
RELS VALUATION
(952) 345-4903
*david.cherner@rels.info*

PUBLIC

**Rels Valuation**
8009 34th Avenue South / Suite 1300
Bloomington MN 55425
Rels.info

Rels

December 10, 2012

**VIA ELECTRONIC MAIL**

Stephanie Boudreaux
Louisiana Real Estate Commission
P.O. Box 14785
Baton Rouge, LA 70898-4785

**RE: Proposed Regulations Concerning Appraisal Management Companies**
**Notice of Intent, 38 LR 11 (November 20), pp. 2992-2994**

Dear Ms. Boudreaux:

On behalf of Valuation Information Technology, L.L.C., which does business in Louisiana under the name Rels Valuation, thank you for the opportunity to submit comments regarding proposed regulations concerning appraisal management companies ("AMCs"). Rels Valuation is a member of the Real Estate Valuation Advocacy Association ("REVAA"), an industry trade association that promotes education, high ethical standards, political awareness, and the professional development of the real estate valuation industry.

The proposed regulations concerning AMCs ("Proposed Rules") either propose new or amend existing regulations governing AMCs in the Louisiana Administrative Code under Subpart 3, Part LXVII, of Title 46 – Professional and Occupation Standards Regulations. The Notice of Intent to the Proposed Rules states the purpose of the Proposed Rules is to establish compliance procedures whereby AMC licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Session and the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, and to clarify investigative procedures.

Importantly, the fiscal and economic impact statement for the Proposed Rules states that there is no estimated impact on competition and employment as a result of the Proposed Rules, and does not estimate any cost to directly affected persons as a result of the proposed requirement regarding customary and reasonable compensation. Our concerns with the accuracy of the Board's conclusion are reflected in these comments.

We support a number of provisions in the Proposed Rules, particularly those that establish compliance procedures for AMCs to meet amended licensing requirements.

We object, however, to proposed Chapter 311, regarding Compensation of Fee Appraisers, in its entirety as inconsistent and preempted by the federal Truth in Lending Act. As provided in our December 6, 2012 correspondence to you, we would like to request a formal hearing to permit AMCs and other interested parties to express their concerns with the Proposed Rules.

We hope the following comments are helpful, and we look forward to working with the Louisiana Real Estate Appraisers Board (the "Board"). We respectfully request written confirmation of the receipt of our comments as well as a stamped copy thereof for our permanent record.

**A. Obtaining and Maintaining a Surety Bond**

We do not object to proposed §30302 providing the procedures surrounding an AMC obtaining a surety bond in compliance with §3415.3(D) of the Louisiana Revised Statutes.

However, we believe the proposed rule must address the time frame within which a suit may be filed against the bond by a party having a claim against the licensee. We recommend the Board adopt a new subsection under proposed §30302 clarifying that a party having a claim against the licensee must bring suit directly on the surety bond, or the board may bring suit on behalf of the party having a claim against the licensee, within one year after the claim arises.

**B. Appraiser License Verification**

Although we generally support proposed §30401, we believe a number of clarifications to the current draft are appropriate to preserve the proposed rule's intent, but also ensure the rule does not conflict with existing law and provides clearer direction to licensees to ensure compliance with the amended licensing requirements enacted in Act 429. Recommended language to amend the Proposed Rules reflecting the following concerns is included at the end of this section.

1. Verification of credential

Proposed §30401(A) states that a licensee must verify a fee appraiser's credential prior to making an assignment to a fee appraiser. Although AMCs adopt procedures to ensure fee appraisers receiving appraisal assignments are properly credentialed, we suggest the language as drafted is confusing because it suggests an AMC must, prior to every assignment to an appraiser, check with the National Registry to confirm the appraiser is in good standing.

AMCs typically have a broader and more robust process to verify a fee appraiser is in good standing with a state including, but not limited to: (a) cross-referencing the daily report from the Appraisal Subcommittee National Registry that details appraiser disciplinary action with the AMC's appraiser panel as well as with any appraisers the AMC is working with; and (b) requiring any and all appraisers on an AMC's appraiser panel to acknowledge their appraiser credential is in good standing when accepting any assignment from the AMC.

As a result, we agree with the provision's intent, but request §30401(A) be amended to clarify that licensees must have a system in place to verify that a fee appraiser on the licensee's appraiser panel holds a Louisiana appraisal credential in good standing. We also recommend amending the reference to the National Registry as it is not maintained by the "Appraiser Foundation," but rather by the Appraisal Subcommittee.

2. Certification of competency from the appraiser

Consistent with our recommendation above, we recommend amending proposed §30401(A) by creating a new subsection that requires an AMC to obtain a written certification from an appraiser regarding the appraiser's competency prior to or at the time of making an assignment to a fee appraiser that would include a certification as to proposed §30401(A)(1)-(5). We also recommend the Board amend the proposed rule to include language consistent with §3415.13(B) regarding appraiser competency.

3. Current version of USPAP

We recommend the Board amend proposed §30401(A)(5) to clarify that an appraiser must, prior to or at the time of accepting an assignment, certify that he or she is aware that misrepresentation of competency is subject to the mandatory reporting requirement *in the most current version* of the Uniform Standards of Professional Appraisal Practice (USPAP). The current proposal only references the 2012 edition of USPAP, and adopting our recommendation ensures that future changes to this rule is not required when USPAP is subsequently amended.

4. Requests for additional information

Proposed §30401(B) states that subsequent to a completed appraisal being submitted to the assigning licensee, any request for additional information that may impact or alter the opinion of value stated therein shall be made by the certified appraiser completing the appraisal review. We believe the provision as drafted is inconsistent because state law permits an AMC to request additional information from an appraiser outside the scope of a certified appraiser completing an appraisal review.

Section 3415.16(B) of the Revised Statutes provides that an AMC may request that an independent appraiser provide additional information about the basis for a valuation or correct objective factual errors in an appraisal report. State law does not require that any such request be made in the context of an appraisal review. Moreover, Act 429 clarifies that an appraisal review does not include an administrative review or a review for an appraisal that does not include an examination of an appraisal for grammatical, typographical, mathematical, or other similar administrative errors that do not involve the appraiser's professional judgment, including compliance with the elements of the client's statement of work.

Requests from an AMC to an independent appraiser to provide additional information about information in his or her report are common, and can result from a variety of different activities performed by an AMC. Examples include, but are not limited to, to automated reviews of a report, administrative reviews, and appraisal reviews. We believe the proposed rule is inconsistent with state law because it unreasonably restricts an AMC from fully performing quality control functions outside the context of an appraisal review.

We believe the intent of the proposed rule may be to ensure that, in the context of an appraisal review, only the appraiser performing the review may request that the appraiser provide additional information about the report. We do not object to this intent, but believe the proposed rule as drafted exceeds the provision's intent and must be clarified.

As a result, we recommend proposed §30401(B) be amended to clarify that a request for additional information that is part of an appraisal review be made by the certified appraiser completing the appraisal review.

5. Recommended language

Recommendations to amend proposed §30401 reflecting our above concerns are below:

**§30401. Appraiser License Verification**

A. ~~Prior to making an assignment to a real estate fee appraiser, l~~Licensees shall have a system in place to verify that ~~the~~ any fee appraiser on its appraiser panel holds a license in good standing in this state pursuant to the Louisiana Real Estate Appraisers Law, R.S. 37:3391, et seq. Licensees may rely on the National Registry of the Appraiser Foundation for purposes of appraiser license verification.

B. Before or at the time of making an assignment to a real estate fee appraiser, licensees ~~and~~ shall obtain a written certification from the appraiser that he or she:

1. is competent in the property type of the assignment;
2. is competent in the geographical area of the assignment;
3. has access to appropriate data sources for the assignment;
4. will immediately notify the licensee in writing if the appraiser later determines that he or she is not qualified to complete the assignment; and
5. is aware that misrepresentation of competency is subject to the mandatory reporting requirement in the most current version of the Uniform Standards of Professional Appraisal Practice (USPAP) ~~2012~~.

C~~B~~. Subsequent to a completed appraisal being submitted to the assigning licensee, any request for additional information as part of an appraisal review ~~that may impact or alter the opinion of value stated therein~~ shall be made by the certified appraiser completing the appraisal review.

**C. Record Keeping**

Proposed §30501 requires AMCs to maintain records for a number of enumerated items, grants the Board authority to review records without prior notice, and mandates that an AMC notify the Board of any changes to any document or information on file with the Board within 5 days. We are concerned with a number of provisions of this proposed rule – recommended language to amend the Proposed Rules reflecting the following concerns is included at the end of this section.

1. Appraiser qualifications and experience

Proposed §30501(B)(1) and (3) require an AMC licensee to maintain the qualifications, experience, and professional record for each fee appraiser approved by licensee to receive appraisal assignments. Although we support the proposition that AMCs should review an appraiser's qualifications, experience,

and professional record when approving him or her to receive appraisal assignments, the proposed rule imposes liability on an AMC that fails to maintain this information.

We believe these terms are ambiguous. What constitutes a sufficient record of qualifications, experience, and professional record is subject to several different interpretations. Although an AMC may retain such information as a matter of course, mandating the ongoing maintenance of this information exposes AMCs to uncertain risk due to the lack of clarify as to what exactly constitutes a sufficient record of an appraiser's qualifications, experience, and professional record.

Moreover, there is no public policy purpose to these requirements – to the extent the Board is investigating whether a licensee has approved a fee appraiser to perform appraisal assignments for the AMC, the AMC's records as well as appraiser's own records would be relevant information to the investigation.

2. Errors and omission insurance

Proposed §30501(B)(2) requires an AMC licensee to retain a fee appraiser's errors and omission insurance status, including information concerning the appraiser's insurance coverage. Although we support the requirement, appraisers are not required by law to maintain errors and omissions insurance. Their obligation to maintain such insurance is typically dictated by the licensee. As a result, we recommend this provision be amended to clarify that an AMC should maintain information on the status of an appraiser's errors and omissions insurance, if such insurance is required by the AMC.

3. Transaction-specific records vs. appraiser work history records

Proposed §30501(B)(5)-(7) require an AMC to maintain information on the type of property, scope of work, and turn time for each fee appraiser. We do not object to retaining such information, but the proposed rule is confusing because these records are transaction specific vs. appraiser specific (*e.g.*, name, license status). The type of property, scope of work, and time frame in which the appraisal services are required to be performed are determined at a transactional level for each individual appraisal, and are frequently defined prior to the time a particular assignment is given to an appraiser.

As a result, we recommend amending these subsections to clarify that information concerning the type of property, scope of work, and turn time be retained for each appraisal performed by the fee appraiser.

4. Prior notice to inspect records

Proposed §30501(C) requires that all records maintained by the AMC in accordance with applicable state law and regulation be properly indexed and available to the Board for review upon request and without prior notice. We believe it is unreasonable for the Board to inspect records without any prior notice to the AMC.

Although we appreciate the Board's authority to investigate and enforce applicable laws and regulations, we believe it is inconsistent to single out AMCs to provide records without any notice from the Board. There is no inherent risk that an AMC would destroy evidence in advance of an investigation, and to the extent there was such a risk, the Board could undertake extraordinary action preserve any evidence.

The intention to inspect records without prior notice is inconsistent with a different part of the proposed rule which permits the Board to subpoena any records required by rule to be retained – a subpoena provides notice to the AMC of the Board's intent to inspect records. As drafted, a subpoena served on an AMC provides more protection than the Board appearing without notice to inspect records.

We recommend the proposed rule be amended to require that the Board provide an AMC with ten (10) business days prior notice before inspecting an AMC's records.

5. Time frame to notify the Board of changes to records

We believe proposed §30501(E), which requires an AMC to notify the Board in writing within five days any time that a document or information on file with the Board becomes inaccurate or incomplete, is an unreasonable time period.

Five days (whether calendar or business) is simply an unreasonable time period for an AMC to: (a) identify that information or documentation on file with the Board has changed; (b) prepare correspondence notifying the Board of the change; and (c) send out the appropriate correspondence. We urge the Board amend the provision to give an AMC ten (10) business days to notify the Board of changes to documents or information on file with the Board.

6. Recommended changes

Recommendations to amend proposed §30501 reflecting our above concerns are below:

**§30501. Record Keeping**

A. - A.4. ...

B. In addition to the records that shall be maintained in Subpart A of this Section, licensees shall maintain a complete list of all real estate fee appraisers approved by the licensee to receive appraisal assignments. The list shall include, but is not limited to, the following information on each fee appraiser:

1. name and license status~~, and qualifications~~;
2. errors and omission insurance status, if required by the licensee, including the carrier, the policy number, the dollar limits of the coverage and the dates covered in the policy;
3. ~~Experience and professional record;~~
4. the areas in which each fee appraiser considers him/herself geographically competent broken down by parish and/or zip code;
5. the type of property for each appraisal performed;
6. the scope of work for each appraisal performed;

7. the time frame in which the appraisal services are required to be performed for each appraisal performed;
8. fee appraiser work quality;
9. the number and type of assignments completed per year; and
10. the fee or remuneration or monitory compensation for each report or assignment.

C. All records shall be kept properly indexed and readily available to the board for review upon request and with ten (10) business days ~~without~~ prior notice. Duly authorized representatives of the board shall be authorized to inspect such records at the offices of licensees between the hours of 9 a.m. and 4 p.m., Saturdays, Sundays, and legal holidays excluded, and to subpoena any of the said records.

D. All records specified in this Chapter shall be retained for a period of five years; however, records that are used in a judicial proceeding, in which the appraiser provided testimony related to the appraisal assignment, shall be retained for at least two years after disposition, whichever period expires last.

E. At any time that a document or information on file with the board becomes inaccurate or incomplete, the appraisal management company shall notify the board in writing within ~~five~~ ten (10) business days.

**D. Compensation of Fee Appraisers**

Proposed §31101 requires licensees to use the elements found in the first or second presumption of compliance prescribed by the Dodd-Frank Act to determine the customary and reasonable rate of compensation for a fee appraiser in a specific geographic market. The proposed rule also imposes obligations upon licensees beyond simple compliance with either presumption when communicating with fee appraisers or electing to use the second presumption. The proposed rule also grants the Board authority to establish a customary and reasonable rate of compensation schedule for use by any licensees that elect to do so.

We object to the proposed rule in its entirety on the basis that: (1) it is inconsistent with, and preempted by, the federal Truth in Lending Act; and (2) is not necessary for the enforcement of chapter 3415 of the Louisiana Revised Statutes. We strongly urge the Board to amend the Proposed Rules by removing §31101.

The proposed rule is inconsistent with the Federal Truth in Lending Act because: (1) TILA does not require that an AMC follow a presumption of compliance to be compliant with the customary and reasonable compensation requirement; (2) the rule imposes requirements that are inconsistent with the federal customary and reasonable requirement; and (3) the Board cannot grant itself enforcement authority over a federal law.

Furthermore, because state law requires AMCs to comply with the federal customary and reasonable compensation requirement, and does not explicitly grant the Board authority to promulgate rules implementing a Federal requirement, the proposed rule is not necessary for the enforcement of Chapter 3415.

1. Background

Section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amended the federal Truth in Lending Act (TILA) creating a new section, 129E, governing appraisal independence requirements. Subsection 129E(i) requires that lenders and their agents compensate independent contractor appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence of such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys.[1] The section suggests, and does not prescribe, what evidence supports the payment of a customary and reasonable fee. Dodd-Frank directed federal agencies to promulgate rules implementing this requirement.[2]

The Federal Reserve Board promulgated the Interim Final Rule ("IFR") in December 2010 to implement the above TILA requirement.[3] Section 1026.42(f)(1) of the IFR states:

> (f) *Customary and reasonable compensation*—(1) *Requirement to provide customary and reasonable compensation to fee appraisers.* In any covered transaction, the creditor and its agents shall compensate a fee appraiser for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised.

The IFR provides two alternative ways that creditors and their agents may qualify for a presumption of compliance with the customary and reasonable fees requirement. The first and primary presumption states that a creditor or its agents are in compliance with the rule if the independent contractor appraiser is compensated in an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised.[4] This presumption does not require an AMC to use a survey when establishing its methodology to pay appraisers customary and reasonable fees.

The second and alternative presumption states a creditor or its agents are in compliance with the rule if the creditor or its agents determine the amount of compensation paid to the fee appraiser by relying on information about rates that is objective, based on recent rates paid, and if based on surveys or fee schedules, those items exclude compensation paid to fee appraisers for appraisals ordered by AMCs. This presumption does not mandate the use of any particular survey.[5]

TILA states that any State law is preempted to the extent that the law is inconsistent with TILA.[6] TILA also explicitly states that an action to enforce the Act may be brought by a private party, an appropriate

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[1] 15 U.S.C. § 1639e(i) (2012).
[2] 15 U.S.C. § 1639e(g)(2) (2012).
[3] 12 C.F.R. § 226.42(f), *renumbered* 12 C.F.R. § 1026.42(f) (2012).
[4] 12 C.F.R. § 1026.42(f)(2) (2012).
[5] 12 C.F.R. § 1026.42(f)(3) (2012).
[6] 15 U.S.C. §§ 1610 *et seq.* (2012).

State attorney general, or an appropriate Federal agency. TILA does not grant enforcement authority over its provisions to state agencies.[7]

Section 3415.15, enacted by Act 429 of 2012, amends the Louisiana Revised Statutes to require that "AMCs compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the presumptions of compliance under federal law." The proposed rule seeks to further implement §3415.15, stating that the purpose of the rule is to establish compliance procedures whereby AMCs can meet the requirements of the Dodd-Frank Act.[8]

2. §3415.15 requires an AMC to comply with the federal customary and reasonable requirement

We assert the intent and plain reading of §3415.15 requires AMCs to comply with the federal customary and reasonable compensation requirement. The section also grants the Board authority to sanction an AMC for its failure to comply with federal law as a result of an appropriate federal enforcement action.

We understand the Board believes it has authority to promulgate the proposed rule because the statute either: (a) creates an independent state requirement for AMCs to compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised notwithstanding the federal requirement; or (b) grants the Board authority to promulgate rules to dictate compliance with federal law.

In addition, the Board appears to interpret the phrase "consistent with the presumptions of compliance under federal law" to either: (a) require AMCs to follow presumptions of compliance under federal law in complying with the state requirement, or (b) to grant the Board both enforcement and rulemaking authority over the customary and reasonable compensation requirement so long as those rules are consistent with the federal presumptions.

We strongly object to the Board's interpretation of §3415.15 as such an interpretation was not the intent of the Legislature and is inconsistent with the plain reading of the statute as well as TILA.

For the following reasons, the only reasonable interpretation of §3415.15 is that Louisiana law requires AMCs to comply with the federal customary and reasonable compensation requirement as provided under TILA.

The first phrase of §3415.15 almost mirrors the federal customary and reasonable compensation requirement under TILA. The Board has underscored that the intent of §3415.15 is for AMCs to comply with the federal requirement – the Notice of Intent accompanying the Proposed Rules states that their

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[7] 15 U.S.C. §§ 1640 *et seq.* (2012).
[8] *See* Louisiana Register, Vo. 38, No. 11, November 20, 2012, p.2992.

purpose is to establish compliance procedures for AMCs to meet the requirements of the Dodd-Frank Act.

The second part of §3415.15, the reference to AMCs paying customary and reasonable compensation "consistent with the presumptions of compliance under federal law," simply reinforces the AMC's obligation to comply with the federal customary and reasonable compensation requirement because the presumptions themselves do not impose an obligation on AMCs. As further explained below, an AMC's failure to comply with a presumption of compliance does not mean that the AMC has violated the federal requirement.

As a result, §3415.15 can only be read to require that AMCs comply with the federal customary and reasonable compensation requirement. To read otherwise would be to dismiss the statute's plain language, and would result in the statute being inconsistent with TILA.

Furthermore, the Board's position that §3415.15 creates a state requirement that mirrors the federal requirement is similarly incorrect – such a position would eviscerate the enforcement section of TILA, and would permit any state regulator to simply adopt a federal provision into state law, and seek enforcement authority over that law, regardless of whether the federal law expressly dictates who has authority to enforce it.

Importantly, §3415.15 serves a valuable consumer protection purpose. Section 3415.15 protects the public because if an AMC is found by an appropriate party to have violated the federal requirement, then §3415.15 is violated and the Board can take further punitive action against the AMC. The statute, however, was never intended to grant the Board enforcement authority over Federal law or to create a separate and distinct customary and reasonable requirement.

Given that §3415.15 requires AMCs to comply with the federal customary and reasonable compensation requirement, the proposed rule governing customary and reasonable compensation are inconsistent with TILA in their entirety.

3. Mandating compliance with the federal presumptions

The proposed rule is inconsistent with federal law because TILA does not require a creditor or its agent to comply with any presumptions of compliance – the federal customary and reasonable compensation requirement exists exclusive of the presumptions included in the IFR.

It is important to underscore that the rebuttable presumptions outlined in the IFR simply serve as a safe harbor – they do not create any new responsibility for the creditor or its agent, and they do not hold a creditor or agent in violation of the law if the presumptions are not complied with.

Staff interpretation of the federal requirement and the presumptions underscore that observance with the presumptions is not required for compliance with the federal customary and reasonable compensation requirement:

> A creditor and its agent are presumed to comply with [the customary and reasonable compensation requirement] if the creditor or its agent meets the conditions specified in [the first presumption of compliance] in determining the compensation paid to a fee appraiser. **These conditions are not requirements for compliance** but, if met, create a presumption that the creditor or its agent has complied with [the customary and reasonable compensation requirement]. A person may rebut this presumption with evidence that the amount of compensation paid to a fee appraiser was not customary and reasonable for reasons unrelated to the conditions in [the first presumption of compliance]. **If a creditor or its agent does not meet one of the non-required conditions set forth in [the first presumption of compliance], the creditor's and its agent's compliance with [the customary and reasonable compensation requirement] is determined based on all of the facts and circumstances without a presumption of either compliance or violation.**[9]

The federal customary and reasonable compensation requirement clearly does not mandate compliance with either presumption – the Federal Reserve in drafting the IFR recognized that even though a creditor or agent may not be successful in relying on a presumption to be in compliance with the law, other evidence may be presented to avoid liability.

The proposed rule, however, dismisses the clear intent of the federal requirement and mandates that AMCs comply with either enumerated presumption. Such a rule creates significant unintended consequences.

For example, in an action against an AMC for violation of the federal customary and reasonable requirement, the AMC may seek to avoid liability by asserting compliance with the first presumption. Even if the effort proves unsuccessful, the AMC may still be able to demonstrate compliance with TILA based upon all of the relevant facts and circumstances. Nevertheless, the proposed rule as drafted would find the AMC in violation of TILA.

As a result, the proposed rule is inconsistent with, and therefore preempted by, TILA. It imposes an impermissible obligation on an AMC that conflicts with an AMC's ability to comply with the federal customary and reasonable requirement.

4. <u>The Board cannot enforce federal law</u>

The state law or regulation is inconsistent with TILA because a state regulator does not have authority to enforce Federal law absent unambiguous language giving the regulator such authority.

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[9] *See* 12 C.F.R. § 1026.42(f) (2012); 75 Fed. Reg. 66586, Thursday, October 28, 2010 (emphasis added).

TILA is exclusively enforced by appropriate federal agencies and State attorneys general. State regulators do not have the authority to enforce TILA and its corresponding regulations absent unambiguous language that grants the regulator such authority.

Section 3415.15 does not explicitly give the Board authority to regulate the federal customary and reasonable compensation requirement. As a result, the proposed rule, which dictates how AMCs comply with the federal requirement, and grants the Board enforcement authority over the rule, is inconsistent with TILA.

Importantly, although §3415.15 does not permit the Board to enforce the federal customary and reasonable compensation requirement, it does allow the Board to discipline an AMC licensee that is found to have failed to comply with the requirement through a proper enforcement action as defined by TILA.

5. The proposed rule imposes obligations inconsistent with TILA

Notwithstanding the above concerns, the proposed rule's requirements themselves are also inconsistent with, and preempted by, TILA.

First, and as previously discussed, regardless of how the proposed rule was drafted, §3415.15 requires AMCs to comply with the federal customary and reasonable compensation requirement and does not expressly give the Board authority to enforce the federal requirement.

As a result, the Board cannot rely on §3415.15 to grant itself enforcement authority over an AMC's compliance with the federal customary and reasonable compensation requirement as this would be clearly inconsistent with TILA.

Second, the requirements in the proposed rule are themselves inconsistent with TILA. Any requirement that mandates how an AMC must comply with a particular presumption of compliance provided under federal law is inconsistent with TILA because the federal customary and reasonable compensation requirement does not mandate that an AMC use any presumption to be in compliance with the federal requirement nor does it require a creditor or agent to disclose its methodology as part of complying with a presumption.

Third, we believe the disclosure to a fee appraiser of the documentation substantiating the method used, the basis for, and the details of an AMC's purported "use" of a presumption of compliance forces an AMC to disclose information that constitutes a protected trade secret and evidence that would otherwise be subject to a judicial protective order.

A creditor or AMC's internal methodology regarding compliance with the federal customary and reasonable compensation requirement includes a private assessment of information. Moreover, its disclosure would result in antitrust concerns and would have a substantial impact on an AMC's ability to be competitive because the manner in which it complies with the federal requirement would be subject to public scrutiny.

It is also important to understand the practical and financial impact on this proposed requirement. The documentation substantiating the methodology used to assert compliance with a presumption is extremely voluminous. Compliance with the requirement would result in appraisers receiving reams of paper that reflect the data, information, and detail that constitutes an AMC's methodology. Aside from the legal reasons the proposed requirement is invalid, satisfying the requirement would be an extraordinary financial and practical burden on AMCs.

Fourth, the requirement that an AMC utilizing the second presumption of compliance must submit the information to the Board for approval 30 days prior to its use is clearly inconsistent with TILA. TILA does not contemplate that state regulatory agencies would be required to pre-authorize the use of evidence to support a presumption of compliance with the federal customary and reasonable compensation requirement.

TILA anticipated that a court would be the arbiter over the sufficiency of any fee schedule used by a creditor or its agent. The proposed rule is inconsistent with TILA because the Board is seeking to usurp judicial authority by demanding prior approval of a fee schedule used by an AMC to assert compliance with the second presumption when asserting compliance with the IFR presumption.

Similarly, the portion of the proposed rule that grants the Board authority to establish a customary and reasonable rate of compensation schedule for use by AMCs that elect to do so is also inconsistent with TILA.

6. Inconsistent application of TILA

In addition to the proposed rule's inconsistency with TILA, the Board's intended enforcement and application of the proposed rule would result in significant unintended consequences for the lending community's compliance with the federal customary and reasonable compensation requirement.

As discussed, TILA applies to creditors and their agents. All applicable creditors must comply with the federal customary and reasonable compensation requirement regardless of whether they use an AMC.

The intent of the federal requirement is to have consistent and uniform application across the country, and creditors and their agent AMCs rely on that consistency to identify and implement appropriate policies and procedures to comply with the requirement. Instead of complying with 50 different

requirements concerning customary and reasonable compensation of appraisers, there is only one standard.

The proposed rule, however, significantly erodes the consistency enjoyed by creditors and exposes creditors that use AMCs to greater risk because AMC compliance with customary and reasonable compensation of appraiser would be scrutinized under a standard completely different from the current uniform federal standard.

For example, assume Creditor A uses an AMC to order appraisals in Louisiana and Creditor B does not. Currently, Creditor A, the AMC, and Creditor B have policies and procedures to be in compliance with the federal customary and reasonable compensation requirement. Assume an individual sues the AMC and Creditor A for violation of the federal requirement. The AMC and Creditor A may rely on a presumption of compliance, but if the presumption is rebutted, the defendants may still be successful in avoiding liability.

The proposed rule would create additional and unknown liability for the AMC and Creditor A – in the scenario above the AMC is in compliance with federal law, even though the Board could reach the opposite conclusion. These inconsistent outcomes for the same policies and procedures would lead to devastating results. However, because Creditor B does not need to comply with the proposed rule, Creditor B does not face the same unknown liability as Creditor A.

The proposed rule would dramatically impact the appraisal management services market. The likely result of its enactment is clear – creditors will have an incentive to not continue using AMCs. The rule will result in reduced competition in the appraisal services industry.

7. Request for analysis underlying fiscal and economic impact statement

We request that the Board provide its analysis and information supporting its assertion in the fiscal and economic impact statement that the proposed rule has no estimated impact on competition and employment.

We respectfully disagree with the Board's conclusion. As a result of the proposed rule, creditors may not choose not to use AMCs in Louisiana to order appraisals due to the significant risk and requirements the proposed rule regarding customary and reasonable compensation imposes for AMCs, and not for creditors. This result will significantly impact AMC competition in Louisiana.

**E. Conclusion**

In conclusion, we respectfully request the Board adopt our recommendation changes regarding the Proposed Rules, and withdraw its proposal to regulate the federal customary and reasonable compensation requirement. We also request the Board include these comments in the record of this rulemaking.

Sincerely,

David D. Cherner
Compliance Director
RELS VALUATION
(952) 345-4903
*david.cherner@rels.info*

REVAA, Inc.

734 15th Street NW 900

Washington, DC 20005

December 10, 2012

**VIA ELECTRONIC MAIL**

Stephanie Boudreaux
Louisiana Real Estate Commission
P.O. Box 14785
Baton Rouge, LA 70898-4785

**RE: Proposed LREAB Appraisal Management Company Regulations**

Dear Ms. Boudreaux:

This comment is on behalf of the Real Estate Valuation Advocacy Association (REVAA) in regard to the proposed regulations concerning appraisal management companies (AMCs) that would amend Subpart 3, Part LXVII of Title 46 of the Louisiana Administrative Code – Professional and Occupation Standards Regulations (the Proposal), as recently proposed by the Louisiana Real Estate Appraisers Board (the Board).

REVAA supports a number of proposed amendments in the Proposal, with the suggested revisions described further below. However, REVAA strongly opposes the portion of the Proposal that would add Section 31101(A) to Title 46.

Respectfully, and for the reasons discussed below, REVAA and its Members believe that Section 31101(A), as currently drafted, is unlawful and therefore may not be issued by the Board in this form. In our view, Section 31101(A) conflicts with the very requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) that the Board cites and relies upon in proposing it. The Dodd-Frank Act requirements relied upon by the Board have been implemented authoritatively by the Board of Governors of the Federal Reserve System (the Federal Reserve Board). This conflict must be resolved in favor of the Dodd-Frank Act, which preempts Section 31101(A). Therefore, Section 31101(A) cannot stand as it is currently proposed.

Here is additional detail on this issue for your consideration.

**REVAA**

REVAA is a real estate related valuation trade association dedicated to the maintenance and further development of high quality standards within the real estate valuation industry and the advocacy of related causes. REVAA is comprised of companies that produce and deliver real estate valuation products including appraisals, broker price opinions, automated valuation models and other innovative approaches to valuation that benefit mortgage investors, servicers, originators, and borrowers.

REVAA Members actively engage in business in Louisiana, among other states, and our appraisal management company Members will be subject to the Provision. REVAA respectfully submits these comments both in its name and in a representative capacity, on behalf of its Members.

**Section 31101**

As a threshold matter, REVAA respectfully urges the Board to consider that adoption of Section 31101 as it is currently drafted would present very troubling issues with respect to the fair treatment of AMCs in Louisiana. Currently, the "customary and reasonable" appraiser compensation requirements discussed below under federal law apply to all creditors, regardless of whether they utilize an AMC. As REVAA will discuss, Section 31101 would impose new restrictions and requirements surrounding the "customary and reasonable" requirement. Importantly, however, these new restrictions and requirements would apply *only* to AMCs, and consequently would impose additional burdens on creditors seeking to use AMCs in Louisiana. REVAA submits that this kind of discrimination against the use of AMCs is unjustified by the Board, and is in fact unjustifiable under federal law, and further urges the Board to consider the seriously adverse effect that Section 31101, as drafted, could have on the AMC industry in Louisiana. It could have the effect of causing creditors to not use AMCs simply to avoid these additional and inappropriate restrictions. That is not, respectfully, what the Louisiana legislature intended when it passed Act 429. It is also not, respectfully, a permissible or appropriate goal of the Board.

Section 31101(A) – The Dodd-Frank Act and Federal Preemption[1]

Respectfully, REVAA and its Members believe and suggest that Section 31101(A) of the Proposal, as drafted, is preempted by the federal Truth in Lending Act (TILA), as implemented by Regulation Z and as amended by the Dodd-Frank Act, for the following reasons.

In 2010, President Obama signed the Dodd-Frank Act into law. Section 1472 of the Dodd-Frank Act (15 U.S.C. § 1639e) addresses appraisal independence requirements. It amended TILA to require, in part, that creditors and their agents, including AMCs, must compensate appraisers at a rate that is "customary and reasonable" for appraisal services performed in the market area of the property being

[1] The Consumer Financial Protection Bureau (CFPB) assumed sole enforcement authority over both TILA and Regulation Z on July 21, 2011. In a Federal Register release (Identification of Enforceable Rules and Orders, 76 Fed. Reg. 43,569 (July 21, 2011)), the CFPB indicated that for those laws for which rulemaking authority transfers to the CFPB (such as TILA), the official staff commentary, guidance, and policy statements issued prior to July 21, 2011 by the transferring agency will be applied by the CFPB pending further CFPB action. Consequently, unless and until the CFPB issues contradictory guidance, it appears that the Board of Governors guidance on TILA and Regulation Z that was issued prior to July 21, 2011 controls.

appraised. It further stated that evidence of customary and reasonable fees could be established by objective third-party information, such as government fee schedules.

Subsequently, the Federal Reserve Board amended Regulation Z in order to implement the new appraisal provisions of TILA. Under TILA, Regulation Z requires that creditors and their agents (which include AMCs) compensate appraisers for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the appraised property.[2]

Regulation Z further and specifically provides for two alternative methods that creditors and their agents may utilize in order to be presumed to be in compliance with this requirement. Under the first method, creditors and their agents are presumed to be in compliance if they compensate appraisers in amounts that are reasonably related to recent rates paid for comparable appraisal services performed in the relevant geographic area. In determining this amount, Regulation Z provides that the creditor or its agents must review certain factors and make appropriate adjustments to recently-paid rates; such factors include the type of property, the scope of the work, the time in which the appraisal services are required to be performed, and the appraiser's qualifications and experience.[3]

Under the alternative second method, a creditor and its agents are presumed to comply with the customary and reasonable fee requirement if they determine the amount of compensation to be paid to the appraiser by relying on information about rates that is based on objective third-party information, including fee schedules, prepared by independent third parties such as government agencies. This information must be based on recent rates paid to representative samples of providers of appraisal servicers in the geographic market of the appraised property or the fee schedules of those providers, and must exclude fees paid to appraisers for appraisals ordered by AMCs.[4]

It is important to note, however, that these methods of compliance are not mandatory; neither TILA nor Regulation Z *require* that a creditor use either method for ensuring that an appraiser receive customary and reasonable compensation. The methods of compliance described above are simply safe-harbors for creditors that wish to be presumed to be in compliance with the requirement. Creditors are free to utilize other methods in order to demonstrate that they compensate appraisers in a customary and reasonable manner, if such creditors are comfortable with assuming the risk of not utilizing a safe-harbor. If a creditor or its agent (such as an AMC) does not utilize one of these safe-harbors, its compliance with the requirement is determined based on all the facts and circumstances without a presumption of either compliance or violation.[5]

In 2012, Louisiana passed Act 429. Section 3415.15 of Act 429 amends the Louisiana General Statutes to require that "AMCs compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the presumptions

[2] 12 C.F.R. § 1026.42(f)(1).
[3] 12 C.F.R. § 1026.42(f)(2)(i).
[4] 12 C.F.R. § 1026.42(f)(3).
[5] CFPB's Regulation Z Official Staff Commentary, § 1026.42(f)(2)-1.

of compliance under federal law." The Proposal seeks to implement this statutory requirement through Section 31101(A), which requires AMCs to use one of the two methods described above in order to determine the customary and reasonable rate of compensation for a fee appraiser in a specific geographic market. It states:

> Licensees shall use the elements found in the first or second presumption of compliance prescribed by the Dodd-Frank Wall Street Reform and Consumer Protection Act, to determine the customary and reasonable rate of compensation for a fee appraiser in a specific geographic market.[6]

This provision (the Provision) effectively eliminates the ability of creditors and AMCs to demonstrate compliance with the "customary and reasonable compensation" requirement under TILA and Regulation Z absent utilization of a safe-harbor method. The Board proposes to require the use of these two methods of presumed compliance by AMCs. However, as demonstrated above, the Board of Governors expressly recognized that neither a creditor nor its agents are required to use either method of presumed compliance. Consequently, the Board would, in effect, be amending unjustifiably the provisions of Regulation Z for AMCs in Louisiana.

Pursuant to 12 C.F.R. § 1026.28(a) and the Official Staff Commentary thereto, Regulation Z and TILA preempt state law to the extent that the state law contradicts a requirement of TILA or Regulation Z. The Provision, as described above, effectively requires AMCs in Louisiana to use one of the presumed methods of compliance with the customary and reasonable fee requirement under TILA and Regulation Z. Regulation Z contemplates providing AMCs with a choice as to how to determine whether an appraisal fee is customary and reasonable, and thus presumed to be in compliance with Regulation Z. The Provision destroys or at a minimum materially interferes with that choice, and thus contradicts this federal law provision. Accordingly, and respectfully, we conclude that it is preempted by this provision of federal law, and cannot stand.

<u>Section 31101(A)(1)</u>

In light of the foregoing arguments, which demonstrate that the Proposal unjustifiably limits the ability of an AMC to comply with federal law, REVAA respectfully submits that Section 31101(A)(1) is similarly flawed, in that it contemplates an AMC only using the two presumed methods of compliance to determine "customary and reasonable" compensation and disclosing which presumed method was used in a given circumstance to the appraiser in question. This provision, as with Section 31101(A), unjustifiably requires use of one of the two presumed methods of compliance under Regulation Z, and should therefore be removed for the same reasons.

In addition, REVAA suggests that this provision is without purpose. TILA and Regulation Z already permit an appraiser to challenge the compensation he or she receives as not being "customary and reasonable", and if the AMC in question did not use one of the presumed methods of compliance, the AMC would not be able to rely upon a safe-harbor assumption of compliance. Requiring an AMC to

[6] Louisiana Register, Vol. 38, No. 11, November 20, 2012, p. 2993.

disclose to an appraiser up-front how it determined that the compensation in question is "customary and reasonable" would be costly and unduly burdensome for the AMC, and could require the disclosure of sensitive business information that could be highly damaging to the AMC in question.

**Section 30302**

REVAA generally does not object to the implementation of this portion of the Proposal, subject to REVAA's following comment. In order to prevent stale claims and the uncertainty and high cost that stale claims can engender, REVAA recommends adding language to Section 30302 generally that would state that an action against the surety bond by a claimant in a court of competent jurisdiction must be commenced within one (1) year after the licensee AMC has been found by such court to have failed to comply with applicable law.

**Chapter 304**

REVAA generally does not object to the implementation of this portion of the Proposal, subject to REVAA's following comment. In order to promote efficiency and reduce costs, REVAA recommends clarifying language that the AMC in question may obtain the certifications contemplated by Chapter 304 electronically.

**Section 30501(B)**

REVAA generally does not object to the implementation of this portion of the Proposal, subject to REVAA's comments below.

First, in Subsection 1, REVAA recommends removing the word "qualifications", as it is ambiguous in this context. In other words, it is not clear what the Board proposes by requiring a list of an appraiser's "qualifications".

Second, REVAA recommends removing Subsections 5 through 7 and Subsection 10 in their entirety. These provisions are duplicative and unnecessary, since applicable law already requires AMCs to retain full appraisal service records. Additionally, these provisions call for information that is specific to a given appraisal transaction, while the rest of the provisions in this subsection call for information that is specific to a given appraiser, not to a given transaction. This presents a confusing compliance model for AMCs and would be unduly burdensome.

Third, REVAA recommends removing Subsection 8 in its entirety. This provision requires record maintenance of an appraiser's "work quality". However, that term is ambiguous, and there is no indication given in the provision as to what constitutes proper retention of a record concerning an appraiser's "work quality".

**Section 30900**

REVAA generally does not object to the implementation of this portion of the Proposal, subject to REVAA's comments below.

First, in Subsections A and B, REVAA recommends that the Board add language clarifying that the Board and the Executive Director each must have probable cause in order to investigate a licensee AMC. While REVAA recognizes the valid need for the Board and the Executive Director to maintain proper oversight over licensee AMCs, REVAA urges the Board to consider that the prospect of investigation at any time, for any or for no cause, could have a chilling effect on AMCs seeking to do business in Louisiana, and that the level of readiness that a licensee AMC would have to maintain in the face of such a prospect would be cost-prohibitive. REVAA suggests that a "probable cause" standard would serve as an appropriate "medium" between the need for the Board and the Executive Director to be able to monitor licensees and for AMCs to operate with some level of comfort in the State of Louisiana.

Second, in both Subsections A and B, REVAA recommends that the Board clarify the interplay between the Executive Director's investigative authority and the Board's ability to approve commencement of an investigation. It is not clear, for example, why the Board and the Executive Director appear to have separate abilities to commence investigations.

Third, REVAA suggests that the Board add language clarifying that if the Board or the Executive Director determines that a complaint falls outside their jurisdiction, or if a claim is determined to be without merit, then that claim will be dismissed immediately. The reputational risk to a licensee AMC due to a pending claim can be high, and REVAA submits that it is unfair to submit a licensee AMC to such risk unduly when it is determined that a claim was brought in error.

REVAA and its Members appreciate the Board's time and consideration of our views.

Respectfully submitted,

Donald E. Kelly, Executive Director

Don.Kelly@revaa.org

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**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ340ft. Such comments must be received no later than March 27, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ340ft. This proposed regulation is available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

**Public Hearing**

A public hearing will be held on March 27, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

1302#026

## NOTICE OF INTENT

**Office of the Governor**
**Real Estate Appraisers Board**

Real Estate—Appraisal Management Companies
(LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101)

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Appraisers Board has initiated procedures to amend Chapters 303, 305 and 309, and to promulgate Chapters 304 and 311. The purpose of the proposed action is to: (1) establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Session consistent with the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act; (2) establish grievance or complaint procedures; and (3) further clarify investigative procedures.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LXVII. Real Estate**
**Subpart 3. Appraisal Management Companies**
**Chapter 303. Forms and Applications**
**§30302. Surety Bond Required; Amount and Conditions; Filing**

A. Applicants for licensing as an appraisal management company shall submit proof of a surety bond in the amount of $20,000 with a surety company qualified to conduct business in Louisiana.

B. Bonds shall be in favor of the state of Louisiana and conditioned for the benefit of a claimant against the licensee for a violation of the Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board.

C. Bonds shall remain effective and in force throughout the license period of the appraisal management company.

D. Proof of surety bond renewal shall be provided to the board in conjunction with the annual renewal of the appraisal management company license.

E. Failure to maintain a surety bond shall be cause for revocation or suspension of a license.

F. A licensee who elects to submit a cash deposit or security in lieu of a surety bond, as provided in R.S. 37:3515.3(D)(5), shall restore the cash deposit or security annually upon license renewal, if a claim has reduced the deposit amount or security below $20,000.

G. The board may file suit on behalf of a party having a claim against a licensee or a party having a claim may file suit directly against the surety bond. Suits shall be filed within one year after the claim arises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Chapter 304. Competency**
**§30401. Appraiser License Verification**

A. Prior to making an assignment to a real estate fee appraiser, licensees shall have a system in place to verify that the appraiser holds a license in good standing in this state pursuant to the Louisiana Real Estate Appraisers Law, R.S. 37:3391 et seq. Licensees may rely on the National Registry of the Appraisal Subcommittee for purposes of appraiser license verification. Before or at the time of making an assignment to a real estate fee appraiser, licensees shall obtain a written certification from the appraiser that he or she:

1. is competent in the property type of the assignment;
2. is competent in the geographical area of the assignment;
3. has access to appropriate data sources for the assignment;
4. will immediately notify the licensee in writing if the appraiser later determines that he or she is not qualified to complete the assignment; and

5. is aware that misrepresentation of competency is subject to the mandatory reporting requirement of the *Uniform Standards of Professional Appraisal Practice (USPAP)*.

B. Subsequent to a completed appraisal being submitted to the assigning licensee, any request for additional information that may impact or alter the opinion of value stated therein shall be made by the certified appraiser completing the appraisal review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

## Chapter 305. Responsibilities and Duties

### §30501. Record Keeping

A. - A.4. …

B. In addition to the records that shall be maintained in Subsection A of this Section, licensees shall maintain a complete list of all real estate fee appraisers approved by the licensee to receive appraisal assignments. The list shall include, but is not limited to, the following information on each fee appraiser:

1. name, license status, and qualifications;

2. errors and omission insurance status, including the carrier, the policy number, the dollar limits of the coverage and the dates covered in the policy, if such insurance is required by the licensee;

3. experience and professional record;

4. the areas in which each fee appraiser considers him/herself geographically competent broken down by parish and/or zip code;

5. the type of property for each appraisal performed;

6. the scope of work for each appraisal performed;

7. the time frame in which the appraisal services are required to be performed;

8. fee appraiser work quality;

9. the number and type of assignments completed per year; and

10. the fee or remuneration or monitory compensation for each report or assignment.

C. All records shall be kept properly indexed and readily available to the board for review upon request. Duly authorized representatives of the board shall be authorized to inspect such records at the offices of licensees between the hours of 9 a.m. and 4 p.m., Saturdays, Sundays, and legal holidays excluded, upon 10 calendar days written notice to the licensee, and to subpoena any of the said records.

D. All records specified in this Chapter shall be retained for a period of five years; however, records that are used in a judicial proceeding, in which the appraiser provided testimony related to the appraisal assignment, shall be retained for at least two years after disposition, whichever period expires last.

E. At any time that a document or information on file with the board becomes inaccurate or incomplete, the appraisal management company shall notify the board in writing within 10 business days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 37:2407 (August 2011), amended LR 39:

## Chapter 309. Investigations; Disciplinary Authority; Enforcement and Hearing

### §30900. Investigations

A. The board may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of a licensee or certificate holder, or any person who assumes to act as such. Written complaints shall bear the signature of the complainant or that of his legal representative before any action will be taken thereon by the board.

B. The executive director of the board may issue written authorization to investigate apparent violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board.

C. Investigations shall be conducted by the staff of the Louisiana Real Estate Appraisers Board and/or the Louisiana Real Estate Commission.

D. If, during the course of an investigation, information is established indicating that violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board have been committed by any licensee other than the licensee against whom the original complaint was made, the additional licensee may be added as a respondent to the investigation in the absence of any written complaint alleging such violations.

E. The board may file suit in the Nineteenth Judicial District Court in the parish of East Baton Rouge to enforce a subpoena against any person that does not comply with a subpoena issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

## Chapter 311. Compensation of Fee Appraisers

### §31101. General Provisions; Customary and Reasonable Fees; Presumptions Of Compliance

A. Licensees may use the elements found in the presumptions of compliance prescribed by the Dodd-Frank Wall Street Reform and Consumer Protection Act, and as prescribed by R.S. 37:3515(A) to determine the customary and reasonable rate of compensation for a fee appraiser in a specific geographic market. The disclosure made by licensees using the first presumption of compliance shall provide documentation to the selected fee appraiser that substantiates the method used, the basis for, and the details of the elements listed in Paragraphs B.1-6 of this Section.

1. Licensees shall disclose to the selected fee appraiser all methods, factors, variations, and differences used to determine the customary and reasonable rate of compensation in the geographic market of the property being appraised before or at the time an appraisal assignment is made.

2. An agreement between a licensee and a fee appraiser, written or otherwise, shall not create a presumption of compliance, nor shall it satisfy the requirements of R.S. 37:3415.15, which mandate the payment of a customary and reasonable rate of compensation to fee appraisers.

B. A licensee shall maintain written documentation that describes or substantiates all methods, factors, variations, and differences used to determine the customary and

reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. This documentation shall include, at a minimum, the following elements:

1. the type of property for each appraisal performed;
2. the scope of work for each appraisal performed;
3. the time in which the appraisal services are required to be performed;
4. fee appraiser qualifications;
5. fee appraiser experience and professional record; and
6. fee appraiser work quality.

C. A licensee may establish a customary and reasonable rate of compensation based on objective third-party information prepared by independent third parties such as government agencies, academic institutions, and private research firms. Third-party information shall be based on recent rates paid to a representative sample of appraisal service providers in the geographic market of the appraisal assignment, or the fee schedule of those providers. Written documentation that describes and substantiates third-party information shall be maintained by the licensee.

1. The board, at its discretion, may establish a customary and reasonable rate of compensation schedule for use by any licensees that elects to do so.

D. In accordance with the record keeping responsibilities prescribed in Chapter 305 of the board rules and regulations, licensees shall maintain records on all methods, factors, variations, and differences used to determine a customary and reasonable rate of compensation. Licensees shall submit these records to the board upon request no later than 10 calendar days after the request is made.

E. An appraiser who is aggrieved under this Section may file a complaint with the board against the appraisal management company if the matter remains unresolved after the appraiser completes the company's dispute resolution process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Family Impact Statement**

The proposed rules have no known impact on family, formation, stability, or autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed rules have no known impact on poverty as described in R.S. 49:973.

**Public Comments**

Interested parties are invited to submit written comments on the proposed regulations through March 12, 2013 at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

# PUBLIC

## FISCAL AND ECONOMIC IMPACT STATEMENT
## FOR ADMINISTRATIVE RULES
## RULE TITLE: Real Estate—Appraisal Management Companies

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs (savings) to state or local governmental units as a result of the proposed rule change. The purpose of the proposed rule change is to establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Legislative Session consistent with the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, to establish grievance/complaint procedures, and to further clarify investigative procedures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Any cost associated with meeting the surety bond requirement of Act 429 will be determined by the Appraisal Management Company, depending on the independent decision to either purchase a bond, the cost of which will be determined by the bonding company, or to submit a $20,000 cash deposit or security in lieu of the bond. The purpose of the bond, deposit, or security is to ensure that the Appraisal Management Company conducts business in accordance with all license laws and rules, which provides the benefit of protection to the customer.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment as a result of the proposed rule change.

Bruce Unangst
Executive Director
1302#006

Evan Brasseaux
Staff Director
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals
### Board of Dentistry

Reuse of Toothbrush; Continuing Education Requirements; Examination of Dentists
(LAC 46:XXXIII.305, 1611, and 1709)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to repeal LAC 46:XXXIII.305 and amend LAC 46:XXXIII.1611 and 1709.

The Louisiana State Board of Dentistry is repealing §305. The prohibition set forth in §305 is encompassed in other

150 W Civic Center Drive
Suite 500
Sandy, Utah 84070

Direct 801-303-2431
corelogic.com

March 11, 2012

Stephanie Boudreaux
Public Information Director
Louisiana Real Estate Commission
9071 Interline Avenue
Baton Rouge, Louisiana 70809

**VIA ELECTRONIC MAIL**
sboudreaux@lrec.state.la.us

**RE: Louisiana Appraisal Management Company Licensing and Regulation Act (the "Act")—Comments to Proposed Regulations**

Dear Ms. Boudreaux:

On behalf of CoreLogic Collateral Solutions, LLC, ("CoreLogic") a licensed appraisal management company ("AMC") in the state of Louisiana, thank you for the opportunity to submit comments regarding proposed regulations concerning the oversight of AMCs. CoreLogic appreciates the efforts taken by the Louisiana Real Estate Commission and the Louisiana Real Estate Appraisers Board ("Board") to propose regulations as part of the continued implementation of the Act.

CoreLogic respectfully requests to comment on the proposed regulations under LAC Title 46, Part LXVII, Chapters 304, 305, and 311.

**Chapter 304. Section 30401. Appraisal License Verification**

CoreLogic acknowledges that Board made a change to section 30401 (A) from the prior draft, to provide clarification regarding the timing of making an assignment to a real estate fee appraiser. However, additional clarification is needed. CoreLogic respectfully requests that language be added so that the

items that are of concern to the Board are included in the engagement letters and thus by accepting the assignment the appraiser is acknowledging that they are competent to complete the assignment.

**Chapter 305. Section 30501. Record Keeping**

Under Section 30501 (B), the Board proposes that AMCs maintain detailed records on each fee appraiser approved to receive appraisal assignments. While CoreLogic does not object to keeping such records, the requisite amount of detail that must be maintained needs clarifying. For example under Section 30501 (B), further detail is required as to:

- Item 1—the type of qualifications that must be disclosed by the appraiser to the AMC; and
- Item 3—the type of information concerning experience and professional records that must be disclosed by the appraiser to the AMC.

Further under Sections 30501 (B) 5, 6, and 7, this information needs to be provided by the appraiser for each appraisal performed, especially with regard to time frames for completing appraisal assignments.

Finally, under Section 30501 (C), CoreLogic respectfully requests that the Board provide at least ten (10) business days prior notice when it requests access to such records. Additionally, CoreLogic respectfully requests that the Board remove the requirement that AMCs must properly index their records. The proposed regulations provide no guidance as to the meaning of "properly index."

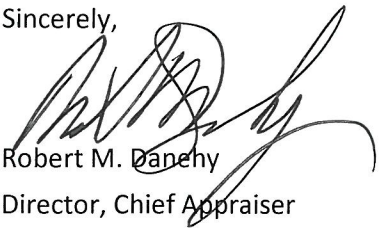
**Chapter 311. Section 31101. General Provision; Customary and Reasonable Fees; Presumption of Compliance**

CoreLogic respectfully asserts that the proposed regulations set forth under Section 31101 are inconsistent with the federal requirements set forth in the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act") and requests that the entire section be removed. Under the Dodd Frank Act, the Federal Reserve Board ("FRB") specifically was tasked with promulgating regulations to implement "customary and reasonable" fee requirements.

Under Section 31101 (A) (1), the Board requires that the AMC disclose to the appraiser the particular presumption of compliance used. Again, under the Dodd Frank Act, AMCs are not required to rely on any presumption in developing their customary and reasonable fees. Accordingly, there is not a requirement under the Dodd Frank Act for an AMC to disclose this information to the appraiser. Further, disclosure of this information creates significant business privacy concerns for AMCs.

CoreLogic appreciates the opportunity to respond to the proposed regulations and looks forward to further discussion.

Sincerely,



Robert M. Danehy
Director, Chief Appraiser
CoreLogic Collateral Solutions, LLC
801-303-2431
*bdanehy@corelogic.com*

**PUBLIC**

NAAMC

NATIONAL ASSOCIATION OF APPRAISAL MANAGEMENT COMPANIES

April 22, 2013

Stephanie Boudreaux
Louisiana Real Estate Commission
P.O. Box 14785
Baton Rouge, LA 70898-4785

RE: Notice of Intent re Proposed changes to Real Estate Management Companies Rules and Regulations as published in the Louisiana Register Vol. 39, No. 02 February 20, 2013. Amendments to Chapters 303,305 and 309 and promulgation of Chapters 304 and 311

Dear Madam:

On behalf of the National Association of Appraisal Management Companies (NAAMC) we would like to offer some comments regarding the above referenced changes to Louisiana's AMC Registration Rules.

We represent Appraisal Management companies big and small across the country. We are proud of the fact AMC's add value to the appraisal process and that our clients recognize this.

Participants in the real estate industry have watched with dismay the very public failure of a small number of AMC's. We have noted with alarm that the failure of these companies has created a situation where the independent contractor appraisers are not being paid for work they have done in good faith.

It's our belief that § 311101 Compensation of Fee Appraisers section of Chapter 311 is intended to help clarify fee payment requirements found in Dodd Frank which some market participants have found confusing. However, The State of Louisiana's proposed regulations impose a significant burden regarding demonstration of compliance which is not found in Dodd Frank.

Dodd Frank allows for two kinds of compliance relative to the requirement to pay appraisers a customary and reasonable fee for an appraisal prepared for a mortgage on single family home. The two kinds of compliance are 1) Payment of fees historically paid in the market area OR; 2) Payment of fees published by an objective third-party, such as the VA rates.

NAAMC

NATIONAL ASSOCIATION OF APPRAISAL MANAGEMENT COMPANIES

*"Customary and reasonable rate of compensation for fee appraisers"* Under the interim final rule, a creditor and its agent must pay a fee appraiser at a rate that is reasonable and customary in the geographic market where the property is located.

The rule provides two presumptions of compliance. Under the first a creditor and its agent is presumed to have paid a customary and reasonable fee if the fee is reasonably related to recent rates paid for appraisal services in the relevant geographic market, and, in setting the fee, the creditor or its agent has: Taking into account specific factors ,which include, for example, the type of property and the scope of work; and not engaged in any anticompetitive actions, in violation of state or federal law, that affect the appraisal fee, such as price fixing or restricting them from entering the market. Second, a creditor or its agent would also be presumed to comply if it establishes a fee by relying on rates established by third party information, such as the appraisal fee schedule issued by the Veteran's Administration, and/or fee surveys and reports that are performed by an independent third party (the Act provides that the fee surveys and reports must not include fees paid by AMCs)."

The use of VA appraisal rates is unsupported as VA Rates are non-market rates which are much higher more than fees paid for a traditional appraisal product. VA Appraisals are priced higher than traditional appraisal products because there is more work involved and a minority of appraisers are qualified to perform VA appraisals.

In order to collect a VA fee, an independent appraiser has to be a VA approved appraiser. To become a VA appraiser the appraiser must meet certain requirements; one of which is that the appraiser must have five years minimum appraisal experience. As previously stated, only a small minority of appraisers are approved VA fee appraisers. In fact, of the 1,216 Appraisers licensed in Louisiana on December 31, 2012 just 60 were on the VA panel.

If this rule is enacted, an AMC would be required to pay all independent appraisers as if they have 5 years experience and had the experience and capabilities required for VA panel membership regardless of their actual qualifications and years of experience.

Louisiana Independent Appraisers set their own appraisal fees. If this rule is enacted, it will mean a 30% fee increase for independent appraisers with no additional benefit to the consumers in Louisiana. Simply paying more for a product does not ensure that it is superior to a product with a lesser cost.

NAAMC

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We understand that ascertaining what items must be in place to "prove" a fee structure paid to an independent contractor is a complex undertaking and we applaud the work of your committee toward that end. However, the regulations as proposed go beyond the scope of the Federal Legislation and cross over into the area of contractual relationships between business people.

The proposed legislation defines market actions for an entire class of business contracts arising out of a desire to define compliance with Dodd Frank. However it must be noted that Dodd Frank is specific to mortgages prepared for owner occupied single family homes and not to all appraisals prepared by all appraisers. The regulations proposed are overly broad and go beyond the purpose and intent of Dodd Frank.

Additionally, all of the requirements do not appear to directly correlate to fee compensation issues. For example, In Chapter 311 § A. "The disclosure made by licensees using the first presumption of compliance shall provide documentation to the selected fee appraiser that substantiates the method used, the basis for, and the details of the elements listed in Paragraphs B.1-6 of this Section"

However – B.1-6 details the elements as:

1. the type of property for each appraisal performed;
2. the scope of work for each appraisal performed;
3. the time in which appraisal services are required to be performed;
4. fee appraiser qualifications;
5. fee appraiser experience and professional record; and
6. fee appraiser work quality

None of the elements detail how to weight a particular element in the decision to engage an appraiser. Per USPAP a scope of work decision is always made by an independent appraiser (Title XI FIRREA of 1989 and reaffirmed in Title XIV in 2010). Every assignment and therefore the engagement for every assignment is unique.

The independent fee appraiser is responsible for providing an appraisal report based on a Scope of Work decision that they make during the engagement process. The proposed reporting of an AMC's history for every assignment in some kind of self defined algorithmic model has little or nothing to do with the complexity of real property engagements and the business practices involved in providing quality appraisals to our customers provided by independent fee appraisers licensed and certified by the State of Louisiana.

The described method is cumbersome, unduly involved and not reflective of the type of data which could be independently vetted by market participants. We see no benefit to the


consumer in this regulation. How would the fee structure model be proved to accurately reflect the market as a whole? How would an independent fee contractor appraiser adequately parse the data presented to them? How is the Board going to validate the data provided to the independent fee contractor without an involved investigation paid for by the taxpayers in Louisiana?

The purpose and intent of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) was consumer protection and appraisal independence. Dodd-Frank requires that individual states implement regulation of AMC's. LASS has partnered with many States in providing information and input as each individual State frames their own AMC statutes.

We respectfully request that the Members of the Real Estate Appraisers Board consider the following areas with respect to the proposed changes during their deliberations; First; the imposition of additional reporting burdens relative to the first presumption of compliance with the payment of customary and reasonable fees; Second; the unintended consequences associated with the proposed establishment of a customary and reasonable rate of compensation schedule by the Board.

*First: The Provision of Documentation relative to the First Presumption of compliance*

*"...The disclosure made by licensees using the first presumption of compliance shall provide documentation to the selected fee appraiser that substantiates the method used, the basis for, and the details of the elements listed in paragraphs B.1-6 of this Section.*

1. *Licensees shall disclose to the selected fee appraiser all methods, factors, variations, and difference used to determine the customary and reasonable rate of compensation in the geographic market of the property being appraised before or at the time an appraisal assignment is made."*

The purpose and intent of Dodd-Frank was consumer protection and appraiser independence.

We would respectfully suggest that by requiring a private business enterprise to provide a detailed reporting of exactly how they arrived at a fee for service offer to an independent contractor does nothing to provide additional consumer protections nor does it promulgate appraiser independence.

We agree wholeheartedly as appraisal professionals that appraisers deserve to be paid a fee appropriate to their abilities, experience and professionalism.

We believe that all parties would agree that a Licensed Appraiser with minimal experience would expect that their fee compensation would be less than the fee offered to a Certified Appraiser with thirty years of experience.

That same Licensed Appraiser might be located within a very short drive distance to a particular property while the Certified Appraiser might be located at a greater distance. Both professionals would be considered for the assignment by an AMC. Both professionals might be approached regarding that assignment. Both professionals would (and should) be offered different rates of compensation.

Whether an independent contractor accepts a fee assignment is up to the independent contractor. The two parties to the contract bear the responsibility for the contract. Expecting a complex reporting of algorithmic business cost data to enable or encourage appraiser independence seems ill founded. The proposed rules change imposes such a costly and weighty burden on the AMC that the likely result is that they will be forced to "prove" compliance by adopting the VA rate schedules. As noted earlier in this correspondence the VA rates are traditionally 30% higher than an average rate in any given market. This is a reflection of the complexity of inspection and reporting requirements imposed by the VA on their carefully selected panel of Certified Appraisers.

The likely impact of the regulation change is that many smaller state based AMC's will simply not be able to bear the burden of the regulations requirements and that they will be forced to withdraw from the Louisiana market.

The resultant dearth of opportunity will hurt not just AMCs but Louisiana appraisers, mortgage borrowers, the banking industry and ultimately the taxpayers of Louisiana. The likely impact is a reduction in the number of market participants and an increase in costs for Louisiana taxpayers.

The resultant lack of access for National Lenders who will now face increased fees for obtaining mortgages will do nothing to add to the public protections or appraiser independence mandated by Dodd Frank.

The independent fee contractor appraisers will now be forced to do business only with the largest AMC's who can bear the costs of the overly burdensome "proof" standards imposed on them. The smaller AMC's, especially the smaller individual companies based in Louisiana will be priced out of the market.

If a homeowner wishes to obtain estimates for a roofing job on their dwelling in Louisiana should they be provided with a quote from each bidder with a similar level of detail? Should

those roofers who are licensed by the State of Louisiana be required to demonstrate in their bid how they arrived at their fee with "all methods, factors, variations and differences used to determine the rate of compensation in the geographic market of the property"?

The business relationship between and AMC, their client and the independent fee contractor is contractually based. Like all contracts there are rights and responsibilities for all the parties.

A residential mortgage is the result of a multi entity contractually defined process between a lender and a consumer. The process may include the services of Brokers, Realtors, AMCs, Appraisers, Title Insurers, Home Inspectors and Lawyers or closing agents. The proposed method of insuring compliance with the First Presumption imposes a burden on only one party to a private business transaction surrounding the creation of a mortgage secured by real property.

To the best of our knowledge, none of the other entities are singled out by having to detail how their business sets it fees. The engagement of an independent contractor is exactly that. The independent contractor has the right to negotiate a fee which they feel is adequate to compensate them for the scope of work they identify as necessary to provide a credible appraisal.

*Second: Unintended Consequences of the proposed creation by the Board of a rate of compensation schedule and the potential Creation of a Potential Conflict of Interest*
The proposed legislation creates a conflict of interest for the board members of the Louisiana Real Estate Board by suggesting that they define a Customary and Reasonable Rate of Compensation Schedule for the use of any licensees that elect to use it.

By requiring members of the Board to decide who should be paid how much for a particular assignment requires a Board member to be responsible for both defining how much money should be paid and in their role as Board Members how the money should be distributed (by defining which class of license receives which rate of compensation or by defining which market area receives which rate of compensation for example).

This creates the appearance of a conflict of interest and is does nothing to contribute to the mission of creating additional protections for the public.

Additionally it must be noted that while the regulations require that Board members be licensed appraisers it makes no provision or requirement for AMC's to be similarly represented.

NAAMC

NATIONAL ASSOCIATION OF APPRAISAL MANAGEMENT COMPANIES

The Board members who are appraisers would find themselves forced into the position of distributing monies collected from one portion of the Board's membership to the another portion. The opportunity for a perception of inequality of representation for all of the parties licensed by the State of LA Board of Real Estate is a likely consequence.

Lincoln Appraisal and Settlement Services does not see a direct benefit to the public arising out of this proposal and we note significant concerns regarding increased appraisal costs for the people of the State of Louisiana.

We hope that the information contained in this document helps to better inform the members of the board on the issues facing AMC's. We appreciate the opportunity to be heard and make ourselves available to the committee members for additional information at your convenience.

Sincerely,

George T. Panichas Jr.
President
NAAMC

George K. Demopulos
Vice President
NAAMC

cc: Governor Bobby Jindal

July 22, 2013

Nanci L. Weissgold
D 202.778.9314
F 202.778.9100
nanci.weissgold@klgates.com

**VIA ELECTRONIC MAIL**

Stephanie Boudreaux
Louisiana Real Estate Commission
P. O. Box 14785
Baton Rouge, LA 70898
sboudreaux@lrec.state.la.us

Re: Revised Proposed Rules Implementing the Louisiana Appraisal Management Company Licensing and Regulation Act

Dear Ms. Boudreaux:

I am writing on behalf of my client, an appraisal management company ("AMC"), to comment on the most recently revised version of rules (the "Proposed Rules") that the Louisiana Real Estate Appraisers Board (the "Board") has proposed as part of the ongoing implementation of the Louisiana Appraisal Management Company Licensing and Regulation Act (the "AMC Act"), La. Rev. Stat. §§ 37:3415.1 et seq. As we expressed in response to the Board's previous invitations for comment, we have reservations about the Proposed Rules' handling of AMCs' payment of "customary and reasonable" rates to fee appraisers. Therefore, as the Board continues its work to implement the Act, we respectfully request that the Board consider the comments below.

## I. COMMENTS

Although Proposed Rule 31101 reflects substantive revisions from its original form as published in November 2012, our previous concerns about its conflict with existing federal law requirements remain. Specifically, Proposed Rule 31101 requires an AMC to "compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised and as prescribed by R.S. 37:3415.15A." That section of the Act requires an AMC to "compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the presumptions of compliance under federal law." Through Proposed Rule 31101, it therefore appears that the Board is attempting to interpret and enforce the provisions of federal law relating to the payment of customary and reasonable fees.

The requirements of federal law at issue are Section 129E(i) of the Truth in Lending Act ("TILA," as that statute was amended by the Dodd Frank Wall Street Reform and Consumer

Protection Act ("Dodd Frank")), and the interim final rule that the Federal Reserve Board ("FRB") adopted to implement it. TILA requires a creditor or its agent to compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised, Effective April 1, 2011, in keeping with that requirement, the FRB's interim final rule establishes two presumptions of compliance through which a creditor or its agent may demonstrate that it pays "customary and reasonable" fees to appraisers. See 75 Fed. Reg. 66572 (Oct. 28, 2010).[1] However, use of one of the presumptions of compliance is not mandatory; a creditor may establish that it pays "customary and reasonable" rates of compensation to appraisers through other means that fit its business needs.

Although Proposed Rule 31101 no longer expressly requires use of one of the two presumptions of compliance, it would have the same effect by implication. Regardless of how a licensee chose to determine its manner of paying "customary and reasonable" fees to appraisers, it would have to "maintain written documentation that describes or substantiates all methods, factors, variations, and differences used to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment," including, at a minimum, six elements. The required elements mirror those found under the first presumption of compliance. If an AMC elected to compensate fee appraisers other than pursuant to one of the fee schedules provided for in the rule – one of which would be determined under objective third party fee information (as under the second presumption of compliance), and one of which would be set by the Board – it also would have to take those elements into consideration. For each assignment made, an AMC would have to use the factors found in the first presumption of compliance to "make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable" – adding substantially to its compliance burden. In short, Rule 31101 still mandates use of methods of compliance that are optional under federal law. As a result, the Proposed Rule conflicts with the FRB's final interim rule, and interferes with the ability of AMCs to comply with the FRB's interim final rule under TILA.

While the Board has authority under the Act to engage in certain rulemaking activity to implement the Act's provisions, neither Section 3415.15 of the Act nor any other section authorizes the Board to interpret federal law. The Dodd Frank Act and Section 129E(g) of TILA reserve rulemaking authority to implement the "customary and reasonable" fee and other appraisal independence requirements of TILA exclusively to the FRB, the other federal banking regulatory agencies, and the Consumer Financial Protection Bureau. State appraisal regulators such as the Board have no authority under TILA or other federal law to promulgate their own regulations interpreting Section 129E or to modify the regulations issued by the FRB.

---

[1] In July 2011, as part of its assumption of regulatory and enforcement powers, the Consumer Financial Protection Bureau received authority to enforce TILA.

Particularly to the extent that its Proposed Rules would be inconsistent with an existing federal regulation, we do not believe that the Board possesses authority to interpret the customary and reasonable fee requirements of TILA.

## II. CONCLUSION

We appreciate the additional opportunity to comment on the revised version of the Proposed Rules, and urge the Board to consider the issues discussed above before adopting them in final form. If you have any questions about the comments herein, please do not hesitate to contact me.

Thank you for your consideration.

Sincerely,

Nanci L. Weissgold

PUBLIC

**Rels**
8009 34th Avenue S / Suite 1300
Bloomington MN 55425
**Rels.info**

Rels

March 11, 2013



**VIA ELECTRONIC MAIL**

Stephanie Boudreaux
Louisiana Real Estate Commission
P.O. Box 14785
Baton Rouge, LA 70898-4785

**RE: Proposed Regulations Concerning Appraisal Management Companies**
**Notice of Intent, 39 LR 02 (February 20), pp. 376-378**

Dear Ms. Boudreaux:

On behalf of Valuation Information Technology, L.L.C., which does business in Louisiana under the name Rels Valuation, thank you for the opportunity to submit comments regarding proposed regulations concerning appraisal management companies ("AMCs"). Rels Valuation is a member of the Real Estate Valuation Advocacy Association ("REVAA"), an industry trade association that promotes education, high ethical standards, political awareness, and the professional development of the real estate valuation industry.

The proposed regulations concerning AMCs ("Proposed Rules") either propose new or amend existing regulations governing AMCs in the Louisiana Administrative Code under Subpart 3, Part LXVII, of Title 46 – Professional and Occupation Standards Regulations. The most recent draft is an amended version of rules proposed in November. We thank the Louisiana Real Estate Appraisers Board (the "Board") for its consideration of our comments dated December 10, 2012. We continue support a number of provisions in the Proposed Rules, particularly those that establish compliance procedures for AMCs to meet amended licensing requirements.

We continue, however, our objection to proposed Chapter 311, regarding Compensation of Fee Appraisers, because it is inconsistent with the federal Truth in Lending Act, and therefore in violation of Louisiana law. We respectfully request a formal hearing to permit AMCs and other interested parties to express their concerns with the Proposed Rules.

We hope the following comments are helpful, and we look forward to working with the Board. We respectfully request written confirmation of the receipt of our comments as well as a stamped copy thereof for our permanent record.

**A. Appraiser License Verification**

Proposed §30401(A)(5) states that before or at the time of making an assignment to a real estate fee appraiser, licensees shall obtain a written certification from the appraiser that he or she, among other things, is aware that misrepresentation of competency is subject to the mandatory reporting requirement of the Uniform Standards of Professional Appraisal Practice (USPAP).

We are unclear as to the intent of this provision as we do not believe any mandatory reporting requirement under USPAP applies to AMCs. We are unsure whether the proposed requirement imposes any obligations upon AMCs other than to disclose the requested information. JUST DISCLOSURE

The only mandatory reporting provision applicable in Louisiana to AMCs in Louisiana is from the federal Dodd-Frank Wall Street Reform and Consumer Protection Act which amended the Truth in Lending Act to require that AMCs (and other parties) who have a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, to refer the matter to the applicable State appraiser certifying and licensing agency.[1]

Moreover, the Federal Reserve Board's 2010 Interim Final Rule implementing the above provision requires an AMC only to report an appraiser's violation of USPAP if the failure to comply with USPAP is material. The Rule defines *material* as "likely to significantly affect the value assigned to the consumer's principal dwelling."

We request the Board clarify this provision to state that the appraiser must certify that he or she is aware that misrepresentation of competency may be subject to the mandatory reporting requirement of section 129E of the Truth in Lending Act. IF HEARTBURN NOT A PROBLEM

**B. Record Keeping**

Proposed §30501(B)(7) requires an AMC to maintain information on the turn time in which the appraisal services are required to be performed for each fee appraiser. We do not object to retaining such information, but the proposed rule is confusing because this record type is transaction specific vs. appraiser specific (*e.g.*, name, license status). The time frame in which appraisal services are required to be performed are determined at a transactional level for each individual appraisal, and are frequently defined prior to the time a particular assignment is given to an appraiser.

We recommend amending this subsection to clarify that information concerning turn time be retained for each appraisal performed by the fee appraiser, consistent with the amendment made by the Board to Proposed §30501(B)(5)-(6) from its November draft. UNSURE PLEASE CLARIFY ?.



[1] 15 U.S.C. § 1639e(e) (2012).

**C. Compensation of Fee Appraisers**

Proposed Chapter 311 permits licensees to use the elements found in the first or second presumption of compliance prescribed by the 2010 Interim Final Rule adopted by the Federal Reserve Board to determine the customary and reasonable rate of compensation for a fee appraiser in a specific geographic market. The proposed rule also imposes obligations upon licensees beyond simple compliance with either presumption when communicating with fee appraisers. The proposed rule also grants the Board authority to establish a customary and reasonable rate of compensation schedule for use by any licensees that elect to do so.

We object to the proposed rule on the basis that: (1) it is inconsistent with the federal Truth in Lending Act; and (2) is not necessary for the enforcement of chapter 3415 of the Louisiana Revised Statutes. We strongly urge the Board to amend the Proposed Rules by removing Proposed §31101.

The proposed rule remains inconsistent with the federal Truth in Lending Act because: (1) TILA does not require that an AMC follow a presumption of compliance to be compliant with the customary and reasonable compensation requirement; (2) TILA, and state law, do not authorize the Board to enforce the federal customary and reasonable compensation requirement; and (3) the rule imposes requirements that are inconsistent with the federal customary and reasonable requirement.

Furthermore, because state law requires AMCs to comply with the federal customary and reasonable compensation requirement, and does not explicitly grant the Board authority to promulgate rules implementing a Federal requirement, the proposed rule is not necessary for the enforcement of Chapter 3415.

1. Background

Section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amended the federal Truth in Lending Act (TILA) creating a new section, 129E, governing appraisal independence requirements. Subsection 129E(i) requires that lenders and their agents compensate independent contractor appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence of such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys.[2] The section suggests, and does not prescribe, what evidence supports the payment of a customary and reasonable fee. Dodd-Frank directed federal agencies to promulgate rules implementing this requirement.[3]

The Federal Reserve Board promulgated the Interim Final Rule ("IFR") in December 2010 to implement the above TILA requirement.[4] Section 1026.42(f)(1) of the IFR states that in any covered transaction, the



[2] 15 U.S.C. § 1639e(i) (2012).
[3] 15 U.S.C. § 1639e(g)(2) (2012).
[4] 12 C.F.R. § 226.42(f), *renumbered* 12 C.F.R. § 1026.42(f) (2012).

creditor and its agents shall compensate a fee appraiser for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised.

The IFR provides two alternative ways that creditors and their agents may qualify for a presumption of compliance with the customary and reasonable fees requirement. The first and primary presumption states that a creditor or its agents are in compliance with the rule if the independent contractor appraiser is compensated in an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised.[5] This presumption does not require an AMC to use a survey when establishing its methodology to pay appraisers customary and reasonable fees. — WRITTEN DOES PROPOSED RULES

The second and alternative presumption states a creditor or its agents are in compliance with the rule if the creditor or its agents determine the amount of compensation paid to the fee appraiser by relying on information about rates that is objective, based on recent rates paid, and if based on surveys or fee schedules, those items exclude compensation paid to fee appraisers for appraisals ordered by AMCs. This presumption does not mandate the use of any particular survey.[6] → WRITTEN DOES RULE

TILA explicitly states that an action to enforce the Act may be brought by a private party, an appropriate State attorney general, or an appropriate Federal agency. TILA does not grant enforcement authority over its provisions to state agencies.[7] WE ARE NOT ENFORCING TILA — JUST LA. LAW

Section 3415.15, enacted by Act 429 of 2012, amends the Louisiana Revised Statutes to require that "AMCs compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the presumptions of compliance under federal law." The proposed rule seeks to further implement §3415.15, stating that the purpose of the rule is to establish compliance procedures whereby AMCs can meet the requirements of the Dodd-Frank Act.[8] WE ARE CONSISTENT

2. §3415.15 requires an AMC to comply with the federal customary and reasonable requirement

The plain reading of §3415.15 requires AMCs to comply with the federal customary and reasonable compensation requirement. The section only grants the Board authority to sanction an AMC to the extent an AMCs fails to comply with federal law as a result of an appropriate federal enforcement action. NO →



[5] 12 C.F.R. § 1026.42(f)(2) (2012).
[6] 12 C.F.R. § 1026.42(f)(3) (2012).
[7] 15 U.S.C. §§ 1640 *et seq.* (2012).
[8] *See* Louisiana Register, Vol. 39, No. 02, February 20, 2012, p.376.

The first phrase of §3415.15 almost mirrors the federal customary and reasonable compensation requirement. Moreover, the Board has underscored that §3415.15 requires AMCs to comply with the federal requirement – the Notice of Intent accompanying the Proposed Rules states that their purpose is to establish compliance procedures for AMCs to meet the requirements of the Dodd-Frank Act.

The second part of §3415.15, the reference to AMCs paying customary and reasonable compensation "consistent with the presumptions of compliance under federal law," simply reinforces the AMC's obligation to comply with the federal customary and reasonable compensation requirement because the presumptions themselves do not impose an obligation on AMCs. An AMC's failure to comply with a presumption of compliance does not mean that the AMC has violated the federal requirement.

As a result, §3415.15 can only be read to require that AMCs comply with the federal customary and reasonable compensation requirement. To read otherwise would be to dismiss the statute's plain language, and would result in the statute being inconsistent with TILA.

In addition, the phrase "consistent with the presumptions of compliance under federal law" unambiguously requires that an AMC's compliance with the federal ~~customary and reasonable~~ compensation requirement must be applied, interpreted, and enforced consistent with TILA. As mentioned, however, TILA can only be enforced by a private party, ~~an appropriate State attorney~~ general, or an appropriate Federal agency. The Board's attempt to enforce the federal customary and reasonable requirement violates §3415.15 because its attempted enforcement of the requirement is not consistent with TILA. ? SHOULD WE INVOLVE ATTORNEY GENERAL?

Section 3415.15 protects the public because if an AMC is found by an appropriate party to have violated the federal requirement, then §3415.15 is violated and the Board can take further punitive action against the AMC. The statute, however, was never intended to grant the Board enforcement authority over Federal law or to create a separate and distinct customary and reasonable requirement as such a result would be inconsistent with TILA.

Lastly, given that §3415.15 requires AMCs to comply with the federal customary and reasonable compensation requirement, the proposed rule governing customary and reasonable compensation is inconsistent with TILA and unnecessary for the enforcement of chapter 3415.

3. Mandating compliance with the federal presumptions

The proposed rule is also inconsistent with §3415.15 because TILA does not require a creditor or its agent to comply with any presumptions of compliance – the federal customary and reasonable compensation requirement exists exclusive of the presumptions included in the IFR.

As discussed in our December 10, 2012 comments to the Board, the federal customary and reasonable compensation requirement clearly does not mandate compliance with either presumption – the Federal

Reserve in drafting the IFR recognized that even though a creditor or agent may not be successful in relying on a presumption to be in compliance with the law, other evidence may be presented to avoid liability.

The rebuttable presumptions outlined in the IFR simply serve as a safe harbor – they do not create any new responsibility for the creditor or its agent, and they do not hold a creditor or agent in violation of the law if the presumptions are not complied with. Presumptions are a "legal fiction" intended to facilitate the resolution of a claim – they do not impose any new independent obligation of any kind.

Although the revised proposed rule amends proposed §31101 by stating licensees may use either presumption to comply with the federal customary and reasonable compensation requirement, the remaining text of the rule continues to mandate an AMC use a presumption in one form or another.

The proposed rule continues to require that a licensee disclose to a selected fee appraiser all methods, factors, variations, and differences used to determine the customary and reasonable rate of compensation in a geographic market of the property being appraiser before or at the time an appraisal assignment is made. The proposed rule also requires a licensee to maintain written documentation that describes or substantiates all of the above information, which must include, at a minimum, the elements found in the first presumption of compliance.

Based on what information a licensee must disclose, it is clear the intent of the proposed rule is to require an AMC to either comply with the first presumption, by incorporating and documenting the factors included under that presumption, or comply with a compensation schedule permitted under the second presumption. TILA does not obligate an AMC to utilize either presumption to be in compliance with the federal customary and reasonable requirement. By mandating that an AMC comply with one of the federal presumptions in paying a customary and reasonable fee, the proposed rule remains inconsistent with TILA and violates §3415.15.

4. Disclosure of trade secret information

We believe the disclosure to a fee appraiser of the documentation substantiating the method used, the basis for, and the details of an AMC's purported "use" of a presumption of compliance forces an AMC to disclose information that constitutes a protected trade secret and evidence that may otherwise be subject to a judicial protective order.

A creditor or AMC's internal methodology regarding compliance with the federal customary and reasonable compensation requirement includes a private assessment of information. Moreover, its disclosure would result in antitrust concerns and would have a substantial impact on an AMC's ability to be competitive because the manner in which it complies with the federal requirement would be subject to public scrutiny.

It is also important to again underscore the practical and financial impact on this proposed requirement. The documentation substantiating the methodology used to assert compliance with a presumption is extremely voluminous. Compliance with the requirement may result in appraisers receiving reams of paper that reflect the data, information, and detail that constitutes an AMC's methodology. Aside from the legal reasons the proposed requirement is invalid, satisfying the requirement would be an extraordinary financial and practical burden on AMCs that would serve a marginal consumer protection purpose.

5. Request for analysis underlying fiscal and economic impact statement

We request that the Board provide its analysis and information supporting its assertion in the fiscal and economic impact statement that the proposed rule has no estimated impact on competition and employment.

We respectfully disagree with the Board's conclusion. As a result of the proposed rule, creditors may choose not to use AMCs in Louisiana to order appraisals due to the significant risk and requirements the proposed rule regarding customary and reasonable compensation imposes for AMCs, and not for creditors. This result will significantly impact AMC competition in Louisiana.

**D. Conclusion**

In conclusion, we respectfully request the Board adopt our recommendation changes regarding the Proposed Rules, and withdraw its proposal to regulate the federal customary and reasonable compensation requirement. We also request the Board include these comments in the record of this rulemaking.

Sincerely,

David D. Cherner
Compliance Director
RELS VALUATION
(952) 345-4903
*david.cherner@rels.info*

**PUBLIC**

VALUATION PARTNERS

*www.valuationpartners.com*
*info@valuationpartners.com*



March 8, 2013

Ms. Stephanie Boudreaux
Louisiana Real Estate Commission
9071 Interline Avenue
Baton Rouge, LA 0809

RE: Amendments to Louisiana Appraisal Management Company Regulations
LAC 46:LXVII. 30302, 30401, 30501, 30900 and 31101

Dear Ms. Boudreaux:

Real Estate Valuation Partners, a wholly owned subsidiary of The William Fall Group, has been licensed as an AMC in Louisiana since the inception of requirements legislated in 2009. We welcome appropriate licensing that ensures integrity and consumer confidence in the real estate valuation process. We have steadfastly advanced transparent processes and communications to both individual fee appraisers as well as the general public particularly in recent years when the real estate economy has suffered and often substantially reduced home values. We are pleased to offer input pertaining to the proposed General Provision for Customary and Reasonable Fees, Presumptions of Compliance as outlined in Chapter 311, section 31101.

Specifically the proposed processes outlined in Paragraph "A" create potentially high variances in interpretation of customary fees. Documented processes that include elements of section 30501 section "B" inherently confuse the typical consumer who typically lacks the necessary background to understand the nuances prescribed. The resultant outcome will be a range of appraisal fee prices that will not clarify or bring confidence to the eventual valuation.

In fact, argument will be presented that only those citing the "highest" fees could truly bring "qualification" to solving the appraisal problem. This will no doubt lead to increased unnecessary cost to the consumer and conflict directly with the intent of "consumer finance protection" as outlined in the Dodd-Frank federal legislation. The direct outcome places the State of Louisiana in the role of establishing market prices instead of allowing the open competitive market to function as it should.

We endorse the primary premise of the Louisiana rules and legislation. As a matter of successful business operation we place vendor selection as one of the most critical components of the valuation process. The identification of the best vendor for the assignment is not a matter of price for us.

VALUATION PARTNERS

*www.valuationpartners.com*
*info@valuationpartners.com*



However, we do not want to be penalized for potentially choosing a lower cost provider who has performed better for us in the past compared to other individuals who might be higher in cost.

Thank-you for your consideration of our views. Please contact me if you would like further details or have direct discussion.

Respectfully,

William Fall, MAI, SRA, ASA
Chief Executive Officer

CONTENTS June 2013



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# Potpourri

## POTPOURRI

**Department of Health and Hospitals**
**Office of Public Health**
**Bureau of Family Health**

Maternal and Child (MCH) Block Grant Application

The Department of Health and Hospitals (DHH) intends to apply for Maternal and Child (MCH) Block Grant federal funding for FY 2013-2014 in accordance with Public Law 97-35 and the Omnibus Budget Reconciliation Act of 1981. The Office of Public Health, Bureau of Family Health is responsible for program administration of the grant.

The block grant application describes in detail the goals and planned activities of the Bureau of Family Health for the next year. Program priorities are based on the results of a statewide needs assessment conducted in 2010, which is updated annually based on relevant data collection.

Interested persons may request copies of the application from:

State of Louisiana
DHH-Office of Public Health
Maternal and Child Health Program
1450 Poydras Street, Room 2032
New Orleans. LA 70112

Or view a summary of the application at: http://www.dhh.louisiana.gov/index.cfm/page/935.

Additional information may be gathered by contacting Karen Webb at (504) 568-3504.

J.T. Lane
Assistant Secretary

1306#084

## POTPOURRI

**Department of Insurance**
**Office of Health Insurance**

Annual HIPAA Assessment Rate

Pursuant to Louisiana Revised Statute 22:1071(D)(2), the annual HIPAA assessment rate has been determined by the Department of Insurance to be .00022 percent.

James J. Donelon
Commissioner

1306#065

## POTPOURRI

**Office of the Governor**
**Real Estate Appraisers Board**

Public Hearing—Substantive Changes to Proposed Rule
Real Estate
(LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101)

The Louisiana Real Estate Appraisers Board published a Notice of Intent in the *Louisiana Register*, on February 20, 2013, to amend Chapters 303, 305 and 309, and to promulgate Chapters 304 and 311. The notice invited interested parties to submit written comments. After a thorough review and careful consideration of the received comments, the board proposes to amend certain portions of the proposed rules:

Amend Subsection 30401.A.5 to provide for a written certification from an appaiser that he or she is aware that misrepresentation of competency may be subject to the mandatory reporting requirement of the Uniform Standards of Professional Appraisal Practice (USPAP).

Amend Subsection 30501.B.7 to insert *turn time* in lieu of *time frame*, as it relates to the time allowed for performing an appraisal.

Amend Subsection 30501.B.10 to correct the spelling of *monetary*.

Amend Subsection 30900 to include 30900.F, which provides for compliance audits authorized by the board or its executive director.

Amend Subsection 31101.A to provide for appraiser compensation at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised and to identify how the market area shall be identified.

Amend Subsection 31101.A.1 to provide that evidence for fees may be established by third-party information and to provide for examples and exclusions thereof.

Amend Subsection 31101.A.2 to allow the board, at its discretion, to establish a customary and reasonable rate of compensation for licensee use.

Amend Subsection 31101.A to include A.3 to provide for factors that shall be considered to ensure that reasonable compensation is made, if an appraiser is compensated on any basis other than an established fee schedule.

Delete Subsection 31101.C-C.1, relative to customary and reasonable fees, third-party information, and geographic markets, as the content thereof is included in other subsections. With the deletion of these parts, Subsection

31101.D will become 31101.C and is amended to provide how records relative to the methods, factors, variations, and differences used to determine customary and reasonable rate of compensation for each appraisal assignment shall be mainntained. Subsequently, Subsection 31101.E will become 31101.D and is amended to provide for appraiser payment guidelines and exceptions thereto.

No fiscal or economic impact will result from the amendments proposed in this notice.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part LXVII. Real Estate**

**Subpart 3. Appraisal Management Companies**

**Chapter 304. Competency**

**§30401. Appraiser License Verification**

A - A.4 …

5. is aware that misrepresentation of competency may be subject to the mandatory reporting requirement in the most current version of the Uniform Standards of Professional Appraisal Practice (USPAP).

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Chapter 305. Responsibilities and Duties**

**§30501. Record Keeping**

A. - B.6. …

7. the turn time in which the appraisal services are required to be performed;

8. - 9 …

10. the fee or remuneration or monetary compensation for each report or assignment.

C. - E …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 37:2407 (August 2011), amended LR 39:

**Chapter 309. Investigations; Disciplinary Authority; Enforcement and Hearing**

**§30900. Investigations**

A. - E …

F. Full or partial compliance audits may be authorized by the executive director, or by affirmative vote of the Board, to determine compliance with all provisions of applicable law and rules. A maximum of 10 percent of all registered licensees may be subject to audit in any calendar year. Licensees selected for audit shall be given 10 days written notice prior to commencement of the audit

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

**Chapter 311. Compensation of Fee Appraisers**

**§31101. General Provisions; Customary and Reasonable Fees; Presumptions of Compliance**

A. Licensees shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised and as prescribed by R.S. 37:3415.15.A. For the purposes of this Chapter, *Market Area* shall be identified by zip code, parish, or metropolitan area.

1. Evidence for such fees may be established by objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by appraisal management companies.

2. The board, at its discretion, may establish a customary and reasonable rate of compensation schedule for use by any licensees electing to do so.

3. Licensees electing to compensate fee appraisers on any basis other than an established fee schedule as described in Paragraphs 1 or 2 above shall, at a minimum, review the factors listed in Subsection 31101.B.1-6 on each assignment made, and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

B. - B.6. …

C. Licensees shall maintain records of all methods, factors, variations, and differences used to determine the customary and reasonable rate of compensation paid for each appraisal assignment in the geographic market of the property being appraised, in accordance with Section 30501.C.

D. Except in the case of breach of contract or substandard performance of real estate appraisal activity, an appraisal management company shall make payment to an independent contractor appraiser for the completion of an appraisal or appraisal review assignment:

1. within 30 days after the appraiser provides the completed appraisal report to the appraisal management company; or

2. in accordance with another payment schedule agreed to in writing by the appraiser and the appraisal management company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:

In accordance with the provisions of the Administrative Procedure Act, specifically R.S. 49:968(H)(2) the board gives notice of a public hearing to receive additional comments and testimony on these substantive amendments to the proposed rules. The hearing will be held at 9:00 a.m. on Monday, July 22, 2013 at the office of the Louisiana Real Estate Appraisers Board, 9071 Interline Avenue, Baton

Rouge, LA. At that time, all interested parties will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. Interested parties may submit written comments to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809, by 9:00 a.m. on Monday, July 22, 2013.

Bruce Unangst
Executive Director

1306#019

## POTPOURRI

### Department of Natural Resources
### Office of Conservation

Electric Well Logs (LAC 43:XIX.107)

LAC 43:XIX.107 currently sets forth, among other things, the regulations for electrical logs, when run, of all test wells, or wells drilled in search of oil, gas, sulphur and other minerals. The Office of Conservation announces that it intends to promulgate revised rules to replace portions of LAC 43:XIX.107 and solicit comments from interested parties prior to promulgating the amended rules. The purpose of this proposed rule amendment is to update regulations regarding the type of logs, when run, that shall be submitted to the Office of Conservation. The proposed rule revisions would apply to all logs, specifically all wellbore data and associated logs including, but not limited to, the minimum requirements of spontaneous potential, gamma ray, formation resistivity and conductivity, acoustic (sonic), dip-meter, neutron, and density logs. Further, other types of formation measurements, tests and sample data obtained shall be submitted to the Office of Conservation upon request by the commissioner of conservation.

The proposed Rule will consider wellbore conditions or other obstacles that prevent logging of the wellbore, such conditions may be considered by the commissioner of conservation or the director of the Engineering Division of the Office of Conservation to determine if such obstacles are reasonable to grant a waiver of the logging requirement.

In addition to commenting on the substance of the proposed rule changes themselves, the Office of Conservation also seeks information from current operators to assist in drafting the Fiscal and Economic Impact Statement required by R.S. 49:953, and to specifically provide information concerning the proposed Rule change's estimated costs and/or economic benefits to directly affected persons or non-governmental groups and the estimated effect on competition and employment.

A copy of the current rules can be found online at the Office of Conservation portion of the LDNR website under the section titled "rules" on http://dnr.louisiana.gov. For more information, please contact Tyler Gray at (225) 342-5500. This notice is available on the Department of Natural Resources, Office of Conservation's website.

James H. Welsh
Commissioner

1306#066

## POTPOURRI

### Department of Natural Resources
### Office of Conservation

Legal Notice—Docket No. ENV 2013-L02

Notice is hereby given that the Commissioner of Conservation will conduct a hearing at 8:30 a.m., Monday, August 5, 2013, at the LaSalle Building located at 617 North Third Street, Baton Rouge, Louisiana.

At such time, the Commissioner, or his designated representative, will conduct a hearing pursuant to LAC Title 43, Part XIX. Subpart 1. Statewide Order No. 29-B relative to the matter of Agri-South Group, LLC versus Exxon Mobile Corporation, et al., Docket Number 24132, 7th Judicial District Court, Catahoula Parish, pertaining to a plan for the evaluation of environmental damage to property commonly referred to as the Plug Road property which is located within the South Shoe Bayou oil and gas field approximately three miles southwest of Lake Larto in southwestern Catahoula Parish.

Any concerns should be directed to:

Office of Conservation
Environmental Division
P.O. Box 94275
Baton Rouge, Louisiana 70804
Re: Docket No. ENV 2013-L02

James H. Welsh
Commissioner

1306#067

## POTPOURRI

### Department of Natural Resources
### Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

| Operator | Field | District | Well Name | Well Number | Serial Number |
|---|---|---|---|---|---|
| Quintana Petroleum Corp. | Bayou Chevreuil | L | Bowie LBR Co | 001 | 132435 |
| Pan-American Engineering Co | Greenwood-Waskom | S | Gill et al | 003 | 58804 |
| Landsberger-North | Melville | L | M J Artall | 001 | 58766 |

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AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 49:953(C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 39:3071 (November 2013).

Lessie A. House
Executive Director

1311#036

**RULE**

**Office of the Governor**
**Real Estate Appraisers Board**

Real Estate—Appraisal Management Companies
(LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101)

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Appraisers Board has amended Chapters 303, 305 and 309, and promulgated Chapters 304 and 311. The purpose of the action is to: (1) establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Session consistent with the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act; (2) establish grievance or complaint procedures; and (3) further clarify investigative procedures.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LXVII. Real Estate**
**Subpart 3. Appraisal Management Companies**

**Chapter 303. Forms and Applications**

**§30302. Surety Bond Required; Amount and Conditions; Filing**

A. Applicants for licensing as an appraisal management company shall submit proof of a surety bond in the amount of $20,000 with a surety company qualified to conduct business in Louisiana.

B. Bonds shall be in favor of the state of Louisiana and conditioned for the benefit of a claimant against the licensee for a violation of the Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board.

C. Bonds shall remain effective and in force throughout the license period of the appraisal management company.

D. Proof of surety bond renewal shall be provided to the board in conjunction with the annual renewal of the appraisal management company license.

E. Failure to maintain a surety bond shall be cause for revocation or suspension of a license.

F. A licensee who elects to submit a cash deposit or security in lieu of a surety bond, as provided in R.S. 37:3515.3(D)(5), shall restore the cash deposit or security annually upon license renewal, if a claim has reduced the deposit amount or security below $20,000.

G. The board may file suit on behalf of a party having a claim against a licensee or a party having a claim may file suit directly against the surety bond. Suits shall be filed within one year after the claim arises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3072 (November 2013).

**Chapter 304. Competency**

**§30401. Appraiser License Verification**

A. Prior to making an assignment to a real estate fee appraiser, licensees shall have a system in place to verify that the appraiser holds a license in good standing in this state pursuant to the Louisiana Real Estate Appraisers Law, R.S. 37:3391 et seq. Licensees may rely on the National Registry of the Appraisal Subcommittee for purposes of appraiser license verification. Before or at the time of making an assignment to a real estate fee appraiser, licensees shall obtain a written certification from the appraiser that he or she:

1. is competent in the property type of the assignment;
2. is competent in the geographical area of the assignment;
3. has access to appropriate data sources for the assignment;
4. will immediately notify the licensee in writing if the appraiser later determines that he or she is not qualified to complete the assignment; and
5. is aware that misrepresentation of competency may be subject to the mandatory reporting requirement in the most current version of the Uniform Standards of Professional Appraisal Practice (USPAP).

B. Subsequent to a completed appraisal being submitted to the assigning licensee, any request for additional information that may impact or alter the opinion of value stated therein shall be made by the certified appraiser completing the appraisal review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3072 (November 2013).

**Chapter 305. Responsibilities and Duties**

**§30501. Record Keeping**

A. - A.4. …

B. In addition to the records that shall be maintained in Subsection A of this Section, licensees shall maintain a complete list of all real estate fee appraisers approved by the licensee to receive appraisal assignments. The list shall include, but is not limited to, the following information on each fee appraiser:

1. name, license status, and qualifications;
2. errors and omission insurance status, including the carrier, the policy number, the dollar limits of the coverage and the dates covered in the policy, if such insurance is required by the licensee;
3. experience and professional record;
4. the areas in which each fee appraiser considers him/herself geographically competent broken down by parish and/or zip code;
5. the type of property for each appraisal performed;
6. the scope of work for each appraisal performed;
7. the turn time in which the appraisal services are required to be performed;
8. fee appraiser work quality;

9. the number and type of assignments completed per year; and

10. the fee or remuneration or monetary compensation for each report or assignment.

C. All records shall be kept properly indexed and readily available to the board for review upon request. Duly authorized representatives of the board shall be authorized to inspect such records at the offices of licensees between the hours of 9 a.m. and 4 p.m., Saturdays, Sundays, and legal holidays excluded, upon 10 calendar days written notice to the licensee, and to subpoena any of the said records.

D. All records specified in this Chapter shall be retained for a period of five years; however, records that are used in a judicial proceeding, in which the appraiser provided testimony related to the appraisal assignment, shall be retained for at least two years after disposition, whichever period expires last.

E. At any time that a document or information on file with the board becomes inaccurate or incomplete, the appraisal management company shall notify the board in writing within 10 business days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 37:2407 (August 2011), amended LR 39:3072 (November 2013).

## Chapter 309. Investigations; Disciplinary Authority; Enforcement and Hearing

### §30900. Investigations

A. The board may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of a licensee or certificate holder, or any person who assumes to act as such. Written complaints shall bear the signature of the complainant or that of his legal representative before any action will be taken thereon by the board.

B. The executive director of the board may issue written authorization to investigate apparent violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board.

C. Investigations shall be conducted by the staff of the Louisiana Real Estate Appraisers Board and/or the Louisiana Real Estate Commission.

D. If, during the course of an investigation, information is established indicating that violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board have been committed by any licensee other than the licensee against whom the original complaint was made, the additional licensee may be added as a respondent to the investigation in the absence of any written complaint alleging such violations.

E. The board may file suit in the Nineteenth Judicial District Court in the parish of East Baton Rouge to enforce a subpoena against any person that does not comply with a subpoena issued by the board.

F. Full or partial compliance audits may be authorized by the executive director, or by affirmative vote of the board, to determine compliance with all provisions of applicable law and rules. A maximum of 10 percent of all registered licensees may be subject to audit in any calendar year. Licensees selected for audit shall be given 10 days written notice prior to commencement of the audit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013).

## Chapter 311. Compensation of Fee Appraisers

### §31101. General Provisions; Customary and Reasonable Fees; Presumptions Of Compliance

A. Licensees shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised and as prescribed by R.S. 37:3415.15(A). For the purposes of this Chapter, market area shall be identified by zip code, parish, or metropolitan area.

1. Evidence for such fees may be established by objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by appraisal management companies.

2. The board, at its discretion, may establish a customary and reasonable rate of compensation schedule for use by any licensees electing to do so.

3. Licensees electing to compensate fee appraisers on any basis other than an established fee schedule as described in Paragraphs 1 or 2 above shall, at a minimum, review the factors listed in §31101.B.1-6 on each assignment made, and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

B. A licensee shall maintain written documentation that describes or substantiates all methods, factors, variations, and differences used to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. This documentation shall include, at a minimum, the following elements:

1. the type of property for each appraisal performed;

2. the scope of work for each appraisal performed;

3. the time in which the appraisal services are required to be performed;

4. fee appraiser qualifications;

5. fee appraiser experience and professional record; and

6. fee appraiser work quality.

C. Licensees shall maintain records of all methods, factors, variations, and differences used to determine the customary and reasonable rate of compensation paid for each appraisal assignment in the geographic market of the property being appraised, in accordance with Section §30501.C.

D. Except in the case of breach of contract or substandard performance of real estate appraisal activity, an appraisal management company shall make payment to an independent contractor appraiser for the completion of an appraisal or appraisal review assignment:

1. within 30 days after the appraiser provides the completed appraisal report to the appraisal management company; or

2. in accordance with another payment schedule agreed to in writing by the appraiser and the appraisal management company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013).

Bruce Unangst
Executive Director

1311#029

## RULE

### Office of the Governor
### Real Estate Commission

Buyer Broker Compensation; Written Disclosure and Acknowledgment (LAC 46:LXVII.3503)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has amended LAC 46:LXVII, Real Estate, Chapter 35, to require certain disclosures and acknowledgements in written offers regarding buyer broker compensation.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LXVII. Real Estate**
**Subpart 1. Real Estate**
**Chapter 35. Disclosure by Licensee**
**§3503. Buyer Broker Compensation; Written Disclosure and Acknowledgment**

A. Buyer broker compensation shall not be included as part of closing costs paid by the seller, unless such compensation is disclosed in a written offer and accepted by the seller, which specifically states the amount of compensation being paid to the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 39:3074 (November 2013).

Bruce Unangst
Executive Director

1311#030

## RULE

### Department of Health and Hospitals
### Board of Pharmacy

Penal Pharmacy Permit
(LAC 46:LIII.1801, 1807, and 2303)

Editor's Note: A hearing was not held pursuant to R.S. 49:968(H)(2) to incorporate the changes in this Rule.

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy amends three Sections of its rules, to clarify the necessity of a penal pharmacy permit only for those pharmacies serving offenders in the custody of the state department of corrections.

**Title 46**
**PROFESSIONAL AND OCCUPATIONAL STANDARDS**
**Part LIII. Pharmacists**
**Chapter 18. Penal Pharmacy**
**§1801. Penal Pharmacy Permit**

A. A penal pharmacy permit shall be required to operate a pharmacy located within a penal institution owned and/or operated by the Louisiana Department of Public Safety and Corrections, or its successor, (hereinafter, "the department"), to provide medications and pharmacy care for offenders residing in that institution or another penal institution owned and operated by the department. The pharmacy in the penal institution may also provide medications and pharmacy care to offenders assigned to that institution and residing at home or another housing location.

B. In the event a pharmacy located within the state but outside a penal institution intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution owned and/or operated by the department that pharmacy shall first obtain a penal pharmacy permit.

C. In the event a nonresident pharmacy intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution owned and/or operated by the department, or to any offender in the custody of the department shall first obtain a nonresident penal pharmacy permit, and further, shall comply with these rules with the exception of acquiring a separate penal pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1236 (May 2012), amended LR 39:3074 (November 2013).

**§1807. Prescription Department Requirements**

A. The prescription department of a penal pharmacy shall comply with the minimum specifications identified in §1103, Prescription Department Requirements, of the board's rules, and further, the specifications provided for the penal pharmacy permit may not be held or used by any other pharmacy permit.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1237 (May 2012), amended LR 39:3074 (November 2013).

**Chapter 23. Out-of-State Pharmacy**
**§2303. Out-of-State Pharmacy Requirements**

A. - C. …

D. Every nonresident pharmacy doing business in Louisiana by dispensing and delivering prescription drugs and devices to offenders in the custody of the Louisiana Department of Public Safety and Corrections shall apply for and maintain a nonresident penal pharmacy permit, and further, shall comply with the provisions of Chapter 18 of the board's rules, with the single exception of the necessity for acquiring a separate penal pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

State of Louisiana

**EXECUTIVE DEPARTMENT**
**EXECUTIVE ORDER NUMBER 17-16**

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***SUPERVISION OF THE LOUISIANA REAL ESTATE APPRAISERS BOARD REGULATION OF APPRAISAL MANAGEMENT COMPANIES***

---

**WHEREAS,** the Louisiana Real Estate Appraisers Board ("the LREAB") protects Louisiana consumers and mortgage lenders by licensing residential appraisers and regulating the integrity of the residential appraisal process;

**WHEREAS,** the federal Dodd-Frank Wall Street Reform and Consumer Protection Act established requirements for appraisal independence, including requirements that lenders and their agents pay "customary and reasonable" fees for residential mortgage appraisals, and mandating that the same state agency that regulates appraisers must require that appraisals ordered by appraisal management companies ("AMCs") be conducted pursuant to the appraisal independence standards established in Truth In Lending Act section 129E;

**WHEREAS,** the legislature has recognized this federal requirement in enacting La. R.S. 37:3415.15(A) of the Louisiana Appraisal Management Company Licensing and Regulation Act, requiring that: "an appraisal management company shall compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the requirements of 15 U.S.C. 1639E [TILA section 129E] and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222";

**WHEREAS,** on November 20, 2013, consistent with the authority described by La. R.S. 37:3415.21 and the procedure for rule adoption described by La. R.S. 49:953 of the Administrative Procedure Act, the LREAB published in the *Louisiana Register* final rules implementing La. R.S. 37:3415.15(A), Louisiana Administrative Code Title 46, section 31101; and

**WHEREAS,** questions concerning the scope of the U.S. Supreme Court decision in *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015), raise the possibility of federal antitrust law challenges to state board actions affecting prices, which may prevent the LREAB from faithfully executing mandates under the Dodd-Frank Act and Louisiana law under La. R.S. 37:3415.15.

**NOW THEREFORE, I, JOHN BEL EDWARDS,** Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

**SECTION 1:** Prior to finalization of a settlement with or the filing of an administrative complaint against an AMC regarding compliance with the customary and reasonable fee requirements of La. R.S. 37:3415.15(A), such proposed action and the record thereof shall be submitted to the Division of Administrative Law (DAL) for approval, rejection, or modification within 30 days of the submission. Such review is to ensure fundamental fairness and that the proposed action serves Louisiana's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs for such an appraisal are customary and reasonable. The LREAB shall enter into a contract with the DAL within ninety (90) days of this order to establish the procedure for this review.

**SECTION 2:** The LREAB is directed to submit to the Commissioner of Administration (or the Commissioner's designee) for approval, rejection, or modification within 30 days of the submission any proposed regulation related to AMC compliance with the customary and reasonable fee requirement of La. R.S. 37:3415.15(A), along with its rulemaking record, to ensure that such proposed regulation serves Louisiana's public policy of protecting the integrity of the residential mortgage appraisals by requiring that the fees paid by AMCs for an appraisal are to be customary and reasonable. The Commissioner (or his designee) may extend the 30-day review period upon a determination that such extension is needed.

**SECTION 3:** This Order is effective upon signature and shall continue in effect unless amended, terminated, or rescinded by the Governor.

**IN WITNESS WHEREOF,** I have set my hand officially and caused to be affixed the Great Seal of Louisiana at the Capitol, in the City of Baton Rouge, on this 11th day of July, 2017.

**GOVERNOR OF LOUISIANA**

**ATTEST BY**
**THE GOVERNOR**

**SECRETARY OF STATE**

State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

JOHN BEL EDWARDS
GOVERNOR

**LOUISIANA REAL ESTATE APPRAISERS BOARD**

**P. O. Box 14785**
**Baton Rouge, LA 70898-4785**

**July 17, 2017**

**RESOLUTION**

WHEREAS, under provisions of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act and the Louisiana Appraisal Management Company Licensing and Regulation Act, as amended by Act 429 of the 2012 Regular Session, the Louisiana Real Estate Appraisers Board (the "Board") is obligated to ensure that Appraisal Management Companies (AMC) pay appraisers a customary and reasonable fee for residential mortgage appraisals, La. R.S. 37:3415.15(A);

WHEREAS, pursuant to La. R.S. 37:3415.15, 37:3415.21 and the Louisiana Administrative Procedures Act, the Board promulgated Louisiana Administrative Code Title 46, section 31101 ("Rule 31101") setting out rules for AMC compliance with the customary and reasonable fee standard;

WHEREAS, the Board has investigated complaints of AMC violations of Rule 31101, and has entered into settlement agreements and/or compliance plans, where appropriate;

WHEREAS, on July 11, 2017, Governor John Bel Edwards signed Executive Order Number 17-16, entitled "Supervision of the Louisiana Real Estate Appraisers Board Regulation of Appraisal Management Companies," which reinforces the State's active supervision over the regulatory and enforcement activities of the LREAB, by directing:

a. Prior to finalization of any settlement or filing of an administrative complaint by LREAB against an AMC regarding compliance with a customary and reasonable rule under La. R.S. 37:3415.15(A), the proposed LREAB action shall be submitted for review to the Division of Administrative Law for approval, rejection, or modification. The purpose of the review is to ensure that such proposed action serves Louisiana's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs for such an appraisal are customary and reasonable.



POST OFFICE BOX 14785 BATON ROUGE, LA 70898-4785
(225) 925-1923 1-800-821-4529 FAX (225) 925-4501
www.lrec.state.la.us email: info@lrec.state.la.us

b. Within 90 days of entry of the Executive Order, the LREAB must enter into a contract with the Division of Administrative Law establishing procedures for this review.

c. The LREAB must submit to the Commissioner of Administration or the Commissioner's designee for approval, rejection, or modification any proposed regulation relating to AMC compliance with the customary and reasonable fee requirement.

AND WHEREAS, the Board intends its ongoing rules and enforcement activities concerning AMC compliance with the obligation to pay appraisers customary and reasonable fees for residential mortgage appraisals to proceed pursuant to the reinforced active supervision established by Executive Order JBE 17-16:

THEREFORE, it is resolved:

1. The Executive Director shall, on or before July 31, 2017 present to the Board a proposed rulemaking that proposes a rule regarding customary and reasonable appraisal fees for review by the Board for submission to the Commissioner of Administration pursuant to Executive Order Section 2, resulting in the repeal and replacement of current Rule 31101;

2. The Executive Director shall negotiate, within 90 days, the contract with the Division of Administrative Law as specified in Executive Order Section 1, for approval by the Board;

3. The Board having determined in all pending investigations of alleged violations of Rule 31101 that the subject payments were customary and reasonable, the Executive Director is directed to close all such pending investigations and to only initiate future investigations once a replacement rule is adopted; and

4. The Executive Director is authorized to seek settlement or other resolution of all decrees, settlements, and compliance plans arising from alleged or adjudicated violations of Rule 31101 that have not expired by their terms.

THUS DONE AND SIGNED this 17th day of July 2017.

Chairman

Secretary

**PUBLIC**

**FISCAL AND ECONOMIC IMPACT STATEMENT**
**FOR ADMINISTRATIVE RULES**

Person Preparing Statement: Ryan Shaw

Dept.: Office of the Governor

Phone: 225-925-1923

Office: LA Real Estate Appraisers Board

Return Address: P.O. Box 14785
Baton Rouge, LA
70890-4785

Rule Title: LAC 46:LXVII. Part 2 Chapter 311

Date Rule Takes Effect: Upon publication in the Register

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no implementation costs or savings to state or local governmental units associated with the proposed rule readoption.

The proposed rule readoption is for continued oversight only.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule readoption is for continued oversight only and will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule readoption is for continued oversight only and will have no estimated costs associated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Bruce Unangst, Executive Director

Typed Name & Title of Agency Head or Designee

Date of Signature

Date of Signature

**FISCAL AND ECONOMIC IMPACT STATEMENT**
**FOR ADMINISTRATIVE RULES**

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

There are no implementation costs (savings) to state or local governmental units associated with the proposed rule readoption. The proposed rule readoption is for continued oversight only.

B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This action is taken at the discretion of the board.

C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule readoption will not result in any increase in the expenditure of funds.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ Yes. If yes, attach documentation.

(b) _____ NO. If no, provide justification as to why this rule change should be published at this time

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**WORKSHEET**

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

| COSTS | FY 18 | FY 19 | FY 20 |
|---|---|---|---|
| Personal Services | | | |
| Operating Expenses | | | |
| Professional Services | | | |
| Other Charges | | | |
| Equipment | | | |
| Major Repairs & Constr. | | | |
| **TOTAL** | **-0-** | **-0-** | **-0-** |
| **POSITIONS (#)** | **-0-** | **-0-** | **-0-** |

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The proposed rule readoption will not impact costs (savings) to state or local governmental units.

3. Sources of funding for implementing the proposed rule or rule change.

| SOURCE | FY 18 | FY 19 | FY 20 |
|---|---|---|---|
| State General Fund | **-0-** | **-0-** | **-0-** |
| Agency Self-Generated | | | |
| Dedicated | | | |
| Federal Funds | | | |
| Other (Specify) | | | |
| TOTAL | **-0-** | **-0-** | **-0-** |

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

There are no funds required to implement the proposed rule readoption.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed rule readoption will have no impact on local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

The agency operates from self-generated funds that will not be affected by the proposed rule readoption.

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**WORKSHEET**

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

| REVENUE INCREASE/DECREASE | FY 18 | FY 19 | FY 20 |
|---|---|---|---|
| State General Fund | | | |
| Agency Self-Generated | **-0-** | **-0-** | **-0-** |
| Dedicated Funds* | | | |
| Federal Funds | | | |
| Local Funds | | | |
| **TOTAL** | **-0-** | **-0-** | **-0-** |

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The proposed rule readoption will have no effect on revenue collections of state and local governmental units.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

The proposed rule readoption is for continued oversight only and will have no estimated costs associated.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

The proposed rule readoption is for continued oversight only and will have no estimated impact on receipts and/or income.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment
in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed rule readoption will not impact competition and employment in the public and private sectors.

NOTICE OF INTENT

Office of the Governor
Real Estate Appraisers Board

LAC 46:LXVII.Part 3. Chapter 311

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Appraisers Board has initiated procedures to readopt Chapter 311 (Compensation of Fee Appraisers) to include additional oversight.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXVII. Real Estate

Subpart 3. Appraisal Management Companies

Chapter 311. Compensation of Fee Appraisers
§31101. General Provisions; Customary and Reasonable Fees; Presumptions of Compliance

A. Licensees shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised and as prescribed by R.S. 37:3415.15(A). For the purposes of this Chapter, market area shall be identified by zip code, parish, or metropolitan area.

1. Evidence for such fees may be established by objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by appraisal management companies.

2. The board, at its discretion, may establish a customary and reasonable rate of compensation schedule for use by any licensees electing to do so.

3. Licensees electing to compensate fee appraisers on any basis other than an established fee schedule as described in Paragraphs 1 or 2 above shall, at a minimum, review the factors listed in §31101.B.1-6 on each assignment made, and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

B. A licensee shall maintain written documentation that describes or substantiates all methods, factors, variations, and differences used to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. This documentation shall include, at a minimum, the following elements:

1. the type of property for each appraisal performed;

2. the scope of work for each appraisal performed;

3. the time in which the appraisal services are required to be performed;

4. fee appraiser qualifications;

5. fee appraiser experience and professional record; and

6. fee appraiser work quality.

C. Licensees shall maintain records of all methods, factors, variations, and differences used to determine the customary and reasonable rate of compensation paid for each appraisal assignment in the geographic market of the property being appraised, in accordance with Section §30501.C.

D. Except in the case of breach of contract or substandard performance of real estate appraisal activity, an appraisal management company shall make payment to an independent contractor appraiser for the completion of an appraisal or appraisal review assignment:

1. within 30 days after the appraiser provides the completed appraisal report to the appraisal management company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013), amended LR 42:872 (June 2016).

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the August 20, 2017 *Louisiana Register*: The proposed rule readoption has no known impact on family, formation, stability, or autonomy.

Poverty Impact Statement

The proposed rule readoption has no known impact on poverty as described in R.S. 49:973.

Provider Statement

The proposed rule readoption has no known impact on providers of services for individuals with developmental disabilities.

Public Comments

Interested parties may submit written comments on the proposed regulations to Ryan Shaw, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809 or rshaw@lrec.state.la.us, through September 8, 2017 at 4:30 p.m.

Public Hearing

If it becomes a necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedures Act, a hearing will be held on September 28, 2017 at 9:00 a.m. at the office of the Louisiana Real Estate Commission, 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: LAC 46:LXVII. Part 2 Chapters 307, 309, and 311

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no estimated implementation costs (savings) to state or local governmental units as the result of the proposed rule readoption.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule readoption will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
There are no estimated costs associated with the proposed rule readoption.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule readoption will have no effect on competition and employment.

Bruce Unangst
Executive Director

Evan Brasseaux
Staff Director
Legislative Fiscal Office

## Notice of Electronic Service

I hereby certify that on December 14, 2017, I filed an electronic copy of the foregoing Reply in Support of Respondent Louisiana Real Estate Appraisers Board Motion to Dismiss, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on December 14, 2017, I served via E-Service an electronic copy of the foregoing Reply in Support of Respondent Louisiana Real Estate Appraisers Board Motion to Dismiss, upon:

Lisa Kopchik
Attorney
Federal Trade Commission
LKopchik@ftc.gov
Complaint

Michael Turner
Attorney
Federal Trade Commission
mturner@ftc.gov
Complaint

Christine Kennedy
Attorney
Federal Trade Commission
ckennedy@ftc.gov
Complaint

Geoffrey Green
Attorney
U.S. Federal Trade Commission
ggreen@ftc.gov
Complaint

W. Stephen Cannon
Chairman/Partner
Constantine Cannon LLP
scannon@constantinecannon.com
Respondent

Seth D. Greenstein
Partner
Constantine Cannon LLP
sgreenstein@constantinecannon.com
Respondent

Richard O. Levine
Of Counsel
Constantine Cannon LLP
rlevine@constantinecannon.com

Respondent

Kristen Ward Broz
Associate
Constantine Cannon LLP
kbroz@constantinecannon.com
Respondent

James J. Kovacs
Associate
Constantine Cannon LLP
jkovacs@constantinecannon.com
Respondent

Thomas Brock
Attorney
Federal Trade Commission
TBrock@ftc.gov
Complaint

W. Stephen Cannon
Attorney