

PUBLIC

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman  
Terrell McSweeney



Louisiana Real Estate Appraisers Board,  
Respondent

DOCKET NO. 9374

**COMPLAINT COUNSEL'S MOTION FOR PARTIAL SUMMARY DECISION**

Geoffrey M. Green  
Assistant Director

Lisa B. Kopchik  
Christine M. Kennedy  
Michael J. Turner  
*Attorneys*

Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
Facsimile: (202) 326-3496  
Telephone: (202) 326-3139  
Email: [LKopchik@ftc.gov](mailto:LKopchik@ftc.gov)

*Counsel Supporting the Complaint*

Dated: November 30, 2017

**COMPLAINT COUNSEL’S MOTION FOR PARTIAL SUMMARY DECISION  
AND [PROPOSED] ORDER**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Please take notice that, pursuant to Federal Trade Commission Rule of Practice 3.24, Complaint Counsel hereby respectfully move for partial summary decision in this action.

By this Motion, Complaint Counsel seek partial summary decision dismissing Respondent’s Third and Ninth Affirmative Defenses, both of which involve the State Action Doctrine. These justifications fail as a matter of law.

Respondent is a state agency controlled by a panel of real estate appraisers licensed by the Respondent itself. As alleged in the Complaint, Respondent has elected to regulate the fees that appraisal management companies must pay to real estate appraisers for appraisal services. By fixing the prices for appraisal services, Respondent interferes with the free market, unreasonably restrains price competition among appraisers, and thus violates Section 5 of the FTC Act.

Respondent has asserted that “The Complaint fails adequately to allege that the Board has a controlling number of active participants in the relevant **residential** market” (Affirmative Defense No. 3, emphasis original), and that “LREAB is immune from federal antitrust liability under *Parker v. Brown*, 317 U.S. 341 (1943)” (Affirmative Defense No. 9).

Complaint Counsel seeks entry of an Order granting partial summary decision on Respondent’s Third and Ninth Affirmative Defenses.

This Motion is supported by the accompanying Memorandum and the authorities cited therein. For the reasons set forth in the accompanying Memorandum, this motion should be granted. A Proposed Order is attached.

Dated: November 30, 2017

Respectfully submitted,

/s/ Geoffrey M. Green  
Geoffrey M. Green  
Lisa B. Kopchik  
Christine M. Kennedy  
Michael J. Turner  
*Attorneys*

Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
Facsimile: (202) 326-3496  
Telephone: (202) 326-3139  
Email: [LKopchik@ftc.gov](mailto:LKopchik@ftc.gov)

*Counsel Supporting the Complaint*

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

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

**In the Matter of**

Louisiana Real Estate Appraisers Board,  
Respondent

DOCKET NO. 9374

**[PROPOSED] ORDER**

Having carefully considered Complaint Counsel's Motion for Partial Summary Decision, Respondent Louisiana Real Estate Appraisers Board's Opposition thereto, and Complaint Counsel's Reply, and all supporting and opposing declarations and other evidence, and the applicable law, it is hereby ORDERED AND ADJUDGED, that Respondent's Third Defense and Ninth Defenses fail as a matter of law, and Complaint Counsel's Motion for Partial Summary Decision as to this issue is hereby GRANTED.

Chief Administrative Law Judge Chappell is hereby directed to receive and consider all of the parties' evidence on all other factual and legal allegations in the Administrative Complaint. *See* Section 3.24(a)(5) of the Commission's Rules of Practice, 16 C.F.R. § 3.24(a)(5).

ORDERED:

By the Commission.

---

Donald S. Clark  
Secretary

SEAL

ISSUED:

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

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

**In the Matter of**

Louisiana Real Estate Appraisers Board,  
Respondent

DOCKET NO. 9374

**MEMORANDUM OF LAW IN SUPPORT OF  
COMPLAINT COUNSEL’S MOTION FOR PARTIAL SUMMARY DECISION**

Geoffrey M. Green  
Assistant Director

Lisa B. Kopchik  
Christine M. Kennedy  
Michael J. Turner  
Attorneys

Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
Telephone: (202) 326-3139  
Email: [LKopchik@ftc.gov](mailto:LKopchik@ftc.gov)

*Counsel Supporting the Complaint*

Dated: November 30, 2017

**TABLE OF CONTENTS**

INTRODUCTION .....	1
SUMMARY OF UNDISPUTED FACTS .....	2
RESPONDENT'S ASSERTED STATE ACTION DEFENSE .....	6
STANDARD FOR SUMMARY DECISION.....	6
ARGUMENT .....	7
I. A REGULATORY BOARD CONTROLLED BY ACTIVE MARKET PARTICIPANTS MAY INVOKE THE STATE ACTION DEFENSE ONLY IF THE BOARD IS ACTIVELY SUPERVISED BY THE STATE.....	8
II. RESPONDENT REQUIRES ACTIVE SUPERVISION BECAUSE A MAJORITY OF ITS MEMBERS ARE ACTIVE APPRAISERS.....	9
III. RESPONDENT'S CHALLENGED CONDUCT WAS NOT ACTIVELY SUPERVISED BY THE STATE.....	13
A. Legal Standard for Active Supervision .....	13
B. The Louisiana Legislative Committees' Unexercised Right to Review Rule 31101 Does Not Constitute Active Supervision .....	15
C. Respondent's Fee Survey and Its Enforcement of Rule 31101 Were Not Actively Supervised by the State.....	16
CONCLUSION.....	18

## TABLE OF AUTHORITIES

### Cases

<i>Cal. Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.</i> , 445 U.S. 97 (1980) .....	9
<i>F.T.C. v. Phoebe Putney Health Sys., Inc.</i> , 568 U.S. 216 (2013) .....	9
<i>F.T.C. v. Ticor Title Ins. Co.</i> , 504 U.S. 621 (1992) .....	<i>passim</i>
<i>Goldfarb v. Virginia State Bar</i> , 421 U.S. 773 (1975) .....	10, 12
<i>In re La. Real Estate Appraisers Bd.</i> , Docket No. 9374 .....	6
<i>In re N.C. Bd. Dental Exam’rs</i> , Docket No. 9343, 151 F.T.C. 607 (2011) .....	6, 7, 12
<i>In re Kentucky Household Goods Carriers Ass’n</i> , 139 F.T.C. 404 (2005) .....	<i>passim</i>
<i>In re New England Motor Rate Bureau, Inc.</i> , Docket No. 9170, 112 F.T.C. 200 (1989) .....	2
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986) .....	7
<i>N.C. State Bd. of Dental Exam’rs v. F.T.C.</i> , 135 S. Ct. 1101 (2015) .....	<i>passim</i>
<i>Parker v. Brown</i> , 317 U.S. 341 (1943) .....	6, 8
<i>Patrick v. Burget</i> , 486 U.S. 94 (1988) .....	<i>passim</i>
<i>Pinhas v. Summit Health</i> , 894 F.2d 1024 (9th Cir. 1989) .....	17
<i>Shahawy v. Harrison</i> , 875 F.2d 1529 (11th Cir. 1989) .....	18
<i>Teladoc, Inc. v. Tex. Med. Bd.</i> , No. 1-15-CV-343, 2015 U.S. Dist. LEXIS 166754, at *26 (E.D. Tex. Dec. 14, 2015) .....	18

### Statutes

16 C.F.R. § 3.24(a)(1) .....	6
La. R.S. 37: 3415.20 (B) (2) .....	18
La. R.S. 37: 3394 .....	10
La. R.S. 37: 3395 (A) (1) .....	10
Sherman Act, 15 U.S.C. § 1 .....	8

### Other Authorities

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 .....	3
Federal Rule of Civil Procedure 56 .....	7
Truth in Lending Act of 1968 .....	3



## INTRODUCTION

The Complaint in this matter alleges that the Louisiana Real Estate Appraisers Board (“Respondent”) has unreasonably restrained price competition for real estate appraisal services provided to appraisal management companies (“AMCs”). The Answer asserts the state action defense. This motion for summary decision addresses the validity of Respondent’s state action defense, focusing on the lack of active supervision of Respondent’s conduct by an independent, disinterested state actor.<sup>1</sup> As discussed below, Respondent’s state action defense is without merit and should be dismissed.

Respondent is a state agency controlled by a panel of licensed real estate appraisers, and empowered to regulate aspects of the real estate appraisal industry in Louisiana. As alleged in the Complaint, since 2013, Respondent has elected to regulate the fees that AMCs must pay to real estate appraisers for appraisal services. By fixing the prices for appraisal services, Respondent interferes with the free market, unreasonably restrains price competition among appraisers, and thus violates Section 5 of the FTC Act.

Respondent claims that its actions are exempt from antitrust scrutiny under the state action doctrine, which shields certain implementations of state policy from federal antitrust liability. Because Respondent is controlled by active market participants (*i.e.*, is controlled by licensed appraisers), Respondent can qualify for the state action defense only if Respondent’s anticompetitive actions were adequately supervised by state representatives who do *not* have a private interest in the real estate appraisal industry. *See N.C. State Bd. of Dental Exam’rs v. F.T.C.*, 135 S. Ct. 1101 (2015). Here, the adoption and enforcement by Respondent of the

---

<sup>1</sup> Because the lack of adequate supervision by the state is dispositive, Complaint Counsel will not address other requirements of the state action defense in this motion. In particular, Complaint Counsel does not concede that Respondent’s conduct was in furtherance of a clearly articulated state policy. *Cf. In re N.C. Bd. Dental Exam’rs*, Docket No. 9343, 151 F.T.C. 607, 617 n.8 (Comm’n Op. and Order on Mot. Summ. J., Jan. 16, 2011) (Commission granting partial summary decision dismissing the state action defense based solely on insufficient active supervision); *see also Patrick v. Burget*, 486 U.S. 94, 100 (1988) (“We need not consider the clear articulation prong of the [state action defense] because the active supervision requirement is not satisfied.”) (internal quotation marks omitted).

regulations at issue have not been supervised. Respondent can identify only a theoretical procedure by which supervision by a disinterested state actor could have occurred.

As described below, the Supreme Court has clearly held that an unexercised power to supervise does not transform the actions of market participants into exempt “state action.” Accordingly, Respondent’s state action defense fails as a matter of law.<sup>2</sup>

### SUMMARY OF UNDISPUTED FACTS

AMCs are independent companies engaged by lenders to retain real estate appraisers, and to obtain from these appraisers an assessment of the value of real property. Statement of Undisputed Facts ¶¶ 16–17. This means that AMCs are often the direct customers of appraisers.

Respondent is an agency of the state of Louisiana charged with licensing and regulating both AMCs and real estate appraisers. *Id.* ¶¶ 1–2. Respondent issues two (principal) classes of real estate appraiser licenses. A person licensed as:

a **general appraiser** may appraise “all types of real estate regardless of complexity or transaction value”; *Id.* ¶ 3a.

a **residential appraiser** may appraise all residential properties having four or fewer residential units (for example, a single family home), and other types of real estate having a transaction value of \$250,000 or less.<sup>3</sup> *Id.* ¶ 3b.

Respondent is governed by a multi-member board, with each member appointed by the Governor and confirmed by the Senate. *Id.* ¶ 1. The board makes decisions by majority vote. *Id.* ¶ 14.

---

<sup>2</sup> On July 11, 2017 (subsequent to the issuance of the Complaint in this matter), the Governor of Louisiana issued Executive Order 17-16, creating a new procedure for review of certain post-Complaint activities of Respondent. This motion addresses only whether Respondent’s past conduct, as challenged in the Complaint, is shielded by the state action defense. The Executive Order is not relevant to the Commission’s liability determination. *See In re New England Motor Rate Bureau, Inc.*, Docket No. 9170, 112 F.T.C. 200, 275 (Final Order, Aug. 18, 1989) (“This statutory change [in state supervision regime] cannot immunize conduct the [respondent] engaged in before the amendment went into effect.”). This motion does not address whether post-Complaint developments may affect the analysis of non-liability issues, such as the terms of an appropriate remedy, and Complaint Counsel does not seek to bar Respondent from advancing any such contention.

<sup>3</sup> In addition, a person licensed as an **appraiser trainee** may act under the supervision of a general appraiser or a residential appraiser. Statement of Undisputed Facts ¶ 3c.

The Louisiana Real Estate Appraisers Law (“Appraisers Law”) specifies the composition of Respondent’s board. As of 2013, the Appraisers Law provided for a nine-member board. *Id.* ¶ 4. Seven of the nine are identified as “appraiser members”: these must be Louisiana residents holding an appraiser’s license and “engaged in the general practice of real estate appraising in the state of Louisiana for not less than five years immediately preceding their appointment.” *Id.* ¶¶ 4–5. Further, at least four of the nine board members must be general appraisers, and at least two of the board members must be residential appraisers. *Id.* ¶ 6.

The Appraisers Law was modified effective August 2014, adding a tenth board member to represent AMCs and making other modest changes. *Id.* ¶ 8. At all relevant times (2013 through 2016), a majority of Respondent’s board members were (i) state licensed appraisers, (ii) authorized to perform residential appraisals, and (iii) engaged in the practice of real estate appraising, either independently or as an employee of an appraisal company. *Id.* ¶ 15.

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) Dodd-Frank amended the Truth in Lending Act of 1968 (“TILA”) to provide that lenders and their agents must pay appraisers “customary and reasonable fees.” *Id.* ¶ 39. In 2012, the Louisiana legislature enacted legislation establishing a similar requirement under state law. *Id.* ¶ 25.

In 2013, acting by unanimous vote of its board, Respondent approved Rule 31101. *Id.* ¶ 40. Rule 31101 directs that an AMC must compensate appraisers at a rate that is “customary and reasonable for appraisal services in the market area of the property being appraised.” *Id.* ¶ 66. Further, an AMC must determine its customary and reasonable fee by one of three specified methods: (i) based on a survey of fees recently paid by lenders in the relevant geographic area

(“Survey Method”); (ii) based on a fee schedule established by Respondent; or (iii) based on fees recently paid in the relevant geographic area, adjusting this base rate using six specified factors (the “Six Factor Method”). *Id.* ¶¶ 43, 66. By its terms, Rule 31101 applies to all appraisals procured by an AMC, and is not limited to fees paid for residential appraisals.

Louisiana law establishes a procedure whereby the legislature may (at its option) review the exercise of rule-making authority by a state agency. *Id.* ¶ 29. In brief, the state agency files with each house of the legislature a report on the proposed rule, which is then referred to the appropriate House and Senate oversight subcommittees. *Id.* ¶¶ 32–33. The subcommittees may elect to hold hearings regarding the adoption of the proposed rule, and at such hearings the subcommittees may, among other things, “[d]etermine whether the rule change . . . is in conformity with the intent and scope of the enabling legislation purporting to authorize the adoption thereof.” *Id.* ¶¶ 34–35. If either the House or Senate oversight subcommittee, acting by majority vote, finds that a proposed rule is unacceptable, such determination is then reviewed by the Governor. *Id.* ¶ 36.

After approving Rule 31101, Respondent submitted the proposed rule and a report of its approval to the Louisiana House of Representatives and the Senate, as required by Louisiana law. *Id.* ¶ 63. The chairs of each standing committee then appointed a subcommittee. The subcommittees held no hearings and no vote regarding Rule 31101 occurred. *Id.* ¶ 65. Rule 31101 took effect upon publication in the Louisiana Register on November 20, 2013.<sup>4</sup> *Id.* ¶ 66.

Contemporaneously with approving Rule 31101, Respondent commissioned the Southeastern Louisiana University Business Research Center to conduct an online survey of

---

<sup>4</sup> The failure of an oversight subcommittee to conduct a hearing or make a determination regarding any proposed rule does not affect the validity of a rule. *Id.* ¶ 37.

“typical” appraisal fees paid by lenders to appraisers during 2012 for residential appraisals. *Id.* ¶ 67. Survey respondents included general appraisers (who by law may perform “all types” of real estate appraisals), residential appraisers, and lenders. In May 2013, Respondent posted on its website a report summarizing the survey results.<sup>5</sup> *Id.* ¶ 69. The survey report identifies median fees for five types of appraisals in each of nine geographic regions. *Id.* ¶ 71. Respondent updated the fee survey and the fee report three times (for appraisals performed in 2013, 2014, and 2016). *Id.* ¶ 70.

Respondent has enforced Rule 31101 in various ways. Respondent investigated AMCs for allegedly failing to pay “customary and reasonable” fees. *Id.* ¶ 74. In at least one instance, Respondent settled an enforcement action against an AMC for allegedly failing to pay “customary and reasonable” fees when the AMC agreed “to follow the current Louisiana fee schedule.” *Id.* ¶¶ 83–86. In another instance, Respondent found that an AMC violated Rule 31101, and entered an order requiring the AMC to submit a compliance plan describing how it would comply with the Rule in the future. *Id.* ¶¶ 104–07. Respondent rejected the AMC’s original proposed plan to use the Six Factor Method, and later accepted the AMC’s plan to pay appraisal fees at or above the medians reported in the survey report. *Id.* ¶¶ 108–14.

The AMC Act provides that a Louisiana court may review questions of law arising in an adjudicatory proceeding conducted by Respondent. *Id.* ¶ 27. The scope of review is limited. The court shall affirm Respondent’s decision if Respondent “has regularly pursued its authority and not acted arbitrarily.” *Id.* ¶ 28.

---

<sup>5</sup> The formal title of this document is “Louisiana Residential Real Estate Appraisal Fees: 2012.” *Id.* ¶ 69.

## RESPONDENT'S ASSERTED STATE ACTION DEFENSE

The Complaint alleges that Respondent violated Section 5 by adopting Rule 31101, and by enforcing this regulation in the manner summarized above.

Respondent raises the state action defense in its Answer to the Complaint, stating:

3. The Complaint fails adequately to allege that the Board has a controlling number of active participants in the relevant **residential** appraisal market.

\* \* \*

9. [Respondent] is immune from federal antitrust liability under *Parker v. Brown*, 317 U.S. 341 (1943). Answer ¶¶ 3, 9, *In re La. Real Estate Appraisers Bd.*, Docket No. 9374 (F.T.C. May 30, 2017) (emphasis in original).

Defense Number 3 references an element of the state action defense, and Defense Number 9 raises the defense with reference to the Supreme Court case that first established the doctrine.<sup>6</sup>

Because all facts relevant to the state action defense are undisputed, it is ripe for summary decision.

### STANDARD FOR SUMMARY DECISION

Commission Rule of Practice 3.24 provides that a party may move for summary decision for “all or any part of the issues being adjudicated,” 16 C.F.R. § 3.24(a)(1), including the applicability of an affirmative defense. *See, e.g., In re N.C. Bd. Dental Exam’rs*, Docket No. 9343, 151 F.T.C. 607, 633 (Comm’n Op. and Order on Mot. Summ. J., Jan. 16, 2011) (granting

---

<sup>6</sup> Defense Number 3 is improper for a variety of reasons. First, it invents a requirement to plead the absence of an affirmative defense, which is not required by Rule 3.11(b). Second, it is frivolous—the Complaint alleges control by market actors in paragraphs 6, 11, 25, 53, and 54. Third, to the extent it properly raises any aspect of the state action defense it is duplicative of Defense 9. For purposes of this motion, the state action defense is addressed as a whole, including both Defenses 3 and 9.

summary decision that the state action defense did not apply). The standard for summary decision is “virtually identical” to that applied to a motion for summary judgment under Federal Rule of Civil Procedure 56. *Id.* at 610–11. Summary decision is appropriate where “the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,” and there is thus no “genuine issue for trial.” *Id.* (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). “Once the moving party has adequately supported its motion, the nonmoving party must do more than simply show that there is some metaphysical doubt as to the material facts. It must instead establish specific facts showing that there is a genuine issue for trial.” *Id.* at 611 (citation, quotation marks omitted).

A motion for summary decision can be particularly helpful in expediting resolution of a case when the sufficiency of a defense is at issue. For example, in *N.C. Dental*, the Commission determined that there was no genuine issue of material fact regarding “the propriety of the [respondent’s] invocation of the state action doctrine as an affirmative defense,” *id.* at 609, and issued an Order dismissing respondent’s defense, *id.* at 633.

On a motion for summary decision on an affirmative defense, the Commission “need not determine whether [the respondent’s] activities violate the relevant antitrust laws.” *Id.* at 612. The Commission addresses only “whether [the respondent’s] conduct is exempt from antitrust scrutiny.” *Id.* at 611–12.

## **ARGUMENT**

The Commission should enter a summary decision dismissing Respondent’s state action defense.

Respondent is a state agency, comprised primarily of licensed appraisers, that regulates the real estate appraisal industry. In order to invoke the state action defense, Respondent must establish that, *inter alia*, its conduct was actively supervised by an independent state actor. Yet, no disinterested state official has reviewed the restraints challenged in the Complaint to determine whether they promote state policy, rather than simply promoting appraisers' interest in receiving elevated appraisal fees. Indeed, the only state supervision identified by Respondent consists of (1) the mere potential for review of Rule 31101, when initially adopted, by subcommittees of the Louisiana legislature, and (2) the mere potential for review of a subset of its subsequent enforcement actions by a state court. However, the "mere potential for state supervision" is not an adequate substitute for actual and substantive review of agency actions. *N.C. Dental*, 135 S. Ct. at 1116. Thus, the state action defense does not shield Respondent's conduct from antitrust liability.

**I. A REGULATORY BOARD CONTROLLED BY ACTIVE MARKET PARTICIPANTS MAY INVOKE THE STATE ACTION DEFENSE ONLY IF THE BOARD IS ACTIVELY SUPERVISED BY THE STATE.**

In *Parker v. Brown*, 317 U.S. 341 (1943), the Supreme Court held that the Sherman Act, 15 U.S.C. § 1, which bars "restraints of trade," should not be read to bar states from imposing market restraints "as an act of government." *Id.* at 350, 352. The Court explained that "nothing in the language of the Sherman Act or in its history" suggested that Congress intended to restrict the sovereign states from regulating their economies. *Id.* at 350. Thus, states may, within certain limits, adopt and implement policies that would otherwise violate the Sherman Act. Application of the state action defense, however, is "disfavored," and the doctrine must be applied narrowly. *F.T.C. v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992). That is because "[t]he preservation of



the free market and of a system of free enterprise” is a “national policy of . . . a pervasive and fundamental character . . .” *Id.* at 632; *accord N.C. Dental*, 135 S. Ct. at 1110; *F.T.C. v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 225 (2013).

“But while the Sherman Act confers immunity on the States’ own anticompetitive policies out of respect for federalism, it does not always confer immunity where a State delegates control over a market to a non-sovereign actor,” such as a regulatory board whose members are engaged in the occupation it regulates. *N.C. Dental*, 135 S. Ct. at 1110. As the Supreme Court has recognized, “there is a real danger” that competitors serving as board members will act to further their “own interests, rather than the governmental interests of the State.” *Id.* at 1112 (quoting *Patrick v. Burget*, 486 U.S. 94, 100 (1988)).

In order to guard against this danger, where a state regulatory agency is controlled by active market participants, the state action defense requires a showing that the allegedly anticompetitive actions were (1) undertaken in furtherance of a clearly articulated and affirmatively expressed state policy; and (2) actively supervised by the state itself. *N.C. Dental*, 135 U.S. at 1110; *Cal. Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980). “Active supervision is essential for the state action doctrine to apply because it ensures that the extent to which the antitrust laws are displaced and responsibility for this displacement is properly laid on the state itself, not merely the private actors.” *In re Kentucky Household Goods Carriers Ass’n* (“*Kentucky Movers*”), 139 F.T.C. 404, 405–06 (Comm’n Op., June 21, 2005).

## **II. RESPONDENT REQUIRES ACTIVE SUPERVISION BECAUSE A MAJORITY OF ITS MEMBERS ARE ACTIVE APPRAISERS.**

The Supreme Court has provided States with a simple and straightforward test for determining which of the State’s regulatory agencies require active supervision in order to be

exempt from the federal antitrust laws. A state agency requires supervision when “a controlling number of decisionmakers” have a “private interest” in the “occupation the board regulates.”

*N.C. Dental*, 135 S. Ct. at 1114.<sup>7</sup>

One virtue of the Supreme Court’s test is that often it will be clear from the text of the agency’s organic statute, without additional fact finding, whether active supervision is required. If a person requires a license from the agency to practice an occupation, and a person requires a license from the agency to serve as a member of its governing board, then the court is probably looking at industry self-regulation that requires supervision. (For example, dentists regulating dentists requires supervision,<sup>8</sup> as does lawyers regulating lawyers.<sup>9</sup>)

Given the express terms of the Louisiana Real Estate Appraisers Law, the active supervision requirement is clearly applicable here. Respondent is empowered to regulate real estate appraisers, including by issuing (or denying) the licenses that appraisers must hold to practice their trade. La. R.S. 37: 3395 (A) (1). Respondent, through Rule 31101, regulates the fees received by licensed appraisers. And by law, a controlling number (a majority) of Respondent’s board members must be “appraiser members”; that is, a majority must be licensed appraisers. La. R.S. 37: 3394. These statutory provisions establish a need for independent supervision. Further, the Commission need not rely on statutory language alone. The record evidence shows that the “appraiser members” of the board, the licensees, are in fact actively engaged in providing appraisal services. In short, this is a paradigmatic example of the industry

---

<sup>7</sup> See also *N.C. Dental*, 135 S. Ct. at 1111 (noting generally that “the anticompetitive conduct of non-sovereign actors, especially those authorized by the State to regulate their own profession,” must be actively supervised). Note that the *N.C. Dental* test enables a court to resolve all state action issues without defining the relevant antitrust market, and without assessing the market impact of the challenged conduct.

<sup>8</sup> See generally *id.*

<sup>9</sup> See generally *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

self-regulation that concerned the Supreme Court in *N.C. Dental*, 135 S. Ct. at 1114 (“When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest.”).

Respondent contends that the “general appraisers” serving on Respondent’s board (who by law may perform “all types” of real estate appraisals) are not active market participants because these individuals (allegedly) do not have a sufficient private financial interest in the *residential* appraisal fees principally affected by Rule 31101. In effect, Respondent is demanding a financial audit of each of its board members—to determine moneys earned from performing appraisals within the scope of Rule 31101—before an antitrust court can determine whether the member is or is not a market participant. The case law requires no such inquiry.

In *N.C. Dental*, the FTC challenged a state dental board’s actions to exclude non-dentists from providing teeth whitening services in competition with dentists. The respondent was a state agency responsible for licensing and regulating dentists; the agency was governed by an eight-member board, and six of the eight board members were “licensed dentists engaged in the active practice of dentistry.” 135 S. Ct. at 1108. Phrased differently, “[a] majority of the board’s members [were] engaged in the active practice of the profession it regulates.” *Id.* at 1107. On this basis, the Supreme Court classified the dental board as controlled by active market participants. The Court was aware that some of the dentists serving as members of the dental board did not actually “offer[] whitening services.” *Id.* at 1116. Still, the Court did not inquire into whether (or to what extent) the dental board’s dentist members personally benefitted from the challenged restraint. It was sufficient that licensed dentists were regulating the practice of dentistry.

Likewise, the Commission's *N.C. Dental* decision holds unequivocally that whether the individual members of the dental board earn revenues from teeth whitening is irrelevant to the state action analysis:

The Board argues that Complaint Counsel has presented no evidence that the individual dentist members of the Board have a financial conflict of interest or that they derived substantial revenues in their private practice from teeth whitening services. We find this argument unpersuasive. First, we hold that the determinative factor in requiring supervision is not the extent to which individual members may benefit from the challenged restraint, but rather the fact that the Board is controlled by participants in the dental market. North Carolina dentists stand to reap economic gains when the Board takes actions to exclude non-dentists from competing to provide certain services. *In re N.C. Dental*, 151 F.T.C. at 627.

Thus, industry self-regulation requires supervision, without a separate showing that the decision-makers have personally benefitted from the challenged restraint.

*Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), is also directly on point. The Supreme Court examined whether the Virginia State Bar (a state agency) violated the antitrust laws by enforcing a minimum fee schedule for certain “common legal services,” such as title search. *Id.* at 776–78. The Court rejected the state action defense because the Virginia State Bar was “controlled by market participants (lawyers)” and had joined in anticompetitive activity for “the benefit of its members.” *N.C. Dental*, 135 S. Ct. at 1114 (citing *Goldfarb*, 421 U.S. at 791–92). “Its members” refers to persons practicing law in Virginia. *Goldfarb*, 421 U.S. at 776. The Court did not examine whether the lawyers who acted as decision makers for the Virginia State Bar performed the common legal services covered by the fee schedule, or personally benefitted from the agency’s price fixing activity. Stated differently, the Court was not concerned with whether the lawyers setting the fee for a title search practiced real estate law or

instead practiced securities law. For state action purposes, it was sufficient to know that lawyers were regulating the legal profession.

Here, the undisputed facts establish that Respondent is controlled by appraisers and regulates appraisers; therefore, active supervision by an independent state actor is required.

### **III. RESPONDENT’S CHALLENGED CONDUCT WAS NOT ACTIVELY SUPERVISED BY THE STATE.**

Respondent’s adoption and enforcement of Rule 31101 have not been supervised by a disinterested state actor as required for state action purposes. Adoption of the rule could have been reviewed by the Louisiana legislature, but was not. Further, no mechanism even exists for a substantive policy review of the enforcement actions based on Rule 31101, or the details of Respondent’s survey report (employed by Respondent to determine a remedy).

#### **A. Legal Standard for Active Supervision**

“The Supreme Court has made clear that the standard for active state supervision is a rigorous one.” *Kentucky Movers*, 139 F.T.C. at 415. The Court has articulated four “constant requirements” for adequate supervision of conduct alleged to violate the antitrust laws:

- (1) the supervisor must review the substance of the decision, not just the procedures followed to produce it;
- (2) the supervisor must have the power to veto or modify the anticompetitive action;
- (3) the supervisor must make an actual decision regarding the action, potential supervision is not enough; and
- (4) the supervisor must not be a market participant. *N.C. Dental*, 135 S. Ct. at 1116–17 (citation omitted).<sup>10</sup>

---

<sup>10</sup> The Federal Trade Commission is in accord:

[T]he Commission has explained that it would consider the following elements in determining whether a state has actively supervised private anticompetitive conduct: (1) the development of an adequate factual record; (2) a written decision on the merits; and (3) a specific assessment – both quantitative and qualitative – of how the private action comports with the substantive standards established by the legislature. *In re N.C. Dental*, 151 F.T.C. at 629.

Where, as here, the challenged conduct involves price regulation, the supervisor must approve not simply the concept of regulation, but also must exercise “sufficient judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention.” *See Ticor*, 504 U.S. at 634. For price regulation, the supervisory regime ordinarily should include some combination of public hearings; independent collection of evidence and data; an analysis of the relevant firms’ costs, revenues and profit margins; formulation of a standard by which appropriate fees can be established; and a written decision on the merits. *See Kentucky Movers*, 139 F.T.C. at 417.

An unexercised state authority to review the conduct in question is insufficient to constitute active supervision. For example, in *F.T.C. v. Ticor*, the states of Wisconsin and Montana each created a program in which title insurance ratings bureaus, comprised of competing insurance companies, periodically “filed [joint] rates for title searches and title examinations with the state insurance office.” 504 U.S. 621, 629 (1992). The insurance offices’ actual review of proposed rates lacked rigor, amounting to little more than checking the rates for mathematical accuracy. *Id.* at 638. The ratings bureaus argued that “as a matter of law in those States inaction signified substantive approval.” *Id.* The Court rejected this contention, explaining: “Where prices or rates are set as an initial matter by private parties, subject only to a veto if the State chooses to exercise it, the party claiming the immunity must show that state officials have undertaken the necessary steps to determine the specifics of the price-fixing or rate-setting scheme.” *Id.* As the nominal supervisor in fact took no meaningful action, “whatever the potential for state regulatory review . . . active state supervision did not occur.” *Id.*

Similarly, in *Kentucky Movers*, an association comprised of household movers, acting pursuant to state law, prepared and filed joint tariffs with a state oversight agency. 139 F.T.C. at 406–08. State law contemplated a public hearing and some cost-based analysis of collective rates by the agency. *Id.* at 426–27. However, these steps were not implemented. As there was no actual and meaningful independent state review of whether the proposed tariff comported with the states own standards, the Commission dismissed the state action defense. *See id.* at 505.

**B. The Louisiana Legislative Committees’ Unexercised Right to Review Rule 31101 Does Not Constitute Active Supervision**

As detailed above, Rule 31101 – adopted by Respondent – governs real estate appraisal fees in Louisiana, and is the basis for Respondent’s various enforcement activities alleging that AMCs failed to pay customary and reasonable appraisal fees.

The Louisiana legislature did not actively supervise the adoption of Rule 31101, even though such supervision was possible under state law. Respondent forwarded the text of Rule 31101 to the legislature, together with some other documentation. However, neither the House nor the Senate subcommittee held a hearing. No public action was taken by either subcommittee regarding the rule. There was no independent collection of information, and no independent assessment of whether the rule conforms with state policy. The subcommittees issued no written decision. That is, the subcommittees took none of the steps set out in the case law as indicating active supervision of price regulation. *See Kentucky Movers*, 139 F.T.C. at 417.

The Louisiana’s legislature’s supervision was “mere[ly] potential,” and hence insufficient. *See N.C. Dental*, 135 S. Ct. at 1116 (quoting *Ticor*, 504 U.S. at 638).<sup>11</sup>

---

<sup>11</sup> Because the supervision must relate to a specific action or decision alleged to be anticompetitive, the Governor’s appointment of Board members cannot alone constitute adequate supervision. *See N.C. Dental*, 135 S. Ct. at 1116–17.

**C. Respondent’s Fee Survey and Its Enforcement of Rule 31101 Were Not Actively Supervised by the State**

The Complaint also challenges Respondent’s enforcement of Rule 31101. As detailed above, Respondent commissioned annual surveys of residential appraisal fees, and published survey reports purporting to identify the median fees paid by lenders over the preceding year. Respondent also conducted investigations of alleged violations of Rule 31101 by AMCs. Investigations were resolved either by agreement with the target AMC, or by issuance of an order.<sup>12</sup> This enforcement activity is not state action unless actively supervised by the state. *See N.C. Dental*, 135 S. Ct. at 1110 (applying active supervision requirement to agency enforcement actions including issuing cease-and-desist letters); *Ticor*, 504 U.S. at 634 (active supervision requires that state officials “play[] a substantial role in determining the specifics of the economic policy”); *Patrick v. Burget*, 486 U.S. 94, 106 (1988) (active supervision requires that state officials review “particular anticompetitive acts of private parties”).

From 2013 through 2016, no state official evaluated the methodology employed in conducting Respondent’s fee survey, the substance of the survey reports, or whether transmuting the previous year’s median appraisal fee into the minimum lawful fee for the current year faithfully implements state policy. Furthermore, Respondent’s investigations of, and enforcement actions against, AMCs were not approved or reviewed by an independent state actor.<sup>13</sup>

---

<sup>12</sup> The Complaint alleges that, through this series of enforcement actions, Respondent effectively required AMCs to pay appraisal fees that equal or exceed the fees identified in its survey reports. Respondent disputes this characterization of its enforcement actions. However, this dispute is not relevant to determining whether Respondent’s enforcement activity constitutes state action.

<sup>13</sup> *Cf. Kentucky Movers*, 139 F.T.C. at 417 (noting that proper supervision of proposed fees would include “collect[ing] business data (including revenues and expenses); conduct[ing] economic studies; review[ing] profit levels and develop[ing] standards or measures such as operating ratios; disapprov[ing] rates that fail to meet the state’s standards”); *see also Ticor*, 504 U.S. at 634 (suggesting that a supervisor could use “sampling techniques” and “specified rate of return” formulas to scrutinize data submitted by an active market participant).



Respondent may argue that the ability of an AMC to seek review of certain of Respondent's completed enforcement actions in state court satisfies the active supervision requirement as to these actions. The Supreme Court has not determined whether judicial review can ever provide the requisite active state supervision. *See Patrick*, 486 U.S. at 104 (declining to decide "the broad question whether judicial review of private conduct ever can constitute active supervision").<sup>14</sup> But even setting this aside, judicial review is plainly insufficient here for two independent reasons. First, no state court review of Respondent's enforcement actions has actually occurred. As discussed above, *N.C. Dental*<sup>15</sup> and *Ticor*<sup>16</sup> expressly hold that active supervision must actually occur, and not merely be possible.

Second, the state's supervision must be substantive, and not deferential to the policy judgments of the private actors. *See, e.g., N.C. Dental*, 135 S. Ct. at 1116. Case law instructs that traditional forms of judicial review of administrative actions, such as limited inquiries into whether an agency acted within its delegated discretion, followed proper procedures, or had some factual basis for its actions, are insufficient to constitute active supervision. *See Patrick*, 486 U.S. at 105 ("constricted" judicial review of whether decision was supported by reasonable procedures and reasonable evidence "does not convert the action of a private party . . . into the action of the State for purposes of the State action doctrine"); *Pinhas v. Summit Health*, 894 F.2d 1024, 1030 (9th Cir. 1989) (judicial review was not active supervision where "reviewing court may not reject the judgment of the governing board even if it disagrees with the board's

---

<sup>14</sup> Judicial review that is contingent on a plaintiff filing a lawsuit shifts the burden of active supervision to the target of the regulation and away from the regulator. No challenge may ever be brought if the benefits of a successful lawsuit will be shared by many but the costs must be borne by a party capable of seeking judicial review. Contingent judicial review provides no certainty that the actions *will* ever be reviewed, and therefore is not active supervision.

<sup>15</sup> *N.C. Dental*, 135 S. Ct. at 1116 (noting that the "mere potential for [such review] is not an adequate substitute for a decision" (citation omitted)).

<sup>16</sup> *Ticor*, 504 U.S. 621.

judgment”) (citation omitted); *Shahawy v. Harrison*, 875 F.2d 1529, 1535–36 (11th Cir. 1989) (judicial review “for procedural error and insufficient evidence” is not active supervision); *Teladoc, Inc. v. Tex. Med. Bd.*, No. 1-15-CV-343, 2015 U.S. Dist. LEXIS 166754, at \*26 (E.D. Tex. Dec. 14, 2015) (judicial review “limited to inquiring whether the decision exceeded the statutory authority granted to the agency” is not active supervision).

Under Louisiana state law, any future state court review of an enforcement action by Respondent against an AMC will be limited to assessing whether the Respondent “has regularly pursued its authority and has not acted arbitrarily.” La. R.S. 37: 3415.20 (B) (2) (“If the court finds that the Louisiana Real Estate Appraisers Board has regularly pursued its authority and has not acted arbitrarily, it shall affirm the decision, order, or ruling of the board.”). This hypothetical challenge by an AMC is insufficient for state action purposes. The court will not “review the substance of the anticompetitive decision,” *N.C. Dental*, 135 S. Ct. at 1116 (citation omitted), and will not determine “whether it accorded with state regulatory policy.” *Patrick*, 486 U.S. at 105. Hence, judicial review by Louisiana state courts will not supply the necessary supervision.

## CONCLUSION

Respondent regulates residential real estate appraisal fees, and is controlled by a board composed almost entirely of individuals licensed to provide that very service. And yet, no independent state actor has supervised Respondent’s price rule or its enforcement activity. The Supreme Court has repeatedly emphasized that actual supervision, and not merely an unexercised right to supervise, is required to invoke the state action defense. Because the

undisputed facts show that no such actual supervision occurred, Respondent's state action defense fails as a matter of law and should be dismissed.

Respectfully submitted,

/s/ Geoffrey M. Green  
Geoffrey M. Green  
Lisa B. Kopchik  
Christine M. Kennedy  
Michael J. Turner  
*Attorneys*

Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
Facsimile: (202) 326-3496  
Telephone: (202) 326-3139  
Email: [LKopchik@ftc.gov](mailto:LKopchik@ftc.gov)

*Counsel Supporting the Complaint*

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

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

**In the Matter of**

Louisiana Real Estate Appraisers Board,  
Respondent

DOCKET NO. 9374

**COMPLAINT COUNSEL’S STATEMENT OF UNDISPUTED FACTS**

Pursuant to Rule 3.24, Complaint Counsel submits, in support of its Motion for Partial Summary Decision, the following statement of material facts as to which there is no genuine dispute:

**A.    Louisiana Real Estate Appraisers Board**

1.       Louisiana Real Estate Appraisers Board (“Respondent”) is a state agency created by Louisiana law. Respondent is governed by a multi-member board, with each member nominated by the Governor and confirmed by the state Senate. Kennedy Decl. Tab 3, La. R.S. 37:3394.<sup>1</sup>

---

<sup>1</sup> “Kennedy Decl.” refers to the Declaration of Christine M. Kennedy, to which all exhibits and pleadings referred to herein are attached.

2. Respondent is responsible for licensing and regulating the conduct of real estate appraisers and appraisal management companies (“AMCs”) in Louisiana. Kennedy Decl. Tab 3, La. R.S. 37: 3393, La. R.S. 37: 3395 (A) (1); Tab 4, La. R.S. 37: 3415.3.

3. Respondent issues licenses to three classes of appraisers:

a. A person licensed as a general appraiser may appraise “all types of real estate regardless of complexity or transaction value.” Kennedy Decl. Tab 3, La. R.S. 37: 3392 (7).

b. A person licensed as a residential appraiser may appraise all residential properties having four or fewer residential units (for example, a single family home), and other types of real estate having a transaction value of \$250,000 or less. Kennedy Decl. Tab 3, La. R.S. 37: 3392 (13).

c. A person licensed as an appraiser trainee may act under the supervision of a general appraiser or a residential appraiser. Kennedy Decl. Tab 3, La. R.S. 37: 3397 (B) (1) (a).

4. The Louisiana Real Estate Appraisers Law (“Appraisers Law”) specifies the composition of Respondent’s board. In 2013 and until August 1, 2014, the Appraisers Law provided for a nine-member board, seven of whom were identified as “appraiser members.” Kennedy Decl. Tab 6, La. R.S. 37: 3394 (B) (2013).

5. In 2013 and until August 1, 2014, the Appraisers Law provided that each appraiser member of Respondent’s board shall be a Louisiana resident, hold an appraiser’s license and be “engaged in the general practice of real estate appraising in the state of Louisiana

for not less than five years immediately preceding their appointment.” Kennedy Decl. Tab 6, La. R.S. 37: 3394 (B) (2013).

6. In 2013 and until August 1, 2014, the Appraisers Law provided that at least four of the nine members of Respondent’s board shall be general appraisers, and at least two shall be residential appraisers. Two members of Respondent’s board shall be chosen from lists of names submitted by local bankers’ associations. Kennedy Decl. Tab 6, La. R.S. 37: 3394 (B) (2013).

7. The Appraisers Law was modified in 2014. Kennedy Decl. Tab 6, 2014 Acts No. 347.

8. As of August 1, 2014, Respondent’s board shall consist of ten members appointed by the Governor. Kennedy Decl. Tab 3, La. R.S. 37: 3394.

9. As of August 1, 2014, the Appraisers Law provides that eight of the ten members of Respondent’s board shall be licensed appraisers in Louisiana. Kennedy Decl. Tab 3, La. R.S. 37: 3394.

10. As of August 1, 2014, the Appraisers Law provides that, of the eight appraiser members of Respondent’s board, at least four shall be general appraisers and at least two shall be residential appraisers. Kennedy Decl. Tab 3, La. R.S. 37: 3394.

11. As of August 1, 2014, the Appraisers Law provides that one of the eight appraiser members of Respondent’s board shall have been engaged in the business of appraisal management for at least four years and shall be an employee or representative of an AMC. This AMC representative may be either a general appraiser or a residential appraiser. Kennedy Decl. Tab 3, La. R.S. 37: 3394.

12. As of August 1, 2014, the Appraisers Law provides that Respondent's board shall include two members from a list of five names submitted by a local bankers' association.

Kennedy Decl. Tab 3, La. R.S. 37: 3394.

13. The members of Respondent's board select a Chairman and other officers.

Kennedy Decl. Tab 3, La. R.S. 37: 3394 (G).

14. Respondent takes action based on a majority vote of its members. The Chairman does not vote except when necessary to break a tie. Kennedy Decl. Tab 47, { [REDACTED] }.

15. At all times relevant to the allegations in this case, a majority of Respondent's board members were (i) state licensed appraisers, (ii) authorized to perform residential appraisals, and (iii) engaged in the practice of real estate appraising, either independently or as an employee of an appraisal company. In particular:

a. From 2013 through 2016, Gayle Boudousquie was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; CX0315 (screenshot of a Facebook page for "Gayle H Boudousquie & Assoc.").

b. From 2013 through 2015, Michael Graham was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; CX0314 (screenshot of a webpage for "Mike Graham Real Estate Appraisal and Brokerage").

- c. From 2013 through 2016, Roland Hall was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; Tab 47, { [REDACTED] }.
- d. From 2013 through 2016, Butch Landry was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; CX0313 (screenshot of a LinkedIn page for "NEWTON LANDRY").
- e. From 2013 through 2016, Craig Lipscomb was a member of Respondent's board and a licensed appraiser, and authorized to perform residential appraisals. Kennedy Decl. Tab 10, { [REDACTED] }.
- f. From 2013 through 2016, Tommie McMorris was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; CX0312 (screenshot of a LinkedIn page for "Tommie McMorris").
- g. From 2013 until sometime in 2015, Pete Pauley was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; CX0311 (screenshot of a webpage for "The Pauley Corporation").



h. For at least a part of 2013, Bill Kipf was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; CX0310 (screenshot of a webpage entitled "People in Business for March 31").

i. From sometime in 2015 through 2016, Cheryl Bella was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; CX0331 (screenshot of a webpage for "Cheryl B. Bella, MAI, AI-GRS").

j. From sometime in 2015 through 2016, Janis Bonura was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; CX0332 (screenshot of a LinkedIn page for "Janis M. Bonura, SRA").

k. From 2015 through 2016, Tim Hammett was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, { [REDACTED] }; CX0333 (screenshot of a LinkedIn page for "Appraisals Plus, LLC"); Tab 48, { [REDACTED] }.

**B. Appraisal Management Companies**

16. AMC's are independent companies and act as agents of lenders. Kennedy Decl. Tab 1, Complaint ¶ 1; Tab 2, Answer ¶ 1.

17. As lenders' agents, AMC's pay independent licensed appraisers to render an opinion of the value of the real estate offered as collateral for a mortgage. Kennedy Decl. Tab 4, La. R.S. 37: 3415.2 (2).

**C. The AMC Act**

18. In 2009, Louisiana enacted the Louisiana Appraisal Management Company Licensing and Regulation Act ("AMC Act"), effective January 1, 2010. Kennedy Decl. Tab 4, La. R.S. 37: 3415.1 *et seq.*

19. The AMC Act provides, *inter alia*, that an AMC must be licensed by Respondent in order to conduct business in Louisiana. Kennedy Decl. Tab 4, La. R.S. 37: 3415.3.

20. The AMC Act grants Respondent the authority to adopt rules and regulations necessary for the enforcement of the AMC Act in accordance with the Louisiana Administrative Procedure Act. Kennedy Decl. Tab 4, La. R.S. 37: 3415.21.

21. The AMC Act grants Respondent authority to censure an AMC; conditionally or unconditionally suspend, or revoke a license issued by Respondent; levy fines; or impose civil penalties not to exceed fifty thousand dollars, if the AMC has violated or attempted to violate any of Respondent's rules. Kennedy Decl. Tab 4, La. R.S. 37: 3415.19 (A) (2).

22. As initially enacted, the AMC Act provided that any rule proposed by Respondent shall require the affirmative approval of the House of Representatives Committee on Commerce

and the Senate Committee on Commerce, Consumer Protection and International Affairs.

Kennedy Decl. Tab 7, La. R.S. 37: 3415.21 (B) (2009).

23. In 2012, the AMC Act was amended to provide that, if the Respondent submits a proposed rule for affirmative approval and the legislature is not in session, the proposed rule shall be deemed affirmatively approved if forty-five days have elapsed from the date the proposed rule is received by the oversight committees and no hearing is held by either committee. Kennedy Decl. Tab 7, La. R.S. 37: 3415.21 (B) (2012); Tab 46, { [REDACTED] }.

24. La. R.S. 37: 3415.21 (B), requiring affirmative approval by the legislative committees of Respondent's proposed rules, was repealed effective June 19, 2014. Kennedy Decl. Tab 7, Acts 2014, No. 764; Tab 46, { [REDACTED] }.

25. In 2012, the Louisiana legislature amended the 2009 AMC Act to require that AMCs pay appraisers fees that are "customary and reasonable." The statute stated:

§ 3415.15. Fees; customary and reasonable; disclosure

A. 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 presumptions of compliance under federal law.

Kennedy Decl. Tab 8, La. R.S. 37: 3415.15 (A) (2012).

26. Effective August 1, 2016, 37: 3415.15 (A) was revised to read:

A. 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.

Kennedy Decl. Tab 4, La. R.S. 37: 3415.15 (A).

27. The AMC Act provides that a Louisiana court may review questions of law involved in any final decision of Respondent. Kennedy Decl. Tab 4, La. R.S. 37: 3415.20 (B).

28. The court must affirm Respondent's decision if Respondent "has regularly pursued its authority and not acted arbitrarily." Kennedy Decl. Tab 4, La. R.S. 37: 3415.20 (B).

**D. Louisiana Administrative Procedures Act**

29. Louisiana Administrative Procedure Act ("LAPA") establishes a procedure whereby the legislature may review the exercise of rule-making authority by a state agency. Kennedy Decl. Tab 5, La. R.S. 49: 953 *et seq.*

30. LAPA requires that, prior to the adoption of any rule, the agency shall publish in the Louisiana Register a notice of its intended action ("Notice of Intent"). Such Notice of Intent shall include, *inter alia*, a statement of the fiscal and economic impact of the proposed rule. Kennedy Decl. Tab 5, La. R.S. 49: 953 (A) (1) (a) (ii - iii).

31. LAPA requires that, prior to the adoption of any rule, the agency afford all interested persons reasonable opportunity to submit data, views, comments, or arguments on the proposed rule. Kennedy Decl. Tab 5, La. R.S. 49: 953 (A) (2) (a).

32. LAPA requires that, prior to the adoption of any rule, the agency that proposes a rule submit a report to the appropriate standing legislative committees in each house of the legislature. Such report shall contain, *inter alia*, a summary of all comments received by the agency, and statements on the fiscal and economic impacts of the proposed rule. Kennedy Decl. Tab 5, La. R.S. 49: 968 (B - C).

33. LAPA requires that the chairman of each standing committee appoint an oversight subcommittee, and that the agency submit to the each oversight subcommittee a report similar to the one submitted to the standing committees. Kennedy Decl. Tab 5, La. R.S. 49: 968 (D) (1).

34. The oversight subcommittees have an option to hold hearings to review the exercise of rule-making authority by a state agency. Kennedy Decl. Tab 5, La. R.S. 49: 968 (D) (1).

35. At any hearing on a proposed rule, the oversight subcommittee is charged with, *inter alia*, determining whether the rule change is in conformity “with the intent and scope of the enabling legislation” and “all applicable laws and the constitution.” The oversight subcommittee shall also determine “the advisability or relative merit of the rule change,” and whether the rule change “is acceptable or unacceptable.” Kennedy Decl. Tab 5, La. R.S. 49: 968 (D) (3).

36. If either the House or Senate oversight subcommittee, acting by majority vote, finds that a proposed rule is unacceptable, such determination is then reviewed by the Governor. Kennedy Decl. Tab 5, La. R.S. 49: 968 (F - G).

37. The failure of an oversight subcommittee to conduct a hearing or make a determination regarding any proposed rule does not affect the validity of a rule. Kennedy Decl. Tab 5, La. R.S. 49: 968 (H) (1).

38. The proposed rule can be published in the Louisiana Register and shall become effective upon publication if neither subcommittee has held hearings within 30 days after the day that the agency’s reports are received by the oversight subcommittees. Kennedy Decl. Tab 5, La. R.S. 49: 954 (B); La. R.S. 49: 968 (D) (2) (a); La. R.S. 49: 968 (E) (2).

**E. Dodd-Frank**

39. In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), aimed at ensuring that real estate appraisers would operate independently. Dodd-Frank amended the Truth in Lending Act of 1968 (“TILA”) to provide that lenders and their agents must pay appraisers “customary and reasonable fees.” Kennedy Decl. Tab 9, 111 P.L. 203, Section 1472, *codified at* 15 U.S.C. 1639e.

**F. Adoption of Rule 31101**

40. At a meeting on January 14, 2013, all members of Respondent’s board, except the Chairman and one member who was not present, voted to “ratify approval” of proposed Rule 31101. Kennedy Decl. Tab 11, CX0306 (Minutes of Meeting of Louisiana Real Estate Appraisers Board (“Board Minutes”), January 14, 2013).

41. On February 20, 2013, Respondent published in the Louisiana Register a Notice of Intent to promulgate proposed Rule 31101. The Notice stated that the public may comment on the proposal until March 12, 2013. Kennedy Decl. Tab 5, La. R.S. 49: 953(A) (1); Tab 12, 39 LR 376 (February 20, 2013).

42. The Notice of Intent published on February 20, 2013, stated that:

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.

Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013).

43. The Notice of Intent included the text of proposed Rule 31101, which stated that AMCs must pay appraisers “customary and reasonable” fees. The appraisal fees must be

determined by either (1) reference to third-party information such as government fee schedules, academic studies, or independent private sector surveys (“Survey Method”); (2) a fee schedule established by Respondent; or (3) consideration of six factors (“Six Factor Method”). Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013).

44. The Notice of Intent included a Fiscal Impact Statement. In a section of the Fiscal Impact Statement entitled, “III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO PERSONS OR NONGOVERNMENTAL GROUPS (Summary),” the Notice of Intent addressed surety bond requirements, but it did not address costs or benefits to AMCs or appraisers. Kennedy Decl. Tab 5, R.S. 49: 953 (A) (3) (b); Tab 12, 39 LR 376 (February 20, 2013).

45. In a section of the Fiscal Impact Statement entitled, “IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary),” the Notice of Intent stated, *in toto*, “There is no estimated impact on competition and employment as a result of the proposed rule change.” Kennedy Decl. Tab 5, La. R.S. 49: 953 (A) (3) (b); Tab 12, 39 LR 376 (February 20, 2013).

46. Several parties submitted to Respondent written comments on proposed Rule 31101 between February 20, 2013 and March 20, 2013. Kennedy Decl. Tab 5, La. R.S. 49: 953 (A)(2); Tabs 13-17, CX0031 (comment from Rels Valuation), CX0319 (comment from National Association of Appraisal Management Companies), CX3040 (comment from Real Estate Valuation Partners), { [REDACTED] }, CX0032 (comment from Facilitate Appraisal Integrity Reform).

47. The written public comments noted, *inter alia*, that the Louisiana rule would require AMCs to use one of two methods to calculate appraisal fees, whereas the federal rule, promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), treats the two described methods as presumptions of compliance and allows any method to determine compliance with the “customary and reasonable” fee mandate. Kennedy Decl. Tab 13, CX0031 (Comment from Rels Valuation); Tab 17, CX0032 (comment from Facilitate Appraisal Integrity Reform).

48. The written public comments noted, *inter alia*, that the fiscal and economic impact statements were wrong to state that there would be no fiscal or economic effects because of the proposed rule. Kennedy Decl. Tab 13, CX0031 (comment from Rels Valuation).

49. The written public comments noted, *inter alia*, that real estate appraisal fees in Louisiana could rise if the rule were effective. Kennedy Decl. Tab 14, CX0319 (comment from National Association of Appraisal Management Companies); Tab 15, CX3040 (comment from Real Estate Valuation Partners); Tab 16, { [REDACTED] }.

50. The written public comments noted, *inter alia*, that recordkeeping requirements for AMCs that use the Six Factor Method would be so burdensome as to effectively require AMCs to pay according to the Survey Method. Kennedy Decl. Tab 17, CX0032 (comment from Facilitate Appraisal Integrity Reform); Tab 14, CX0319 (comment from National Association of Appraisal Management Companies); Tab 16, { [REDACTED] }.



51. The written public comments noted, *inter alia*, that the proposed rule would effectively require Respondent to set fees. Kennedy Decl. Tab 17, CX0032 (comment from Facilitate Appraisal Integrity Reform); Tab 15, CX3040 (comment from Real Estate Valuation Partners).

52. The written public comments noted, *inter alia*, that the proposed rule could implicate federal antitrust laws. Kennedy Decl. Tab 14, CX0319 (comment from National Association of Appraisal Management Companies); Tab 17, CX0032 (comment from Facilitate Appraisal Integrity Reform).

53. On July 22, 2013, Respondent held a public Substantive Change Hearing as part of Respondent's consideration of changes to proposed Rule 31101. Kennedy Decl. Tab 18, CX0320 (Public Meeting Notice).

54. At the Substantive Change Hearing, David Cherner, representing an association of AMCs, noted that proposed Rule 31101 would be inconsistent with Dodd-Frank regulations. Kennedy Decl. Tab 19, CX0179 (Substantive Change Hearing Transcript) at 7-19.

55. At the Substantive Change Hearing, David Cherner noted that the Louisiana rule would require AMCs to use one of two described methods to calculate fees, whereas the federal rule, promulgated pursuant to Dodd-Frank, treats the two described methods as rebuttable presumptions of compliance. Kennedy Decl. Tab 19, CX0179 (Substantive Change Hearing Transcript) at 16-17.

56. At the Substantive Change Hearing, David Cherner noted that the fiscal impact statement asserting that there would be no fiscal impact on AMCs was incorrect. Kennedy Decl. Tab 19, CX0179 (Substantive Change Hearing Transcript) at 19.

57. In or about August or September 2013, Respondent's staff prepared reports of comments on proposed Rule 31101. Kennedy Decl. Tab 20, { [REDACTED] }; { [REDACTED] }; { [REDACTED] }; CX0021 (Summary Report Part One); CX0022 (Summary Report Part Two).

58. Respondent's reports on proposed Rule 31101 identified some of the issues raised in the public comments: possible Dodd-Frank preemption or redundancy with federal law; whether the proposed rule and its enforcement were authorized under state or federal law; and whether the state rule was more restrictive than the corresponding federal requirements. Kennedy Decl. Tab 20, { [REDACTED] }; { [REDACTED] }; CX0021 (Summary Report Part One); CX0022 (Summary Report Part Two).

59. Respondent's reports on proposed Rule 31101 did not address the possibility that AMCs would be effectively required to use a survey to set appraisal fees. Kennedy Decl. Tab 20, { [REDACTED] }; { [REDACTED] }; { [REDACTED] }; CX0021 (Summary Report Part One); CX0022 (Summary Report Part Two).

60. Respondent's reports on proposed Rule 31101 did not address whether Respondent would promulgate rules that set fees. Kennedy Decl. Tab 20, { [REDACTED] }; { [REDACTED] }; { [REDACTED] }; CX0021 (Summary Report Part One); CX0022 (Summary Report Part Two).

61. Respondent's reports on proposed Rule 31101 did not address possible fiscal or economic effects of a rule that sets fees. Kennedy Decl. Tab 20, { [REDACTED] }; { [REDACTED] }; { [REDACTED] }; CX0021 (Summary Report Part One); CX0022 (Summary Report Part Two).

62. Respondent's reports on proposed Rule 31101 did not address possible conflicts between the proposed rule and the antitrust laws. Kennedy Decl. Tab 20, { [REDACTED] }; { [REDACTED] }; { [REDACTED] }; CX0021 (Summary Report Part One); CX0022 (Summary Report Part Two).

63. In September 2013, Respondent submitted its reports of comments on proposed Rule 31101 to the House and Senate, as required by Louisiana law. Kennedy Decl. Tab 5, La. R.S. 49: 968 (B and D); Tab 46 { [REDACTED] }; Tab 20, { [REDACTED] }; { [REDACTED] }; { [REDACTED] }.

64. The 2013 Regular Session of the Louisiana legislature was convened on April 8, 2013, and was adjourned on June 6, 2013.

[http://www.legis.state.la.us/Legis/SessionInfo/SessionInfo\\_13RS.aspx](http://www.legis.state.la.us/Legis/SessionInfo/SessionInfo_13RS.aspx).

65. No legislative committee or oversight subcommittee collected business data including revenues, expenses or profits, developed standards or measures such as operating ratios, approved any rates, held a hearing, or issued an opinion on Rule 31101 before the Rule became

effective. Kennedy Decl. Tab 46, { [REDACTED] }; Tab 21, CX0318  
(Board Minutes, November 18, 2013).

66. Rule 31101 took effect upon publication in the Louisiana Register on November 20, 2013. The Rule states:

§ 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.

Kennedy Decl. Tab 22, 39 LR 3072 (November 20, 2013).

**G. The Southeastern Louisiana University Business Center Survey**

67. In January 2013, Respondent contracted with the Southeastern Louisiana University Business Research Center (“SLU”) to conduct a survey of typical fees paid by lenders to appraisers in 2012. Kennedy Decl. Tab 23, { [REDACTED] }.

68. SLU surveyed lenders, licensed general appraisers, and licensed residential appraisers. Kennedy Decl. Tab 24, CX3010 (SLU survey report) at 2, 11.

69. SLU produced a report of the survey findings. Respondent posted the report on its website on or about May 30, 2013. The formal title of the report is “Louisiana Residential Appraisal Fees: 2012.” Kennedy Decl. Tab 24, CX3010 (SLU survey report).

70. SLU conducted three similar surveys of fees paid in 2013, 2014, and 2016, reports of which were published on Respondent’s website in 2014, 2015, and 2017. Kennedy Decl. Tab 24, CX3010 (SLU survey report); <http://www.reab.state.la.us/AMC.html> (links to other surveys).

71. The SLU reports present the median fees submitted by lenders and appraisers in response to each survey for five kinds of appraisals in nine geographic regions. Kennedy Decl.

Tab 24, CX3010 (SLU survey report) at 17-26; <http://www.reab.state.la.us/AMC.html> (links to other surveys).

**H. Investigations**

72. Bruce Unangst (“Unangst” or “Executive Director”) has been the Executive Director of Respondent since 2010. Kennedy Decl. Tab 46 { [REDACTED] }.

73. As Executive Director, Unangst has authority to open investigations into alleged violations of Rule 31101. Kennedy Decl. Tab 46 { [REDACTED] }.

74. { [REDACTED] }  
[REDACTED]  
[REDACTED]  
[REDACTED] }. Kennedy Decl. Tab 25, { [REDACTED] }; Tab 46, { [REDACTED] }.

75. Respondent’s staff has represented that fees at the level identified as the SLU survey medians will conclusively satisfy the “customary and reasonable” fee requirements of Rule 31101. Kennedy Decl. Tab 26, { [REDACTED] }.

76. Respondent has never issued any public guidance on how an AMC can determine appraisal fees using the Six Factor Method. Kennedy Decl. Tab 46, { [REDACTED] }.

**I. CoesterVMS Investigation**

77. [REDACTED]

[REDACTED]  
[REDACTED] }.

Kennedy Decl. Tab 27, { [REDACTED]  
[REDACTED] }.

78. [REDACTED]

[REDACTED] }. Kennedy  
Decl. Tab 27, { [REDACTED] }.

79. [REDACTED]

[REDACTED] }. Kennedy Decl. Tab  
27, { [REDACTED] }.

80. [REDACTED]

[REDACTED] }. Kennedy Decl. Tab 27, { [REDACTED]  
[REDACTED] }.

81. [REDACTED]

[REDACTED] }. Kennedy  
Decl. Tab 27, { [REDACTED] }.

82. [REDACTED]

[REDACTED]  
[REDACTED] }. Kennedy Decl. Tab 28, { [REDACTED]

[REDACTED]  
[REDACTED] }.

83. On May 28, 2015, Coester and Respondent settled the Coester Complaint by signing a document entitled “Stipulations and Order.” Kennedy Decl. Tab 29, { [REDACTED] }.

84. { [REDACTED] }.  
[REDACTED] }. Kennedy Decl. Tab 29, { [REDACTED] }.

85. { [REDACTED] }.  
[REDACTED] }.  
[REDACTED] }. Kennedy Decl. Tab 30, { [REDACTED] }.

86. On June 5, 2015, at a regularly scheduled meeting, Respondent’s board accepted Coester’s Stipulation and Order without opposition, ordered Coester to pay administrative costs of \$5000, and ordered Coester to “follow the current Louisiana fee schedule” for twelve months. Kennedy Decl. Tab 31, CX0283 (Board Minutes, June 5, 2015); Tab 29, { [REDACTED] }.

87. On October 27, 2015, a Louisiana licensed appraiser sent an email to the Executive Director that stated, { [REDACTED] }.  
[REDACTED] }. Kennedy Decl. Tab 32, { [REDACTED] }.



88. The Executive Director forwarded the October 27, 2015 email to Respondent's staff with a cover note that read, { [REDACTED] }. Kennedy Decl. Tab 32, { [REDACTED] }.

**J. iMortgage Investigation**

89. On January 29, 2014, a Louisiana licensed appraiser sent an email to the Executive Director complaining that an AMC, iMortgage, had offered the appraiser a fee that was "far below [customary and reasonable] rates" and attached an offer from the AMC to pay \$200 for a specific appraisal. Kennedy Decl. Tab 33, CX0080 (email dated January 24, 2019).

90. { [REDACTED] }  
[REDACTED]  
[REDACTED] }. Kennedy Decl. Tab 34, { [REDACTED] }  
[REDACTED] }.

91. { [REDACTED] }  
[REDACTED] }. Kennedy Decl. Tab 34, { [REDACTED] }  
[REDACTED] }.

92. On July 28, 2014, iMortgage answered Respondent's request of July 1, 2014. Kennedy Decl. Tab 35, CX0328 (letter dated July 28, 2014).

93. iMortgage provided information on appraisal assignments for which it paid appraisal fees between December 1, 2013, and June 30, 2014. Kennedy Decl. Tab 35, CX0328 (letter dated July 28, 2014).

94. Respondent initiated an enforcement action against iMortgage. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015).

95. Respondent sent iMortgage a Complaint alleging that iMortgage had violated Rule 31101 150 times between December 1, 2013 and June 30, 2014 by failing to pay customary and reasonable fees for 150 separate real estate appraisals. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015) at 17-18; Tab 37, CX0316 (allegation letter dated September 16, 2015).

96. On November 17, 2015, Respondent sent iMortgage a revised Complaint in the case, alleging that iMortgage violated Rule 31101 fifteen times between December 1, 2013 and June 30, 2014 by failing to pay customary and reasonable fees. Kennedy Decl. Tab 38, CX0329 (letter dated November 17, 2015, forwarding Respondent's November 17, 2015, allegation letter).

97. Respondent eliminated 135 transactions from the Complaint because they were not "covered transactions," as defined under 12 CFR 226.42 (b) (2). Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015) at 15; Tab 38, CX0329 (letter dated November 17, 2015, forwarding Respondent's November 17, 2015, allegation letter).

98. On December 8, 2015, the Respondent eliminated six more transactions from consideration. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015) at 15-16; Tab 39, [REDACTED] }.

99. In three of the six transactions, Respondent eliminated the transactions because iMortgage had paid fees equal to or above the median fee reported in the SLU survey report. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015) at 15-16; Tab 39, { [REDACTED] }.

100. In four of the six transactions eliminated from consideration, Respondent eliminated the transaction because it occurred outside the time period alleged in the Complaint. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015) at 15-16; Tab 39, { [REDACTED] }.

101. In one eliminated transaction, iMortgage paid a fee equal to or above the median fee reported in the SLU survey report and the transaction also occurred outside the time period alleged in the Complaint. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015) at 15-16; Tab 39, { [REDACTED] }.

102. In each of the nine remaining transactions that formed the basis for the allegations in the revised Complaint, iMortgage paid an appraiser a fee that was below the median fee reported in the SLU survey report. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015) at 15-16; Tab 39, { [REDACTED] }.

103. On December 8, 2015, Respondent held a hearing on allegations that iMortgage had violated Rule 31101 in nine transactions. Kennedy Decl. Tab 36, CX0330 (excerpts from

hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015).

104. On December 8, 2015, at the end of the hearing, Respondent's board members voted unanimously, except for the Chairman and one member who was absent, to find that iMortgage violated Rule 31101. Kennedy Decl. Tab 40, CX0334 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015).

105. Respondent's board, by a vote of six to one, required iMortgage to pay a \$10,000 penalty and costs of adjudication, and suspended iMortgage's license for six months. Kennedy Decl. Tab 40, CX0334 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015).

106. Respondent's board stayed the suspension of iMortgage's license on the condition that iMortgage submit a compliance plan by March 21, 2016, and that Respondent approve such compliance plan. Kennedy Decl. Tab 40, CX0334 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015).

107. Respondent entered an order that found that iMortgage had violated La. R.S. 37:3415.15 and Rule 31101. Respondent ordered iMortgage to pay a fine of \$10,000 and administrative costs of the adjudicatory proceeding, and suspended iMortgage's license for six months, with a stay on enforcement of the suspension pending iMortgage providing a compliance plan reviewed and approved by Respondent. Kennedy Decl. Tab 41, CX0309 (Findings of Fact, Conclusions of Law, and Order).

108. On February 26, 2016, iMortgage submitted a proposed compliance plan for Respondent's approval. Kennedy Decl. Tab 42, { [REDACTED] }.

109. The iMortgage proposed compliance plan dated February 26, 2016, stated that iMortgage would pay fees to appraisers using the Six Factor Method, and described the way that iMortgage would apply the six factors. Kennedy Decl. Tab 42, { [REDACTED] }.

110. By letter dated March 10, 2016, the Executive Director rejected iMortgage's proposed compliance plan dated February 26, 2016. Kennedy Decl. Tab 43, { [REDACTED] }.

111. On March 15, 2016, iMortgage submitted a second proposed compliance plan to Respondent for approval. Kennedy Decl. Tab 44, CX0308 (Second proposed compliance plan).

112. The second proposed compliance plan stated that iMortgage would pay fees to appraisers equal to the median fees in the SLU survey report. Kennedy Decl. Tab 44, CX0308 (Second proposed compliance plan).

113. On March 21, 2016 at a regularly scheduled meeting of Respondent's board, the Executive Director recommended that Respondent accept iMortgage's second proposed compliance plan. Kennedy Decl. Tab 45, CX0307 (Board Minutes, March 21, 2016).

114. Respondent's board accepted iMortgage's second proposed compliance plan by a vote of six to zero, with one member abstaining. Kennedy Decl. Tab 45, CX0307 (Board Minutes, March 21, 2016).

Respectfully submitted,

/s/ Geoffrey M. Green  
Geoffrey M. Green

Lisa B. Kopchik  
Christine M. Kennedy  
Michael J. Turner  
*Attorneys*

Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
Telephone: (202) 326-3139  
Email: LKopchik@ftc.gov

*Counsel for the Complaint*

Dated: November 30, 2017

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

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

**In the Matter of**

Louisiana Real Estate Appraisers Board,  
Respondent

DOCKET NO. 9374

**DECLARATION OF CHRISTINE M. KENNEDY**

1. I have personal knowledge of the facts set forth in this declaration, and if called as a witness I could and would testify competently under oath to such facts.
2. I am an attorney at the Federal Trade Commission and Complaint Counsel in this proceeding.
3. Attached to this declaration are the exhibits submitted in support of Complaint Counsel's Motion for Partial Summary Decision.
4. Tab 1 is a true and correct copy of the Administrative Complaint (Public Version) issued by the Federal Trade Commission in the above-captioned matter, dated May 30, 2017 ("Complaint").
5. Tab 2 is a true and correct copy of the Answer of Respondent Louisiana Real Estate Appraisers Board to the Complaint, dated June 19, 2017.
6. Tab 3 is a true and correct copy of Louisiana Real Estate Appraisers Law ("Appraisers Law").

7. Tab 4 is a true and correct copy of Louisiana Appraisal Management Company Licensing and Regulation Act (“AMC Act”).
8. Tab 5 is a true and correct copy of Louisiana’s Administrative Procedure Act.
9. Tab 6 contains two subparts and is a true and correct copy of: (a) Section 3394 of the 2013 Appraisers Law; and (b) the 2014 Louisiana House Bill amending Section 3394 of the Appraisers Law.
10. Tab 7 contains three subparts and is a true and correct copy of: (a) Section 3415.21 of the 2009 AMC Act; (b) Section 3415.21 of the 2012 AMC Act; and (c) the 2014 Louisiana Senate Bill repealing Section 3415.21.
11. Tab 8 is a true and correct copy of the AMC Act, as amended in 2012.
12. Tab 9 is a true and correct copy of Section 1639e of the Truth in Lending Act, which was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.
13. Tab 10 contains ten subparts and is a true and correct copy of: (a) { [REDACTED] }; (b) CX0315, screenshot of a Facebook page for “Gayle H Boudousquie & Assoc”; (c) CX0314, screenshot of a webpage for “Mike Graham Real Estate Appraisal and Brokerage”; (d) CX0313, screenshot of a LinkedIn page for “NEWTON LANDRY”; (e) CX0312, screenshot of a LinkedIn page for “Tommie McMorris”; (f) CX0311, screenshot of a webpage for “The Pauley Corporation”; (g) CX0310, screenshot of a webpage entitled “People in Business for March 31”; (h) CX0332, screenshot of a LinkedIn page for “Janis M. Bonura, SRA”; (i) CX0331, screenshot of a webpage for “Cheryl B. Bella, MAI, AI-GRS”; and (j) CX0333, screenshot of a LinkedIn page for “Appraisals Plus, LLC.”



14. Tab 11 is a true and correct copy of CX0306, Minutes of Meeting of Louisiana Real Estate Appraisers Board (“Board Minutes”), January 14, 2013.
15. Tab 12 is a true and correct copy of Respondent’s Notice of Intent to promulgate proposed Rule 31101.
16. Tab 13 is a true and correct copy of CX0031, written public comment by Rels Valuation on Respondent’s proposed Rule 31101.
17. Tab 14 is a true and correct copy of CX0319, written public comment by National Association of Appraisal Management Companies on Respondent’s proposed Rule 31101.
18. Tab 15 is a true and correct copy of CX3040, written public comment by Real Estate Valuation Partners on Respondent’s proposed Rule 31101.
19. Tab 16 is a true and correct copy of { [REDACTED] }.
20. Tab 17 is a true and correct copy of CX0032, written public comment by Coalition to Facilitate Appraisal Integrity Reform on Respondent’s proposed Rule 31101.
21. Tab 18 is a true and correct copy of CX0320, public meeting notice of the Substantive Change Hearing regarding Respondent’s consideration of changes to proposed Rule 31101.
22. Tab 19 is a true and correct copy of CX0179, Substantive Change Hearing transcript.
23. Tab 20 contains four subparts and is a true and correct copy of: (a) { [REDACTED] };
- { [REDACTED] };
- { [REDACTED] }; (c) { [REDACTED] }

[REDACTED]; and (d) [REDACTED]  
[REDACTED].

24. Tab 21 is a true and correct copy of CX0318, Board Minutes, November 18, 2013.

25. Tab 22 is a true and correct copy of Rule 31101 (39 LR 3072), as published in the Louisiana Register on November 20, 2013.

26. Tab 23 is a true and correct copy of { [REDACTED] }.

27. Tab 24 is a true and correct copy of CX 3010, SLU’s report of survey findings, entitled “Louisiana Residential Appraisal Fees: 2012.”

28. Tab 25 is a true and correct copy of { [REDACTED]  
[REDACTED] }.

29. Tab 26 is a true and correct copy of { [REDACTED]  
[REDACTED] }.

30. Tab 27 is a true and correct copy of { [REDACTED]  
[REDACTED] }.

31. Tab 28 is a true and correct copy of { [REDACTED]  
[REDACTED]  
[REDACTED] }.

32. Tab 29 is a true and correct copy of { [REDACTED]  
[REDACTED] }.

33. Tab 30 is a true and correct copy of { [REDACTED]  
[REDACTED] }.

34. Tab 31 is a true and correct copy of CX0283, Board minutes, June 4, 2015.

35. Tab 32 is a true and correct copy of { [REDACTED] }.

36. Tab 33 is a true and correct copy of CX0080, email correspondence between Respondent and a Louisiana licensed appraiser, dated January 29, 2014.
37. Tab 34 is a true and correct copy of { [REDACTED] }.
38. Tab 35 is a true and correct copy of CX0328, letter from iMortgage to Respondent, dated July 18, 2014, attaching appraisal assignments.
39. Tab 36 is a true and correct copy of CX0330, excerpt of transcript of administrative hearing, *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015.
40. Tab 37 is a true and correct copy of CX0316, allegation letter to iMortgage, dated September 16, 2015.
41. Tab 38 is a true and correct copy of CX0329, a letter dated November 17, 2015, from Robert Maynor, Director of Investigations, to attorneys for iMortgage, forwarding Preliminary Notice of Adjudication and the Written Complaint, dated November 17, 2015.
42. Tab 39 is a true and correct copy of { [REDACTED] }.
43. Tab 40 is a true and correct copy of CX0334, excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, dated December 8, 2015.
44. Tab 41 is a true and correct copy of CX0309, Findings of Fact, Conclusions of Law, and Order in *Louisiana Real Estate Appraisers Board versus iMortgage Services, LLC*.
45. Tab 42 is a true and correct copy of { [REDACTED] }.
46. Tab 43 is a true and correct copy of { [REDACTED] }.

47. Tab 44 is a true and correct copy of CX0308, iMortgage's second proposed compliance plan, dated March 15, 2016.
48. Tab 45 is a true and correct copy of CX0307, Board Minutes, March 21, 2016.
49. Tab 46 is a true and correct copy of { [REDACTED] }.
50. Tab 47 is a true and correct copy of { [REDACTED] }.
51. Tab 48 is a true and correct copy of { [REDACTED] }.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24<sup>th</sup> day of November, 2017, at Washington, DC.

/s/ Christine M. Kennedy  
Christine M. Kennedy  
Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
Telephone: (202) 326-3569  
Email: [ckennedy@ftc.gov](mailto:ckennedy@ftc.gov)  
  
*Counsel for the Complaint*

# Tab 1

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

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

**In the Matter of**

**Louisiana Real Estate Appraisers Board,  
Respondent**

**DOCKET NO. 9374**

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (the “Commission”), having reason to believe that the Louisiana Real Estate Appraisers Board has violated Section 5 of the Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

**NATURE OF THE CASE**

1.       The Louisiana Real Estate Appraisers Board (the “Board”), a state agency controlled by licensed real estate appraisers, has unreasonably restrained price competition for real estate appraisal services provided to appraisal management companies (“AMCs”) in Louisiana. AMCs act as agents for lenders in arranging for real estate appraisals.

2.       The Board adopted a regulation, effective as of November 20, 2013, purportedly implementing a requirement under federal and Louisiana law that AMCs pay appraisers a “customary and reasonable” fee for real estate appraisal services. In both promulgating and subsequently enforcing that regulation, the Board has unlawfully restrained price competition.

3.       First, by its express terms, the Board’s fee regulation unreasonably restrains competition by displacing a marketplace determination of appraisal fees. Under the regulation, AMCs must compensate appraisers at a rate determined by one of three methods: (1) an AMC may use a survey of fees recently paid by lenders in the relevant geographic area; (2) an AMC may use a fee schedule established by the Board; or (3) an AMC may identify recently paid fees and adjust this base rate using six specified factors. By requiring one of these three methods, the Board prevents AMCs and appraisers from arriving at appraisal fees through bona fide negotiation and through the operation of the free market.

4. Second, in subsequently enforcing its regulation, the Board has unlawfully restrained price competition, effectively requiring AMCs to match or exceed appraisal rates listed in a published survey. To that end, the Board commissioned the Southeastern Louisiana University Business Research Center (“SLU Center”) to survey recent fees paid by lenders. The SLU Center conducted three annual surveys, in 2013, 2014, and 2015, and produced three reports on fees paid in 2012, 2013, and 2014, respectively. According to the Board, the SLU Center reports identify the median fees paid by lenders for five types of appraisals in nine geographic regions in Louisiana, stated separately for urban, suburban and rural settings. The Board provided AMCs with notice of the SLU Center reports and posted the reports on its website.

5. The Board has effectively required AMCs to pay appraisal fees that equal or exceed the median fees identified in the SLU Center reports. For example, the Board initiated two enforcement actions against AMCs for allegedly violating fee requirements under the Board’s regulation. In each case, the Board resolved the enforcement action by securing the AMC’s agreement to pay appraisal fees at or above the level set forth in the SLU Center reports. Other AMCs that learned of the Board’s enforcement actions, in order to avoid disciplinary action, now use the SLU Center reports to determine the fees that they pay appraisers.

6. Through the promulgation of its regulation and through its investigative and enforcement actions, the Board—controlled at all relevant times by active market participants—has harmed competition through its regulation of fees paid by AMCs for appraisal services.

7. Independent state officials have not supervised the Board’s discretionary actions. The actions of the Board restrict price competition among appraisers without any legitimate justification or defense, including the “state action” defense, and therefore violate Section 5 of the Federal Trade Commission Act.

## **RESPONDENT**

8. The Louisiana Real Estate Appraisers Board is organized, exists, and transacts business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 9071 Interline Avenue, Baton Rouge, Louisiana 70809. The Board regulates and licenses both appraisers and AMCs.

9. AMCs are independent companies engaged by lenders to procure real estate appraisals. AMCs generally may not operate in Louisiana without first obtaining a license from the Board. The Board is empowered to discipline an AMC that violates any applicable Louisiana statute or regulation, including by revoking or suspending an AMC’s license and imposing fines or civil penalties.

10. By statute, the Board consists of eight licensed appraisers and two representatives of the lending industry. One of the eight appraiser members must also be engaged in the business of appraisal management. The Governor of Louisiana appoints each Board member for a three-year term.

11. Collectively, the appraiser members control the operation of the Board. Appraiser members are active market participants because, among other things, appraiser members are licensed by the Board and have private interests in the Board's acts and practices.

### **JURISDICTION**

12. The Board is a "person" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

13. The acts and practices of the Board, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44. Appraisers offering appraisal services in Louisiana contract with AMCs based outside of Louisiana, including for the transfer of money across state lines. In addition, AMCs that contract for appraisal services in Louisiana act as agents for lenders based outside of Louisiana.

### **THE PROVISION OF APPRAISAL SERVICES THROUGH APPRAISAL MANAGEMENT COMPANIES**

14. Most residential real estate purchases are financed by a mortgage on the real estate that is the subject of the transaction. In most cases, a residential mortgage requires an appraisal of the real estate used as collateral for the loan, performed by an appraiser licensed under state law.

15. Institutions that lend money for residential real estate transactions engage appraisers directly or through an agent, including an AMC. An AMC typically maintains a "panel" of licensed appraisers in each locality in which it does business, negotiates with and engages an appraiser from the panel, pays the appraiser for an appraisal report, reviews and edits the appraisal report, and provides the appraisal report to the lender, in exchange for a fee.

### **Federal Law Regarding AMCs**

16. In the wake of the financial crisis of 2007-2008, policy makers perceived that inflated appraisals had contributed to a housing "bubble," *i.e.*, an unsustainable run-up in housing prices. One concern was that some appraisers experienced undue pressure from, or had ties to, lenders or other parties with financial interests in mortgage transactions.

17. In response to these concerns, Congress included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") provisions intended to ensure that appraisers would operate independently, shielded from inappropriate influence exerted by lenders or other interested parties.



18. One set of appraisal independence provisions in Dodd-Frank and its implementing rules prohibits contacts between lender personnel and retained appraisers that might influence an appraiser's independent judgment. In part because of these prohibitions, lenders increasingly turned to AMCs to arrange for required appraisal services. Today, lenders engage AMCs to obtain an appraisal in most residential real estate transactions.

19. Also to promote appraisal independence, Dodd-Frank requires lenders and their agents, in covered transactions, to compensate appraisers "at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised." Covered transactions are loans that extend consumer credit secured by the consumer's principal dwelling, such as mortgages and home equity loans.

20. Dodd-Frank includes a provision known as an "antitrust savings clause." Dodd-Frank provides that "[n]othing in this Act ... shall be construed to modify, impair, or supersede the operation of any of the antitrust laws." In other words, Congress specifically directed that Dodd-Frank was not intended to displace generally applicable antitrust principles, including the prohibition on unreasonable agreements in restraint of trade.

21. Under Dodd-Frank, Congress tasked the Board of Governors of the Federal Reserve System (the "Federal Reserve") with issuing rules on behalf of the Federal Reserve and other federal banking agencies to further specify appraisal independence requirements.

22. In October 2010, the Federal Reserve issued rules implementing Dodd Frank's appraisal independence requirements. In its commentary on the rules, the Federal Reserve interpreted the statutory requirement that lenders pay "customary and reasonable" appraisal fees to mean "that the marketplace should be the primary determiner of the value of appraisal services, and hence the customary and reasonable rate of compensation" for appraisers.

23. The October 2010 rules specify that lenders or their agents presumptively comply with the statutory customary and reasonable appraisal fee requirement in one of two ways ("presumptions of compliance"). A lender or its agent may pay to an appraiser a fee "reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property," as informed by six identified factors: (i) the type of property; (ii) the scope of work; (iii) the time in which the appraisal must be performed; (iv) the appraiser's qualifications; (v) the appraiser's experience and professional record; and (vi) the appraiser's work quality. Alternatively, a lender or its agent may pay a fee based on "objective third-party information," including fee schedules, studies, and independent surveys of recent appraisal fees (excluding fees paid by AMCs).

24. In commentary on the October 2010 rules, the Federal Reserve clarified that the two identified presumptions of compliance are not the only permissible ways to comply with the customary and reasonable fee requirement under Dodd-Frank. If a lender or its agent arrives at an appraisal fee in another way, whether the fee is customary and reasonable shall depend on all relevant facts and circumstances, without a presumption of either compliance or violation.

25. Another provision in Dodd-Frank directs federal banking agencies to establish minimum requirements for states that choose to regulate AMCs. Among other things, these requirements must ensure that “appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards” set forth in Dodd-Frank. Congress did not require states to delegate regulation of customary and reasonable fee requirements to active market participants.

26. In 2015, federal banking agencies jointly issued rules implementing this Dodd-Frank provision. The rules provide that any state that chooses to regulate AMCs must require any AMC that is not regulated by a federal banking agency to “[e]stablish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with [Dodd Frank’s appraisal independence requirements].” The rules also provide that any state that chooses to regulate AMCs must maintain an AMC licensing program within the state appraiser licensing agency with mechanisms to discipline AMCs for violations of appraisal-related laws. The rules do not require states or state appraiser licensing agencies to impose standards for customary and reasonable fee requirements beyond what federal law provides, or to set customary and reasonable fees at any particular level.

### **Louisiana Statutes Regarding AMCs**

27. In 2009, the Louisiana legislature passed a new law subjecting AMCs to oversight by the Board (the “AMC Law”), and requiring any AMC that wishes to operate in Louisiana to obtain a license from the Board. The Board is empowered to investigate, censure, and discipline AMCs that violate the law.

28. In 2012, the Louisiana legislature amended the AMC Law to require 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, consistent with the presumptions of compliance under federal law.” The AMC Law authorizes the Board to promulgate regulations necessary for enforcement of the AMC Law. The AMC Law does not require the Board to impose standards for customary and reasonable fee requirements beyond what federal law provides, or to set customary and reasonable fees at any particular level.

### **THE BOARD’S ACTIONS TO SUPPRESS COMPETITION**

29. The Board suppresses competition among appraisers and displaces market forces. The Board’s executive director has stated: [REDACTED]

30. In 2013, driven by its apparent dissatisfaction with the free market, the Board adopted a regulation purporting to implement the AMC Law, known as Rule 31101. The regulation, which specifies how AMCs must comply with the customary and reasonable fee requirement, unlawfully restrains competition on its face by prohibiting AMCs from arriving at an appraisal fee through the operation of the free market.

31. Specifically, Rule 31101 requires AMCs to pay fees set pursuant to one of three prescribed methods. First, an AMC may rely on third-party fee schedules, studies, or surveys of fees paid by lenders. Second, an AMC may rely on a fee schedule formally adopted by the Board. Third, an AMC may rely on rates recently paid in the relevant geographic market, adjusted by the six factors identified in the parallel federal rules (set out in paragraph 23 above). Because Rule 31101 identifies these methods as the exclusive ways for arriving at customary and reasonable fees, it precludes AMCs from arriving at appraisal fees through the operation of the free market.

32. In enforcing Rule 31101, the Board has also unlawfully restrained price competition. Although Rule 31101 identifies three methods of compliance, the Board has effectively required payment of appraisal fees at least as high as median fees listed in fee surveys that the Board itself has commissioned.

33. Beginning in 2013, the Board commissioned the SLU Center to survey recent fees paid by lenders to appraisers in Louisiana. The SLU Center surveyed lenders and, [REDACTED] appraisers. [REDACTED]

34. [REDACTED] appraisers were eager to participate in the survey. [REDACTED]

[REDACTED] Appraisers responded, [REDACTED]

35. For fees paid in each of 2012, 2013, and 2014, the SLU Center prepared a report identifying median appraisal fees for urban, suburban, and rural areas statewide and in nine geographic regions in Louisiana, for each of five common types of real estate appraisals. For example, the 2014 survey reported that the median statewide fee for the appraisal of an individual condominium unit in a suburban area was \$450. Reported median fees combined survey responses from lenders and appraisers. The Board provided AMCs with notice of the SLU Center survey results and posted them on its website.

36. The Board views the SLU Center survey results as setting a floor for appraisal fees that AMCs must pay appraisers. As the Board's executive director reportedly said at an industry conference, the survey "sets out our expectations regardless of what presumption might be used, regardless of what analytics and magic formulas an AMC might have, this is our expectation." AMCs that do not follow the rates set forth in the SLU Center reports risk investigation and discipline by the Board.

37. One investigation, against an AMC known as CoesterVMS (“Coester”), began

[REDACTED] The investigation led to a Board complaint alleging that Coester had violated customary and reasonable fee requirements under Louisiana law. The matter was resolved by a stipulated order under which Coester agreed to “follow the current Louisiana fee schedule,” *i.e.*, the median fees set forth in SLU Center reports. Coester also agreed to pay the Board \$5,000 in administrative costs.

38. The Board publicized its settlement with Coester. The settlement was closely followed within the industry. Trade press reported that the Board had “made history” with its enforcement against an AMC of the customary and reasonable fee requirement.

39. Another investigation, against an AMC known as iMortgage Services (“iMortgage”), [REDACTED] began after an appraiser complained that the AMC had offered low fees. The investigation led to a Board complaint alleging that scores of appraisal fees paid by iMortgage failed to meet the customary and reasonable fee requirement under Louisiana law. Over the course of proceedings, the Board dropped allegations about most of these transactions. Among others, the Board dropped all allegations related to appraisal fees that it could not directly measure against SLU Center survey results, and allegations related to fees that were equal to or exceeded median fees reported in the survey. In the end, the Board limited the proceeding to nine appraisal fees that were lower than corresponding median fees set forth in the SLU Center report.

40. After a hearing, the Board entered findings and an order against iMortgage. The Board determined that iMortgage violated the customary and reasonable fee requirement under Louisiana law in each of the nine instances addressed at the hearing. The Board censured iMortgage, fined it \$10,000 plus administrative costs, and conditionally suspended iMortgage’s license to operate as an AMC. The Board stayed the suspension pending iMortgage’s submission of an acceptable plan to comply with the Board’s ruling. The Board rejected iMortgage’s first proposed compliance plan and accepted iMortgage’s compliance plan only when iMortgage agreed to pay fees consistent with the most recent SLU Center report.

41. The Board’s proceeding against iMortgage was public and closely followed within the industry. Trade press reported on the Board’s ruling that iMortgage had not paid customary and reasonable appraisal fees and on the sanctions that the Board imposed on the AMC.

42. The Board investigated other AMCs in response to appraiser complaints about low fees. [REDACTED]

43. The conduct of the Board constitutes concerted action among the Board and its members.



50. The Board possesses and has exercised the power to restrain competition among appraisers in the relevant market. The Board's actions have tended to suppress, and will continue to suppress, price competition among appraisers for the provision of real estate appraisal services to AMCs in Louisiana.

51. Neither Congress nor the Louisiana legislature has required the Board to set customary and reasonable fees at a particular level. Rather, the Board, acting in its discretion, has effectively required AMCs to pay appraisal fees that equal or exceed the median fees identified in SLU Center survey reports.

52. The Louisiana AMC Law does not clearly articulate an intention to displace competition in the setting of appraisal fees.

53. A controlling number of Board members are active market participants. The Board's actions have not been supervised by independent state officials, that is, by persons who are not participants in the Louisiana appraisal industry.

54. Congress did not, through Dodd-Frank or any other statute, require, authorize, or intend that unsupervised active market participants shall regulate appraisal fees. States may comply with Dodd-Frank requirements without violating the antitrust laws.

### **VIOLATION OF THE FTC ACT**

55. The acts and practices of the Board described above constitute concerted action that unreasonably restrains trade and are unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, and the effects thereof, are continuing and will continue or recur in the absence of appropriate and effective relief.

### **NOTICE**

Notice is hereby given to the Respondent that the thirtieth day of January, 2018, at 10:00 a.m., is hereby fixed as the time, and Federal Trade Commission offices, 600 Pennsylvania Avenue, NW, Washington, DC 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in the complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement

of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearing as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46 of said Rules.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint, and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after an answer is filed by the Respondent. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within five days of receiving the Respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

### **NOTICE OF CONTEMPLATED RELIEF**

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Board has violated or is violating Section 5 of the Federal Trade Commission Act, as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Requiring the Board to rescind and to cease and desist from enforcing Rule 31101, any order based on an alleged violation of Rule 31101, and any agreement with an AMC or other person resolving an alleged violation of Rule 31101.
2. Requiring the Board to cease and desist from raising, fixing, maintaining, or stabilizing prices or price levels, rates or rate levels, or engaging in any other pricing action in connection with the sale of real estate appraisal services.
3. Requiring the Board to cease and desist from adopting, promulgating, or enforcing any regulation, rule, or policy relating to the determination of compensation levels for real estate appraisal services.

4. Requiring the Board to provide appropriate notice of the Commission's order, including by:
  - a. placing a prominent notice on the Board's website stating that the Board has been ordered to rescind and cease and desist from enforcing Rule 31101, together with a link to the Commission's order;
  - b. sending by mail or email to each AMC licensed in Louisiana a copy of the notice placed on the Board's website, together with a link to the Commission's order; and
  - c. distributing a copy of the Commission's order to every current and future Board member; and every officer, manager, representative, agent and employee of the Board.
5. Such additional relief as is necessary to correct or remedy, or prevent the recurrence of, the anticompetitive acts alleged in the complaint.

**WHEREFORE, THE PREMISES CONSIDERED**, the Federal Trade Commission on this thirtieth day of May, 2017, issues its complaint against the Board.

By the Commission.

Donald S. Clark  
Secretary

SEAL:



# Tab 2

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

---

**In the Matter of**

**Louisiana Real Estate Appraisers Board,  
Respondent**

---

**Docket No. 9374**

**ANSWER OF RESPONDENT LOUISIANA REAL ESTATE APPRAISERS BOARD  
TO THE COMPLAINT**

Respondent Louisiana Real Estate Appraisers Board (“LREAB” or the “Board”), through its undersigned counsel, hereby answers the Complaint (the “Complaint”) filed by the Federal Trade Commission (“FTC”). LREAB denies that it has engaged in conduct that violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Except to the extent specifically admitted herein, LREAB denies each and every allegation in the Complaint, including all allegations contained in headings or otherwise not contained in one of the Complaint’s 1-55 numbered paragraphs.

**GENERAL RESPONSE TO THE COMMISSION’S ALLEGATIONS**

To shore up the integrity of the residential mortgage appraisal process and, thereby, help to avert a recurrence of the real estate-fueled financial crisis of 2007-2009, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) requires States to empower their real estate licensing agency, *inter alia*, to ensure that Appraisal Management Companies (“AMCs”) pay residential appraisers “customary and reasonable” fees for residential appraisal services. This requirement ensures the integrity and quality of residential mortgage appraisals.

Louisiana is one of the first States to implement these requirements of the Dodd-Frank Act by empowering the LREAB— a state board consisting of experts in mortgage lending, commercial real estate appraisal, and residential real estate appraisal, with no one constituency comprising a majority—to promulgate a “customary and reasonable” fee rule.

After receiving input from all stakeholders in various public meetings, hearings, and through written comments, the LREAB unanimously promulgated a rule regarding the AMCs’ payment of “customary and reasonable” fees (“Rule 31101”). Rule 31101 not only follows the mandates of the Dodd-Frank Act in requiring AMCs to pay appraisers a “customary and reasonable” fee for appraisals, but also in providing AMCs multiple methods of compliance with the “customary and reasonable” residential appraisal fee requirement. As part of that guidance, the Board commissioned independent studies to identify, on an annual basis, the median fees paid by lenders for five different types of appraisal services in nine geographic regions. Where the Board has received credible complaints of AMCs offering fees below “customary and reasonable” levels, it has investigated. The majority of these investigations closed with no action. In two instances involving repeated violations, the AMCs proposed or accepted, as a temporary compliance method, to pay the applicable median fee as shown by the annual independent study.

The FTC’s Complaint now asserts that, by fulfilling their duties to follow and enforce Dodd-Frank’s mandate for “customary and reasonable” residential appraisal fees, LREAB members “conspired” to raise appraisal prices. The LREAB categorically and vociferously denies these allegations as factually false and politically wrong-headed. The State of Louisiana and the LREAB diligently implemented and followed the Dodd-Frank federal mandates so as to protect the greater public interest in a financially sound home real estate market. Other States

are looking to Louisiana's example similarly to promulgate and enforce Dodd-Frank's "customary and reasonable" residential appraisal fee requirement. These false conspiracy allegations and FTC overreach now place both Louisiana's and other States' federally-mandated implementation and enforcement efforts in serious jeopardy.

The LREAB did not violate Section 5 of the FTC Act. The Board's rules were tailored to implement the federal mandate that the state licensing agency must (1) register AMCs and (2) enforce AMC compliance with the "customary and reasonable" fee requirement. LREAB's actions throughout the rule-making process—tracking the express language of Dodd-Frank and allowing extensive public comment on its proposed rules—demonstrate LREAB's painstaking efforts both to be consistent with federal law and responsive to public and industry concerns. The FTC has no cause, legal or factual, to punish the LREAB for acting in good faith to implement federal laws and policies designed to serve the public interest by ensuring the integrity of the residential mortgage appraisal process.

#### **NATURE OF THE CASE**

1. To the extent the allegations in paragraph 1 are legal conclusions, no response is required. LREAB admits that AMCs act as agents for lenders in arranging for real estate appraisals. LREAB denies all other allegations in paragraph 1.

2. To the extent the allegations in paragraph 2 are legal conclusions, no response is required. LREAB admits that the Board promulgated a rule on November 20, 2013 that required appraisers to be compensated at "customary and reasonable" rates. LREAB denies all other allegations in paragraph 2.

3. To the extent the allegations in paragraph 3 purport to describe the Board's regulation, that regulation is the best evidence of its contents, and no response is necessary. To the

extent the allegations in paragraph 3 are legal conclusions, no response is required. LREAB denies all other allegations in paragraph 3. Specifically, LREAB denies that the “Board’s fee regulation unreasonably restrains competition by displacing a marketplace determination of appraisal fees.”

4. LREAB admits that it commissioned the SLU Center to survey fees paid by lenders to appraisers in response to AMC concerns that state and local fee survey data was not readily available for their use in complying with the “customary and reasonable” requirement. LREAB further admits that the SLU Center conducted annual independent appraisal fee studies, in 2013, 2014, 2015, and 2016, and produced reports on appraisal fees paid in 2012, 2013, 2014, and 2015, respectively. LREAB admits that the SLU Center reports identify the median fees paid by lenders for five types of appraisals in nine geographic regions in Louisiana, stated separately for urban, suburban, and rural settings. LREAB admits that it provided AMCs with notice of the SLU Center independent appraisal fee studies and posted the studies on its website, indicating that the independent appraisal fee study was “a courtesy to all licensees; **however, its use is not mandatory.**” LREAB denies that it “unlawfully restrained price competition.” LREAB denies that it effectively required “AMCs to match or exceed appraisal rates listed in a published survey.” To the extent any further response is required, LREAB denies all other allegations in paragraph 4.

5. To the extent the allegations in paragraph 5 are legal conclusions, no response is required. LREAB admits that it initiated two enforcement actions against AMCs. LREAB denies all other allegations in paragraph 5. Specifically, LREAB denies that the “Board has effectively required AMCs to pay appraisal fees that equal or exceed the median fees identified in the SLU Center reports.”

6. To the extent the allegations in paragraph 6 are legal conclusions, no response is required. LREAB denies all other allegations in paragraph 6.

7. To the extent the allegations in paragraph 7 are legal conclusions, no response is required. LREAB denies all other allegations in paragraph 7.

**RESPONDENT**

8. LREAB admits the allegations in paragraph 8.

9. LREAB admits that the Louisiana Legislature has tasked the Board with implementing and enforcing certain statutes and regulations regarding the conduct of AMCs. LREAB does not have sufficient knowledge or information to admit or deny the other allegations in paragraph 9.

10. To the extent paragraph 10 purports to describe Louisiana Revised Statute Section 37:3394(B), the statute is the best evidence of its contents. Additionally, LREAB denies that “by statute, the Board consists of eight licensed appraisers.” Louisiana Revised Statute Section 37:3394(B) requires that at least four Board members are “general appraisers” and “at least two of the ten members shall be residential appraisers.”

11. To the extent the allegations in paragraph 11 are legal conclusions, no response is required. LREAB denies all other allegations in paragraph 11. Specifically, LREAB denies that all appraiser members of the Board are active participants in the residential appraisal market.

**JURISDICTION**

12. LREAB admits the allegations in paragraph 12.

13. To the extent the allegations in paragraph 13 contain legal conclusions, no response is required. LREAB lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 13.

**THE PROVISION OF APPRAISAL SERVICES THROUGH  
APPRAISAL MANAGEMENT COMPANIES**

14. LREAB does not have sufficient knowledge or information to admit or deny the allegations in paragraph 14.

15. LREAB denies that AMCs have the ability to “edit” appraisal reports. LREAB does not have sufficient knowledge or information to admit or deny the other allegations in paragraph 15.

**Federal Law Regarding AMCs**

16. LREAB does not have sufficient information concerning the perceptions of policy makers to admit or deny the allegations in paragraph 16.

17. LREAB admits the allegations in paragraph 17.

18. To the extent the allegations in paragraph 18 purport to describe the Dodd-Frank Act, the Dodd-Frank Act is the best evidence of its contents, and no response is necessary. LREAB admits the remaining allegations in paragraph 18.

19. To the extent the allegations in paragraph 19 purport to describe the Dodd-Frank Act, the Dodd-Frank Act is the best evidence of its contents, and no response is necessary.

20. To the extent the allegations in paragraph 20 purport to describe the Dodd-Frank Act, the Dodd-Frank Act is the best evidence of its contents, and no response is necessary. To the extent the allegations in paragraph 20 contain legal conclusions, no response is necessary.

21. To the extent the allegations in paragraph 21 purport to describe the Dodd-Frank Act and the rules issued by the Governors of the Federal Reserve System on behalf of the Federal Reserve and other federal banking agencies, the Dodd-Frank Act and those issued rules are the best evidence of their content, and no response is necessary.

22. To the extent the allegations in paragraph 22 purport to describe the Federal Reserve’s October 2010 Interim Rules or commentary on Dodd-Frank, that commentary is the

best evidence of its contents and no response is necessary. To the extent the allegations in paragraph 22 contain legal conclusions, no response is necessary.

23. To the extent the allegations in paragraph 23 purport to describe the Federal Reserve's October 2010 Interim Rules, those rules are the best evidence of their contents and no response is necessary. To the extent the allegations in paragraph 23 contain legal conclusions, no response is necessary.

24. To the extent the allegations in paragraph 24 purport to describe the Federal Reserve's October 2010 Interim Rules or commentary on Dodd-Frank, that commentary and those rules are the best evidence of their contents and no response is necessary. To the extent the allegations in paragraph 24 contain legal conclusions, no response is necessary.

25. To the extent the allegations in paragraph 25 purport to describe the Dodd-Frank Act, the Dodd-Frank Act is the best evidence of its contents, and no response is necessary. To the extent the allegations in paragraph 25 are legal conclusions, no response is necessary. LREAB admits that Dodd-Frank mandated that state licensing agencies tasked with regulating appraisers must also regulate AMCs.

26. To the extent the allegations in paragraph 26 purport to describe the Dodd-Frank Act or the rules implementing Dodd-Frank, the Dodd-Frank Act and/or those rules are the best evidence of their contents, and no response is necessary. To the extent the allegations in paragraph 26 are legal conclusions, no response is necessary.

#### **Louisiana Statutes Regarding AMCs**

27. To the extent the allegations in paragraph 27 purport to describe Louisiana laws, those laws are the best evidence of their contents, and no response is necessary. To the extent the allegations in paragraph 27 are legal conclusions, no response is necessary.



28. To the extent the allegations in paragraph 28 purport to describe Louisiana laws, those laws are the best evidence of their contents, and no response is necessary. To the extent the allegations in paragraph 28 are legal conclusions, no response is necessary.

#### **THE BOARD'S ACTIONS TO SUPPRESS COMPETITION**

29. To the extent the allegations in paragraph 29 are legal conclusions, no response is necessary. LREAB denies that the Board “suppresses competition among appraisers and displaces market forces.” LREAB admits the remaining allegations of paragraph 29.

30. To the extent the allegations in paragraph 30 are legal conclusions, no response is necessary. LREAB admits that it promulgated Rule 31101 on November 20, 2013. LREAB denies all other allegations in paragraph 30. Specifically, LREAB denies that its decision to comply with a federal mandate by implementing Rule 31101 was “driven by its apparent dissatisfaction with the free market.”

31. To the extent paragraph 31 purports to describe Rule 31101, that Rule is the best evidence of its contents and no response is required. LREAB denies all other allegations in paragraph 31. Specifically, LREAB denies that “[b]ecause Rule 31101 identifies these methods as the exclusive ways for arriving at customary and reasonable fees, it precludes AMCs from arriving at appraisal fees through the operation of the free market.”

32. To the extent paragraph 32 contains legal conclusions, no response is necessary. LREAB denies all other allegations in paragraph 32.

33. LREAB admits that it commissioned the SLU Center to conduct an independent appraisal fee study of fees paid by lenders in Louisiana and that the SLU Center surveyed both lenders and appraisers. LREAB admits that the SLU center requested responses from lenders and appraisers and received more responses from appraisers. LREAB denies all other allegations in paragraph 33.

34. LREAB admits that it encouraged both appraisers and lenders to participate in the SLU survey. LREAB denies all other allegations in paragraph 34.

35. LREAB admits the allegations in paragraph 35.

36. LREAB admits that its executive director said that the SLU Center survey “sets out our expectations regardless of what presumption might be used, regardless of what analytics and magic formulas an AMC might have, this is our expectation.” LREAB denies the remaining allegations in paragraph 36. Specifically, LREAB denies that the SLU Center survey sets a “floor” for appraisal fees.

37. LREAB admits that it conducted an investigation against Coester and that Coester proposed (and the Board agreed to) a stipulated order to resolve the matter. To the extent paragraph 37 purports to describe the stipulated order, that order is the best evidence of its contents, and no response is necessary. LREAB denies all other allegations in paragraph 37.

38. LREAB does not have sufficient knowledge or information to admit or deny that “[t]he settlement was closely followed within the industry.” LREAB admits that “[t]rade press reported that the Board had ‘made history’ with its enforcement against an AMC of the customary and reasonable fee requirement.” LREAB denies all other allegations in paragraph 38.

39. LREAB admits that it conducted an investigation into allegations that iMortgage failed to compensate appraisers at “customary and reasonable” rates. LREAB denies the remaining allegations in paragraph 39.

40. LREAB admits that after a lengthy hearing, and a full and fair opportunity for iMortgage to present any evidence of its compliance with Rule 31101, the Board entered findings and an order against iMortgage. To the extent paragraph 40 purports to describe the contents of the Board’s order against iMortgage, that order is the best evidence of its contents, and no response is necessary. LREAB denies all other allegations in paragraph 40.

41. LREAB admits that the trade press reported on the Board's ruling against iMortgage. LREAB does not have sufficient knowledge or information to admit or deny the remaining allegations in paragraph 41.

42. LREAB admits that it investigated other AMCs for potential violations of the "customary and reasonable" fee rule. LREAB denies all other allegations in paragraph 42. Specifically, LREAB denies that it has ever taken enforcement actions against an AMC merely for charging a "low fee."

43. To the extent paragraph 43 contains legal conclusions, no response is necessary. LREAB denies the allegations in paragraph 43.

#### **EFFECTS ON COMPETITION OF THE BOARD'S ACTIONS**

44. To the extent paragraph 44 contains legal conclusions, no response is necessary. LREAB denies all other allegations in paragraph 44. Specifically, LREAB denies that its efforts to comply with a Federal mandate have "restrained competition," "harmed consumers," or raised prices for "appraisal services in Louisiana above competitive levels."

45. LREAB denies the allegations in paragraph 45 on the basis that the quoted information included in the paragraph is so incomplete as to be misleading. To the extent that paragraph 45 purports to describe the contents of a document, that document is the best evidence of its contents and no response is necessary. LREAB does not have sufficient knowledge or information to admit or deny the other allegations of paragraph 45.

46. LREAB admits that a non-Board member of the appraisal community made that statement to an AMC. LREAB denies all other allegations in paragraph 46.

47. LREAB admits that a non-Board member of the appraisal community made that statement to an AMC. LREAB denies all other allegations in paragraph 47.

48. LREAB admits that AMCs in Louisiana may choose to use the SLU Center survey to determine “customary and reasonable” appraisal fees and as a means of compliance with the mandates of Dodd-Frank, as implemented through the Board’s Rule 31101. LREAB denies all other allegations in paragraph 48.

49. To the extent the allegations in paragraph 49 are legal conclusions, no response is necessary. LREAB denies all other allegations in paragraph 49.

50. To the extent the allegations in paragraph 50 are legal conclusions, no response is necessary. LREAB denies all other allegations in paragraph 50.

51. To the extent the allegations in paragraph 51 are legal conclusions, no response is necessary. LREAB denies all other allegations in paragraph 51. Specifically, the Board denies that it has “set” fees at any “particular level” in its efforts to implement the federally-mandated “customary and reasonable” fee requirement.

52. To the extent paragraph 52 purports to describe the contents of Louisiana Revised Statute 37:3415 *et seq.*, that law is the best evidence of its contents, and no response is necessary. LREAB denies all other allegations in paragraph 52.

53. To the extent the allegations in paragraph 53 are legal conclusions, no response is necessary. LREAB denies all other allegations in paragraph 53. Specifically, LREAB denies that a “controlling number of Board members are active market participants.”

54. To the extent the allegations in paragraph 54 are legal conclusions, no response is necessary. To the extent that paragraph 54 purports to describe the contents of Dodd-Frank, that law is the best evidence of its contents, and no response is necessary. LREAB admits that states, including Louisiana, “may comply with Dodd-Frank requirements without violating the antitrust laws,” and specifically avers that the LREAB has so complied.

**VIOLATION OF THE FTC ACT**

55. To the extent the allegations in paragraph 55 are legal conclusions, no response is necessary. LREAB denies all other allegations in paragraph 55.

**AFFIRMATIVE DEFENSES**

LREAB asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Commission:

1. The Complaint fails to state a claim upon which relief can be granted under Section 5 of the FTC Act, 15 U.S.C. § 45.
2. The Complaint fails adequately to allege a plausible relevant services market.
3. The Complaint fails adequately to allege that the Board has a controlling number of active participants in the relevant **residential** appraisal market.
4. LREAB has acted in good faith to comply with a federal regulatory mandates.
5. The Complaint fails to allege any plausible harm to competition.
6. The Complaint fails to allege any plausible harm to consumers or consumer welfare.
7. The alleged potential harm to competition is not actionable.
8. Neither the filing of this administrative action nor the contemplated relief are in the public interest, pursuant to 15 U.S.C. § 45.
9. LREAB is immune from federal antitrust liability under *Parker v. Brown*, 317 U.S. 341 (1943).
10. LREAB has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or

apparent throughout the course of the action. LREAB reserves the right to amend, or seek to amend, its answer or affirmative defenses.

**NOTICE OF CONTEMPLATED RELIEF**

LREAB respectfully requests that the Administrative Law Judge (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) pursuant to 16 C.F.R. § 3.81, award LREAB its fees and expenses of defending this action, and (iv) award such other and further relief as the Administrative Law Judge may deem proper.

Dated: June 19, 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 Avenue, NW  
Suite 1300 N  
Washington, DC 20004  
Phone: 202-204-3500  
scannon@constantinecannon.com

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

# Tab 3

**CHAPTER 51. LOUISIANA REAL ESTATE APPRAISERS LAW****§3391. Short title**

This Chapter shall be known and may be cited as the "Louisiana Real Estate Appraisers Law."

Acts 1987, No. 472, §1; Acts 1995, No. 690, §2; Acts 2001, No. 833, §2.

**§3392. Definitions**

As used in this Chapter, the following words have the meaning ascribed to them in this Section unless the context clearly indicates otherwise:

- (1) "Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects, including energy efficiency, of, identified real estate, for or in expectation of compensation.
- (2) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. Compensation for appraisal assignments may not include any contingency fee based on the results of the appraisal assignment.
- (3) "Appraisal report" means any communication, written or oral, of an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects, including energy efficiency, of, identified real estate.
- (4) "Board" means the Louisiana Real Estate Appraisers Board established pursuant to the provisions of this Chapter.
- (5) "Broker price opinion/comparative market analysis" means an analysis of recent sales of similar properties by a real estate salesperson or broker to derive an indication of the probable sales price of a particular property for the salesperson's or broker's principal.
- (6) "Commission" means the Louisiana Real Estate Commission.
- (7) "General certified real estate appraiser" means a person who holds a current, valid license issued to him by the board for appraisal of all types of real estate regardless of complexity or transaction value.
- (8) "In good standing" means the status of a licensee who has complied with all explicit license obligations thereby having unabated authority to conduct license activities.



- (9) "Licensee" means any person who has been issued a license by the board to participate in any appraisal activity described in this Chapter.
- (10) "Real estate" means an identified parcel or tract of land, including improvements, if any.
- (11) "Real estate appraiser trainee" means any person who has been issued a license by the board to appraise properties under the supervision of a licensed general real estate appraiser or residential real estate appraiser.
- (12) "Real property" means one or more defined interests in a parcel of real estate, whether an unencumbered fee or a lesser estate.
- (13) "Residential certified real estate appraiser" means any person who holds a current, valid license issued by the board to appraise one to four residential units, without regard to transaction value or complexity, and perform appraisals of other types of real estate having a transaction value of two hundred fifty thousand dollars or less. This includes the appraisal of vacant or unimproved land that is utilized for one to four family residential units.

Acts 1987, No. 472, §1; Acts 1990, No. 740, §§1, 2; Acts 1991, No. 412, §1; Acts 1995, No. 690, §2; Acts 2001, No. 833, §2; Acts 2001, No. 888, §1; Acts 2003, No. 341, §§1 and 3; Acts 2010, No. 504, §1; Acts 2014, No. 213, §1.

**§3393. License required; penalty for unlicensed real estate appraiser activity**

- A. No person, other than a state licensed real estate appraiser, shall assume or use that title or any title, designation, or abbreviation that may create the impression of being licensed as a real estate appraiser by this state.
- B. No licensed real estate appraiser shall assume or use any title, designation, or abbreviation that may create the impression of being licensed in a class other than that for which his license has been issued.
- C. It shall be unlawful for any individual, for a fee or other valuable consideration, or with the intention or expectation of receiving or collecting a fee or valuable consideration from another, to do any of the following unless the individual is licensed under this Chapter:
- (1) Be employed to perform or perform an appraisal as defined in this Chapter where the subject property of the assignment lies within the borders of the state of Louisiana.
  - (2) Present himself, or allow himself to be presented, as being able to perform an appraisal for which a license is required under this Chapter.
- D. All real estate appraiser licenses issued under the provisions of this Chapter shall be issued in the individual name of the applicant and shall not be issued to a partnership, association, corporation, firm, or group. Nothing shall preclude a licensed real property appraiser from performing appraisals for or on behalf of a partnership, association, corporation, firm, or group.

- E. Nothing in this Chapter shall preclude a licensed real estate broker or salesperson from performing a broker price opinion/comparative market analysis in the ordinary course of the practice of real estate, provided that the broker or salesperson does not represent himself as being a state licensed real estate appraiser.
- F. It shall be unlawful for any individual, for a fee or other valuable consideration, or with the intention or expectation of receiving or collecting a fee or valuable consideration from another, to perform contingent appraisals, or any form of estimated value, based on the fee or valuable consideration pending the estimated value.
- G. It shall be unlawful for any individual, person, partnership, association, or corporation to perform any type of review or analysis of a real property appraisal, unless that person is licensed to perform real property appraisals.
- H. The provisions of this Chapter shall not apply to the following:
  - (1) A person, partnership, association, or corporation that performs appraisals of property owned by that person, partnership, association, or corporation.
  - (2) A court-appointed individual who conducts an appraisal pursuant to a judicially ordered evaluation of the specific real property under litigation.
  - (3) A director, officer, or salaried employee of commercial banks, savings banks, credit unions, and savings and loan associations, when engaged in appraisal or evaluation activities for and on behalf of such financial institutions, unless there is a fee charged for the appraisal or evaluation, provided that a federal statute, rule, or regulation does not require such appraisal or evaluation activities to be performed by a state licensed real estate appraiser.
  - (4) State, parish, or municipal public officers or their salaried employees while performing their duties as such, except when the intended use of the appraisal is for acquisition of real property.
  - (5) A person appointed by a sheriff to make an appraisal in accordance with R.S. 13:4364 or 4365.
  - (6) A person or firm contracted by a state, parish, or municipal tax authority to perform mass appraisal assignments.
  - (7) Employees of the Department of Transportation and Development; however, the provisions of this Chapter shall apply to such employees after June 30, 2010.
  - (8) A certified public accountant when engaged by a client to perform a business valuation under both of the following conditions:
    - a) The valuation of real property must rely on an appraisal report performed by a licensed appraiser.

- b) Such public accountant is licensed pursuant to the Louisiana Accountancy Act.
- I. In addition to any other civil remedy or civil penalty provided in this Chapter, the board may issue a subpoena to any person based on the probable cause that he has engaged in real estate appraiser activity without a license. Subpoenas issued by the board shall:
  - (1) Comply with the notice requirements of R.S. 49:955.
  - (2) Be personally served upon the person named therein or by any type of mailing that requires a return receipt.
  - (3) Include a statement that describes the manner in which the person named therein shall respond to the board.
- J. In accordance with the provisions of this Chapter and the Administrative Procedure Act, the board may impose a civil penalty not to exceed five thousand dollars and costs and attorney fees upon any person who is found to have engaged in real estate appraiser activity without a license.
- K. An unlicensed person who engages in or offers to engage in, or performs or offers to perform, any of the practices, acts, or operations set forth in R.S. 37:3392 and this Section shall be sufficient evidence to raise a presumption of fact or to establish the fact that he has illegally engaged in or performed real estate appraiser activity.
- L. A person engaged in real estate appraiser activity without a license shall not have the right to receive any compensation for services so rendered. In addition to any other penalties imposed under this Chapter, the board may require any person engaged in real estate appraiser activity without a license to return any fees collected for such activity.

Acts 1987, No. 472, §1; Acts 2003, No. 341, §1; Acts 2005, No. 188, §1; Acts 2006, No. 389, §1; Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

#### **§3394. Louisiana Real Estate Appraisers Board**

- A. There is hereby created within the office of the governor the Louisiana Real Estate Appraisers Board, which shall be comprised as provided in Subsection B of this Section.
- B. (1) Ten members shall be appointed by the governor with one member appointed from each congressional district and with four members appointed at large. Of the ten members appointed by the governor:
  - a) Two shall be appointed from a list of five names submitted by the Louisiana Bankers Association each of whom shall have been involved in real estate lending for at least five years.
  - b) One member shall have been engaged in the business of appraisal management for at least four years and shall be an employee or representative of a Louisiana licensed appraisal management company. Additionally, this member shall be a citizen and

qualified elector of Louisiana and licensed as a Louisiana certified real estate appraiser immediately preceding the appointment to the board.

- c) The remainder shall have been domiciled in Louisiana and licensed as certified real estate appraisers for not less than five years immediately preceding the appointment.
- (2) At least four of the ten members shall be general appraisers and at least two of the ten members shall be residential appraisers. All appraiser members shall be state certified.
- C. Each appointment by the governor shall be submitted to the Senate for confirmation.
  - D. All members shall be appointed for three-year terms. All terms shall commence thirty days after the appointment, and all members shall serve until their successors have been appointed and qualified. Vacancies occurring in the membership of the board for any reason shall be filled by appointment by the governor for the unexpired term. Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors. No person shall be appointed for more than two consecutive terms. The appointing authority may remove a member for cause.
  - E. The executive director of the commission shall serve as executive director of the board.
  - F. The board shall meet at least once each calendar quarter to conduct its business. The location in Louisiana of future meetings shall be decided by a vote of the members present at the current meeting. The executive director shall give written notice to each member of the time and place of each meeting of the board at least ten days before the scheduled date of the meeting.
  - G. The members of the board shall elect a chairperson, vice chairperson, and secretary.
  - H. Six members of the board shall constitute a quorum for all business.
  - I. Each member of the board shall be entitled to a per diem allowance of fifty dollars for each meeting of the board at which the member is present. Each member of the board shall be entitled to reimbursement of their actual expenses for travel, meals, and lodging.

Acts 1987, No. 472, §1; Acts 1991, No. 94, §1, eff. Jan. 13, 1992; Acts 1991, No. 412, §1; Acts 1993, No. 949, §1; Acts 1995, No. 690, §2; Acts 2001, No. 8, §12, eff. July 1, 2001; Acts 2001, No. 833, §2; Acts 2003, No. 341, §1; Acts 2014, No. 347, §1, eff. May 30, 2014.

### **§3395. Powers, duties**

- A. The board shall have the following autonomous powers and duties:
  - (1) To regulate the issuance of real estate appraiser and trainee licenses.
  - (2) To establish administrative procedures for processing applications and issuing licenses to real estate appraisers and trainees.
  - (3) To adopt any rules and regulations in accordance with the Administrative Procedure Act necessary for the enforcement of this Chapter.

- (4) To require any satisfactory proof it may desire in reference to the honesty, truthfulness, reputation, knowledge, and experience of any applicant for a real estate appraiser license prior to the issuance of any license.
  - (5) To adopt standards for the development and communication of real estate appraisals and to adopt regulations explaining and interpreting the standards.
  - (6) To conduct disciplinary proceedings pursuant to the provisions of this Chapter, to suspend or revoke licenses, and to censure and fine licensees.
  - (7) To impose continuing education requirements on licensees.
  - (8) To adopt a seal by which it shall authenticate its proceedings
  - (9) To perform such other functions and duties as may be necessary to carry out the provisions of this Chapter.
- B. Notwithstanding any provisions contained in this Chapter to the contrary, the board may adopt such regulations as may be necessary to comply with the minimum requirements of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, its agent, or its successor.
- C. The board shall have authority to require any real estate appraiser licensee to maintain records, as specified in this Chapter, and to inspect and subpoena such records.
- D. The board shall have the authority to subpoena any real estate appraiser licensee or witness for the purpose of holding any hearing or in furtherance of an investigation. Failure of a licensee to comply with a subpoena duces tecum shall be punishable by the board in accordance with the provisions of R.S. 37:3409.

Acts 1987, No. 472, §1; Acts 1991, No. 412, §1; Acts 1991, No. 695, §1; Acts 1993, No. 949, §§1, 2; Acts 1995, No. 690, §2; Acts 2003, No. 341, §1; Acts 2014, No. 347, §1 {{NOTE: SEE ACTS 1987, NO. 472, §2.}}

#### **§3395.1. Peer Review Committee; powers and duties**

- A. The Louisiana Real Estate Appraisers Board is granted the authority to create as needed a Peer Review Committee, and it shall be referred to hereafter as the "committee."
- B. The committee shall be comprised of certified real estate appraisers and shall provide assistance as necessary to the board regarding the performance of its functions and duties in pre-license and post-license review and regulation. Each member of the committee shall serve without compensation but shall be reimbursed for actual expenses and mileage incurred in carrying out his duties as a committee member in accordance with the state travel regulations promulgated by the division of administration.

- C. There shall be no liability on the part of and no action for damages against the board or a member of the committee on any action taken or recommendation made by a member of the committee acting within the scope of his function as a member of or consultant to the committee if such action was taken or recommendation was made without malice.
- D. The board shall promulgate rules and regulations subject to the Administrative Procedure Act in order to effectuate this Section.

Acts 2008, No. 197, §1.

**§3396. Applications**

- A. Applications for examination, experience review, and renewal certification shall be made in writing to the board on forms provided by the board.
- B. Appropriate fees, as set forth in R.S. 37:3407, shall accompany all applications for examination, experience review, and license renewal.
- C. Each applicant shall sign a pledge to comply with the standards set forth in this Chapter and shall state that he or she understands the types of misconduct for which disciplinary proceedings may be initiated against a state licensed real estate appraiser.
- D. (1) Licenses shall be granted only to persons who have satisfied the minimum education, examination, and experience requirements mandated by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation and published in the most current version of the Real Property Appraiser Qualification Criteria, including any subsequent amendments and regulations issued pursuant thereto.
  - (2) All applicants for a real estate appraiser license shall undergo a background screening as mandated by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation and prescribed by the board.
  - (3) When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretense, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or a crime of moral turpitude in any court of competent jurisdiction, such untrustworthiness of the applicant or the conviction itself may be sufficient grounds for refusal to issue a license.
  - (4) When an applicant has made a false statement of material fact on his application, such false statement may in itself be sufficient grounds for refusal to issue a license.
- E. Suspension or revocation or grounds for suspension or revocation of a real estate appraiser license, or its equivalent, or a real estate salesperson or broker license in any jurisdiction may be grounds for refusal to issue a real estate appraiser license.

- F. (1) A real estate appraiser whose license has been revoked as a result of disciplinary action in any jurisdiction shall not be eligible to apply for a Louisiana real estate appraiser license for at least five years following the date on which the license, or its equivalent, was revoked.
- (2) An applicant whose license has been revoked shall meet all requirements of an initial applicant and shall present evidence of completion of continuing education for each renewal period, or portion thereof, following the date on which the license was revoked.

Acts 1987, No. 472, §1; Acts 1991, No. 412, §1; Acts 1993, No. 949, §1; Acts 1995, No. 690, §2; Acts 2001, No. 888, §1; Acts 2003, No. 341, §1; Acts 2014, No. 213, §1.

**§3397. License classifications; criteria**

- A. (1) There shall be three classes of licenses for real estate appraisers. Such classes shall conform in all respects with the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, and any subsequent amendments and regulations issued pursuant thereto.
- (2) The application for examination, experience review, and renewal certification shall specify the license classification for which the applicant is applying.
- B. (1)(a) Applicants for a real estate appraiser trainee license shall be subject to training and direct supervision by a certified appraiser who meets all of the following qualifications:
- a) Has been licensed as a certified real estate appraiser in Louisiana for at least three years prior to becoming a supervising appraiser.
  - b) Is in good standing as a certified residential or certified general real estate appraiser in Louisiana.
- (b) Both the trainee applicant and the supervising appraiser shall complete a course that complies, at minimum, with the specifications for course content established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. The course shall be oriented toward the requirements and responsibilities of supervising appraisers and expectations for trainee appraisers. The course shall be completed by the trainee appraiser prior to obtaining a trainee appraiser license and by the supervising appraiser prior to supervising a trainee appraiser. The supervising appraiser shall not have been subject to any disciplinary action in any jurisdiction within the last three years that affects the supervisor's legal eligibility to engage in appraiser practice. The appraiser trainee is permitted to have more than one supervising appraiser. The scope of work for the appraiser trainee is limited to the appraisal of those properties that the supervising appraiser is licensed to appraise.
- (2) There are no additional examination or experience requirements other than those listed in this Subsection for the real estate appraiser trainee license.

- (3) An appraisal experience log shall be maintained jointly by the supervising appraiser and the trainee appraiser. It is the responsibility of both the supervisory appraiser and the trainee appraiser to ensure the appraisal experience log is accurate, current, and complies with the requirements of the trainee appraiser's credentialing jurisdiction. At a minimum, the appraisal log shall include the following:
- a) Type of property.
  - b) Date of report.
  - c) Address of appraised property.
  - d) Description of work performed by the trainee appraiser and scope of the review and supervision of the supervisory appraiser.
  - e) Number of actual work hours by the trainee appraiser on the assignment.
  - f) The signature and state certification number of the supervisory appraiser. Separate appraisal logs shall be maintained for each supervisory appraiser if applicable.
- (4) As a prerequisite to license renewal, all appraiser trainees shall be required to obtain the equivalent of fourteen hours of continuing education per calendar year.
- (5) The appraiser trainee shall be entitled to obtain copies of appraisal reports prepared by the trainee. The supervising appraiser shall keep copies of the trainee appraisal reports for a period of at least five years or at least two years after final disposition of any judicial proceeding in which testimony is given, whichever period expires last.

Acts 1987, No. 472, §1; Acts 1993, No. 949, §1; Acts 1995, No. 690, §2; Acts 2003, No. 341, §1; Acts 2006, No. 389, §1; Acts 2012, No. 429, §1, eff. May 31, 2012; Acts 2014, No. 213, §§1, 2; Acts 2016, No. 259, §1.

### **§3397.1. Certified residential and certified general appraisers; continuing education**

As a prerequisite to license renewal, all certified residential and certified general appraisers shall complete the equivalent of fourteen hours of continuing education instruction per calendar year.

Acts 2014, No. 213, §1.

### **3398. Examination**

- A. A license as a real estate appraiser shall not be issued in any class other than real estate appraiser trainee unless the applicant has passed a qualifying examination approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation for such license.



- B. Any applicant not licensed within two years after passing an examination given pursuant to the provisions of this Chapter shall be required to retake and pass the examination.
- C. An applicant who has failed an examination may reapply for examination by submitting an application fee within ninety days of the last examination date.

Acts 1987, No. 472, §1; Acts 1993, No. 949, §1; Acts 1997, No. 1363, §1, eff. July 15, 1997; Acts 1999, No. 158, §1; Acts 2001, No. 888, §1; Acts 2003, No. 341, §§1 and 3; Acts 2014, No. 213, §§1 and 2.

#### **§3400. Term of licenses**

All licenses issued under this Chapter shall be issued for two years and shall expire on the second December thirty-first following the date on which it was issued.

Acts 1987, No. 472, §1; Acts 2003, No. 341, §1.

#### **§3401. Nonresident license; temporary registration; reciprocity**

- A. Every nonresident applicant for a license issued under this Chapter shall submit an irrevocable consent that service of process in any action against the applicant arising out of the applicant's activities as a licensed real estate appraiser may be made by delivery of the process to the secretary of state, if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.
- B. An applicant who has complied with the provisions of Subsection A of this Section may apply for a license as a real estate appraiser in this state in accordance with Subsection (b) of Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- C. A nonresident real estate appraiser certified or licensed in another jurisdiction may make appraisals on a temporary basis only if all of the following conditions are met:

- (1) Repealed by Acts 2003, No. 341, §3.
- (2) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council, or its successor, has approved the state, commonwealth, or territory program under which the nonresident appraiser is licensed or certified.
- (3) The nonresident appraiser has registered with the board on the prescribed form and has provided the board with payment of the temporary registration fee specified in R.S. 37:3407(A)(7).

Acts 1987, No. 472, §1; Acts 1991, No. 412, §1; Acts 1993, No. 949, §1; Acts 1995, No. 690, §2; Acts 2003, No. 341, §§1 and 3; Acts 2012, No. 429, §1, eff. May 31, 2012; Acts 2014, No. 213, §§1, 2.

**§3403. Renewal of license**

- A. (1) Each license issued under this Chapter shall be issued for a period of two years and shall expire on the second December thirty-first following the date on which it is issued. A license which is not renewed by January first shall be considered to be expired, and any appraisal practice that is conducted in this state after expiration of the license shall be deemed a violation of this Chapter.
- (2) Any licensee who submits a renewal application which is received by the board after the expiration date shall pay the delinquent fee provided for in R.S. 37:3407(A).
- B. Any licensee who fails to renew timely may thereafter renew during the six-month period immediately following the last date on which the licensee held a valid license. Former licensees who are not eligible for renewal because of delay beyond the six-month delinquent renewal period shall apply as initial applicants.

Acts 1987, No. 472, §1; Acts 1993, No. 949, §1; Acts 1995, No. 690, §2; Acts 2003, No. 341, §1.

**§3405. Principal place of business for appraiser**

- A. Each licensed real estate appraiser shall advise the board of the address of his or her principal place of business and all other addresses at which he is currently engaged in the business of preparing real property appraisal reports.
- B. Each licensed appraiser shall report any changes in the address or telephone number of his business or residence to the board in writing within ten days of the change.

Acts 1987, No. 472, §1; Acts 1993, No. 949, §1; Acts 1995, No. 690, §2; Acts 2003, No. 341, §1.

**§3406. Issuance of licenses; display; use of term**

- A. A license issued under authority of this Chapter shall bear the signatures or facsimile signatures of the chairperson and secretary of the board and a license number assigned by the board.
- B. Each licensed real estate appraiser shall include his classification and license number in all appraisal reports, contracts, or other instruments used by the licensee in conducting real property appraisal activities.
- C. Repealed by Acts 2003, No. 341, §3.
- D. Real estate appraisers that use their license for advertising purposes, including but not limited to logos, stationery, and business cards, shall place their license number adjacent to or immediately below their license classification.

Acts 1987, No. 472, §1; Acts 1991, No. 412, §1; Acts 1995, No. 690, §2; Acts 2001, No. 833, §2; Acts 2003, No. 341, §§1 and 3; Acts 2006, No. 389, §1.

**§3407. Fees**

- A. The board shall charge and collect fees not in excess of the following:
- |  |          |
|--|----------|
| (1) License application fee  | \$200.00 |
| (2) License history fee  | \$25.00  |
| (3) Examination processing fee   | \$100.00 |
| (4) Experience review  | \$100.00 |
| (5) License renewal fee  | \$200.00 |
| (6) Delinquent renewal fee:  |          |
| January 1 - February 15  | \$25.00  |
| February 16 - June 30  | \$100.00 |
| (7) Temporary registration fee   | \$150.00 |
| (8) Initial qualifying/continuing education provider fee                                     | \$100.00 |
| (9) Annual renewal fee for education provider  | \$100.00 |
| (10) Filing fee for additional course offerings<br>submitted by approved education providers | \$10.00  |
| (11) Processing Fee  | \$25.00  |
- B. (1) In addition to the fees provided for in Subsection A of this Section, the board may charge each applicant or licensee twenty dollars for each two-year license. The funds shall be included in the research and education fund of the Louisiana Real Estate Commission and shall be dedicated for use by the board to sponsor, conduct, contract for, and underwrite any and all research projects or real estate appraisal programs having to do with the advancement of the real estate appraisal industry in Louisiana.
- (2) Additionally, the board may collect any required federal fees from each applicant or licensee and remit them to the appropriate agency or instrumentality of the federal government as may be required to render Louisiana licensed real estate appraisers eligible to perform appraisals in connection with federally related transactions.
- C. All fees shall be paid into the operating account of the board for the purpose of carrying out the provisions of this Chapter.
- D. Activities of the board shall be audited in accordance with R.S. 24:513.

Acts 1987, No. 472, §1; Acts 1991, No. 412, §1; Acts 1993, No. 949, §1; Acts 1995, No. 690, §2; Acts 2003, No. 341, §1; Acts 2014, No. 200, §1.

**§3408. Continuing education requirements**

- A. As a prerequisite to renewal of a real estate appraiser license, all licensees shall present evidence satisfactory to the board of having met the continuing education requirements set forth in this Chapter.
- B. The basic continuing education requirements for renewal of a license shall be the completion of not less than twenty-eight hours, or its equivalent, in courses that have received the approval of the board. As part of this requirement, the applicant shall complete a minimum of seven

classroom hours of instruction covering the Uniform Standards of Professional Appraisal Practice every renewal period.

- C. In lieu of meeting the requirements of Subsection B of this Section, an applicant for renewal may present evidence of the following:
- (1) Completion of courses determined by the board to be equivalent to continuing education courses approved by the board pursuant to Subsection B of this Section.
  - (2) a) Participation, other than as a student, in educational processes and programs in real property appraisal theory, practices, or techniques including but not limited to teaching, program development, and preparation of textbooks, monographs, articles, and other instructional materials, all to be approved by the board.  
  
b) No more than half of the continuing education credit shall be granted for participation pursuant to this Paragraph.
- D. The board shall adopt regulations for implementation of the provisions of this Section to provide licensees with current knowledge of real property appraisal theories, practices, and techniques. Such regulations shall prescribe the following:
- (1) Policies and procedures for obtaining board approval of courses pursuant to Subsection B of this Section.
  - (2) Standards, policies, and procedures to be applied by the board in evaluating course equivalency as specified in Subsection C of this Section.
  - (3) Standards, monitoring methods, and systems for recording attendance to be employed by course sponsors as a prerequisite to board approval of courses for credit.
- E. In making recommendations pursuant to Paragraph (D)(1) of this Section, the board shall give consideration to courses of instruction, seminars, and other real property appraisal education courses or programs previously or hereafter developed by or under the auspices of professional appraisal organizations and utilized by those associations for purposes of designation, certification, or recertification of the members of the association.
- F. No amendment or repeal of a regulation adopted by the board pursuant to this Section shall operate to deprive a licensed real estate appraiser of credit toward renewal of certification for any course of instruction completed by the applicant prior to the amendment or repeal of the regulation, if the course would have qualified for continuing education credit under the regulation as it existed prior to the repeal or amendment.

Acts 1987, No. 472, §1; Acts 1993, No. 949, §1; Acts 1995, No. 690, §2; Acts 2001, No. 888, §1; Acts 2003, No. 341, §1; Acts 2014, No. 213, §1.

**§3409. Disciplinary proceedings**

- A. The board may censure a licensed real estate appraiser, conditionally or unconditionally suspend or revoke any license issued under this Chapter, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees if, in the opinion of the board, a licensee is performing, is attempting to perform, has performed, or has attempted to perform any of the following acts:
- (1) Committing any act in violation of this Chapter.
  - (2) Violating any rule or regulation adopted by the board in the interest of the public and consistent with the provisions of this Chapter.
  - (3) Knowingly making any false representation to any party in developing or communicating an appraisal.
  - (4) Accepting an appraisal assignment when the employment itself is contingent upon the appraiser reporting a predetermined analysis or opinion or where the fee to be paid for the performance of this appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon the consequences resulting from the appraisal assignment.
  - (5) Violating the confidential nature of governmental records to which he gained access through employment or engagement as an appraiser by a governmental agency.
  - (6) Procuring a license for himself or anyone else by fraud, misrepresentation, or deceit.
  - (7) Having been convicted of a felony or having entered a plea of nolo contendere to a felony charge.
  - (8) Failing to make available to the board for its inspection, without prior notice, originals or true copies of all written contracts engaging the person's services to appraise real property and all reports and supporting data assembled and formulated by the appraiser in preparing the reports.
  - (9) Paying a fee or valuable consideration to any person for acts or services performed in violation of this Chapter.
  - (10) Acting as a real estate appraiser in an unworthy or incompetent manner that may endanger the public interest.
- B. (1) Sole authority for the conduct of adjudicatory proceedings in accordance with the Administrative Procedure Act for violations of this Chapter is vested in the board.
- (2) Before censuring any licensee, or suspending or revoking any license, the board shall notify the licensee in writing of any charges made at least twenty days prior to the date set for the hearing and shall afford him an opportunity to be heard in person or by counsel.

- (3) The written notice shall be satisfied by personal service on the respondent, or by sending the notice by certified mail to the licensee's address on file with the board, or by hand delivery from board personnel.
  - (4) The board shall have the power to subpoena and issue subpoenas duces tecum and to bring before it any person in this state to take testimony by deposition, in the same manner as prescribed by law in judicial proceedings in the courts of this state, or to require production of any records relevant to any inquiry or hearing by the board.
- C. (1) The hearing on the charges shall be at a time and place prescribed by the board and in accordance with the Administrative Procedure Act.
- (2) The board may make findings of fact and shall deliver or mail such findings to the licensee charged with an offense under this Chapter. Any finding of fact by the board pursuant to this Subsection shall be conclusive.
  - (3) Any final decision or determination of the board in adjudicatory proceedings shall be reviewable as to questions of law by the Nineteenth Judicial District Court in the parish of East Baton Rouge. Any application for judicial review made by an aggrieved party shall be filed within thirty days after the final decision of the board.
  - (4) If a petition to review the final decision of the board is filed, the case shall be specifically fixed for trial within thirty days from the filing of an answer by the board. If the court finds that the board has properly pursued its authority in accordance with the law, is supported by evidence in the record, and has not acted arbitrarily, it shall affirm the decision, order, or ruling of the board.
  - (5) If an appeal is filed in the Nineteenth Judicial District Court, the court shall receive the entire record of the hearing.
  - (6) Absent an agreement of counsel for all parties, no stay of enforcement of a decision issued by the board shall be granted during the pendency of an appeal unless the Nineteenth Judicial District Court finds that the applicant has established that the issuance of the stay does not threaten harm to other interested parties.
  - (7) No stay shall be granted ex parte. The court shall schedule a hearing on the request for a stay order within ten days from filing. The decisions shall be rendered within five days after the conclusion of the hearing.
  - (8) No judicial order staying or enjoining the effectiveness or enforcement of a final decision or order of the board in an adjudication proceeding, whether issued pursuant to R.S. 37:3409 or otherwise, shall be effective, or be issued to be effective, longer than either of the following:
    - a) One hundred twenty days from the date on which the board's decision or order was rendered.

- b) The date on which the court enters judgment in a proceeding for judicial review of the board's decision or order pursuant to R.S. 49:964, whichever occurs first.
- D. The board may also suspend or revoke the license of a real estate appraiser based upon a final civil judgment against the appraiser on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real property. In a disciplinary proceeding based upon such judgment, the licensed real estate appraiser shall be afforded notice and the opportunity to present matters in mitigation and extenuation but shall not collaterally attack the civil judgment.
- E. It shall be the duty of each licensed real estate appraiser to notify the board within ten days by registered or certified mail or by hand delivery of the following actions:
  - (1) The rendering of a final judgment against the appraiser by a court of competent jurisdiction the subject matter of which involves a real estate appraisal transaction to which the appraiser was a party.
  - (2) The institution of criminal prosecution by arrest or indictment which involves a real estate appraisal transaction to which the appraiser was a party.
  - (3) Any conviction of the appraiser by a court of competent jurisdiction for forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, theft, any other felony, or any crime involving moral turpitude.
  - (4) Any sanction imposed on the appraiser by another jurisdiction.
- F. A licensed real estate appraiser shall not participate in the preparation of federally related real estate appraisals during any period in which his license has been suspended by the board pursuant to adjudicatory proceedings.

Acts 1987, No. 472, §1; Acts 1991, No. 412, §1; Acts 1993, No. 949, §1; Acts 1995, No. 690, §2; Acts 1999, No. 158, §1; Acts 2003, No. 341, §1; Acts 2014, No. 213, §1.

**§3410. Standards for the development and communication of real estate appraisals**

- A. A licensed real estate appraiser shall comply with generally accepted standards of professional practice in the development and communication of appraisals of real estate located in this state and with generally accepted ethical rules of conduct as contained in the "Uniform Standards of Professional Appraisal Practice", or its successor, as approved by the Appraisal Standards Board of the Appraisal Foundation or its successor.
- B. The licensed real estate appraiser shall include within the body of the appraisal report the amount of the appraiser's fee for appraisal services.

Acts 1987, No. 472, §1; Acts 1990, No. 740, §1; Acts 1991, No. 412, §1; Acts 2003, No. 341, §1; Acts 2012, No. 429, §1, eff. May 31, 2012; Acts 2014, No. 213, §1.

**§3411. Documents to be retained**

A licensed real estate appraiser shall retain for five years originals or true copies of contracts engaging the appraiser's services for real property appraisal work, appraisal reports, and supporting data assembled and formulated by the appraiser in preparing reports. The period for retention of the records applicable to each engagement of the services of the appraiser shall run from the date of the submission of the appraisal report to the client. These records shall be made available by the appraiser for inspection and copying by the board on reasonable notice to the appraiser. When litigation is contemplated at any time, reports and records shall be retained for two years from final disposition.

Acts 1987, No. 472, §1; Acts 1995, No. 690, §2; Acts 2003, No. 341, §1; Acts 2016, No. 259, §1.

**§3412. False information**

It shall be unlawful for any person or his agent to file with the board any notice, statement, or other document required under the provisions of this Chapter which is false or contains any material misstatement of fact.

Acts 1987, No. 472, §1; Acts 1995, No. 690, §2.

**3413. Penalty**

Any person who violates any provision of this Chapter shall be fined not more than five thousand dollars, imprisoned for not more than six months, or both.

Acts 1995, No. 690, §2; Acts 2003, No. 341, §1.



# Tab 4

**CHAPTER 51-A. APPRAISAL MANAGEMENT COMPANY  
LICENSING AND REGULATION ACT**

**§3415.1. Short title**

This Chapter shall be known and may be cited as the "Louisiana Appraisal Management Company Licensing and Regulation Act."

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

**§3415.2. Definitions**

As used in this Chapter, the following words have the meaning ascribed to them in this Section unless the context clearly indicates otherwise:

(1) "Appraisal" means the act or process of developing an opinion of value of real property following the appraisal process defined by the Uniform Standards for Professional Appraisal Practice.

(2) "Appraisal management company" means any corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that engages in any of the following activity:

(a) Administers a network of independent contract appraisers to perform real estate appraisal services for lenders or other clients.

(b) Receives requests for residential appraisal services from clients and enters into agreements, written or otherwise, with one or more independent appraisers to perform the real estate appraisal services contained in the request.

(3) "Appraisal management services" means the process of receiving a request for the performance of real estate appraisal services from a client, and for a fee paid by the client, entering into an agreement with one or more independent appraisers to perform the real estate appraisal services contained in the request.

(4) "Appraiser" is defined as one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.

(5) RESERVED.

(6) "Appraiser panel" means a group of appraisers that has been selected by an appraisal management company to perform real estate appraisal services for the appraisal management company on behalf of lenders or other clients.

(7) "Board" means the Louisiana Real Estate Appraisers Board.

(8) "Client" means any person or entity that contracts with or otherwise enters into an agreement for the performance of residential real estate appraisal services.

(9) "Controlling person" means any of the following:

(a) An owner, officer, or director of a corporation, partnership, or other business entity seeking to offer appraisal management services in this state.

(b) An individual employed, appointed, or authorized by an appraisal management company who has the authority to enter into a contractual relationship with clients to contract for the performance of appraisal management services and has the authority to enter into agreements with independent appraisers for the performance of real estate appraisal services.

(c) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(10) "Real estate appraisal services" means residential valuation services performed by an individual acting as an appraiser, including but not limited to appraisal, appraisal review, or appraisal consulting, as these services are defined under the Uniform Standards for Professional Appraisal Practice.

(11) "Administrative review", "compliance review", "quality check", or "QC" means a process that checks an appraisal report for compliance with the Uniform Standards of Professional Appraisal Practice or other stipulated requirements.

(12) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term shall 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.

(13) "Fee appraiser" means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is one of the following:

(a) A state-licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice.

(b) A company not subject to the requirements of Section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3331 et seq., that utilizes the services of state-licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010; Acts 2012, No. 429, §1, eff. May 31, 2012.

**§3415.3. License required**

A. It shall be unlawful for a person, corporation, partnership, sole proprietorship, subsidiary, unit, or any other business entity to directly or indirectly engage or attempt to engage in business as an appraisal management company, to directly or indirectly engage or attempt to perform appraisal management services, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a license issued by the board under the provisions of this Chapter, regardless of the entity's use of the term "appraisal management company", "national valuations solutions provider", "mortgage technology company", or any other name.

B. The license required by Subsection A of this Section shall, at a minimum, include the following information:

(1) The name of the entity seeking a license.

(2) The business address of the entity seeking a license.

(3) The phone contact information of the entity seeking a license.

(4) If the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state.

(5) The name, address, and contact information of any individual, corporation, partnership, or other business entity that has any ownership interest in the appraisal management company.

(6) The name, address, and contact information for a controlling person, as defined in this Chapter.

(7) Certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds an appraisal license in good standing in this state pursuant to this Chapter.

(8) Certification that the entity has a system in place to review the work on a periodic basis of all independent appraisers that are performing real estate appraisal services for the appraisal management company to ensure that the real estate appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice, pursuant to this Chapter.

(9) Certification that the entity maintains a detailed record for five years of each real estate appraisal service request that it receives and an itemized list of all fees contracted with each appraiser who performs real estate appraisal services for the appraisal management company, pursuant to this Chapter.

(10) Proof that the entity has obtained and maintains a surety bond that meets the requirements of Subsection D of this Section.

(11) An irrevocable Uniform Consent to Service of Process, pursuant to this Chapter.

C.(1) A person who performs an appraisal review for an appraisal management company shall be licensed or certified in Louisiana.

(2) An administrative review may be performed by any individual, including a certified appraiser.

D.(1) Every applicant for a license or the renewal of a license shall obtain and maintain a surety bond in the amount of twenty thousand dollars. The surety bond shall:

(a) Be in the form prescribed by the board pursuant to regulations duly promulgated by it.

(b) Accrue to the state for the benefit of a claimant against the registrant to secure the faithful performance of the licensee obligations under this Chapter.

(2) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(3) A party having a claim against the licensee may bring suit directly on the surety bond, or the board may bring suit on behalf of the party having a claim against the licensee.

(4) Consumer claims shall be given priority in recovering from the bond.

(5) A deposit of cash or security may be accepted in lieu of the surety bond.

(6) If a claim reduces the face amount of the bond, the bond shall be annually restored upon renewal of the licensee's registration.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010; Acts 2012, No. 429, §1, eff. May 31, 2012.

#### **§3415.4. Exemptions**

A. This Chapter shall not be applicable to any of the following:

(1) Any corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity that exclusively employs persons on an employer/employee basis for the performance of real estate appraisal services in the normal course of its business and such entity is responsible for ensuring that the real estate appraisal services being performed by its employees are being performed in accordance with Uniform Standards of Professional Appraisal Practice.

(2) Any individual, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity engaged in real estate appraisal services who, in the normal course of business, enters into an agreement, whether written or otherwise, with another independent appraiser for the performance of real estate appraisal services that the hiring or contracting appraiser is unable to complete for any reason, including but not limited to competency, work load, schedule, or geographic location.

(3) Any individual, corporation, partnership, sole proprietorship, subsidiary, unit, or other business entity engaged in real estate appraisal services who, in the normal course of business, enters into an agreement, whether written or otherwise, with an independent contractor appraiser for the performance of real estate appraisal services and, upon the completion of the appraisal, the report of the appraiser performing the real estate appraisal services is cosigned by the appraiser who subcontracted with the independent appraiser for the performance of the real estate appraisal services.

B. The Louisiana Real Estate Appraisers Board may issue special exemptions, if deemed acceptable by the board, upon special application and review.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

**§3415.5. Forms**

An applicant for a license as an appraisal management company in this state shall submit to the board an application on a form prescribed by the board.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

**§3415.6. Expiration of license**

All licenses granted by the board pursuant to this Chapter shall expire December thirty-first of each calendar year.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010; Acts 2011, No. 114, §1.

**§3415.7. Consent to service of process**

Each entity applying for a license as an appraisal management company in this state shall complete an irrevocable Uniform Consent to Service of Process as prescribed by the board.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

**§3415.8. Owner requirements**

A. An appraisal management company applying for a license in this state may not be owned by any person who has had a license or certificate to act as an appraiser, real estate broker or agent, mortgage broker, or mortgage originator, which combined are considered herein to be "real estate or lending-related licenses" refused, denied, suspended, canceled, or revoked in the past in any state without specific approval by the board.

B. Any licensed appraisal management company with an owner or employee who is subsequently refused or denied a real estate or lending-related license in any state, shall notify the board in writing within ten days of such action.

C. Any licensed appraisal management company with an owner or employee whose real estate or lending-related license has been suspended, revoked, or cancelled subsequent to being registered shall notify the board in writing within ten days of such action.

D. Either refusal or revocation of any real estate or lending-related license in any state shall be grounds for denying renewal of the appraisal management company's license. However, failure to notify the board of refusal, suspension, revocation, or cancellation of the licenses within ten days of such action shall be cause for revocation of an appraisal management company's license.

E. Each person that has any ownership interest in an appraisal management company in this state shall comply with all of the following:

- (1) Be of good moral character, as determined by the board.
- (2) Submit to a background investigation, as determined by the board.
- (3) Certify to the board that the person has never had a license to act as an appraiser refused, denied, cancelled, suspended, or revoked in this state or in any other state.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

**§3415.9. Controlling person; requirements**

A. Each appraisal management company applying to the board for a license in this state shall designate one controlling person that will be the main contact for all communication between the board and the appraisal management company.

B. In order to serve as a controlling person of an appraisal management company, a person shall comply with all of the following:

- (1) Certify to the board that he has never had a certificate or license issued by the board of this state, or the board of any other state, to act as an appraiser refused, denied, canceled, suspended, or revoked.
- (2) Be of good moral character, as determined by the board.
- (3) Submit to a background investigation, as determined by the board.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

**§3415.10. License application assessment; delinquent renewal**

A. When accepting an application for an initial or renewal license, the board is authorized to collect an assessment not in excess of one thousand five hundred dollars.

B. If the license renewal is delinquent, the board is further authorized to collect a delinquent renewal assessment as follows:

- (1) If the renewal application is submitted during the period of January first to February fifteenth, an amount not in excess of one hundred fifty dollars.
- (2) If the renewal application is submitted during the period of February sixteenth to June thirtieth, an amount not in excess of three hundred dollars.

C. If an initial license is issued after January first of any year, the assessment shall be prorated to the remaining portion of the year ending December thirty-first.

D. The provisions of this Section shall expire on December 31, 2019.

Acts 2011, No. 114, §1; Acts 2013, No. 31, §1, eff. May 29, 2013; Acts 2016, No. 259, §1; Acts 2017, No. 11, §1.

NOTE: See Acts 2011, No. 114, §§2, 3, relative to licenses issued on or after certain dates.

#### **§3415.11. Limitations**

An appraisal management company licensed in this state pursuant to this Chapter shall not enter into contracts or agreements with an independent appraiser for the performance of real estate appraisal services unless that person is licensed and in good standing pursuant to the Louisiana Real Estate Appraisers Law, R.S. 37:3391 et seq.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

#### **§3415.12. Pre-engagement certification**

Each appraisal management company seeking to be licensed in this state shall certify to the board, on an annual basis, on a form prescribed by the board, that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this state pursuant to the Louisiana Real Estate Appraisers Law, R.S. 37:3391 et seq.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

#### **§3415.13. Adherence to standards; competency**

A. Each appraisal management company seeking to be licensed in this state shall certify to the board on an annual basis that it has a system in place to review on a periodic basis the work of all appraisers that are performing real estate appraisal services for the appraisal management company to ensure that the real estate appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice.

B. Before or at the time of making an assignment to an appraiser, an appraisal management company shall verify that the appraiser receiving the assignment satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.

Acts 2009, No. 502, §1, eff. Jan. 1, 2009; Acts 2012, No. 429, §1, eff. May 31, 2012.

#### **§3415.14. Record keeping**



Each appraisal management company seeking to be licensed in this state shall certify to the board on an annual basis that it maintains a detailed record for five years of each real estate appraisal service request that it receives including the fee paid by the lenders to all appraisers for all real estate appraisal services and the names of all appraisers or entities that perform all real estate appraisal services for the appraisal management company.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

**§3415.15. Fees; customary and reasonable; disclosure**

A. 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.

B. An appraisal management company shall separately state to the client all of the following:

(1) The fees paid to an appraiser for appraisal services.

(2) The fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser's services.

C.(1) An appraisal management company shall not prohibit any appraiser who is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the appraisal management company.

(2) An appraisal management company shall not include any fees for appraisal management services performed by the company in the amount the company reports as charges for the actual completion of an appraisal by the appraiser.

Acts 2012, No. 429, §1, eff. May 31, 2012; Acts 2016, No. 259, §1.

**§3415.16. Appraiser independence; prohibitions**

A. It shall be unlawful for any employee, director, officer, or agent of an appraisal management company licensed in this state pursuant to this Chapter to influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner, including but not limited to the following:

(1) Withholding or threatening to withhold timely payment for an appraisal.

(2) Withholding or threatening to withhold future business for an independent appraiser, or demoting or terminating or threatening to demote or terminate an independent appraiser.

(3) Expressly or impliedly promising future business, promotions, or increased compensation for an independent appraiser.

(4) Conditioning the request for a real estate appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an independent appraiser.

(5) Requesting that an independent appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the independent appraiser's completion of a real estate appraisal service.

(6) Providing to an independent appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.

(7) Providing to an independent appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits, allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to such appraiser.

(8) Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in conjunction with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process or underwriting guidelines, and so long as the lender adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest

(9) Forcing an appraiser to accept an assignment where the delivery times are so short that they force the appraiser to render a misleading report.

B. Nothing in Subsection A of this Section shall be construed as prohibiting the appraisal management company from requesting that an independent appraiser do either of the following:

(1) Provide additional information about the basis for a valuation.

(2) Correct objective factual errors in an appraisal report.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

### **§3415.17. Alteration of appraisal reports**

An appraisal management company shall not alter, modify, or otherwise change a completed real estate appraisal service report submitted by an appraiser.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

**§3415.18. Adjudication of disputes between an appraisal management company and an appraiser**

A. Except within the first thirty days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser without doing all of the following:

(1) Notifying the appraiser in writing of the reasons why the appraiser is being removed from the appraiser panel of the appraisal management company. If the appraiser is being removed from the panel for illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice, or a violation of state licensing standards, the nature of the alleged conduct or violation shall be identified.

(2) Providing an opportunity for the appraiser to respond to the notification of the appraisal management company.

B. An appraiser that is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice, or violation of state licensing standards, may file a complaint with the board for a review of the decision of the appraisal management company, except that in no case shall the board make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company which is unrelated to the actions specified in Subsection A of this Section.

C. If an appraiser files a complaint against an appraisal management company pursuant to Subsection B of this Section, the board shall adjudicate the complaint.

D. If, after opportunity for hearing and review, the board determines that an appraiser did not commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of state licensing standards, the board shall order that an appraiser be reinstated to the appraiser panel of the appraisal management company that was the subject of the complaint without prejudice.

E. Following the adjudication of a complaint to the board by an appraiser against an appraisal management company, an appraisal management company may not refuse to make assignments for real estate appraisal services to an appraiser, or reduce the number of assignments, or otherwise penalize the appraiser, if the board has found that the appraisal management company acted improperly in removing the appraiser from the appraiser panel.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

**§3415.19. Enforcement**

A. The board may censure an appraisal management company, conditionally or unconditionally suspend, or revoke any license issued under this Chapter, levy fines or impose civil penalties not to exceed fifty thousand dollars, if in the opinion of the board, an appraisal management company is attempting to perform, is performing, has performed, or has attempted to perform any of the following acts:

(1) Committing any act in violation of this Chapter.

(2) Violating any rule or regulation adopted by the board in the interest of the public and consistent with the provisions of this Chapter.

(3) Procuring a license by fraud, misrepresentation, or deceit.

B.(1) In addition to any other civil remedy or civil penalty provided for in this Chapter, the board may issue a subpoena to any person or persons who the board has probable cause to believe has engaged in real estate appraisal activity without a currently valid license.

(2) Subpoenas issued by the board shall comply with the notice requirements of R.S. 49:955. These subpoenas shall be served upon the unlicensed individual personally or by any type of mailing requiring a return receipt and shall include a statement of the manner in which the unlicensed person shall be required to respond to the commission.

C. The board may impose a civil penalty of no more than five thousand dollars upon any unlicensed person who, after a hearing or informal resolution in accordance with all provisions of this Chapter and the Administrative Procedure Act, is found to have engaged in real estate appraisal activity without a currently valid license having been issued by the board pursuant to the provisions of this Chapter. In addition, the board may assess costs and attorney fees against the unlicensed person found to have been engaged in real estate appraisal activity without a current license.

D. No person engaged in real estate appraisal activity without a currently valid license shall have the right to receive any compensation for services so rendered. In addition to any other penalties imposed under this Chapter, the board may require that any person engaged in real estate appraisal activity without a license return any fees collected for engaging in real estate appraisal activity.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

### **§3415.20. Disciplinary hearings**

A. The conduct of adjudicatory proceedings in accordance with the Administrative Procedure Act for violations of this Chapter is vested in the board, subject to the following provisions:

(1) Before censuring, suspending, or revoking any registration, the board shall notify the licensee in writing of any charges made, at least twenty days prior to the date set for the hearing and shall afford the licensee an opportunity to be heard in person or by counsel.

(2) The written notice shall be satisfied by personal service on the controlling person of the licensee, or the licensee's agent for service of process in this state, or by sending the notice by certified mail, return receipt requested to the controlling person of the licensee to the licensee's address on file with the board, or by board personnel hand delivering a copy of the charges to the licensee.

(3) The board shall have the power to subpoena and issue subpoenas duces tecum and to bring before it any person in this state, or take testimony by deposition, in the same manner prescribed by law in judicial

proceedings in the courts of this state, or to require production of any records relevant to an inquiry or hearing by the board. Any final decision or determination of the board shall be reviewable by the Nineteenth Judicial District Court in the Parish of East Baton Rouge.

(4) The hearing on the charges shall be at a time and place prescribed by the board and in accordance with the provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950.

(5) The board may make findings of fact and shall deliver or mail such findings to the licensee charged with an offense under this Chapter. Any finding of fact by the board pursuant to the provisions of this Section shall be conclusive.

B.(1) The Nineteenth Judicial District Court of the state may review questions of law involved in any final decision of the board. Any application for review made by an aggrieved party shall be filed within thirty days after the final decision of the board.

(2) If the court finds that the Louisiana Real Estate Appraisers Board has regularly pursued its authority and has not acted arbitrarily, it shall affirm the decision, order, or ruling of the board. If a petition to review the final decision of the board is filed, the case shall be specifically fixed for trial within thirty days from the filing of an answer by the board.

C. Administrative proceedings under this Chapter before the board are not exclusive remedies. Criminal action under the terms of this Chapter may be simultaneously instituted and maintained against the accused for any violation of this Chapter. The board may also separately or simultaneously bring and carry on an action by injunction to restrain a licensed or unlicensed individual from further violation of any of the provisions of this Chapter, during the pendency of the criminal proceeding or proceedings before the board and against any unlawful practice thereafter.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010.

#### **§3415.21. Rulemaking authority**

A. The board may adopt any rules and regulations in accordance with the Administrative Procedure Act necessary for the enforcement of this Chapter.

Acts 2009, No. 502, §1, eff. Jan. 1, 2010; Acts 2012, No. 429, §1, eff. May 31, 2012; Acts 2014, No. 764, §1, eff. June 19, 2014.

#### **§3415.22. Federal registry requirements**

A. The board shall collect from each appraisal management company that is registered or seeking to be registered in this state the information that the appraisal subcommittee, as described in R.S. 37:3395, requires to be submitted to it by the state pursuant to regulations promulgated by the appraisal subcommittee, including the collection of administrative fees consistent with the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 208, 225, 323, 390, 1026, and 1222.

B.(1) A federally regulated appraisal management company operating in this state shall report to the board any information required to be submitted by the state to the appraisal subcommittee pursuant to

the policies of the appraisal subcommittee regarding the determination of the appraisal management company national registry fee.

(2) Reports submitted pursuant to this Subsection shall include the following:

(a) A statement, in a form prescribed by the board, detailing the intent of the federally regulated appraisal management company to operate in this state.

(b)(i) Any information related to whether the appraisal management company is owned in whole or in part, directly or indirectly, by any person who has had an appraiser license or certification refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any state.

(ii) Any information related to the revocation of a license of any person described in Item (i) of this Subparagraph and whether the revoked license has been reinstated by the state or states in which the appraiser was licensed.

Acts 2016, No. 259, §1.

# Tab 5

## LEGISLATION

State Legislature  
2014 Regular Session

Administrative Procedure Act (R.S. 49:950 et seq.)

## Title 49. STATE ADMINISTRATION

## Chapter 13. Administrative Procedure

## §950. Title and form of citation

This Chapter shall be known as the Administrative Procedure Act and may be cited as the Administrative Procedure Act.

Added by Acts 1982, No. 129, §1.

## §951. Definitions

As used in this Chapter:

(1) "Adjudication" means agency process for the formulation of a decision or order.

(1.1) "Adopt", "adopted", or "adoption", when pertaining to a fee in this Chapter, shall include action proposed by an agency to adopt, apply, assess, charge, implement, levy, or otherwise collect a fee pursuant to authorization by law that the agency may adopt, apply, assess, charge, implement, levy or otherwise collect such fee.

(2) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in Article VI, Section 44 of the Louisiana Constitution, and any board, commission, department, agency, officer, or other entity thereof, and the courts.

(3) "Decision" or "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing, and including non-revenue licensing, when the grant, denial, or renewal of a license is required by constitution or statute to be preceded by notice and opportunity for hearing.

(4) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency, except that an agency is a "person" for the purpose of appealing an administrative ruling in a disciplinary action brought pursuant to Title 37 of the Louisiana Revised Statutes of 1950 prior to the final adjudication of such disciplinary action.

(6) "Rule" means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. "Rule" includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

(7) "Rulemaking" means the process employed by an agency for the formulation of a rule. Except where the context clearly provides otherwise, the procedures for adoption of rules and of emergency rules as provided in R.S. 49:953 shall also apply to adoption, increase, or decrease of fees. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as

applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this Subsection.

Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1997, No. 1224, §1; Acts 2010, No. 775, §1, eff. June 30, 2010.

NOTE: See Acts 2010, No. 775, §3, regarding its applicability.

## §952. Public information; adoption of rules; availability of rules and orders

Each agency which engages in rulemaking shall:

(1) File with the Office of the State Register a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

(3) Make available for public inspection all rules, preambles, responses to comments, and submissions and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions and publish an index of such rules, preambles, responses to comments, submissions, statements, and interpretations on a regular basis.

(4) Make available for public inspection all final orders, decisions, and opinions.

Acts 1966, No. 382, §2, eff. July 1, 1967. Amended by Acts 1978, No. 252, §1; Acts 1979, No. 578, §1, eff. July 18, 1979; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 1993, No. 386, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

## §953. Procedure for adoption of rules

A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1)(a) Give notice of its intended action and a copy of the proposed rules at least ninety days prior to taking action on the rule. The notice shall include:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved;

(ii) A statement, approved by the legislative fiscal office, of the fiscal impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no fiscal impact will result from such proposed action;

(iii) A statement, approved by the legislative fiscal office, of the economic impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no economic impact will result from such proposed action;

(iv) The name of the person within the agency who has the responsibility for responding to inquiries about the intended action;

(v) The time when, the place where, and the manner in which interested persons may present their views thereon; and

(vi) A statement that the intended action complies with the statutory law administered by the agency, including a citation of the enabling legislation.

(vii) A statement indicating whether the agency has prepared a preamble which explains the basis and rationale for the intended action, summarizes the information and data supporting the intended action, and provides information concerning how the preamble may be obtained.

(viii) A statement concerning the impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

(ix) A statement concerning the impact on child, individual, or family poverty in relation to individual or community asset development as set forth in R.S. 49:973.

(b)(i) The notice shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least one hundred days prior to the date the agency will take action on the rule.

(ii) Upon publication of the notice, copies of the full text of the proposed rule shall be available from the agency proposing the rule upon written request within two working days.

(c) Notice of the intent of an agency to adopt, amend, or repeal any rule and the approved fiscal and economic impact statements,



as provided for in this Subsection, shall be mailed to all persons who have made timely request of the agency for such notice, which notice and statements shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule change is submitted to the Louisiana Register.

(D) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(2)(a) Afford all interested persons reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested within twenty days after publication of the rule as provided in this Subsection, by twenty-five persons, by a governmental subdivision or agency, by an association having not less than twenty-five members, or by a committee of either house of the legislature to which the proposed rule change has been referred under the provisions of R.S. 49:968.

(b)(i) Make available to all interested persons copies of any rule intended for adoption, amendment, or repeal from the time the notice of its intended action is published in the Louisiana Register. Any hearing pursuant to the provisions of this Paragraph shall be held no earlier than thirty-five days and no later than forty days after the publication of the Louisiana Register in which the notice of the intended action appears. The agency shall consider fully all written and oral comments and submissions respecting the proposed rule.

(ii) The agency shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written or oral comments and submissions. In addition to the response to comments, the agency may prepare a preamble explaining the basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions. Such preamble and response to comments and submissions shall be furnished to the respective legislative oversight subcommittees at least five days prior to the day the legislative oversight subcommittee hearing is to be held on the proposed rule, and shall be made available to interested persons no later than one day following their submission to the appropriate legislative oversight subcommittee. If no legislative oversight hearing is to be held, the agency shall issue a response to comments and submissions and preamble, if any, to any person who presented comments or submissions on the rule and to any requesting person not later than fifteen days prior to the time of publication of the final rule.

(iii) The agency shall, upon request, make available to interested persons the report submitted pursuant to R.S. 49:968(D) no later than one working day following the submittal of such report to the legislative oversight subcommittees.

(3)(a) For the purposes of this Subsection, the statement of fiscal impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such fiscal impact statement shall include a statement of the receipt, expenditure, or allocation of state funds or funds of any political subdivision of the state.

(b) For the purposes of this Subsection, the statement of economic impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such economic impact statements shall include an estimate of the cost to the agency to implement the proposed action, including the estimated amount of paperwork; an estimate of the cost or economic benefit to all persons directly affected by the proposed action; an estimate of the impact of the proposed action on competition and the open market for employment, if applicable; and a detailed statement of the data, assumptions, and methods used in making each of the above estimates.

B.(1)(a) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided in Subsection A of this Section and within

five days of adoption states in writing to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Office of the State Register, its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The provisions of this Paragraph also shall apply to the extent necessary to avoid sanctions or penalties from the United States, or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs. The agency statement of its reason for finding it necessary to adopt an emergency rule shall include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria provided in this Paragraph for adoption of an emergency rule.

(b) The agency statement required in Subparagraph (a) of this Paragraph shall be submitted to the speaker of the House of Representatives and the president of the Senate at their respective offices in the state capitol by electronic transmission if such means are available. If electronic means are not available, the agency statement shall be submitted to the office of the speaker of the House of Representatives and the president of the Senate in the state capitol by certified mail with the return receipt requested or by messenger who shall provide a receipt for signature. The return receipt, the receipt for signature, or the electronic confirmation receipt shall be proof of receipt of the agency statement by the respective offices.

(2) Notice of the emergency rule shall be mailed to all persons who have made timely request of the agency for notice of rule changes, which notice shall be mailed within five days of adoption of the emergency rule. The Office of the State Register may omit from the Louisiana Register any emergency rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the emergency rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register contains a notice stating the general subject matter of the omitted emergency rule, the reasons for the finding of the emergency submitted by the agency, and stating how a copy thereof may be obtained.

(3) The validity of an emergency rule or fee may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located. The agency shall be made a party to the action. An action for a declaratory judgment under this Paragraph may be brought only by a person to whom such rule or fee is applicable or who would be adversely affected by such rule or fee and only on the grounds that the rule or fee does not meet the criteria for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. The court shall declare the rule or fee invalid if it finds that there is not sufficient evidence that such rule or fee must be adopted on an emergency basis for one or more of the reasons for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. Notwithstanding any other provision of law to the contrary, the emergency rule or fee shall remain in effect until such declaratory judgment is rendered. The provisions of R.S. 49:963 shall not apply to any action brought pursuant to this Paragraph. The provisions of this Paragraph are in addition to R.S. 49:963 and shall not limit any action pursuant to R.S. 49:963.

(4)(a) Within sixty days after receipt of the agency statement required in Paragraph (1) of this Subsection by the presiding officer of either house for an emergency rule or fee, an oversight subcommittee of that house may conduct a hearing to review the emergency rule or fee and make a determination of whether such rule or fee meets the criteria for an emergency rule or fee as provided in Paragraph (1) of this Subsection and those determinations as provided in R.S. 49:968(D)(3). If within such time period an oversight subcommittee finds an emergency rule or fee unacceptable, it shall prepare a written report containing a copy of the proposed rule or proposed fee action and a summary of the determinations made by the committee and transmit copies thereof as provided in R.S. 49:968(F)(2).

(b) Within sixty days after adoption of an emergency rule or fee, the governor may review such rule or fee and make the determinations as provided in Subparagraph (a) of this Paragraph. If within such time period the governor finds an emergency rule or fee unacceptable, he shall prepare a written report as provided in Subparagraph (a) and transmit copies thereof to the agency proposing the rule change and the Louisiana Register no later than four days after the governor makes his determination.

(c) Upon receipt by the agency of a report as provided in either Subparagraph (a) or (b) of this Paragraph, the rule or fee shall be nullified and shall be without effect.

C. An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, considerations, and disposition. Within ninety days after submission of a petition, the agency shall either deny the petition in writing, stating reasons for the denial, or shall initiate rule making proceedings in accordance with this Chapter.

D. When a rule is adopted, amended, or repealed in compliance with federal regulations, the adopting agency's notice of intent and the actual text of the rule as published in the Louisiana Register, must be accompanied by a citation of the Federal Register issue in which the determining federal regulation is published, such citation to be by volume, number, date, and page number.

E. Beginning January 1, 1987, no agency shall adopt, amend, or repeal any rule if the accompanying fiscal impact statement approved by the Legislative Fiscal Office indicates that said rule change would result in any increase in the expenditure of state funds, unless said rule is adopted as an emergency rule pursuant to the requirements of this Section or unless the legislature has specifically appropriated the funds necessary for the expenditures associated with said rule change.

F.(1) Notwithstanding any other provision of this Chapter to the contrary, if the Department of Environmental Quality proposes a rule that is not identical to a federal law or regulation or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall adopt and promulgate such proposed rule separately from any proposed rule or set of proposed rules that is identical to a federal law or regulation or required for compliance with a federal law or regulation. However, if the only difference between the proposed rule or set of proposed rules and the corresponding federal law or regulation is a proposed fee, the Department of Environmental Quality shall not be required to adopt and promulgate such proposed rule or set of proposed rules separately. For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(2) When the Department of Environmental Quality proposes a rule that is not identical to a corresponding federal law or regulation, or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall provide a brief summary which explains the basis and rationale for the proposed rule, identifies the data and evidence, if any, upon which the rule is based, and identifies any portions of the proposed rule that differ from federal law or regulation if there is a federal law or regulation which is not identical but which corresponds substantially to the proposed rule. Such summary shall be provided along with the notice of intent and shall be published in the Louisiana Register or made available along with the proposed rule as provided in Item A(1)(b)(ii) of this Section. The Department of Environmental Quality may also provide such a summary when proposing a rule identical to a corresponding federal law or regulation or proposing a rule which is required for compliance with federal law or regulation to explain the basis and rationale for the proposed rule.

(3) Notwithstanding any other provision of this Chapter to the contrary, when the Department of Environmental Quality proposes a rule that is identical to a federal law or regulation applicable in Louisiana, except as provided in Paragraph (4) of this Subsection, it may use the following procedure for the adoption of the rule:

(a) The department shall publish a notice of the proposed rule at least sixty days prior to taking action on the rule as provided below. The notice, which may include an explanation of the basis and rationale for the proposed rule, shall include all of the following:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved.

(ii) A statement that no fiscal or economic impact will result from the proposed rule.

(iii) The name of the person within the department who has responsibility for responding to inquiries about the intended action.

(iv) The time, place, and manner in which interested persons may present their views thereon including the notice for a public hearing required by R.S. 30:2011(D)(1).

(v) A statement that the intended action complies with the law administered by the department, including a citation of the specific provision, or provisions, of law which authorize the proposed rule.

(b) Notice of the proposed rule shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least seventy days prior to the date the department proposes to formally adopt the rule. The Office of the State Register may omit from the Louisiana Register any such proposed rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the Louisiana Register contains a notice stating the general subject matter of the omitted proposed rule, the process being employed by the department for adoption of the proposed rule, and stating how a copy of the proposed rule may be obtained.

(c) Notice of the intent of the department to adopt the rule shall be mailed to all persons who have made timely request for such notice, which notice shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(e) The department shall afford all interested persons an opportunity to submit data, views, comments, or arguments related to the proposed rule, in writing, during a period of no less than thirty days. The department shall consider fully all written comments and submissions respecting the proposed rule.

(f) The department shall make available to all interested persons copies of the proposed rule from the time the notice of its adoption is published in the Louisiana Register.

(g) The department shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written comments and submissions and specifically addressing any assertion that the proposed rule is not identical to the federal law or regulation upon which it is based. The department shall issue such response to comments and submissions to any person who presented comments or submissions on the rule and to any requesting person no later than fifteen days prior to the time of publication of the final rule.

(h) No later than fifteen days prior to the time of publication of the final rule in the Louisiana Register, the secretary or any authorized assistant secretary of the department shall do each of the following:

(i) Certify, under oath, to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, the chairman of the House Committee on Natural Resources and Environment, the chairman of the Senate Committee on Environmental Quality, and the Office of the State Register that the proposed rule is identical to a specified federal law or regulation applicable in Louisiana.

(ii) Furnish the chairman of the Senate Committee on Environmental Quality and the chairman of the House Committee on Natural Resources and Environment the response to comments

and submissions required under Subparagraph (g) of this Paragraph, together with a copy of the notice required under Subparagraph (a) of this Paragraph.

(i) Unless specifically requested, in writing, by the chairman of the House Committee on Natural Resources and Environment or the chairman of the Senate Committee on Environmental Quality within ten days of the certification provided under Subparagraph (h) of this Paragraph, there shall be no legislative oversight of the proposed rule. If, however, legislative oversight is properly requested, R.S. 49:968 and Items (A)(2)(b)(ii) and (iii) of this Section shall thereafter apply with respect to the proposed rule.

(j) In the absence of legislative oversight, the proposed rule may be adopted by the Department of Environmental Quality no earlier than sixty days, nor later than twelve months, after the official notice of the proposed rule was published in the Louisiana Register; provided, however, that the proposed rule shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption.

(4) The procedures set forth in Paragraph (3) of this Subsection for the adoption by the Department of Environmental Quality of rules identical to federal laws or regulations applicable in Louisiana shall not be available for the adoption of any rules creating or increasing fees.

G.(1) Prior to or concurrent with publishing notice of any proposed policy, standard, or regulation pursuant to Subsection A of this Section and prior to promulgating any policy, standard, or final regulation whether pursuant to R.S. 49:954 or otherwise under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the Department of Environmental Quality, after August 15, 1995, shall publish a report, or a summary of the report, in the Louisiana Register which includes:

(a) A statement identifying the specific risks being addressed by the policy, standard, or regulation and any published, peer-reviewed scientific literature used by the department to characterize the risks.

(b) A comparative analysis of the risks addressed by the policy, standard, or regulation relative to other risks of a similar or analogous nature to which the public is routinely exposed.

(c) An analysis based upon published, readily available peer-reviewed scientific literature, describing how the proposed and final policy, standard, or regulation will advance the purpose of protecting human health or the environment against the specified identified risks.

(d) An analysis and statement that, based on the best readily available data, the proposed or final policy, standard, or regulation presents the most cost-effective method practically achievable to produce the benefits intended regarding the risks identified in Subparagraph (a) of this Paragraph.

(2) No regulation shall become effective until the secretary complies with the requirements of Paragraph (1) of this Subsection.

(3) This provision shall not apply in those cases where the policy, standard, or regulation:

(a) Is required for compliance with a federal law or regulation.

(b) Is identical to a federal law or regulation applicable in Louisiana.

(c) Will cost the state and affected persons less than one million dollars, in the aggregate, to implement.

(d) Is an emergency rule under Subsection B of this Section.

(4) For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(5) In complying with this Section, the department shall consider any scientific and economic studies or data timely provided by interested parties which are relevant to the issues addressed herein and the proposed policy, standard, or regulation being considered.

H. The Department of Wildlife and Fisheries and the Louisiana Wildlife and Fisheries Commission may employ the timetables and provisions of Subsection B of this Section in promulgating rules and regulations relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oysters seasons, and finfish seasons and size limits, and all rules and regulations pursuant

thereto. Rules adopted annually pursuant to this Subsection which open and close the offshore and fall shrimp seasons, the oyster seasons, the marine finfish seasons, the webless migratory game bird hunting season, and the trapping season shall be effective for the duration of the respective season. Notwithstanding the provisions of Paragraph (B)(4) of this Section, any legislative oversight hearing held on a rule proposed under the provisions of this Subsection shall be held no earlier than five days and no later than thirty days following the date of adoption of the rule.

Acts 1966, No. 382, §3, eff. July 1, 1967. Amended by Acts 1974, No. 284, §1, eff. Jan. 1, 1975; Acts 1975, No. 730, §1; Acts 1976, No. 279, §1; Acts 1978, No. 252, §1; Acts 1980, No. 392, §1. Acts 1983, No. 713, §1; Acts 1984, No. 953, §1; Acts 1985, No. 371, §1, eff. July 9, 1985; Acts 1986, 1st Ex. Sess., No. 11, §1, eff. Jan. 1, 1987; Acts 1987, No. 853, §1; Acts 1990, No. 1063, §1; Acts 1990, No. 1085, §§1 and 2, eff. July 31, 1990; Acts 1991, No. 104, §1, eff. June 30, 1991; Acts 1993, No. 119, §1; Acts 1993, No. 274, §1; Acts 1993, No. 386, §1; Acts 1995, No. 512, §1; Acts 1995, No. 642, §1; Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, §3, eff. May 7, 1996; Acts 1999, No. 1183, §1; Acts 2008, No. 580, §6; Acts 2010, No. 777, §1; Acts 2012, No. 781, §1, eff. June 13, 2012; Acts 2012, No. 854, §1, eff. Jan. 1, 2013; Acts 2013, No. 220, §23, eff. June 11, 2013.

#### **§954. Filing; taking effect of rules**

A. No rule adopted on or after January 1, 1975, is valid unless adopted in substantial compliance with this Chapter. Each rulemaking agency shall file a certified copy of its rules with the Office of the State Register. No rule, whether adopted before, on, or after January 1, 1975, shall be effective, nor may it be enforced, unless it has been properly filed with the Office of the State Register. No rule, adopted on or after November 1, 1978, shall be effective, nor may it be enforced, unless prior to its adoption a report relative to the proposed rule change is submitted to the appropriate standing committee of the legislature or to the presiding officers of the respective houses as provided in R.S. 49:968. No rule, adopted on or after September 12, 1980, shall be effective, nor may it be enforced, unless the approved economic and fiscal impact statements, as provided in R.S. 49:953(A), have been filed with the Office of the State Register and published in the Louisiana Register. The inadvertent failure to mail notice and statements to persons making request for such mail notice, as provided in R.S. 49:953, shall not invalidate any rule adopted hereunder. A proceeding under R.S. 49:963 to contest any rule on the grounds of noncompliance with the procedures for adoption, as given in this Chapter, must be commenced within two years from the date upon which the rule became effective.

B. Each rule hereafter adopted shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption, except that:

(1) If a later date is required by statute or specified in the rule, the later day is the effective date.

(2) Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective on the date of its adoption, or on a date specified by the agency to be not more than sixty days future from the date of its adoption, provided written notice is given within five days of the date of adoption to the governor of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Office of the State Register as provided in R.S. 49:953(B). Such emergency rule shall not remain in effect beyond the publication date of the Louisiana Register published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in that issue; however, any emergency rule so published shall not be effective for a period longer than one hundred twenty days, but the adoption of an identical rule under R.S. 49:953(A)(1), (2), and (3) is not precluded. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

Acts 1966, No. 382, §4, eff. July 1, 1967. Amended by Acts 1968, No. 474, §1; Acts 1974, No. 284, §1, eff. Jan. 1, 1975; Acts 1975, No. 730, §1; Acts 1978, No. 252, §1; Acts 1980, No. 392, §1; Acts 1990, No. 248, §1; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§954.1. Louisiana Administrative Code and Louisiana**

**Register; publication; distribution; copies; index; interagency rules**

A. The Office of the State Register shall compile, index, and publish a publication to be known as the Louisiana Administrative Code, containing all effective rules adopted by each agency subject to the provisions of this Chapter, and all boards, commissions, agencies, and departments of the executive branch, notwithstanding any other provision of law to the contrary. The Louisiana Administrative Code shall also contain all executive orders issued by the governor on or after May 9, 1972, which are in effect at the time the Louisiana Administrative Code is published. The Louisiana Administrative Code shall be supplemented or revised as often as necessary and at least once every two years.

B. The Office of the State Register shall publish at least once each month a bulletin to be known as the Louisiana Register which shall set forth the text of all rules filed during the preceding month and such notices as shall have been submitted pursuant to this Chapter. It shall also set forth all executive orders of the governor issued during the preceding month and a summary or digest of and fiscal note prepared for each such order as required by the provisions of R.S. 49:215. In addition, the Office of the State Register may include in the Louisiana Register digests or summaries of new or proposed rules; however, if any conflict should arise between the written digest of a rule and the rule, the rule shall take precedence over the written digest.

C. The Office of the State Register shall publish such rules, notices, statements, and other such matters as submitted by the rulemaking agency without regard to their validity. However, the Office of the State Register may omit from the Louisiana Register or Louisiana Administrative Code any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register or Louisiana Administrative Code, as the case may be, contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

D. One copy, or multiple copies if practical, of the Louisiana Register and Louisiana Administrative Code shall be made available upon request to state depository libraries free of charge, and to other agencies or persons at prices fixed by the Office of the State Register to recover all or a portion of the mailing and publication costs. Notwithstanding the provisions of R.S. 49:951(2) to the contrary, the Office of the State Register shall provide free copies of the Louisiana Register and the Louisiana Administrative Code to the David R. Poynter Legislative Research Library, the Senate Law Library, and the Huey P. Long Memorial Law Library.

E. The Office of the State Register shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Louisiana Administrative Code.

F. The Office of the State Register may publish advertisements for bids and other legal notices in the Louisiana Register in addition to other publications thereof required by law.

G. The Office of the State Register is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this Section.

H. The governor shall be the publisher of the Louisiana Administrative Code and Louisiana Register provided for through the Office of the State Register.

Added by Acts 1974, No. 284, §1, eff. Jan. 1, 1975. Amended by Acts 1975, No. 730, §1; Acts 1976, No. 279, §1; Acts 1978, No. 252, §1; Acts 1982, No. 687, §1, eff. Aug. 2, 1982; Acts 1988, No. 604, §1, eff. July 14, 1988; Acts 1988, No. 937, §1, eff. July 26, 1988; Acts 1990, No. 9, §2; Acts 1993, No. 119, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§954.2. Repealed by Acts 2004, No. 220, §1**

NOTE: See Acts 2004, No. 220, §2, relative to validity and effectiveness of certain rules, permits, and licenses.

**§954.3. Environmental Regulatory Code**

The Department of Environmental Quality shall codify its rules and regulations in effect on March 1, 1992, in the Environmental Regulatory Code, and thereafter, shall update such codification of its rules and regulations on a quarterly basis. The secretary shall complete and offer for sale at cost the initial codification within one hundred and eighty days from March 1, 1992.

Acts 1991, No. 735, §2, eff. July 18, 1991.

**§955. Adjudication; notice; hearing; records**

A. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall include:

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved;
- (4) A short and plain statement of the matters asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

E. The record in a case of adjudication shall include:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered or a resume thereof if not transcribed;
- (3) A statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;
- (4) Offers of proof, objections, and rulings thereon;
- (5) Proposed findings and exceptions;
- (6) Any decision, opinion, or report by the officer presiding at the hearing.

F. The agency shall make a full transcript of all proceedings before it when the statute governing it requires it, and, in the absence of such requirement, shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof unless the governing statute or constitution provides that it shall be furnished without cost.

G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Acts 1966, No. 382, §5, eff. July 1, 1967.

**§956. Rules of evidence; official notice; oaths and affirmations; subpoenas; depositions and discovery; and confidential privileged information**

In adjudication proceedings:

(1) Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. Agencies may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be

offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(4) Any agency or its subordinate presiding officer conducting a proceeding subject to this Chapter shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues.

(5)(a) Any agency or its subordinate presiding officer shall have power to sign and issue subpoenas in the name of the agency requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall be issued until the party who wishes to subpoena the witness first deposits with the agency a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

(b) A subpoena issued pursuant to this Section shall be served by any agent of the agency, by the sheriff, by any other officer authorized by law to serve process in this state, by certified mail, return receipt requested, or by any person who is not a party and who is at least eighteen years of age. Witnesses subpoenaed to testify before an agency only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witness as may be fixed by the agency with reference to the value of the time employed and the degree of learning or skill required.

(c) Whenever any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the agency may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt. It shall be the duty of the judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him, to proceed to a hearing of the case; and upon such hearing, the judge shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(6) The agency or a subordinate presiding officer or any party to a proceeding before it may take the depositions of witnesses, within or without the state and may conduct discovery in all manners as provided by law in civil actions. Depositions so taken and admissions, responses, and evidence produced pursuant to discovery shall be admissible in any proceeding affected by this Chapter. The admission of such depositions, admissions, responses, and evidence may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the agency or presiding officer in accordance with the rules of evidence provided in this Chapter.

(7) Repealed by Acts 1995, No. 760,  $\square$ 2, eff. June 27, 1995.

(8)(a) Records and documents, in the possession of any agency or of any officer or employee thereof including any written conclusions drawn therefrom, which are deemed confidential and privileged shall not be made available for adjudication proceedings

of that agency and shall not be subject to subpoena by any person or other state or federal agency.

(b) Such records or documents shall only include any private contracts, geological and geophysical information and data, trade secrets and commercial or financial data, which are obtained by an agency through a voluntary agreement between the agency and any person, which said records and documents are designated as confidential and privileged by the parties when obtained, or records and documents which are specifically exempt from disclosure by statute.

(c) Any violation of this prohibition shall be a waiver of governmental immunity from suit for damage resulting from any such disclosure.

(d) Notwithstanding the provisions of Subparagraphs (a) and (c) of this Paragraph the state boards and agencies identified in R.S. 13:3715.1(J) may make available and use records and documents, including any written conclusions drawn therefrom, which are otherwise deemed confidential or privileged and which are in the possession of such board or agency or any officer, employee, or agent thereof, or any attorney acting on its behalf in any adjudication proceedings of such agency, provided that in any case involving medical or patient records, the identity of any patient shall be maintained in confidence. Any such records shall be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates. Disclosure by such board or agency or any officer, employee, agent, or attorney acting on behalf of any of them, of any material otherwise deemed privileged or confidential under state law, which is made in response to a federal subpoena, shall not constitute a waiver of governmental immunity from suit for damages resulting from such disclosure. Such boards and agencies, including their officers, employees, agents, and attorneys, shall nevertheless assert any privilege which is recognized and applicable under federal law when responding to any such federal subpoena.

Acts 1966, No. 382, §6, eff. July 1, 1967. Amended by Acts 1976, No. 524, §1, eff. Aug. 5, 1976; Acts 1989, No. 156, §1; Acts 1995, No. 760, §§1, 2, eff. June 27, 1995; Acts 1999, No. 416, §1; Acts 1999, No. 765, §1.

#### **§956.1. Administrative proceedings; member of the legislature or personnel as witness**

An application for an order compelling discovery to a member or former member of the legislature in his capacity as a state lawmaker, or a legislative employee in his official capacity, when the legislature or either body thereof is not a party to the proceeding may be made to the agency in which the action is pending, but no order compelling discovery shall issue except in strict conformity with the provisions of R.S. 13:3667.3(D). For the purposes of this Section "legislative employee" shall mean the clerk of the House of Representatives, the secretary of the Senate, or an employee of the House of Representatives, the Senate, or the Legislative Bureau.

Acts 2006, No. 690, §4, eff. June 29, 2006; Acts 2008, No. 374, §4, eff. June 21, 2008; Acts 2012, No. 519, §4.

#### **§957. Examination of evidence by agency**

When in an adjudication proceeding a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, or the proposed order is not prepared by a member of the agency, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made final until a proposed order is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposed order shall be accompanied by a statement of the reasons therefor and of the disposition of each issue of fact or law necessary to the proposed order, prepared by the person who conducted the hearing or by one who has read the record. No sanction shall be imposed or order be issued except upon consideration of the whole record and as supported by and in accordance with the reliable, probative, and substantial evidence. The parties by written stipulation may waive,

and the agency in the event there is no contest may eliminate, compliance with this Section.

Acts 1966, No. 382, §7, eff. July 1, 1967.

**§958. Decisions and orders**

A final decision or order adverse to a party in an adjudication proceeding shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified personally, by mail, or by electronic means of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

Acts 1966, No. 382, §1, eff. July 1, 1967; Acts 2012, No. 289, §1, eff. May 25, 2012.

**§959. Rehearings**

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the agency, within ten days from the date of its entry. The grounds for such action shall be either that:

(1) The decision or order is clearly contrary to the law and the evidence;

(2) The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

(3) There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or

(4) There is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration, or review, and the order of the agency granting it, shall set forth the grounds which justify such action. Nothing in this Section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a subordinate deciding officer. The hearing shall be confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

Acts 1966, No. 382, §9, eff. July 1, 1967.

**§960. Ex parte consultations and recusations**

A. Unless required by the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

B. A subordinate deciding officer or agency member shall withdraw from any adjudicative proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a subordinate deciding officer or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of

disqualification affecting a subordinate deciding officer, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of R.S. 49:957 shall apply.

Acts 1966, No. 382, §10, eff. July 1, 1967.

**§961. Licenses**

A. When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Chapter concerning adjudication shall apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Acts 1966, No. 382, §11, eff. July 1, 1967.

**§962. Declaratory orders and rulings**

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders and rulings as to the applicability of any statutory provision or of any rule or order of the agency. Declaratory orders and rulings shall have the same status as agency decisions or orders in adjudicated cases.

Acts 1966, No. 382, §12, eff. July 1, 1967; Acts 1995, No. 947, §6, eff. Jan. 1, 1996.

**§962.1. Judicial review, rule to show cause for permit applicants**

A. If the secretary does not grant or deny a permit, license, registration, variance, or compliance schedule for which the applicant had applied within the time period as provided for in R.S. 30:26 and 2022(C), R.S. 49:214.30(C)(2), and R.S. 56:6(26), the applicant has the authority, on motion in a court of competent jurisdiction, to take a rule on the secretary to show cause in not less than two nor more than thirty days, exclusive of holidays, why the applicant should not be granted the permit, license, registration, variance, or compliance schedule for which the applicant had applied. The rule may be tried out of term and in chambers.

B. In any trial or hearing on the rule, the applicant shall be entitled to a presumption that the facts as stated in the affidavit of the applicant, which shall be attached to the rule are true. The rule of the applicant shall be denied by the court only if the secretary provides clear and convincing evidence of an unavoidable cause for the delay. However, in denying the rule, the court shall decree that the secretary shall grant or deny the application within a time set by the court, or the application shall be granted without further action of the secretary or the court.

C. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the applicant granting the applicant the permit, license, registration, variance, or compliance schedule for which the applicant had applied.

D. The provisions of Subsections A, B, and C of this Section shall not apply to permit applications submitted under the Louisiana Pollutant Discharge Elimination System (LPDES) program under the Louisiana Department of Environmental Quality.

Acts 1991, No. 828, §2; Acts 1995, No. 601, §2.

**§963. Judicial review of validity or applicability of rules**

A.(1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located.

(2) The agency shall be made a party to the action.

B.(1) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court.

(2) The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

C. The court shall declare the rule invalid or inapplicable if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with required rulemaking procedures.

D. An action for a declaratory judgment under this Section may be brought only after the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question and only upon a showing that review of the validity and applicability of the rule in conjunction with review of a final agency decision in a contested adjudicated case would not provide an adequate remedy and would inflict irreparable injury.

E. Upon a determination by the court that any statement, guide, requirement, circular, directive, explanation, interpretation, guideline, or similar measure constitutes a rule as defined by R.S. 49:951(6) and that such measure has not been properly adopted and promulgated pursuant to this Chapter, the court shall declare the measure invalid and inapplicable. It shall not be necessary that all administrative remedies be exhausted.

Acts 1966, No. 382, §13, eff. July 1, 1967; Acts 1991, No. 639, §1, eff. July 17, 1991; Acts 1997, No. 1043, §1, eff. July 11, 1997.

**§964. Judicial review of adjudication**

A.(1) Except as provided in R.S. 15:1171 through 1177, a person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review under this Chapter whether or not he has applied to the agency for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy and would inflict irreparable injury.

(2) No agency or official thereof, or other person acting on behalf of an agency or official thereof shall be entitled to judicial review under this Chapter.

B. Proceedings for review may be instituted by filing a petition in the district court of the parish in which the agency is located within thirty days after the transmittal of notice of the final decision by the agency or, if a rehearing is requested, within thirty days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

C. The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay ex parte upon appropriate terms, except as otherwise provided by Title 37 of the Louisiana Revised Statutes of 1950, relative to professions and occupations. The court may require that the stay be granted in accordance with the local rules of the reviewing court pertaining to injunctive relief and the issuance of temporary restraining orders.

D. Within thirty days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed

by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

E. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

F. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

G. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

(7) Repealed by Acts 2002, 1st Ex. Sess., No. 89, §3, eff. April 18, 2002.

Acts 1966, No. 382, §14, eff. July 1, 1967; Acts 1995, No. 1105, §1, eff. June 29, 1995; Acts 1997, No. 128, §1, eff. June 12, 1997; Acts 1997, No. 1216, §2; Acts 1997, No. 1224, §1; H.C.R. No. 89, 1997 R.S., eff. June 2, 1997; Acts 1999, No. 1332, §1, eff. July 12, 1999; Acts 2002, 1st Ex. Sess., No. 89, §3, eff. April 18, 2002; Acts 2012, No. 289, §1, eff. May 25, 2012.

NOTE: SEE ACTS 1995, NO. 1105, §2.

NOTE: SEE ACTS 1997, NO. 128, §2 RELATIVE TO APPLICABILITY OF ACT.

NOTE: See Acts 1999, No. 1332, §2 relative to the remedial nature of Act.

**§964.1. Judicial review; attorney fees; court costs; report**

A. If an agency or official thereof, or other person acting on behalf of an agency or official thereof, files a petition for judicial review of a final decision or order in an adjudication proceeding and such agency, official, or person does not prevail in the final disposition of the judicial review, the agency shall be responsible for the payment of reasonable attorney fees and court costs of the other party.

B. Notwithstanding any provision of R.S. 13:4521 to the contrary, an agency or official thereof, or other person acting on behalf of an agency or official thereof, which files a petition for judicial review of a final decision or order in an adjudication proceeding shall be required to pay court costs.

C. All payments for litigation expenses required by this Section shall be paid from the agency's regular operating budget. Each agency which has paid such litigation expenses shall submit a detailed report of all such payments from the prior fiscal year to its legislative oversight committees and to the Joint Legislative Committee on the Budget no later than November fifteenth of each year. For the purposes of this Subsection and of R.S. 49:992(H), the

term "litigation expenses" shall mean court costs and attorney fees of the agency and of any other party if the agency was required to pay such costs and fees.

Acts 2003, No. 1271, §1, eff. July 11, 2003.

#### **§965. Appeals**

An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal. The appeal shall be taken as in other civil cases.

Acts 1966, No. 382, §15, eff. July 1, 1967.

#### **§965.1. Expenses of administrative proceedings; right to recover**

A. When a small business files a petition seeking: (1) relief from the application or enforcement of an agency rule or regulation, (2) judicial review of the validity or applicability of an agency rule, (3) judicial review of an adverse declaratory order or ruling, or (4) judicial review of a final decision or order in an adjudication proceeding, the petition may include a claim against the agency for the recovery of reasonable litigation expenses. If the small business prevails and the court determines that the agency acted without substantial justification, the court may award such expenses, in addition to granting any other appropriate relief.

B. A small business shall be deemed to have prevailed in an action when, in the final disposition, its position with respect to the agency rule or declaratory order or ruling is maintained, or when there is no adjudication, stipulation, or acceptance of liability on its part. However, a small business shall not be deemed to have prevailed, if the action was commenced at the instance of, or on the basis of a complaint by, anyone other than an officer, agent, or employee of the agency and was dismissed by the agency on a finding of no cause for the action or settled without a finding of fault on the part of the small business.

C. An agency shall pay any award made against it pursuant to this Section from funds in its regular operating budget and shall, at the time of its submission of its proposed annual budget, submit to the division of administration and to the presiding officer of each house of the legislature a report of all such awards paid during the previous fiscal year.

D. As used in this Section:

(1) "Reasonable litigation expenses" means any expenses, not exceeding seven thousand five hundred dollars in connection with any one claim, reasonably incurred in opposing or contesting the agency action, including costs and expenses incurred in both the administrative proceeding and the judicial proceeding, fees and expenses of expert or other witnesses, and attorney fees.

(2) "Small business" means a small business as defined by the Small Business Administration, which for purposes of size eligibility or other factors, meets the applicable criteria set forth in 13 Code of Federal Regulations, Part 121, as amended.

Added by Acts 1982, No. 497, §1.

#### **§965.2. Short title**

R.S. 49:965.2 through 965.8 may be cited as the Regulatory Flexibility Act and are referred to therein as "this Act".

Acts 2008, No. 820, §1.

#### **§965.3. Intent; legislative findings**

A. It is the legislative intent and purpose of this Act to improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses.

B. The legislature finds that:

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.

(2) Small businesses bear a disproportionate share of regulatory costs and burdens.

(3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies.

(4) When adopting rules to protect the health, safety, and economic welfare of Louisiana, state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers.

(5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting, and consulting costs upon small businesses with limited resources.

(6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity.

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes.

(8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation.

(9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses.

(10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

C. Nothing in the Regulatory Flexibility Act shall be interpreted or construed to limit the ability of an agency to propose rules.

Acts 2008, No. 820, §1.

#### **§965.4. Definitions**

The following words or terms as used in this Act shall have the following meanings unless a different meaning appears from the context:

(1) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation, of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in Article VI, Section 44 of the Constitution of Louisiana, and any board, commission, department, agency, officer, or other entity thereof, and the courts.

(2) "Proposed rule" means a proposal by an agency for a new rule or for a change in, addition to, or repeal of an existing rule.

(3) "Rule" means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. "Rule" includes but is not limited to any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

(4) "Small business" means a business that is domiciled in this state, employs one hundred or fewer full-time employees, and meets at least one of the following conditions:

(a) Gross annual sales are less than ten million dollars.

(b) Total net worth of the business is less than two million dollars.

Acts 2008, No. 820, §1; Acts 2010, No. 861, §21.

#### **§965.5. Economic impact statements**

Prior to the adoption of any proposed rule on or after July 1, 2009, that may have an adverse impact on small businesses, each



agency shall prepare an economic impact statement that includes the following:

(1) An identification and estimate of the number of the small businesses subject to the proposed rule.

(2) The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

(3) A statement of the probable effect on impacted small businesses.

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

Acts 2008, No. 820, §1.

#### **§965.6. Regulatory flexibility analysis**

A. Prior to the adoption of any proposed rule on or after July 1, 2009, each agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, environmental, and economic welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

(1) The establishment of less stringent compliance or reporting requirements for small businesses.

(2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

(3) The consolidation or simplification of compliance or reporting requirements for small businesses.

(4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed rule.

(5) The exemption of small businesses from all or any part of the requirements contained in the proposed rule.

B. Prior to the adoption of any proposed rule by an agency which according to the economic impact statement required by R.S. 49:965.5 and the results of the regulatory flexibility analysis required by R.S. 49:965.6 would have an adverse impact on small businesses, the agency shall notify the Department of Economic Development of its intent to adopt the proposed rule.

Acts 2008, No. 820, §1.

#### **§965.7. Conflicts of law**

Nothing in the Regulatory Flexibility Act shall be construed to conflict with or supersede any applicable federal law, rule, or regulation.

Acts 2008, No. 820, §1.

#### **§965.8. Notification**

The Department of Economic Development shall send notification of the intent of an agency to adopt, amend, or repeal any rule which would affect small businesses as indicated by the economic impact statement or regulatory flexibility analysis required by this Act to each person who has made a timely request of the department for such notice. The notification shall be sent at the earliest possible date, and in no case later than ten days after the date an agency notifies the Department of Economic Development of such a proposed rule as required by R.S. 49:965.6.

Acts 2008, No. 820, §1.

#### **§966. Construction and effect; judicial cognizance**

A. Nothing in this Chapter shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Notwithstanding the foregoing, and except as provided in R.S. 49:967, any and all statutory requirements regarding the adoption or promulgation of rules other than those contained in Sections 953, 954, 954.1, and 968 of this Title are hereby superseded by the provisions of this Chapter and are repealed. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this Chapter through the issuance of rules or otherwise.

B. If any provision of this Chapter or the application thereof is held invalid, the remainder of this Chapter or other applications of such provision shall not be affected. No subsequent legislation shall be held to supersede or modify the provisions of this Chapter except to the extent that such legislation shall do so expressly.

C. The courts of this state shall take judicial cognizance of rules promulgated in the Louisiana Register under the provisions of this Chapter.

D. Repealed by Acts 1978, No. 252, §3.

Acts 1966, No. 382, §16, eff. July 1, 1967. Amended by Acts 1979, No. 578, §§1, 2, eff. July 18, 1979; Acts 2013, No. 220, §23, eff. June 11, 2013.

#### **§967. Exemptions from provisions of Chapter**

A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not be applicable to the Board of Tax Appeals, the Department of Revenue, with the exception of the Louisiana Tax Commission that shall continue to be governed by this Chapter in its entirety, unless otherwise specifically provided by law, and the administrator of the Louisiana Employment Security Law; however, the provisions of R.S. 49:951(2), (4), (5), (6), and (7), 952, 953, 954, 954.1, 968, 969, and 970 shall be applicable to such board, department, and administrator.

B.(1) The provisions of R.S. 49:968(F) and 970 shall not be applicable to any rule promulgated by the State Civil Service Commission or the Public Service Commission.

(2) The provisions of this Chapter shall not be applicable to entities created as provided in Part V of Chapter 6 of Title 34 of the Louisiana Revised Statutes of 1950.

C. The provisions of R.S. 49:963, 964, and 965 shall not be applicable to any rule, regulation, or order of any agency subject to a right of review under the provisions of R.S. 30:12.

D. Repealed by Acts 2010, No. 777, §3.

E. The provisions of R.S. 49:963, 964, and 965 shall not apply to any rule, regulation, or policy and procedure statements issued by or for the Department of Public Safety and Corrections, corrections services, concerning:

(1) The internal management and daily operations of a correctional institute, probation and parole district office, or headquarters function.

(2) General law statements that are substantially repetitions of state or federal law.

(3) The implementation and processes for carrying out a court-ordered sentence of death and any and all matters related to the regulations for the sentence of death.

F. The provisions of R.S. 49:963, 964, and 965 shall apply only to the regulations and policies of the Department of Public Safety and Corrections, corrections services, that affect the substantial rights of, or administrative remedies available to, the public or any offender incarcerated in a state correctional facility or local jail facility

Acts 1983, No. 409, §2. Acts 1984, No. 244, §1; Acts 1985, No. 869, §1, eff. July 23, 1985; Acts 1986, No. 494, §1; Acts 1990, No. 248, §1; Acts 1992, No. 53, §1; Acts 1997, No. 1172, §9, eff. June 30, 1997; Acts 1997, No. 1484, §1, eff. July 16, 1997; Acts 2010, No. 777, §3; Acts 2010, No. 889, §2.

#### **§967.1. Application of Chapter to rules and fees**

A.(1) The legislature recognizes that it is essential to the operation of a democratic government that prior to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee, that the provisions of this Chapter be followed, except as otherwise specifically excepted, exempted, or limited by law.

(2) The legislature further recognizes that it is essential to the operation of a democratic government that the people be made aware of all exceptions, exemptions, and limitations to this Chapter. In order to foster the people's awareness, the legislature declares that all exceptions, exemptions, and limitations to this Chapter pertaining to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee be cited or provided for in this Chapter or the Constitution of Louisiana.

B. The legislature further recognizes that there exist specific exceptions, exemptions, and limitations to the laws pertaining to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee throughout the revised statutes and codes of this state. Such exceptions, exemptions, and limitations are hereby continued in effect by incorporation into this Chapter by citation:

- (1) R.S. 6:121.1(A), 121.3(A), 969.34, and 1092(F).
- (2) R.S. 9:3552(C), 3556.2(A), and 3561(D)(2).
- (3) R.S. 13:4202(B)(2).
- (4) R.S. 18:1511.2(B).
- (5) R.S. 22:1260.10(B).
- (6) R.S. 27:220(C).
- (7) R.S. 29:788(C).
- (8) R.S. 30:4(I)(5), 918(B), and 925(A)(2) and (D).
- (9) R.S. 37:1806.1(B) and 3012(B)(1).
- (10) R.S. 40:5.3(B), 406(B)(1), and 600.6(A)(4)(b).
- (11) R.S. 49:258(1).
- (12) R.S. 51:1285(A), 1929.1(A), 2389.1(A), and 3090.
- (13) R.S. 56:319(D), and 2014.

C. The legislature further recognizes that there exist provisions of law which authorize an agency to adopt, increase, or decrease a fee without specifically providing that such action shall be taken in accordance with this Chapter. Any action taken pursuant to such authorization shall be in accordance with this Chapter, unless it is specifically otherwise excepted, exempted, or limited in the Constitution of Louisiana or in law.

D. The provisions of this Chapter relative to fees shall not be applicable to a higher education management board created by Article VIII, Section 6, 7, or 7.1 of the Constitution of Louisiana.

Acts 2010, No. 775, §1, eff. June 30, 2010.

#### **§968. Review of agency rules; fees**

A. It is the declared purpose of this Section to provide a procedure whereby the legislature may review the exercise of rule-making authority and the adoption, increasing, or decreasing of fees, extensions of the legislative lawmaking function, which it has delegated to state agencies.

B. Prior to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee, the agency shall submit a report relative to such proposed rule change or fee adoption, increase, or decrease to the appropriate standing committees of the legislature and the presiding officers of the respective houses as provided in this Section. The report shall be so submitted on the same day the notice of the intended action is submitted to the Louisiana Register for publication in accordance with R.S. 49:953(A)(1). The report shall be submitted to each standing committee electronically if electronic means are available. If no electronic means are available, the report shall be submitted at the committee's office in the state capitol by certified mail with return receipt requested or by messenger who shall provide a receipt for signature. The electronic receipt by the committee, return receipt or the messenger's receipt shall be proof of receipt of the report by the committee.

(1) The Department of Economic Development, all of the agencies made a part of it, and those agencies transferred to or placed within the office of the governor pursuant to R.S. 36:4.1 shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(2) Corrections services of the Department of Public Safety and Corrections and all the agencies of the department related to corrections and concealed weapons and concealed weapon permits, except as otherwise provided in this Subsection, the Louisiana State Board of Private Security Examiners, and the gaming enforcement section of the office of state police within the Department of Public Safety and Corrections shall submit all reports other than reports on proposed rule changes affecting prison enterprise programs, to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section C; however, the Crime Victims Reparation Board shall submit the report to the House

Committee on the Judiciary and the Senate Committee on the Judiciary, Section B.

(3) The Department of Culture, Recreation and Tourism and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(a) The office of the state library, the office of the state museum, the State Board of Library Examiners, the Louisiana Archaeological Survey and Antiquities Commission, the Board of Directors of the Louisiana State Museum, the Board of Commissioners of the State Library of Louisiana, the Louisiana State Arts Council, the Louisiana State Capitol Fiftieth Anniversary Commission, and the Louisiana National Register Review Committee shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Education.

(b) The office of state parks and the State Parks and Recreation Commission shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Natural Resources.

(c) The office of tourism and promotion, the Louisiana Tourist Development Commission, and the Mississippi River Road Commission shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(4) The Department of State and all of the agencies made a part of it shall submit a report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(5) The Louisiana Workforce Commission and all of the agencies made a part of it shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(6) The Department of Transportation and Development and all of the agencies made a part of it shall submit the report, to the House Committee on Transportation, Highways and Public Works and the Senate Committee on Transportation, Highways and Public Works. The department shall also submit to the standing committees any policies or priorities developed for the expenditure or distribution of any monies from the Transportation Trust Fund as created by Article VII, Section 27 of the Constitution of Louisiana. The policies and priorities shall be submitted for review purposes only.

(7) Repealed by Acts 2001, No. 451, §5, eff. Jan. 12, 2004.

(8) The Department of Justice and all of the agencies made a part of it shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section C.

(9) The Department of Civil Service and all of the agencies made a part of it shall submit the report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(10) The Department of Revenue and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs; however, the office of charitable gaming shall submit the report to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section B.

(11) The Department of Natural Resources and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources. However, for exercises of the commissioner of conservation's rulemaking authority pursuant to Chapter 13-A-1 of Title 38 of the Louisiana Revised Statutes of 1950, the department shall submit the report to the House Committee on Natural Resources and Environment and the Senate Committee on Environmental Quality.

(12) Public Safety Services of the Department of Public Safety and Corrections and all the agencies of the department

related to public safety, except as otherwise provided in this Subsection, shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section B; however, the office of motor vehicles shall submit the report to the House Committee on Transportation, Highways and Public Works and the Senate Committee on the Judiciary, Section B; however, the office of the state fire marshal, code enforcement and building safety, shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection and International Affairs.

(13) The Wildlife and Fisheries Commission and the Department of Wildlife and Fisheries and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources.

(14) The Department of Insurance and all of the agencies made a part of it shall submit the report to the House Committee on Insurance and the Senate Committee on Insurance.

(15)(a) The Department of the Treasury and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(b) Each retirement system made a part of the Department of the Treasury shall submit the report to the House Committee on Retirement and the Senate Committee on Retirement.

(16) The Department of Health and Hospitals and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(17) The Department of Children and Family Services and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(18) The Department of Agriculture and Forestry and all of the agencies made a part of it shall submit all reports, and the Department of Public Safety and Corrections and all the agencies made a part of it shall submit reports on proposed rule changes affecting prison enterprise programs to the House Committee on Agriculture, Forestry, Aquaculture and Rural Development and the Senate Committee on Agriculture, Forestry, Aquaculture and Rural Development.

(19) The Department of Education and all of the agencies made a part of it shall submit the report to the House Committee on Education and the Senate Committee on Education.

(20) The Department of Public Service and all of the agencies made a part of it shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(21)(a) Except as provided in Paragraph (1) of this Subsection, the office of the governor and the office of the lieutenant governor and all of the agencies within or part of either and any other agency for which provisions are not otherwise made in this Subsection, shall submit the report to the speaker of the House of Representatives and the president of the Senate, except that executive orders duly issued by the governor and attested to by the secretary of state are exempt from the provisions of this Chapter. The speaker of the House of Representatives and the president of the Senate shall promptly forward the report to the appropriate standing committee of their respective houses.

(b) The Louisiana Workforce Investment Council shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(c) The Office of Group Benefits shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(22) The Department of Environmental Quality and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and Environment and the Senate Committee on Environmental Quality.

(23) The Louisiana Sentencing Commission shall submit the report to the House Committee on the Administration of Criminal Justice and the Senate Committee on the Judiciary, Section C.

(24)(a) In addition to the submission of a report relative to a proposed rule change or fee adoption, increase, or decrease by an agency to the appropriate standing committee as specified in Paragraphs (1) through (23) of this Subsection, whenever the fiscal impact of the rule or fee adoption, increase, or decrease, as indicated by the statement of fiscal impact required by Paragraph (C)(5) of this Section, exceeds one million dollars, the report on the proposed rule change or fee adoption, increase, or decrease shall also be submitted to the Senate Committee on Finance and the House Committee on Appropriations and shall be subject to review by those committees in the same manner and to the same extent as the review of the standing committees provided for in Paragraphs (1) through (23) of this Subsection.

(b) Whenever the fiscal impact or economic impact of the proposed rule change or fee adoption, increase, or decrease is five hundred thousand dollars or more as indicated by the statement of fiscal impact or the statement of economic impact required by Subsection C of this Section, the agency shall transmit the report provided for in Subsection C of this Section to each member of the legislature via electronic mail on the same day the notice of the intended action is submitted to the Louisiana Register for publication in accordance with R.S. 49:953.

C. The report, as provided for in Subsection B of this Section, shall contain:

(1) A copy of the rule as it is proposed for adoption, amendment, or repeal and a statement of the amount of the fee to be adopted or the amount of the proposed increase or decrease. The rule shall be coded with any new rule or language that is to be added to an existing agency rule underscored and any language that is to be deleted from an existing agency rule in struck-through type.

(2) A statement of the proposed action, that is, whether the rule is proposed for adoption, amendment, or repeal; a brief summary of the content of the rule if proposed for adoption or repeal; and a brief summary of the change in the rule if proposed for amendment.

(3) The specific citation of the enabling legislation purporting to authorize the adoption, amending, or repeal of the rule or purporting to authorize the adoption, increasing, or decreasing of the fee.

(4) A statement of the circumstances which require adoption, amending, or repeal of the rule or the adoption, increasing, or decreasing of the fee.

(5) A statement of the fiscal impact of the proposed action and a statement of the economic impact of the proposed action, both approved by the Legislative Fiscal Office.

D.(1)(a) The chairman of each standing committee to which reports are submitted shall appoint an oversight subcommittee, which may conduct hearings on all rules that are proposed for adoption, amendment, or repeal and on all proposed fee adoptions, increases, or decreases. Any such hearing shall be conducted after any hearing is conducted by the agency pursuant to R.S. 49:953(A)(2).

(b) The agency shall submit a report to the subcommittee, in the same manner as the submittal of the report provided for in Subsection B of this Section, which shall include:

(i) A summary of all testimony at any hearing conducted pursuant to R.S. 49:953(A)(2).

(ii) A summary of all comments received by the agency, a copy of the agency's response to the summarized comments, and a statement of any tentative or proposed action of the agency resulting from oral or written comments received.

(iii) A revision of the proposed rule if any changes to the rule have been made since the report provided for in Subsection B of this Section was submitted, or a statement that no changes have been made.

(iv) A concise statement of the principal reasons for and against adoption of any amendments or changes suggested.

(c) The agency shall publish on its website public notice that the report required by Subparagraph (b) of this Paragraph has been

delivered to the appropriate standing committee as provided for in Subsection B of this Section within one business day from submission of the report to the appropriate standing committee. If the agency does not maintain a website, the agency may submit the public notice to the Office of the State Register for publication on a website maintained by the Office of the State Register.

(2)(a) Except as provided in Paragraph (H)(2) of this Section, any subcommittee hearing on a proposed rule shall be held no earlier than five days and no later than thirty days following the day the report required by Subparagraph (1)(b) of this Subsection is received by the subcommittee.

(b) The oversight subcommittee may consist of the entire membership of the standing committee and shall consist of at least a majority of the membership of the standing committee, at the discretion of the chairman of the standing committee, with the concurrence of the speaker of the House of Representatives or the president of the Senate. House and Senate oversight subcommittees may meet jointly or separately to conduct hearings for purposes of rules review.

(3) At such hearings, the oversight subcommittees shall:

(a) Determine whether the rule change or action on fees is in conformity with the intent and scope of the enabling legislation purporting to authorize the adoption thereof.

(b) Determine whether the rule change or action on fees is in conformity and not contrary to all applicable provisions of law and of the constitution.

(c) Determine the advisability or relative merit of the rule change or action on fees.

(d) Determine whether the rule change or action on fees is acceptable or unacceptable to the oversight subcommittee.

E.(1)(a) Each such determination shall be made by the respective subcommittees of each house acting separately. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

(b) No later than three weeks before the deadline for legislative oversight action, the chairman of the subcommittee may request, by letter, the consent of the subcommittee members to have a mail ballot instead of a meeting to consider a proposed rule or proposed fee action. If no objection is received within ten days of the chairman's request, the chairman shall cause a mail ballot to be sent to the members of the subcommittee. In order for the subcommittee to reject a proposed rule or proposed fee action, a majority of ballots returned to the chairman at least twenty-four hours prior to the deadline for legislative oversight action must disapprove the change. Any determination by the subcommittee shall be made within the period provided for oversight hearings in Paragraph (D)(2) of this Section.

(2) Failure of a subcommittee to conduct a hearing or to make a determination regarding any rule proposed for adoption, amendment, or repeal shall not affect the validity of a rule otherwise adopted in compliance with this Chapter.

F.(1) If either the House or Senate oversight subcommittee determines that a proposed rule change or proposed fee action is unacceptable, the respective subcommittee shall provide a written report which contains the following:

(a) A copy of the proposed rule or a statement of the amount of the proposed fee action.

(b) A summary of the determinations made by the subcommittee in accordance with Subsections D and E of this Section.

(2) The written report shall be delivered to the governor, the agency proposing the rule change, and the Louisiana Register no later than four days after the committee makes its determination.

G. After receipt of the report of the subcommittee, the governor shall have ten calendar days in which to disapprove the action taken by the subcommittee. If the action of the subcommittee is not disapproved by the governor within ten calendar days from the day the subcommittee report is delivered to him, the rule change shall not be adopted by the agency until it has been changed or modified and subsequently found acceptable by the subcommittee, or has

been approved by the standing committee, or by the legislature by concurrent resolution. If a proposed rule change is determined to be unacceptable by an oversight committee and such determination is not disapproved by the governor as provided in this Section, the agency shall not propose a rule change or emergency rule that is the same or substantially similar to such disapproved proposed rule change nor shall the agency adopt an emergency rule that is the same or substantially similar to such disapproved proposed rule change within four months after issuance of a written report by the subcommittee as provided in Subsection F of this Section nor more than once during the interim between regular sessions of the legislature.

H.(1) If both the House and Senate oversight subcommittees fail to find a proposed rule change unacceptable as provided herein, or if the governor disapproves the action of an oversight subcommittee within the time provided in Subsection G of this Section, the proposed rule change may be adopted by the agency in the identical form proposed by the agency or with technical changes or with changes suggested by the subcommittee, provided at least ninety days and no more than twelve months have elapsed since notice of intent was published in the Louisiana Register.

(2) Substantive changes to a rule proposed for adoption, amendment, or repeal occur if the nature of the proposed rule is altered or if such changes affect additional or different substantive matters or issues not included in the notice required by R.S. 49:953(A)(1). Whenever an agency seeks to substantively change a proposed rule after notice of intent has been published in the Louisiana Register pursuant to R.S. 49:953(A)(1), the agency shall hold a public hearing on the substantive changes preceded by an announcement of the hearing in the Louisiana Register. A notice of the hearing shall be mailed within ten days after the date the announcement is submitted to the Louisiana Register to all persons who have made request of the agency for such notice. Any hearing by the agency pursuant to this Paragraph shall be held no earlier than thirty days after the publication of the announcement in the Louisiana Register. The agency hearing shall conform to R.S. 49:953(A)(2)(b), and a report on the hearing shall be made to the oversight committees in accordance with Subparagraph (D)(1)(b) of this Section. The agency shall make available to interested persons a copy of such report no later than one working day following the submittal of such report to the oversight committees. Any determination as to the rule by the oversight committees, prior to gubernatorial review as provided in Subsection G of this Section, shall be made no earlier than five days and no later than thirty days following the day the report required by this Paragraph is received from the agency.

(3) If a rule or part of a rule that is severable from a larger rule or body of rules proposed as a unit is found unacceptable, the rules or parts thereof found acceptable may be adopted by the agency in accordance with Paragraph (1) of this Subsection.

I. If the governor disapproves the action of an oversight subcommittee, he shall state written reasons for his action and shall deliver a copy of his reasons to the House and Senate oversight subcommittees, the agency proposing the rule change, and the Louisiana Register.

J. The Louisiana Register shall publish a copy of the written report of an oversight subcommittee and the written report of the governor in disapproving any such action, or if unduly cumbersome, expensive, or otherwise inexpedient, a notice stating the general subject matter of the omitted report and stating how a copy thereof may be obtained.

K. Each year, thirty days prior to the beginning of the regular session of the legislature, each agency which has proposed the adoption, amendment, or repeal of any rule or the adoption, increase, or decrease of any fee during the previous year, shall submit a report to the appropriate committees as provided for in Subsection B of this Section. This report shall contain a statement of the action taken by the agency with respect to adoption, amendment, or repeal of each rule proposed for adoption, amendment, or repeal and a report of the action taken by the agency with respect to any proposed fee adoption, increase, or decrease.

L. After submission of the report to the standing committee, a public hearing may be held by the committee for the purpose of reviewing the report with representatives of the proposing agency.

M. No later than the second legislative day of the regular session of the legislature, a standing committee to which proposed rule changes or proposed fee changes are submitted may submit a report to the legislature. This report shall contain a summary of all action taken by the committee or the oversight subcommittee with respect to agency rules and fees during the preceding twelve months. The report shall also contain any recommendations of the committee for statutory changes concerning the agency, particularly in statutes authorizing the making and promulgation of rules and fees of the agency.

N. A standing committee may, at any time, exercise the powers granted to an oversight subcommittee under the provisions of this Section.

Acts 1990, No. 312, §1; Acts 1990, No. 938, §1; Acts 1990, No. 1085, §1, eff. July 31, 1990; Acts 1991, No. 21, §2, eff. June 14, 1991; Acts 1991, No. 938, §5; Acts 1992, No. 377, §4, eff. June 17, 1992; Acts 1992, No. 447, §3, eff. June 20, 1992; Acts 1993, No. 119, §1; Acts 1993, No. 733, §1; Acts 1995, No. 1057, §1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, §3, eff. May 7, 1996; Acts 1997, No. 1, §5, eff. April 30, 1997; Acts 1997, No. 1001, §1; Acts 1999, No. 568, §2, eff. June 30, 1999; Acts 2001, No. 8, §16, eff. July 1, 2001; Acts 2001, No. 9, §8, eff. July 1, 2001; Acts 2001, No. 300, §3; Acts 2001, No. 451, §5, eff. Jan. 12, 2004; Acts 2001, No. 1178, §7, eff. June 29, 2001; Acts 2003, No. 49, §3, eff. July 1, 2003; Acts 2003, No. 116, §3, eff. May 28, 2003; Acts 2003, No. 183, §7; Acts 2003, No. 358, §1; Acts 2003, No. 850, §3; Acts 2003, No. 1049, §1; Acts 2008, No. 580, §6; Acts 2008, No. 743, §4, eff. July 1, 2008; Acts 2010, No. 777, §1; Acts 2010, No. 861, §21; Acts 2010, No. 877, §3, eff. July 1, 2010; Acts 2012, No. 549, §1; Acts 2012, No. 725, §1, eff. Jan. 1, 2013; Acts 2012, No. 744, §1, eff. June 12, 2012; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§969. Legislative veto, amendment, or suspension of rules, regulations, and fees**

In addition to the procedures provided in R.S. 49:968 for review of the exercise of the rulemaking authority delegated by the legislature to state agencies, as defined by this Chapter, the legislature, by Concurrent Resolution, may suspend, amend, or repeal any rule or regulation or body of rules or regulations, or any fee or any increase, decrease, or repeal of any fee, adopted by a state department, agency, board, or commission. The Louisiana Register shall publish a brief summary of any Concurrent Resolution adopted by the legislature pursuant to this Section. Such summary shall be published not later than forty-five days after signing of such Resolution by the presiding officers of the legislature.

Added by Acts 1980, No. 660, §1. Acts 1995, No. 1109, §1, eff. Oct. 1, 1995.

**§970. Gubernatorial suspension or veto of rules and regulations**

The governor, by executive order, may suspend or veto any rule or regulation or body of rules or regulations adopted by a state department, agency, board or commission, except as provided in R.S. 49:967, within thirty days of their adoption. Upon the execution of such an order, the governor shall transmit copies thereof to the speaker of the House of Representatives and president of the Senate.

Added by Acts 1981, No. 453, §1.

**§971. Rejection of agency fee adoption, increases, or decreases; prohibition against fee increases and new fees; exceptions**

A.(1) If either the House or Senate oversight subcommittees appointed pursuant to R.S. 49:968 determines that a proposed fee adoption, increase, or decrease is unacceptable, the respective subcommittee shall provide a written report containing the reasons therefor to the governor, the agency proposing the fee adoption,

increase, or decrease, and the other house of the legislature. If the oversight subcommittee of the other house of the legislature likewise determines that the proposed fee adoption, increase, or decrease is unacceptable the fee action shall not be adopted by the agency.

(2) If a proposed fee adoption, increase, or decrease is found unacceptable as provided in this Section, the agency shall not propose a fee or a fee change or an emergency fee or an emergency fee change that is the same or substantially similar to the disapproved fee action nor shall the agency adopt an emergency fee or fee change that is the same or substantially similar to the disapproved fee action within four months after issuance of the subcommittee report nor more than once during the interim between regular sessions of the legislature.

(3) However, no state agency which has the authority to impose or assess fees shall increase any existing fee or impose any new fee unless the fee increase or fee adoption is expressly authorized pursuant to a fee schedule established by statute or specifically authorized by a federal law, rules, or regulations for the purpose of satisfying an express mandate of such federal law, rule, or regulation. No state agency shall adjust, modify or change the formula for any authorized fee in a manner that would increase the fee paid by any person by more than five percent of the relevant fee paid by such person in the previous fiscal year. Proposed fee increases of less than five percent shall be subject to oversight as required by R.S. 49:968.

(4)(a) The provisions of Paragraph (3) of this Subsection shall not apply to any department which is constitutionally created and headed by an officer who is duly elected by a majority vote of the electorate of the state.

(b) The provisions of Paragraph (3) of this Subsection shall not apply to any state professional and occupational licensing boards.

B. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

Acts 1987, No. 240, §1; Acts 1995, No. 1005, §1, eff. Aug. 15, 1995; Acts 1995, No. 1057, §1, eff. June 29, 1995, and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and Hospitals only).

NOTE: See Acts 1987, No. 240, §2.

**§972. Family impact statement; issues to be considered; procedure; penalty**

A. Prior to the adoption and implementation of rules, each state agency shall consider and state in writing the impact of such rules on family formation, stability, and autonomy. This written consideration shall be known as the "family impact statement".

B. The family impact statement will consider and respond in writing to the following regarding the proposed rule:

(1) The effect on the stability of the family.

(2) The effect on the authority and rights of parents regarding the education and supervision of their children.

(3) The effect on the functioning of the family.

(4) The effect on family earnings and family budget.

(5) The effect on the behavior and personal responsibility of children.

(6) The ability of the family or a local government to perform the function as contained in the proposed rule.

C. All family impact statements must be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of law relating to public records.

D. For the purposes of this Section, "family" shall mean a group of individuals related by blood, marriage, or adoption who live together as a single household.

Acts 1999, No. 1183, §1.

**§973. Poverty impact statement; issues to be considered; procedure**

A. In the formation of rules, each state agency shall consider and state in writing the impact of such rules on child, individual, or family poverty in relation to individual or community asset

development prior to the adoption and implementation of such rules. This written consideration shall be known as the "poverty impact statement".

B. The poverty impact statement shall consider and respond in writing to the following regarding the proposed rule:

(1) The effect on household income, assets, and financial security.

(2) The effect on early childhood development and preschool through postsecondary education development.

(3) The effect on employment and workforce development.

(4) The effect on taxes and tax credits.

(5) The effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

C. All poverty impact statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of law relating to public records.

D. For the purposes of this Section, the word "poverty" means living at or below one hundred percent of the federal poverty line.

Acts 2012, No. 854, §1, eff. Jan. 1, 2013.

**§974. Internet publication of certain information concerning proposed rules and fees; information required to be published; manner of publication; deadlines**

A.(1) Each agency shall include on its Internet website the information required by Subsection B of this Section.

(2)(a) If an agency does not have an Internet website, the department of which the agency is a part shall include the information required by Subsection B of this Section for the agency on the website of the department.

(b) If an agency in the office of the governor does not have an Internet website, the division of administration shall include the information required by Subsection B of this Section for the agency on the Internet website of the division of administration.

B. All of the following information shall be included on the website:

(1) A brief description of each rule or fee that the agency is in the process of adopting, amending, or repealing. For each such rule or fee, links to the following shall be included:

(a) The full text of the current rule or fee.

(b) A copy of the proposed rule or statement of the proposed fee in the form required by R.S. 49:968(C)(1).

(c) The name and contact information of the person within the agency who has the responsibility for responding to inquiries about the intended action as required by R.S. 49:953(A)(1)(a)(iv).

(d) The time when, the place where, and the manner in which interested persons may present their views concerning the intended action as required by R.S. 49:953(A)(1)(a)(v).

(e) The anticipated effective date for the proposed rule or fee.

(f) A copy of the notice of intent submitted to the Louisiana Register pursuant to R.S. 49:953(A)(1)(b) and the date the notice of intent will be published in the Louisiana Register.

(g) A copy of the report submitted to the legislative oversight subcommittees pursuant to R.S. 49:968(D)(1)(b) and a copy of the public notice required by R.S. 49:968(D)(1)(c).

(h) A copy of any announcement of a hearing and report made pursuant to R.S. 49:968(H)(2).

(i) A copy of any report received by the agency from a legislative oversight subcommittee pursuant to R.S. 49:968(F) or from the governor pursuant to R.S. 21 49:968(I).

(2) A copy of the annual report submitted to the legislative oversight subcommittees by the agency pursuant to R.S. 49:968(K).

C.(1)(a) The information required to be published pursuant to Subparagraphs (B)(1)(a) through (g) of this Section shall be published in the manner required by this Section no later than five days after the date on which the agency submits the report for the proposed rule or fee to the legislative oversight subcommittees pursuant to R.S. 49:968(B).

(b) The copy of the announcement required to be published pursuant to Subparagraph (B)(1)(h) of this Section shall be published in the manner required by this Section no later than five days after the announcement is submitted to the Louisiana Register in accordance with R.S. 49:968(H)(2).

(c) The copy of the report required to be published pursuant to Subparagraph (B)(1)(i) of this Section shall be published in the manner required by this Section no later than five days after the report is received by the agency.(d) The copy of the annual report required to be published pursuant to Paragraph (B)(2) of this Section shall be published in the manner required by this Section no later than five days after the report is submitted to the legislative oversight subcommittees by the agency pursuant to R.S. 49:968(K).

(2) If an agency does not have an Internet website, the agency shall submit the information required by this Section to be published to the department or to the division of administration, as the case may be, in a manner which allows enough time for the information to be published as required by this Section prior to the applicable deadline provided in Paragraph (1) of this Subsection.

D.(1) All of the information required to be published pursuant to this Section shall be archived for a minimum of one year following the date of publication.

(2) Each agency, department, or the division of administration, as the case may be, shall include on its Internet home page a link to the information required to be published pursuant to this Section.

E. The provisions of this Section shall not be construed to require the publication of information concerning the adoption, amendment, or repeal of any rule or fee unless and until the agency gives notice of its intended action pursuant to R.S. 49:953(A).

Acts 2014, No. 401.

**Chapter 13-A. Revision of Louisiana's Administrative Code**

**§981. Continuous revision under supervision of division of administration, office of the state register**

The Office of the State Register, as the official entity to receive, compute, index, and publish the Louisiana Register and Louisiana Administrative Code, shall direct and supervise the continuous revision, clarification, and coordination of the Louisiana Register and Louisiana Administrative Code in a manner not inconsistent with the provisions of this Chapter.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§982. New regulation; incorporation in Louisiana Register and Louisiana Administrative Code; resolution of conflicting rules**

A. Upon receipt of any rules promulgated under the Administrative Procedure Act, the Office of the State Register shall prepare the "Louisiana Register", containing the rules to be promulgated in the Louisiana Administrative Code as they may have been amended or repromulgated and omitting therefrom those sections that have been repealed. There shall also be incorporated therein, in an appropriate place and classification, the text of all the new rules of a general and public nature, assigning to these rules an appropriate title, part, chapter, and section number, and indicating the statutory authority of the rules from which they are taken.

B. When a conflict between two or more rules affecting the same subject matter in the same provision or regulation cannot be resolved for the purpose of incorporating the text into the Louisiana Administrative Code, the Office of the State Register shall so notify the secretary of the department or administrative officer charged with the promulgation of the rule prior to preparing the Louisiana Administrative Code. The secretary or administrative officer shall be notified of the proposed correction. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed correction is received by the Office of the State Register within seven days after the secretary or administrative officer receives the notice, the Office of the State Register shall then direct the printer to incorporate into the Louisiana Administrative Code the text of the provision of the rule properly promulgated.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§983. Incorporation of current rules and regulations procedure**

A. In preparing the Louisiana Register or the Louisiana Administrative Code as provided for in R.S. 49:981, the Office of the State Register shall not alter the sense, meaning, or effect of any rule properly promulgated under the Administrative Procedure Act, but it may:

- (1) Renumber and rearrange sections or parts of sections.
- (2) Transfer sections or divide sections so as to give to distinct subject matters a separate section number, but without changing the meaning.
- (3) Insert or change the wording of headnotes.
- (4) Change reference numbers to agree with renumbered parts, chapters, or sections.
- (5) Substitute the proper section, chapter, or part number for the terms "this part", "the preceding section", and the like.
- (6) Strike out figures where they are merely a repetition of written words and vice-versa.
- (7) Change capitalization for the purpose of uniformity.
- (8) Correct manifest typographical and grammatical errors.
- (9) Make any other purely formal or clerical changes in keeping with the purpose of the revision.

B. The Office of the State Register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed revision is received by the Office of the State Register within seven days after the secretary or administrative officer receives the notice, the Office of the State Register shall proceed with the revision.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§984. Alphabetical or numerical sequence of laws**

A. Whenever a rule defines terms, enumerates provisions or items, or otherwise sets forth provisions of a rule in a numerical or alphabetical listing or sequence, and such provision, as promulgated, fails to establish or fails to maintain an existing alphabetical or numerical sequence, the Office of the State Register, in preparing the Louisiana Register and the Louisiana Administrative Code as provided for by R.S. 49:983, shall rearrange and renumber or redesignate the provisions to the extent necessary to place all of them in consistent order.

B. The Office of the State Register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, is received by the Office of the State Register within seven days after the secretary or administrative officer receives the notice, the Office of the State Register shall proceed with the revision.

C. This requirement is in addition to any other authority granted to the Office of the State Register in the preparation of the Louisiana Register or the Louisiana Administrative Code, particularly by R.S. 49:983.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§985. Submitting copy to the proper party**

A draft of the Louisiana Administrative Code prepared by the Office of the State Register shall be submitted to the appropriate secretary or administrative officer charged with the promulgation of any rule prior to transmittal to the printer.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§986. Filing of copy with commissioner of administration; certificate of correctness; printing**

Any edition of the Louisiana Administrative Code, or of any supplement thereto, prepared in the manner provided in R.S. 49:982 and 983, shall be certified by the Office of the State

Register that each section therein has been compared with the original sections in the official copy of the Louisiana Register with the final provisions of the promulgated rules from which the sections were derived, and that with the exception of the changes of form permitted in R.S. 49:983, the sections are correct. The Office of the State Register shall order the printing of an edition sufficient in number to supply the demand. When the edition has been printed, the Office of the State Register shall affix to one copy of the printed edition the Office of the State Register's original certificate and file the same for record in his office. All other copies of the same edition may contain a printed facsimile of the office's certificate.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**§987. Printing and publication of Louisiana Register; proof of certified edition**

The Office of the State Register may enter into contracts with private publishers for the printing, publication, sale, and distribution of any edition of the Louisiana Register and the Louisiana Administrative Code prepared by the Office of the State Register and certified by it pursuant to the provisions of this Chapter. Those editions so authorized by the Office of the State Register and containing the printed facsimile of the Office of the State Register's certificate of correctness shall be admissible as prima facie evidence of the rules contained therein.

Acts 1993, No. 379, §1; Acts 2013, No. 220, §23, eff. June 11, 2013.

**Chapter 13-B. Division of Administrative Law**

**Part A. Administrative Law**

**§991. Creation of division of administrative law**

The division of administrative law, hereafter referred to as "division", is created in the Department of State Civil Service.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1162, §2, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§992. Applicability; exemptions; attorney fees; court costs**

A.(1) Prior to October 1, 1996, the provisions of the Administrative Procedure Act shall apply to all adjudications as defined by that Act.

(2) On and after October 1, 1996, the division shall commence and handle all adjudications in the manner required by the Administrative Procedure Act provided that the provisions of that Act are not inconsistent with the provisions of this Chapter.

B.(1) Notwithstanding any other provision of the law to the contrary except as provided by R.S. 49:967 and the provisions of this Section, all adjudications shall be resolved exclusively as required by the provisions of this Chapter and the Administrative Procedure Act.

(2) In an adjudication commenced by the division, the administrative law judge shall issue the final decision or order, whether or not on rehearing, and the agency shall have no authority to override such decision or order.

(3) Nothing in this Section shall affect the right to or manner of judicial appeal in any adjudication, irrespective of whether or not such adjudication is commenced by the division or by an agency. However, no agency or official thereof, or other person acting on behalf of an agency or official thereof, shall be entitled to judicial review of a decision made pursuant to this Chapter.

C. The positions appointed by the director pursuant to this Chapter shall be in the classified service.

D.(1) Except as provided in Paragraphs (2) through (8) of this Subsection, the provisions of this Chapter shall apply to any board, commission, department, or agency of the executive branch of state government.

(2) Any board, commission, department, or agency which is required, pursuant to a federal mandate and as a condition of federal funding, to conduct or to render a final order in an adjudication proceeding shall be exempt from the provisions of this Chapter to the extent of the federal mandate.

(3) The office of workers' compensation administration in the Department of Labor shall be exempt from the provisions of this Chapter.

(4) The office of regulatory services in the Department of Labor shall be exempt from this Chapter.

(5) State professional and occupational licensing boards shall be exempt from the provisions of this Chapter.

(6) The Department of Agriculture and Forestry shall be exempt from the provisions of this Chapter.

(7) All adjudications by the assistant secretary of the office of conservation pursuant to Chapter 1 and 7 of Subtitle 1 of Title 30 of the Louisiana Revised Statutes, except determinations of violations of laws, rules, regulations and orders, and determinations of penalties for such violations, shall be exempt from the provisions of this Chapter.

(8) The Public Service Commission and any entity which by law has its adjudications handled by the Public Service Commission shall be exempt from the provisions of this Chapter.

E. In the event that a person files a civil action to require that a state department, division, office, agency, board, commission, or other entity of state government conduct an adjudication as required by this Chapter and judgment is rendered in his favor, he shall be entitled to an award of reasonable attorney fees to be taxed as costs in the matter.

F. The provisions of this Chapter shall apply to all adjudications as defined in the Administrative Procedure Act pursuant to the Procurement Code.

G. Any board or commission authorized by law to conduct hearings may continue to hold such hearings.

H.(1) If an agency or official thereof, or other person acting on behalf of an agency or official thereof, files a petition for judicial review of a final decision or order in an adjudication proceeding and such agency, official, or person does not prevail in the final disposition of the judicial review, the agency shall be responsible for the payment of reasonable attorney fees and court costs of the other party.

(2) Notwithstanding any provision of R.S. 13:4521 to the contrary, an agency or official thereof, or other person acting on behalf of an agency or official thereof, which files a petition for judicial review of a final decision or order in an adjudication proceeding shall be required to pay court costs.

(3) All payments for litigation expenses required by this Subsection shall be paid from the agency's regular operating budget. Each agency which has paid such litigation expenses shall submit a detailed report of all such payments from the previous fiscal year to its legislative oversight committees and to the Joint Legislative Committee on the Budget no later than November fifteenth of each year.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1172, §9, eff. June 30, 1997; Acts 1997, No. 1484, §1, eff. July 16, 1997; Acts 1999, No. 1332, §1, eff. July 12, 1999; Acts 2001, No. 527, §1; Acts 2003, No. 956, §1, eff. July 1, 2003; Acts 2003, No. 1271, §1, eff. July 11, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §3, 4.

NOTE: See Acts 1999, No. 1332, §2 relative to the remedial nature of Act.

#### **§992.1. Applicability; ethics complaints**

All adjudications involving alleged violations of any provision of law under the jurisdiction of the Board of Ethics shall be resolved as required by the provisions of this Chapter and the Administrative Procedure Act to the extent that such provisions do not conflict with Part III of Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950.

Acts 2008, 1<sup>st</sup> Ex. Sess., No. 23, §2, eff. Aug. 15, 2008.

#### **§993. Definitions; rules**

A. The definitions for terms as provided by R.S. 49:951 shall apply to such terms used in this Chapter.

B. The division may promulgate rules according to the Administrative Procedure Act to insure compliance with the provisions of this Chapter.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§994. Administrative law judges**

A. The director of the division shall employ the administrative law judges for the division, each of whom shall have the following qualifications:

(1) An administrative law judge shall be a resident of Louisiana.

(2) An administrative law judge shall be licensed to practice law in Louisiana.

(3) An administrative law judge shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B. An administrative law judge shall be an employee of the division.

C. Notwithstanding the provisions of this Section, all persons employed in affected agencies on October 1, 1996, who handle adjudications and whether or not they meet the qualifications of this Chapter shall, unless the person declines, be transferred to and employed in the division created by this Chapter to handle adjudications in the manner provided in this Chapter. However, no person other than those provided for in this Subsection shall be employed as an administrative law judge who does not meet the requirements of this Section.

D. The administrative law judge shall have the authority to:

(1) Regulate the adjudicatory proceedings assigned to him.

(2) Issue such decisions and orders as are necessary to promote a fair, orderly, and prompt adjudication.

(3) Exercise those powers vested in the presiding officer in the Administrative Procedure Act.

(4) If the parties do not object, conduct adjudications or conferences in person or by telephone, video conference, or similar communication equipment, and administer oaths in such proceedings.

(5) Continue an adjudication in any case when a party or subpoenaed necessary witness has been called to service in the uniformed services as defined in R.S. 29:403, including but not limited to a proceeding pursuant to R.S. 32:667.

E. All adjudications involving alleged violations of any provision of law under the jurisdiction of the Board of Ethics shall be heard by administrative law judges who are licensed to practice law in Louisiana.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2001, No. 84, §1; Acts 2001, 2nd Ex. Sess., No. 7, §2, eff. Oct. 16, 2001; Acts 2003, No. 956, §1, eff. July 1, 2003; Acts 2008, 1<sup>st</sup> Ex. Sess., No. 23, §2, eff. Aug. 15, 2008.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§995. Director**

A. The governor shall appoint, and the Senate shall confirm, a director for the division, who shall have the following qualifications:

(1) The director shall be a resident of Louisiana.

(2) The director shall be licensed to practice law in Louisiana.

(3) The director shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B.(1) The director shall serve a six-year term and may be reappointed and confirmed for subsequent six-year terms without limitation.

(2) If a vacancy occurs during the director's term, the governor shall appoint a successor to fill the remainder of the vacant term.

(3) The first director shall be appointed on July 1, 1996, and shall take such action in compliance with this Chapter as necessary to ensure that the provisions of this Chapter are implemented by October 1, 1996.

C. The director shall be a full-time unclassified employee of the division and he shall not accept or engage in additional employment of any kind.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.



NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§996. Duties of the director**

The director of the division shall take the following actions:

(1) Administer and cause the work of the division to be performed in such a manner and pursuant to such a program as may be appropriate.

(2) Organize the division into such sections as may be appropriate.

(3) Assign administrative law judges as appropriate to perform duties vested in or required by the division.

(4) Develop and maintain a program for the continual training and education of administrative law judges and agencies in regard to their responsibilities under this Chapter and the Administrative Procedure Act.

(5) Secure, compile, and maintain all records of adjudications held pursuant to this Chapter or the Administrative Procedure Act, and such reference materials and supporting information as may be appropriate.

(6) Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether or not a summary or ordinary hearing should be held, to regulate the conduct of adjudications.

(7) Promulgate and enforce rules for the prompt implementation and coordinated administration of this Chapter as may be appropriate.

(8) Administer and supervise the conduct of adjudications.

(9) Assist agencies in the preparation, consideration, publication, and interpretation of rules as appropriate pursuant to the Administrative Procedure Act.

(10) Employ the services of the several agencies and their employees in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003; Acts 2003, No. 1056, §1.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§997. Program of judicial evaluation**

A. The director shall develop and implement a program of judicial evaluation to aid in the performance of his duties.

B. The judicial evaluation shall focus on three areas of judicial performance including competence, productivity, and demeanor. It shall include consideration of the following:

(1) Industry and promptness in adhering to schedules.

(2) Tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses, and counsel and in presiding over adjudications.

(3) Legal skills and knowledge of the law and new legal developments.

(4) Analytical talents and writing abilities.

(5) Settlement skills.

(6) Quantity, nature, and quality of caseload disposition.

(7) Impartiality and conscientiousness.

C. The director shall develop standards and procedures for the judicial evaluation which shall include taking comments from randomly selected litigants and lawyers who have appeared before the administrative law judge under evaluation.

D. The judicial evaluation shall include a review of the methods used by the administrative law judge. The judicial evaluation shall not include a review of any result as determined by an administrative law judge in any adjudication.

E. Before implementing any action based on the findings of the judicial evaluation, the director shall discuss the findings and the proposed action with the affected judge.

F. The judicial evaluation and supporting documents shall be confidential and shall not be subject to open records provisions of R.S. 44:1 et seq.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§998. Prehearing conference**

A. The administrative law judge may conduct a prehearing conference pursuant to a motion of any party or on his own motion.

B. The administrative law judge shall set the time and place for the prehearing conference.

C. The administrative law judge shall give reasonable notice of the prehearing conference to all parties.

D. The prehearing conference may be conducted for the purpose of dealing with one or more of the following matters:

(1) Exploration of settlement possibilities.

(2) Preparation of stipulations.

(3) Clarification of issues.

(4) Rulings on the identities and limitation on the number of witnesses.

(5) Objections to proffers of evidence.

(6) Order of presentation of evidence and cross-examination.

(7) Rulings regarding issuance of subpoenas and protective orders.

(8) Schedules for the submission of written briefs.

(9) Schedules for the conduct of a hearing.

(10) Any other matter to promote the orderly and prompt conduct of the adjudication.

E. The administrative law judge shall issue a prehearing order, which he may direct one or more of the parties to prepare, incorporating the matters determined at the prehearing conference.

F. An administrative law judge assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§999. Disqualification and withdrawal of administrative law judge**

A. An administrative law judge shall voluntarily disqualify himself and withdraw from any adjudication in which he cannot accord a fair and impartial hearing or consideration, or when required to by applicable rules governing the practice of law in Louisiana.

B.(1) Any party may request the disqualification of an administrative law judge by filing an affidavit, promptly upon learning of the basis for the disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.

(2) The director shall promptly determine whether or not to disqualify an administrative law judge based on the request, or alternatively, he may hold a preliminary hearing at least ten calendar days prior to the hearing date for the purpose of receiving evidence relating to the grounds alleged for disqualification.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§999.1. Contract for adjudication services; other governmental entities**

The division is authorized to provide administrative law judges on a contractual basis to any governmental entity not covered by this Chapter, and to conduct administrative hearings for such entity.

Acts 1999, No. 416, §1; Acts 2003, No. 956, §1, eff. July 1, 2003.

**Part B. Suspension and Revocation of License or Permit for Felonious Activity**

**§999.21. Suspension and ultimate revocation of license or permit; felony conviction**

A. As used in this Part, the following terms shall have the following definitions:

(1) "Enforcing authority" means any of the following who have authority to enforce the provisions of this Part:

- (a) The issuing agency which issued the license or permit.
- (b) The attorney general.

(2) "Holder of a license or permit" means the natural person or other entity in whose name a license or permit is issued and who holds such license or permit.

(3) "Issuing agency" means a state agency, board, commission, department, or other entity of the state which issues a license or permit.

(4) "License or permit" means any license or permit issued to any person or other entity by a state agency, except for any license or permit issued pursuant to any provisions of the law in Title 37 or Title 3 of the Louisiana Revised Statutes of 1950.

B. Notwithstanding any other provision of law to the contrary, and in addition to any other sanction or penalty which may be imposed, any license or permit issued by any issuing agency may be suspended and ultimately revoked in accordance with the procedures provided for in this Part if the natural person who is the holder of such permit or license, the natural person who owns in excess of fifty percent of an entity which holds the license or permit, or the natural person who is the chief executive officer of an entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, any crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

C. The license or permit may be suspended and its revocation shall be recommended to the courts by the issuing agency which has issued the license or permit upon its determination in the manner provided for in this Part that a person provided for in this Section has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit.

D. Such license or permit shall be revoked upon a final judgment by a court that the action of the issuing agency in suspending the license was in accord with the facts and law.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

**§999.22. Enforcing authority; initiation of action**

A. Any enforcing authority may bring an action against the holder of a license or permit to suspend and ultimately revoke such license or permit in the manner and according to the procedure provided for in this Part if the enforcing authority obtains knowledge that the natural person who is the holder of the permit or license, or the natural person who owns in excess of fifty percent of the entity which holds the license or permit, or the natural person who is the chief executive officer of the entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

B. The enforcing authority may initiate the action by providing written notice by certified mail of its intention to suspend and ultimately revoke the license or permit of the holder pursuant to this Part, sent to the holder of the license or permit, the person alleged to have been convicted of, or to have entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit, and to the issuing agency which issued the license or permit, if different from the enforcing authority.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

**§999.23. Hearing before the issuing agency**

A. An action to enforce the provisions of this Part shall be initiated by written application made by the enforcing authority to

the issuing agency issuing the license or permit requesting such agency to order the suspension and recommend to the courts the revocation of the license or permit.

B. No determination shall be made and no license shall be ordered suspended and ultimately revoked without an adjudicatory hearing conducted in accordance with the Administrative Procedure Act and Part A of this Chapter.

C. Notwithstanding the provisions of R.S. 49:992 or any other law to the contrary, any hearing conducted pursuant to this Part may, at the request of the issuing agency, be conducted by an administrative law judge in an adjudicatory hearing pursuant to Part A of this Chapter.

D. For purposes of this Part, the enforcing authority shall prove by a preponderance of the evidence that a person has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to the obtaining or keeping of the license at issue.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

**§999.24. Revocation**

A.(1) Within thirty days after the issuance of a written determination and order by an administrative law judge or an issuing agency that the license or permit of a holder should be suspended, and a recommendation to the courts that such license or permit should be revoked, the enforcing authority shall file a petition in the Nineteenth Judicial District Court requesting such judge or court to uphold the determination of such issuing agency and order the revocation of the license or permit. A copy of the written determination and order of the administrative law judge or the issuing agency and a certified transcript of all proceedings had, if any, shall be filed with the court at the same time as the petition of the enforcing authority.

(2) The holder of the license or permit that has been ordered suspended may also file a petition requesting that the order of the administrative law judge or the issuing agency be set aside at any time after it is issued.

B.(1) After or in conjunction with the filing of a petition as provided for in Subsection A of this Section, the holder of the license or permit that has been ordered suspended may file an application with the court with supporting affidavits requesting the court to make an initial determination as to whether the suspension of the license or permit by the administrative law judge or the issuing agency should be upheld.

(2) The court shall assign a hearing on the application for the initial determination not less than two nor more than ten days after the filing of such application, in open court or in chambers.

(3) The court shall review the written determination and order of the administrative law judge or issuing agency, any affidavits which were filed with the application, and the transcript of the proceedings, if any.

(4) If the court upon a review of such documents and consideration of the issues involved finds both that it is not probable that the order of the administrative law judge or the issuing agency will be upheld and that the suspension of the license or permit will result in irreparable injury, loss, or damage to the holder of the license or permit, the court shall issue an order enjoining the suspension until it renders a final judgment on the matter.

C.(1) Except for the procedure as provided in Subsection B of this Section, all of the cases provided for in this Section shall be tried in the same manner as civil cases and shall be heard and determined as speedily as possible.

(2) If the court finds that the action of the administrative law judge or the issuing agency is in accordance with the facts and law, the court shall render a judgment upholding the order of the administrative law judge or the issuing agency and revoking the license or permit of the holder. If not, the court shall either dismiss the order of the administrative law judge or the issuing agency and

enjoin the suspension of the license or permit, or it shall remand the case to the administrative law judge or the issuing agency for further proceedings either with or without maintaining the suspension of the license or permit.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

**§999.25. Additional ground or cause**

Notwithstanding any other law to the contrary, the provisions of this Part shall provide an additional ground or cause of action for suspension or revocation of a license or permit issued by an issuing agency and shall be in addition to any other sanction or penalty which such agency is specifically authorized to impose.

Acts 1997, No. 1162, §1, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

**Timetable for Adoption of rules, Fees, Emergency Rules and  
Emergency Fees by Louisiana State Agencies**

<b>Day</b>	<b>Time Requirement</b>	<b>Action</b>
Agency Rule and Fee Proposal 10 days prior to Day 1	10 days prior to publication date of State Register in which notice of rulemaking or fee setting intent is published (Because the Register is published on the 20th day of the month, the deadline is always 10th day of month) (R.S. 49:951(7), 953(A)(1)(b)(i) and 968(B)).	Last day for agency to submit notice of intent of rulemaking or fee setting to State Register and legislative committee and presiding officers.
Day 1	State Register publication date (always the 20th day of month)	Notice of intent is published. By this date, also must submit notice to interested persons who have requested notice.
Day 36-41	Agency hearing, if requested, no earlier than 35 days and no later than 40 days after notice publication (R.S. 49:953(A)(2)).	The agency must conduct a hearing on the proposed rule or fee, if requested as specified in the law, and must provide for written comments.
* * *	Prior to legislative oversight, agency report to legislative committees (R.S. 49:968(D)). "Summary Report"	A report of the hearing, summary of comments received, and of any proposed revision must be provided to the legislative committee, with an explanation of agency action on changes suggested.
Legislative Oversight of Rules and Fees Day 1	Delivery of agency report to legislative committee (R.S. 49:968(D)) "Summary Report"	When the agency has completed its report and is ready for oversight, the report is submitted to the legislative committees. This starts the timetable for legislative oversight hearings.
Day 6-31	Legislative hearing no earlier than 5 days and no later than 30 days after agency report of hearing, comments, and/or revision (R.S. 49:968(D)(2) and 953(A)(2)(b)(ii)).	The legislative committees having jurisdiction may conduct a hearing to review and determine if the rule change or fee action is acceptable or unacceptable.
4th day after determination	Committee report to the governor, the agency, and the State Register not later than 4th day after committee determination, if the rule or fee is found unacceptable (R.S. 49:968(F)).	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register summarizing its determination.
10th day after receipt by governor	The governor has 10 days after receipt of committee report to disapprove committee action (R.S. 49:968(G)).	The governor may disapprove committee action. If he does not disapprove committee action the agency may not adopt rule unless modified and approved by committee. If he does disapprove committee action, the agency may adopt rule.
Legislative and Gubernatorial Oversight for Emergency Rules and Emergency Fees Day 1	Adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)).	Adoption of emergency rule or emergency fee begins time period for review by oversight subcommittee or by governor.
Day 2-60	Oversight subcommittee hearing or gubernatorial review within 60 days of adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)).	Oversight subcommittee may conduct a hearing or governor may review to determine if such rule or fee meets criteria as emergency and determinations as provided in R.S. 49:968(D)(3).
4th Day after determination	Committee report to the governor, the agency, and the State Register and gubernatorial report to the agency and State Register not later than 4th day after committee or gubernatorial determination, if the rule is found unacceptable (R.S. 49:953(B)(4)(a) and (b) and 968(F)).	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register or the governor must submit a report to the agency and State Register summarizing their determination. Upon agency receipt of report from committee or governor, rule is null and ineffective.
Adoption and Effectiveness Rules and Fees 90 days after publication	First day agency may adopt rule or fee is 90 days after publication of notice in State Register and after compliance with rulemaking and oversight requirements (Last day for adoption is 12 months after notice publication) (R.S. 49:953(A)(1) and 968(H)).	Agency may adopt rule if the legislative committees of both houses fail to find the rule unacceptable or, if found unacceptable by a legislative committee of either house, if the governor disapproves committee action. Otherwise, it may not adopt the rule unless changed and approved by the committee. Agency may adopt fee if a legislative committee of one house fails to find the fee unacceptable. The governor has no authority to disapprove.
* * *	Effective date of adopted rule or fee is date of State Register publication of such rule or fee, unless rule or law provides later date	Final rules or fees are effective after adoption by the agency and upon publication in the State Register, unless a later date is provided in the rule, fee, or by law.
Emergency Rules and Emergency Fees Adoption or 60 days from adoption	Emergency rule or emergency fee is effective on date of adoption, or date specified by agency not more than 60 days from adoption provided written notice is given within 5 days of adoption to governor, attorney general, speaker, president, and Department of State Register (R.S. 49:951(7) and 954(B)(2)).	Agency may adopt emergency rule or emergency fee if emergency criteria are met. Emergency rule may be invalidated by declaratory judgment that it does not meet emergency criteria. (R.S. 49:953(B)(3)) Emergency rule is null upon agency receipt of report from oversight committee or governor that the rule is unacceptable. (R.S. 49:953(B)(4))
* * *	Not effective beyond publication date of State Register published in month following the month adopted, unless such rule or fee and the reasons for adoption are published (however, not effective for longer than 120 days) (R.S. 49:954(B)(2)).	Agency must publish emergency rule or emergency fee and the reasons for adoption in the State Register published the month after the month of adoption to continue effectiveness, provided not effective longer than 120 days.

This table uses the term legislative committee to include oversight committees of legislative committee. It should be noted that the APA authorizes and provides for oversight subcommittees of legislative committees to conduct hearings and make determinations; however, it also provides that the full committee may exercise this authority.

This table is a summary and does not purport to fully reflect the law. Please refer to the APA at LSA R.S. 49:950 et seq.

*Revised by House Legislative Services 2/7/00.*

# Tab 6

**2013 La. R.S. 37:3394**

2013 Louisiana Code Archive

**LOUISIANA STATUTES ANNOTATED > LOUISIANA REVISED STATUTES > TITLE 37.  
PROFESSIONS AND OCCUPATIONS > CHAPTER 51. LOUISIANA REAL ESTATE APPRAISERS  
LAW****§ 37:3394. Louisiana Real Estate Appraisers Board**

---

- A. There is hereby created within the office of the governor the Louisiana Real Estate Appraisers Board, which shall be comprised as provided in Subsection B of this Section.
- B. (1) Nine members shall be appointed by the governor with one member appointed from each congressional district and the remainder appointed at large. Of the nine members appointed by the governor:
- (a) One shall be appointed from a list of three names submitted by the Louisiana Bankers Association each of whom shall have been involved in real estate lending for at least five years.
  - (b) One shall be appointed from a list of three names submitted by the Community Bankers of Louisiana, each of whom shall have been involved in real estate lending for at least five years.
  - (c) The remainder shall have been Louisiana residents engaged in the general practice of real estate appraising in the state of Louisiana for not less than five years immediately preceding their appointment.
- (2) At least four of the nine shall be general appraisers and at least two of the nine shall be residential appraisers. All appraiser members shall be state certified.
- C. Each appointment by the governor shall be submitted to the Senate for confirmation.
- D. All members shall be appointed for three-year terms. All terms shall commence thirty days after the appointment, and all members shall serve until their successors have been appointed and qualified. Vacancies occurring in the membership of the board for any reason shall be filled by appointment by the governor for the unexpired term. Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors. No person shall be appointed for more than two consecutive terms. The appointing authority may remove a member for cause.
- E. The executive director of the commission shall serve as executive director of the board.
- F. The board shall meet at least once each calendar quarter to conduct its business. The location in Louisiana of future meetings shall be decided by a vote of the members present at the current meeting. The executive director shall give written notice to each member of the time and place of each meeting of the board at least ten days before the scheduled date of the meeting.
- G. The members of the board shall elect a chairperson, vice chairperson, and secretary.
- H. Five members of the board shall constitute a quorum for all business.
- I. Each member of the board shall be entitled to a per diem allowance of fifty dollars for each meeting of the board at which the member is present. Each member of the board shall be entitled to reimbursement of their actual expenses for travel, meals, and lodging.

**History**

---

[Acts 1987, No. 472](#), § 1; [Acts 1991, No. 94](#), § 1, eff. Jan. 13, 1992; [Acts 1991, No. 412](#), § 1; [Acts 1993, No. 949](#), § 1; [Acts 1995, No. 690](#), § 2; [Acts 2001, No. 8](#), § 12, eff. July 1, 2001; [Acts 2001, No. 833](#), § 2; [Acts 2003, No. 341](#), § 1.

LOUISIANA STATUTES ANNOTATED

Copyright © 2017 by Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

---

End of Document

**2014 La. HB 894**

Enacted, May 30, 2014

**Reporter**

2014 La. ALS 347; 2014 La. ACT 347; 2014 La. HB 894

LOUISIANA ADVANCE LEGISLATIVE SERVICE > LOUISIANA 2014 REGULAR LEGISLATIVE SESSION >  
ACT 347 > HOUSE BILL NO. 894**Notice**

---

Added: Text highlighted in green

Deleted: ~~Red text with a strikethrough~~**Synopsis**

---

AN ACT To amend and reenact [R.S. 37:3394\(B\)](#) and (H), relative to the Louisiana Real Estate Appraisers Board; to provide for membership requirements and qualifications; and to provide for related matters.

**Text**

---

*Be it enacted by the Legislature of Louisiana:*

**Section 1.** R.S. [37:3394](#)(B) and (H) are hereby amended and reenacted to read as follows:

**§3394. Louisiana Real Estate Appraisers Board**

\* \* \*

**B.**

- (1) ~~Nine~~Ten members shall be appointed by the governor with one member appointed from each congressional district and ~~the remainder~~with four members appointed at large. Of the ~~nine~~ten members appointed by the governor:
- (a) ~~One~~Two shall be appointed from a list of ~~three~~five names submitted by the Louisiana Bankers Association each of whom shall have been involved in real estate lending for at least five years.
- (b) ~~One shall be appointed from a list of three names submitted by the Community Bankers of Louisiana, each of whom shall have been involved in real estate lending for at least five years.~~ One member shall have been engaged in the business of appraisal management for at least four years and shall be an employee or representative of a Louisiana licensed appraisal management company. Additionally, this member shall be a citizen and qualified elector of Louisiana and licensed as a Louisiana certified real estate appraiser immediately preceding the appointment to the board.
- (c) ~~The remainder shall have been Louisiana residents engaged in the general practice of real estate appraising in the state of Louisiana for not less than five years immediately preceding their appointment.~~ The remainder shall have been domiciled in Louisiana and licensed as



certified real estate appraisers for not less than five years immediately preceding the appointment.

(2) At least four of the ~~nine~~ ten members shall be general appraisers and at least two of the ~~nine~~ ten members shall be residential appraisers. All appraiser members shall be state certified.

\* \* \*

H. ~~Five~~Six members of the board shall constitute a quorum for all business.

\* \* \*

**Section 2.** This Act shall become effective upon signature of the by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

## History

---

Approved by the Governor May 30, 2014

Effective date: August 1, 2014

## Sponsor

---

Hoffmann

LOUISIANA ADVANCE LEGISLATIVE SERVICE  
Copyright © 2017 LexisNexis. All rights reserved.

---

End of Document

# Tab 7

**2009 La. R.S. 37:3415.21**

2009 Louisiana Code Archive

***LexisNexis Louisiana Annotated Statutes > LOUISIANA REVISED STATUTES > TITLE 37. PROFESSIONS AND OCCUPATIONS > CHAPTER 51-A. APPRAISAL MANAGEMENT COMPANY LICENSING AND REGULATION ACT***

**§ 37:3415.21. Rulemaking authority; effective date**

- A. The board shall have the power to adopt any rules and regulations in accordance with the Administrative Procedure Act necessary for the enforcement of this Chapter.
- B. Notwithstanding any law to the contrary, these rules shall require the affirmative approval by the House of Representatives Committee on Commerce and the Senate Committee on Commerce, Consumer Protection and International Affairs.
- C. Any appraisal management company doing business in this state at the time of passage of this Act may continue to perform such services without a license until the earlier of either such time that the rules and regulations pertaining to this Chapter have been approved in accordance with Subsections A and B of this Section or January 1, 2011.

**History**

[Acts 2009, No. 502, § 1, eff. Jan. 1, 2010.](#)

LexisNexis Louisiana Annotated Statutes

Copyright © 2017 by Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

---

End of Document

**2012 La. R.S. 37:3415.21**

2012 Louisiana Code Archive

**LOUISIANA STATUTES ANNOTATED > LOUISIANA REVISED STATUTES > TITLE 37.  
PROFESSIONS AND OCCUPATIONS > CHAPTER 51-A. APPRAISAL MANAGEMENT COMPANY  
LICENSING AND REGULATION ACT**

**§ 37:3415.21. Rulemaking authority**

---

- A. The board may adopt any rules and regulations in accordance with the Administrative Procedure Act necessary for the enforcement of this Chapter.
- B. Notwithstanding any law to the contrary, these rules shall require the affirmative approval by the House of Representatives Committee on Commerce and the Senate Committee on Commerce, Consumer Protection and International Affairs. If the board submits its proposed rules for affirmative approval and the legislature is not in session, the proposed rules shall be deemed affirmatively approved if forty-five days have elapsed from the date the proposed rules are received by the oversight committees and no hearing is held by either committee.

**History**

---

[Acts 2009, No. 502](#), § 1, eff. Jan. 1, 2010; [Acts 2012, No. 429](#), § 1, eff. May 31, 2012.

LOUISIANA STATUTES ANNOTATED

Copyright © 2017 by Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

---

End of Document

## 2014 La. SB 575

Enacted, June 19, 2014

### Reporter

2014 La. ALS 764; 2014 La. ACT 764; 2014 La. SB 575

LOUISIANA ADVANCE LEGISLATIVE SERVICE > LOUISIANA 2014 REGULAR LEGISLATIVE SESSION > ACT 764 > SENATE BILL NO. 575

## Synopsis

---

AN ACT To repeal [R.S. 37:3415.21\(B\)](#), relative to the Louisiana Real Estate Appraisers Board; to repeal certain provisions relative to legislative review of administrative rules proposed by the board; and to provide for related matters.

## Text

---

*Be it enacted by the Legislature of Louisiana:*

**Section 1.** R.S. [37:3415.21](#)(B) is hereby repealed.

**Section 2.** This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

## History

---

Approved by the Governor June 19, 2014

Effective date: June 19, 2014

## Sponsor

---

Martiny

LOUISIANA ADVANCE LEGISLATIVE SERVICE  
Copyright © 2017 LexisNexis. All rights reserved.

---

End of Document

# Tab 8

**2012 La. R.S. 37:3415.15**

2012 Louisiana Code Archive

**LOUISIANA STATUTES ANNOTATED > LOUISIANA REVISED STATUTES > TITLE 37.  
PROFESSIONS AND OCCUPATIONS > CHAPTER 51-A. APPRAISAL MANAGEMENT COMPANY  
LICENSING AND REGULATION ACT**

**§ 37:3415.15. Fees; customary and reasonable; disclosure**

---

- A. 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 presumptions of compliance under federal law.
- B. An appraisal management company shall separately state to the client all of the following:
- (1) The fees paid to an appraiser for appraisal services.
  - (2) The fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser's services.
- C.
- (1) An appraisal management company shall not prohibit any appraiser who is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the appraisal management company.
  - (2) An appraisal management company shall not include any fees for appraisal management services performed by the company in the amount the company reports as charges for the actual completion of an appraisal by the appraiser.

**History**

---

[Acts 2012, No. 429](#), § 1, eff. May 31, 2012.

LOUISIANA STATUTES ANNOTATED

Copyright © 2017 by Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

---

End of Document

# Tab 9



**15 USCS § 1639e**

Current through PL 115-82, approved 11/2/17

***United States Code Service - Titles 1 through 54 > TITLE 15. COMMERCE AND TRADE > CHAPTER 41. CONSUMER CREDIT PROTECTION > CONSUMER CREDIT COST DISCLOSURE > CREDIT TRANSACTIONS*****§ 1639e. Appraisal independence requirements**

---

- (a) In general. It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under this section.
- (b) Appraisal independence. For purposes of subsection (a), acts or practices that violate appraisal independence shall include--
- (1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;
  - (2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;
  - (3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and
  - (4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.
- (c) Exceptions. The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:
- (1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.
  - (2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.
  - (3) Correct errors in the appraisal report.
- (d) Prohibitions on conflicts of interest. No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.
- (e) Mandatory reporting. Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction

secured by the principal dwelling of a consumer who has 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, shall refer the matter to the applicable State appraiser certifying and licensing agency.

- (f)** No extension of credit. In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.
- (g)** Rules and interpretive guidelines.
- (1)** In general. Except as provided under paragraph (2), the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue rules, interpretive guidelines, and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), (f), (h), and (i).
- (2)** Interim final regulations. The Board shall, for purposes of this section, prescribe interim final regulations no later than 90 days after the date of enactment of this section [enacted July 21, 2010] defining with specificity acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations. Rules prescribed by the Board under this paragraph shall be deemed to be rules prescribed by the agencies jointly under paragraph (1).
- (h)** Appraisal report portability. Consistent with the requirements of this section, the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue regulations that address the issue of appraisal report portability, including regulations that ensure the portability of the appraisal report between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.
- (i)** Customary and reasonable fee.
- (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.
- (2)** Fee appraiser definition. For purposes of this section, the term 'fee appraiser' means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is--
- (A)** a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice; or
- (B)** a company not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ([12 U.S.C. 3331](#) et seq.) [[12 USCS § 3353](#)] that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.
- (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.

(j) Sunset. Effective 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.

(k) Penalties.

(1) First violation. In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than \$ 10,000 for each day any such violation continues.

(2) Subsequent violations. In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting "\$ 20,000" for "\$ 10,000" with respect to all subsequent violations.

(3) Assessment. The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.

## History

---

(May 29, 1968, [P.L. 90-321](#), Title I, Ch. 2, § 129E, as added July 21, 2010, *P.L. 111-203*, Title XIV, Subtitle F, § 1472(a), *124 Stat. 2187*.)

Annotations

## Notes

---

### Effective date of section:

This section became effective as provided by § 1400(c) of Act July 21, 2010, *P.L. 111-203*, which appears as [15 USCS § 1601](#) note.

## Research References & Practice Aids

---

### Related Statutes & Rules:

This section is referred to in [12 USCS § 3353](#).

### Am Jur:

[17 Am Jur 2d, Consumer and Borrower Protection § 239](#).

### Texts:

10 Banking Law (Matthew Bender), ch 174, Consummation § 174.06.

10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.04.

### Law Review Articles:

Stempel. Symposium: Erie Under Advisement: The Doctrine After Shady Grove: Shady Grove and the Potential Democracy-Enhancing Benefits of Erie Formalism. [44 Akron L Rev 907, 2011.](#)

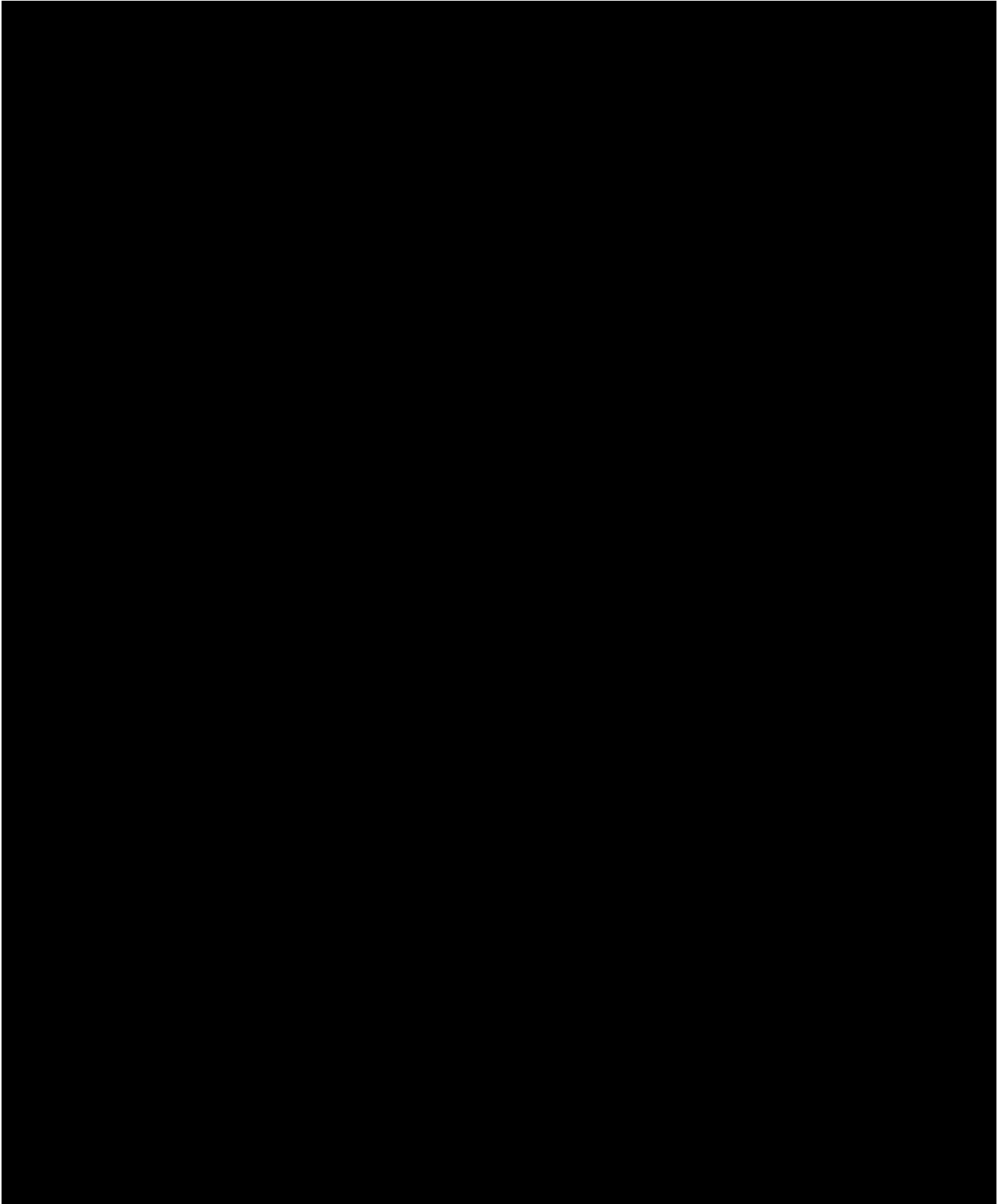
UNITED STATES CODE SERVICE

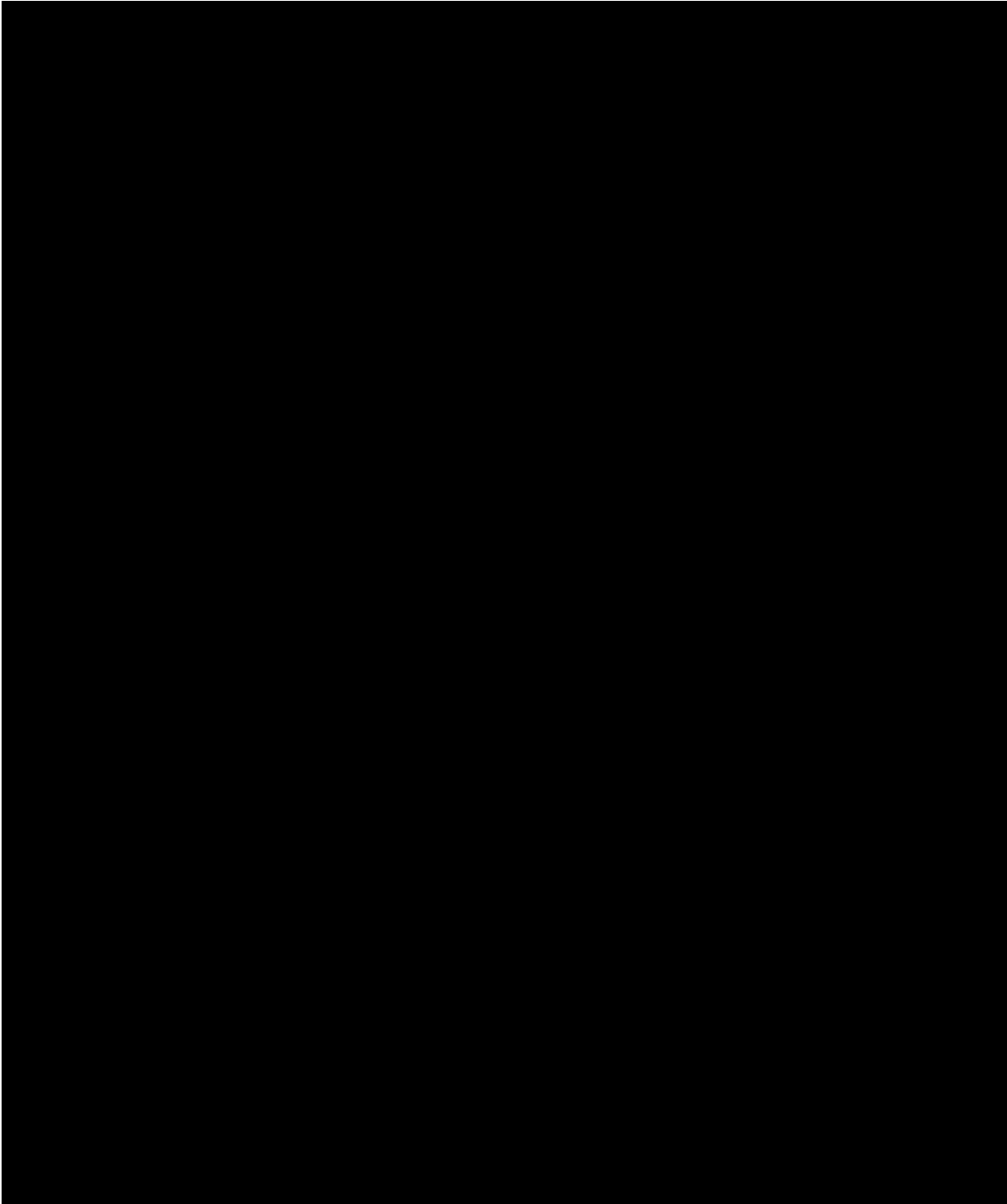
Copyright © 2017 Matthew Bender & Company, Inc. a member of the LexisNexis Group™ All rights reserved.

---

End of Document

# Tab 10

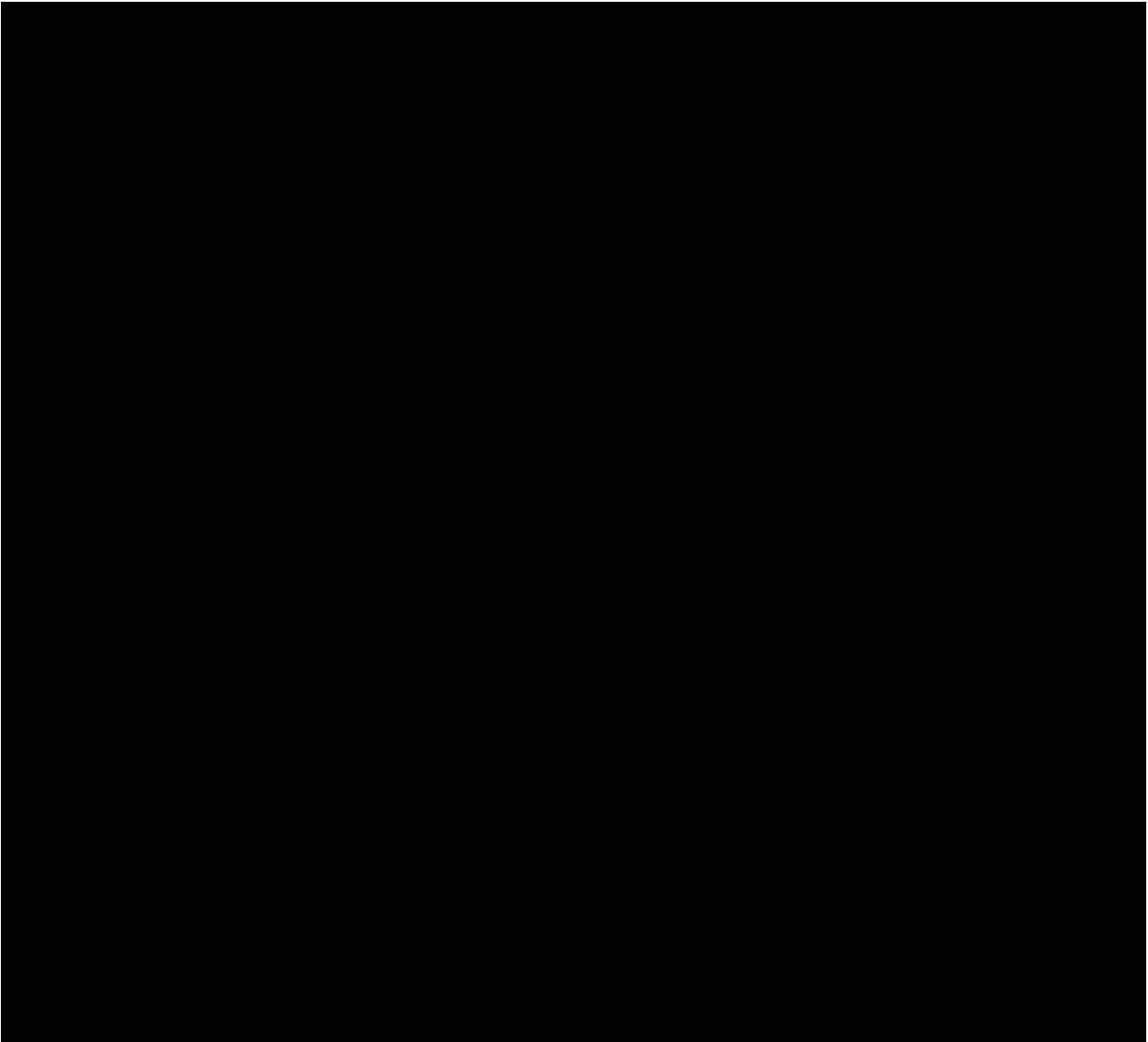


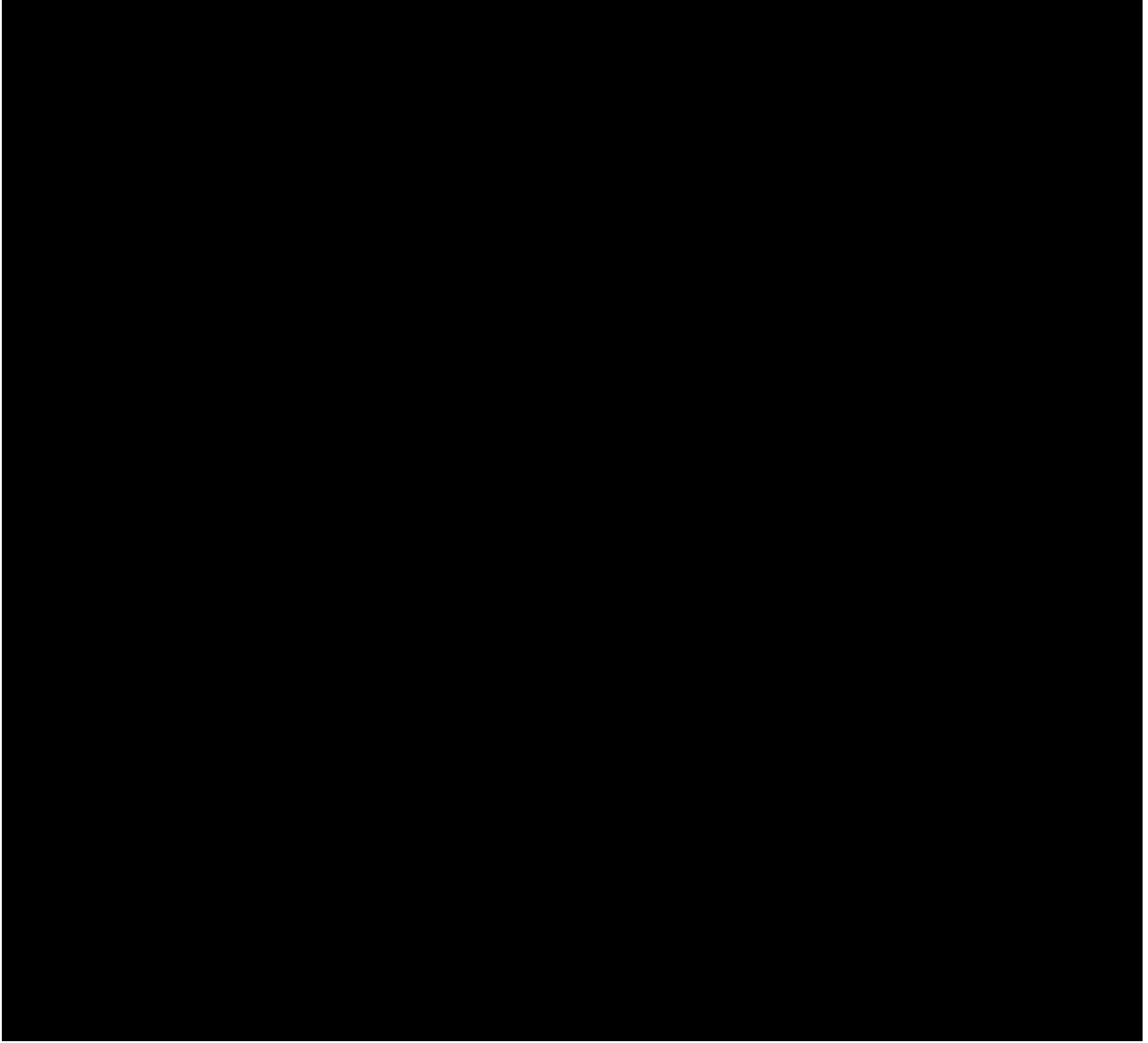


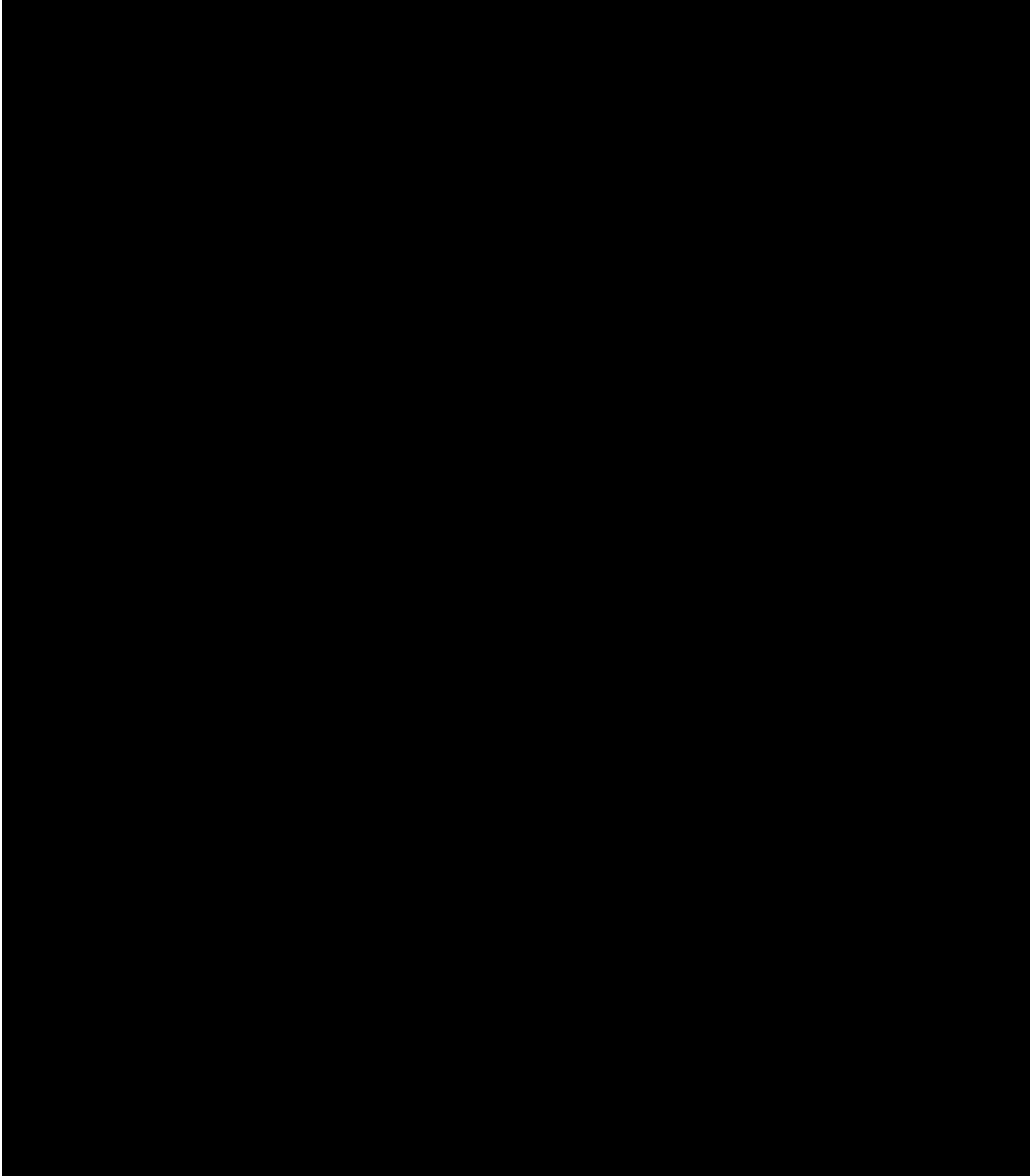
[REDACTED]

[REDACTED]









The screenshot shows a web browser window displaying a Facebook page. The browser's address bar shows the URL: <https://www.facebook.com/pages/Gayle-H-Boudousquie-Asso>. The Facebook header is dark blue with the 'facebook' logo on the left. On the right, there are input fields for 'Email or Phone' and 'Password', a 'Log In' button, and a link for 'Forgot account?'. The main content area features a dark grey header for the page. On the left is a placeholder image of a location pin. To its right, the page name 'Gayle H Boudousquie & Assoc' is displayed in white, with the description 'Real Estate Appraiser · Sunglasses & Eyewear Store' below it. A three-dot menu icon is on the far right of this header. Below the header, a white box contains the text 'Unofficial Page · Located in New Orleans, Louisiana'. Underneath, a breadcrumb trail reads: 'Places > New Orleans, Louisiana > Business Service > Business Consultant > Gayle H Boudousquie & Assoc'. The Windows taskbar is visible at the bottom, showing icons for Internet Explorer, Google Chrome, and several other applications. The system tray on the right shows the time as 9:08 AM on 11/16/2017.

http://mgmai.com/ Mike Graham Real Estate - X

MIKE GRAHAM  
real estate  
Appraisal and Brokerage

Appraisals / Brokerage / Property Management / 318-387-9092 /  
magraham@mgmai.com / 1300 Hudson Lane / Monroe, LA

Home About Us Location Contact Us

Search

### SOLD: Vacant Lots on North 18th Street in Monroe, LA

13th October, 2017 - Kim Allen

Sold: Vacant lots fronting North 18th Street in Monroe, Louisiana

Seller: Sidney H. Magee Revocable Trust et al

Buyer: Dhaliwal Holdings, LLC

Sale Date: 10/10/2017

Sale Price: \$500,000

Land Size: Approximately 96,877 square feet total (per OP Assessor and Clerk records)

Sources: Ouachita Parish Assessor's website, Legal Recorder, Conveyance Record

**SUBSCRIBE TO BLOG VIA EMAIL**

Enter your email address to subscribe to this blog and receive notifications of new posts by email.

Email Address

**ARCHIVES**

Archives

Select Month

9:15 AM  
11/16/2017

The screenshot shows a web browser window displaying a LinkedIn profile. The browser's address bar shows the URL <https://www.linkedin.com/in/newton-landry-2ab187b4/>. The LinkedIn navigation bar at the top includes a search bar, icons for Home, My Network, Jobs, Messaging, and Notifications, and a 'Me' profile icon. The main profile area features a blue header with a network graphic and a large circular placeholder for a profile picture. Below this, the name 'NEWTON LANDRY' is displayed in bold, followed by the title 'Appraiser/Real Estate Agent at Cajun Land Realty' and the location 'Pierre Part, Louisiana • 60'. A blue 'Send InMail' button is positioned below the profile information. The 'Experience' section lists 'Appraiser/Real Estate Agent' at 'Cajun Land Realty'. The 'Featured Skills & Endorsements' section shows 'Real Estate' with a count of 1 and a note that 'Mark Landry has given an endorsement for this skill'. On the right side, there is a 'Promoted' section with three advertisements: 'Johns Hopkins Online' (an MS in Government Analytics), 'Choose any internet' (a promotion for Comcast Business), and 'Attorney Wanted' (a legal services advertisement). Below the promoted section is a 'People Also Viewed' list featuring profiles for Sharp Efferson, Peter Drop, Kim Singletary, Bob Kapinus, and Thom Wood. The Windows taskbar at the bottom shows the Start button, several application icons, and the system tray with the time '9:21 AM' and date '11/16/2017'.

Exclusive Offer for DC - Get a game-changing, 10-course MBA for only \$20K. Ad ...

**Contact and Personal Info**  
Tommie's Profile  
[Show more](#)

**Promoted**

- Choose any internet**  
then add Phone + TV for just \$34.90 more per month. Get it now.
- Become a Law Mentor**  
Mentor someone just starting out in law. Make an impact. Get paid.
- Are You An Attorney?**  
Apply Now to the Marquis Registry of Distinguished Professionals

**People Also Viewed**

- Terri Iverstine**
- Barry Smith**  
Self employed
- Kathy Eaves**  
Realtor at Latter & Blum
- Frank Tallia**  
Outside Sales Manager

**Experience**

- Real Estate Appraiser & Notary**  
Tommie McMorris Appraisals

9:30 AM 11/16/2017

The screenshot shows a web browser window displaying the profile page for 'The Pauley Corporation' on the 'SWLA ECONOMIC DEVELOPMENT ALLIANCE' website. The browser's address bar shows the URL 'http://events.allianceswa.org/list/member/the-pauley-corpora'. The website's navigation menu includes 'Home | About Us | Contact Us' and 'Login | Join | Directory | Calendar'. The main content area features a dark sidebar with 'Chamber Membership' and 'Events & Media Center' options. The profile header for 'The Pauley Corporation' includes a 'VISIT WEBSITE' button and contact information: '1531 Hodges Street, Lake Charles, LA 70601-4012, (337) 478-1333, (337) 478-1338 (fax)'. The Windows taskbar at the bottom shows the time as 9:33 AM on 11/16/2017.





# THE ADVOCATE

BATON ROUGE NEW ORLEANS ACADIANA

E-EDITION

WEEKLY CIRCULARS

NEWS SPORTS ENTERTAINMENT/LIFE BICENTENNIAL OPINION SUBSCRIBE OBITUARIES CLASSIFIEDS JOBS HOMES WHEELS GAMES 56°

## People in Business for March 31

The Advocate APR 6, 2013 - 2:00 PM (0)

PREV

NEXT

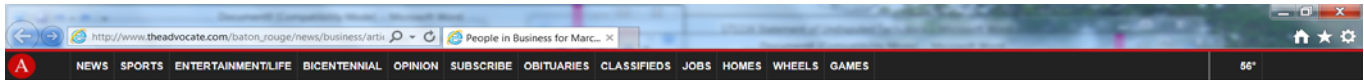


Sandra Harper, president of Our Lady of the Lake College, has been elected to the board of directors of the Association of Catholic Colleges and Universities. The association represents about 200 Catholic institutions of higher learning in the U.S., plus two dozen international universities.

Terry Compton, a diabetes educator on the faculty of Southeastern Louisiana University's School of Nursing, has been elected to the board of directors of the American Association of Diabetes Educators.

LSU researcher Clinton Willson has been named director of engineering design and innovation for the Water Institute of the Gulf.

Willson will remain a professor in the Department of Civil and Environmental Engineering at LSU and continue to serve on LSU's Coastal Sustainability Studio executive board.



Other officers are Steve Maley, operations manager for Badger Oil Corp., chairman-elect and Kenneth "Kenny" Crouch, owner of Pressure Control Specialties, treasurer.

### AROUND SOUTH LA.

Gov. Bobby Jindal has made appointments and reappointments from the local area to several boards, commissions and committees.

- Louisiana Drug Control and Violent Crime Policy Board: Carlos Stout, chief of police for Carencro; Steve Caraway, chief of police for Kenner; and James "Doug" Browning, chief of police for Central.
- Louisiana Educational Television Authority: Sandy Breland, of Baton Rouge, general manager of WAFB-TV.
- Residential Building Contractors Subcommittee: Wes Wyman Jr., of Belle Chasse, owner of W.L. Wyman Construction Co. Inc.; Billy Ward, of Brusly, owner and president of Champion Builders LLC; and Kay Gibson, of Lafayette, owner of M & K Gibson Construction Inc.
- Addictive Disorders Regulatory Authority: Dr. Ronald Taravella, of Baton Rouge, a psychiatrist at the Ascension Parish Prison and medical director of the Baton Rouge Area Alcohol and Drug Center.
- Louisiana Real Estate Appraisers Board: Bill Kipf, of Bill Kipf, Real Estate Appraiser and Appraisal Consultants in Baton Rouge.
- Environmental Education Commission: Nancy Rabalais, of Baton Rouge, executive director of the Louisiana Universities Marine Consortium.
- Louisiana Board of International Commerce: Gregory R. Rusovich, of New Orleans, chief executive officer of Transoceanic Trading and Development Co.; Don Sanders, of Baton Rouge, a partner of Orion Instruments LLC; Jay Hardman, of Baton Rouge, executive director of the Port of Greater Baton Rouge; Gary P. LaGrange, of New Orleans, president and CEO of the Port of New Orleans; Robert Scafield, of Chalmette, executive director of the St. Bernard Port Harbor and Terminal District; Philippe J. Gustin, of Lafayette, director of Le Centre International de Lafayette, the Lafayette Consolidated Government's International Trade Division; Dominik Knoll, of New Orleans, CEO of the World Trade Center of New Orleans; Dan Feibus, of Lafayette, CEO of Zags USA; John F. Fay Jr., of Fay, Nelson & Fay LLC in New Orleans; Joel T. Chaisson, of Destrehan, executive director of the Port of South Louisiana; Kevin Blondiau, of Belle Chasse, a river pilot for the Crescent River Port Pilots Association; and Marion Fox, of Jennings, executive director of Jefferson Parish Economic Development and Tourist Commission.

PREV

NEXT



**RESOURCES**

- Letter to the editor
- News tips



Janis M. Bonura, SRA  
Appraisal Review Officer at First NBC Bank  
First NBC Bank • University of New Orleans  
Greater New Orleans Area

[Send InMail](#) [Connect](#)

Contact and Personal In

In  
AP  
cal  
in your area.  
...  
rican  
tal  
[BigLaw](#)  
m, and  
- -

People Also Viewed

**David Gniady**  
Review Appraiser at Banc of  
America Investments

**Michael Mooring**  
Real Estate Appraiser at The  
Lakvold Group

**Drude Management**  
Property Manager



**Benjamin Pri-Tal** • 3rd  
Attorney

**William Furlong**  
Hospitality Professional

**Douglas Lewis**  
IT Manager at Solomon Grou

**Jonathan Byrd** • 3rd  
--Byrd Capital L.L.C.

**Matt Wise** • 3rd  
Lobbyist at Crossroads Strate  
LLC

**Rebecca Ridge**  
VP Loan Operations at First  
Bank

**Tricia L. Gaddis**  
Vice President Residential  
Lending CCB Community Bar  
NMLS#413291

Featured Skills & Endorsements

**Appraisal Insti...** · 1 [has given an endorsement for this skill](#)

**AI-RSS Design...** No endorsements yet

Accomplishments

**3 Organizations**  
Louisiana Chapter of the Appriasal Institute

[See more organizations](#) ▾





## CURRICULUM

### Getting Compliant

Getting compliant with FICAP is a simple, cost effective process. The first step for any financial institution is establishing the appropriate bank policy and procedures in accordance with regulatory requirements...

[Read More](#)



**Cheryl B. Bella , MAI, AI-GRS**

**FICAP National Chief Compliance Officer**

[cbella@ficapusa.com](mailto:cbella@ficapusa.com)

(225) 933-7971

1508 Heatherview Court Baton Rouge, Louisiana 70815

### System Training

All FICAP system training is conducted by FICAP Compliance Officers who have the expertise and skills to effectively communicate the training needs of each constituent. Training is conducted...

[Read More](#)

## Employment History

### Professional Designations & Certifications

Designated by the Appraisal Institute as MAI Member Designated by the Appraisal Institute as a General Review Specialist Louisiana State Certified General Appraiser - Certificate #0394 Texas Certified General Real Estate Appraiser - TX 1380278 G Licensed Real Estate Salesman, State of Louisiana (inactive status) Certificate of Completion "Performing Phase I Environmental Inspection"



### Questions/Register FICAP

FICAP's cadre of experts is ready to answer your questions and to assist you in finding the proper solutions to satisfy your valuation services management and compliance needs.

[Read More](#)

---

### Chief Compliance Officer

Aug 2001 - Present

Bella Appraisal Consulting Services, LLC

Fee Appraiser  
Property Consultant  
Instructor for appraisal groups, lenders and real estate agents  
Financial Institution Appraisal Consultant

Appraisal Review  
Appraisal Policy  
Appraisal Procedures and Forms  
Bank Staff Training: Regulations, Appraisal Review, Appraisal Procedures

---

HANCOCK BANK

Appraisal Officer, Manager of the Appraisal

Sep 1999 - Aug 2001

**Department,  
State of  
Louisiana**

Establish & Manage the Appraisal Department for the State of Louisiana. Duties include - establish and write bank-wide appraisal policy and procedures for ordering appraisals, qualifying appraisers and reviewing appraisals. Created and presented training programs on governmental regulations and bank appraisal policy for lenders in Mississippi and Louisiana

---

**BANK ONE  
CORPORATION**      **Vice President**      Jun 1998 - May 1999  
Manager of "The Real Estate Appraisal Group" for the State of Louisiana. Duties include enforcement of policy, ordering appraisals, qualifying appraisers, reviewing appraisals and training lenders.

---

**FIRST  
COMMERCE  
CORPORATION**      **Vice President**      Jun 1992 - Jun 1998  
Establish and Manage Real Estate Appraisal Services at City National Bank in Baton Rouge; Review Appraiser; Affiliate Liaison for all Louisiana affiliate locations. Duties include assisting in policy and procedure formation, establishing an approved appraiser list, qualifying environmental inspectors, reviewing appraisals and developing and presenting training programs for lenders.

---

**APPRAISAL  
EMPLOYMENT  
HISTORY**      **Argote, Derbes,  
Graham,  
Shuffield &  
Tatje, Inc., New**      Jan 1987 - May 1992

Orleans and  
Baton Rouge  
offices  
Fee Appraiser

## Education

### Professional Seminars (Developer & Instructor)

Property Measurement and Pricing - LREC 2015 Mandatory	2015
Missouri Bankers Association - Appraisal Compliance Seminar	2015
Louisiana Bankers Association - Appraisal Compliance Seminar	2014
Real Estate Agent-Appraiser Forum: Can We Talk? - LA Chap. of AI & GBRAR	2014

**VIEW MORE**

## Education (Continued)

### Formal Education

<b>BS</b> Louisiana State University	1987
--------------------------------------	------

### Successfully Completed Appraisal Courses with Examinations

Review Theory - General	2014
<b>402</b> Business Practices and Ethics-Appraisal Institute	2006
<b>USPAP</b> Uniform Standards of Professional Appraisal Practice (USPAP) - Appraisal Institute	2006
Analyzing Operating Expenses-Appraisal Institute	2002

**VIEW MORE**

## Professional Real Estate Related Memberships and Positions (Present and Past)

Appraisal Institute Member in Good Standing  
Designated Appraiser Coalition - Founding Member  
FICAP: Chief Compliance Officer  
Member of Greater Baton Rouge Association of Realtors  
Instructor for the Greater Baton Rouge Association of Realtors (GBRAR)  
Instructor for Louisiana Banker's Association (LBA)  
Course Developer and Instructor for Louisiana Real Estate Commission  
Louisiana Real Estate Appraisers Board - Peer Review Committee  
Appraisal Institute Member in Good Standing  
Guest Speaker - Capital Region Builders Association, LA Chapter of AI

### Louisiana Chapter of the Appraisal Institute

2013 President  
2012 Vice President  
2011 Treasurer  
2010 Secretary  
Previously, MAI Admissions Committee  
Previously, External Affairs Chairman

## LEADERSHIP

---





**Lawrence (Larry) J. Golicz,  
Ph.D., MAI, ASA**

**DAC Governance - Executive  
Committee Chair**

Dr. Golicz is a Founding Member of the Designated Appraiser Coalition (DAC). His service as DAC Executive Committee Chairman has...

[Read More](#)

## CONTACT US

---

**If you would like to learn more about FICAP or wish to inquire about joining the FICAP initiative; please provide and submit the following information.**

First Name

Last Name

Email

Phone #

Bank Name:

Please select company type

Questions or Comments



Type the text

[Privacy & Terms](#)

Please provide the information requested and we will have the appropriate FICAP representative contact you to answer any questions you may have.

**SUBMIT REQUEST**

Email: [administration@ficapusa.com](mailto:administration@ficapusa.com)

Phone: ((727) 919-1611

Fax: (727) 771-1107

[Home](#) [Privacy Policy](#) [Site Map](#)

Designed and Developed by Bayshore Solutions ©2017 FICAP. All Rights Reserved.



Downloaded November 20, 2017

https://www.linkedin.com/pulse/appraisals-plus-llc?articleId=5986559481507504128

Page 22 of 22

View Options

https://www.linkedin.com/pulse/appraisals-plus-llc?articleId=5986559481507504128

Appraisals Plus, LLC. | Timo...

LinkedIn

Sign in Join now

## Spring is here!

### Appraisals Plus, LLC.

Published on March 25, 2015

Timothy Hammett [Follow](#)  
Certified Residential Appraiser - Appraisals Plus, LLC. & Licen...

1 0 0

As spring makes its long awaited appearance, everything seems to come to life again. The aroma of blooming flowers and freshly cut grass is almost intoxicating as we switch gears for the warmer weather. Spring is also prime time for real estate, so if you are considering selling this season its time to get prepared! First, it is vital to know the **true** market value of your property, a current appraisal performed by a licensed appraiser supports your asking price. A listing appraisal from **Appraisals Plus, LLC.** is a full appraisal of your property, with a few additional benefits:

- You will know the most realistic asking price so you do not lose out on potential profits or sit on the market longer than necessary.
- You will make yourself aware of any problems and eliminate last-minute repair

# Tab 11

## MINUTES OF MEETING

OF

## LOUISIANA REAL ESTATE APPRAISERS BOARD

January 14, 2013

The Louisiana Real Estate Appraisers Board held its regular business meeting on Monday, January 14, 2013, at 9:30 a.m., at 9071 Interline Avenue, Baton Rouge, Louisiana, according to regular call, of which all members of the board were duly notified, at which meeting the following members were present:

**BOARD**

Roland M. Hall, Sr., Chairman  
Leonard E. "Pete" Pauley, Vice Chairman  
Gayle A. Boudousquie, Secretary  
Newton J. "Butch" Landry  
Clay F. Lipscomb  
Gary S. Littlefield  
Tommie McMorris

**STAFF**

Bruce Unangst, Executive Director  
Arlene C. Edwards, Legal Counsel  
Tad Bolton  
Anne Brassett  
Mark Gremillion  
Robert Maynor  
Summer Mire  
Jenny Yu

Board member Mike Graham was unable to attend the meeting.

**Call to Order**

Chairman Hall called the meeting to order and led the Invocation. Vice Chairman Pauley led the Pledge of Allegiance. On motion made by Mr. Pauley and seconded by Mr. Littlefield, the minutes of the October 15, 2012 meeting were unanimously approved as written and circulated.

**Budget Report**

Ms. Yu provided the budget report for the period ending December 31, 2012 (*See Attachment*). Due to the raise in retirement costs, state agencies are now required to contribute 29.1%.

**Director's Report**

Director Unangst advised that the Board's new website is up for in-house viewing only. He welcomes suggestions and input from Board members.

Chairman Hall inquired about the status of the Peer Review Committee rules. Director Unangst informed members that the rules should formally take effect February 20, 2013.

**Unfinished Business**

Director Unangst recapped this morning's committee meeting on the proposed AMC rules. The minor revisions to the rules will make them easier to enforce in that they track federal law. Mr. Pauley made motion, seconded by Ms. Boudousquie, to ratify approval of the proposed rules. Motion passed without opposition. On behalf of the Board, Mr. McMorris acknowledged Director Unangst's diligent effort in working with REEVA and other interested parties to come to an agreement on this final draft.

**New Business**

On motion made by Mr. McMorris and seconded by Mr. Landry, members voted unanimously to keep the current officers of the Board.

There being no additional items to discuss, the meeting was adjourned on motion made by Vice Chairman Pauley and seconded by Mr. Landry.

---

Roland M. Hall, Sr., Chairman

---

Pete Pauley, Vice Chairman

# Tab 12



FOCUS - 6 of 7 DOCUMENTS

LOUISIANA REGISTER

ISSUE: Volume 39, Number 2

ISSUE DATE: February 20, 2013

SUBJECT: NOTICES OF INTENT

AGENCY: Office of the Governor  
Real Estate Appraisers Board

*39 LR 376*

LOUISIANA ADMINISTRATIVE CODE CITATION: LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
Part LXVII. Real Estate  
Subpart 3. Appraisal Management Companies  
Chapter 303. Forms and Applications

Real Estate--Appraisal Management Companies

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 [\*377]
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 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:

## **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 [\*378] 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

**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

Evan Brasseaux  
Staff Director

Legislative Fiscal Office

1302#006

# **Tab 13 – Tab 20**

**REDACTED IN ENTIRETY**

# Tab 21

MINUTES OF MEETING  
OF  
LOUISIANA REAL ESTATE APPRAISERS BOARD

November 18, 2013

The Louisiana Real Estate Appraisers Board held its regular business meeting on Monday, November 18, 2013, at 9:00 a.m., at 9071 Interline Avenue, Baton Rouge, Louisiana, according to regular call, of which all members of the board were duly notified, at which meeting the following members were present:

**BOARD**

Roland M. Hall, Sr., Chairman  
Leonard E. "Pete" Pauley, Jr., Vice Chairman  
Gayle A. Boudousquie, Secretary  
Michael A. Graham  
Newton J. "Butch" Landry  
Clay F. Lipscomb  
Gary S. Littlefield

**STAFF**

Bruce Unangst, Executive Director  
Arlene Edwards, Legal Counsel  
Tad Bolton  
Anne Brassett  
Mark Gremillion  
Robert Maynor  
Marsha Stafford  
Jenny Yu

Board member Tommie McMorris was unable to attend the meeting.

**Call to Order**

Chairman Hall called the meeting to order and led the Invocation. Vice Chairman Pauley led the Pledge of Allegiance. On motion made by Mr. Pauley and seconded by Mr. Littlefield, the minutes of the September 16, 2013 meeting were unanimously approved as written and circulated.

**Budget Report**

Ms. Yu provided the budget report for the period ending October 31, 2013. She advised that revenue is up by \$35,000 due to AMC renewal fees. In light of the increase in revenue, Ms. Boudousquie suggested the board revisit Mr. Pauley's previous recommendation to offer additional continuing education on a yearly basis.

**Director's Report**

Director Unangst previously notified members about a public records request from Adams & Reese. They are requesting that we supply them with all information pertinent to the AMC rule-making process. Staff has meticulously gone through all files and prepared copies of the requested information, which will be supplied to Adams & Reese sometime this week.

A Senate-Commerce Committee Hearing was called for last Wednesday, November 13, 2013. Discussion of our AMC rules was on the agenda. Prior to the call to order, a vote was taken and the senators elected not to have a hearing. Therefore our AMC rules are deemed approved by those committees under the Administrative Procedures Act and upon publication in the Louisiana Register, which is anticipated for November 20, 2013.

Director Unangst reported that the board has recently received several AMC complaints. If a complaint is determined to have merit, the first attempt at compliance is to send an allegation letter, following the premise that we have a formal complaint or reason to believe that certain statutes/rules have been violated. The respondent is asked to explain why they feel the allegation is correct or incorrect. Director Unangst noted that several of the AMCs who received the letter have since come into compliance. For those who fail to respond or comply, following the opportunity to do so, we will then follow our rules in terms of records inspections or audits.



There will be a meeting at 2:00 p.m. this afternoon at Louisiana Bankers Association to discuss trainees and sponsorship, as well as the overall health of the appraisal program and decline in licenses, trainees in particular. Mr. Hall noted that the average age of appraisers, nationwide, is approximately 55 years old. Mr. Pauley questioned the possibility of boards and associations assisting trainees in finding sponsorship. This is an important issue that needs to be studied by the Peer Review Committee. Another consideration may be increasing the number of trainees a supervisor may sponsor at any given time from three to four.

Director Unangst reminded members that they need to bring any suggested changes to the current appraiser law to his attention as soon as possible to ensure ample time for drafting and presentation to the appropriate legislative committee chairman.

**Unfinished Business**

Chairman Hall feels there is confusion amongst appraisers regarding the allowance of continuing education credit for attending a *7-Hour Equivalent USPAP Update Course* each calendar year. He asked that the Board's website contain clarification regarding the fact that effective January 1, 2015, continuing education credit will not be granted for those who attend a USPAP update course more than once per license cycle.

The board discussed the LREC's ability to impose a penalty for licensees who fail to complete their required continuing education as a prerequisite to license renewal. Rather than holding a hearing for everyone in noncompliance, this matter may be handled administratively with a Stipulations & Consent Order. On motion made by Ms. Boudousquie and seconded by Mr. Pauley, the board voted unanimously to mirror the LREC's language regarding noncompliance of the continuing education and incorporate it in the law. The record shall also reflect the board's intent that licensees found in noncompliance be required to make up any hours they are lacking.

Director Unangst advised that written notification will be sent to all licensed appraisers later this year, and also posted on the website, advising them that the board now has the authority to penalize any licensee who fails to complete the required continuing education for license renewal.

There being no additional items to discuss, the meeting was adjourned on motion made by Mr. Pauley and seconded by Mr. Graham.

---

Roland M. Hall, Sr., Chairman

---

Gayle A. Boudousquie, Secretary

# Tab 22

## [39 LR 3072](#)

Volume 39, Number 11, November 20, 2013

### RULES

#### Reporter

39 LR 3072 \*

***LA - Louisiana Register > 2013 > November > November 20, 2013 > RULES > Office of the Governor -- Real Estate Appraisers Board***

## Agency

---

Office of the Governor > Real Estate Appraisers Board

## Administrative Code Citation

---

LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101

## Text

---

Real Estate--Appraisal Management Companies

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.

## Regulations

---

### **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; **[\*3073]**
  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. [**\*3074**]

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013).

Bruce Unangst  
Executive Director  
1311#029

LOUISIANA REGISTER

---

End of Document

# **Tab 23 – Tab 28**

**REDACTED IN ENTIRETY**



# Tab 29

STIPULATIONS AND ORDER

The Stipulations and Order between Coester Appraisal Management Group and the Louisiana Real Estate Appraisers Board have been executed pursuant to Section 955 (D) of the Louisiana Administrative Procedures Act and Section 30901 of the Rules and Regulations of the Board to informally dispose of violations alleged as a result of an investigation conducted in Case Number 2013-2070, as specified in the written complaint.

STIPULATIONS

The Louisiana Real Estate Appraisers Board and Coester Appraisal Management Group stipulate:

1. That written notice of these proceedings was mailed to Coester Appraisal Management Group on November 24, 2014, with an additional notice of April 30, 2015.
2. That the notice included a copy of the written complaint in Case Number 2013-2070 and advised that the hearing was scheduled for June 4, 2015.
3. That the informal proceedings were initiated pursuant to Coester Appraisal Management Group agreeing in writing to conclude action in Case Number 2013-2070 informally.
4. That Coester Appraisal Management Group voluntarily participated in these proceedings for the purpose of resolving the dispute concerning Case Number 2013-2070.
5. That the proceedings were conducted on May 28, 2015 by telephone with the below listed persons participating:  

Arlene C. Edwards, Hearing Officer  
Robert L. Rieger, Jr., Adams and Reese LLP  
Counsel for Coester Appraisal Management Group
6. That Coester Appraisal Management Group was licensed as an Appraisal Management Company (AMC#0153) for the period November 1, 2011 through 2015, and is currently in good standing.
7. That pursuant to LSA-R.S. 37:3415.15 and Section 31101.A, an Appraisal Management Company shall compensate appraisers at a rate that is customary and reasonable for the appraisals being performed in the market area of the property being appraised, consistent with the presumptions of compliance under federal law. Section 31101.A also sets forth that if electing to compensate fee appraisers on any basis other than an established fee schedule, the licensee shall, at a minimum, review factors listed in Section 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. Further, licensees, shall maintain written documentation that describes or substantiates all methods, factors, variations, and differences to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. The rule sets forth the minimum elements that must be included. Coester Management Group alleges that it complied with the federal law, and as such, it was in compliance with Louisiana law. The Board alleges that Coester Appraisal Management Group did not use established fees set by an objective third party or to use the factors set forth in Section 31101, in violation of LSA-R.S.37:3415.19. (1) and (2), LSA-R.S.37: 3415.15 and Section 31101 of the Rules and Regulations of the Louisiana Real Estate Appraisers Board.

REMAINDER OF PAGE LEFT  
BLANK INTENTIONALLY

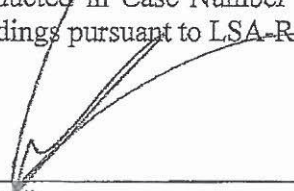
ORDER

In conjunction with the foregoing Stipulations, Coester Appraisal Management Group agrees not to contest Case Number 2013-2070, and agrees to pay administrative costs of the informal proceeding in the amount of \$5,000.00 and further, the Board will accept Coester Appraisal Management Group's proposal to follow the current Louisiana fee schedule for a period of twelve (12) months beginning 30 days after the effective date of this Order. Coester Appraisal Management Group also agrees to submit a quarterly report to the Board, for a period of twelve (12) months, beginning 60 days after the end of the quarter beginning July 1, 2015, which lists all appraisal orders in Louisiana, the fee paid and the date payment was made to the appraiser. Such reports will be kept confidential by the Board.

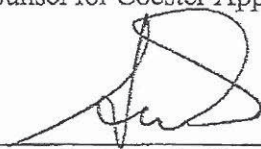
CERTIFICATE

Coester Appraisal Management Group does hereby consent to executing this document in lieu of a formal adjudicatory proceeding in Case Number 2013-2070. Coester Appraisal Management Group understands that this Order is subject to approval by the Louisiana Real Estate Appraisers Board at a regular meeting and that, if approved, will be effective and executory on the date approved by the Board. If this Order is not approved by the Board, Case Number 2013-2070 will be scheduled for a public adjudicatory hearing.

Coester Appraisal Management Group freely and voluntarily waives any right pursuant to LSA-R.S. 49:959 regarding reopening, rehearing or reconsideration by the Board of the informal proceeding conducted in Case Number 2013-2070, and the right to a judicial review of these informal proceedings pursuant to LSA-R.S. 49:964.

  
 \_\_\_\_\_  
 Robert L. Rieger, Jr.  
 Adams and Reese LLP  
 Counsel for Coester Appraisal Management Group

May 28, 2015  
 Date

  
 \_\_\_\_\_  
 Arlene C. Edwards, Hearing Officer  
 Louisiana Real Estate Appraisers Board

May 28, 2015  
 Date

# **Tab 30 – Tab 35**

**REDACTED IN ENTIRETY**

# Tab 36

December 08, 2015

ADMINISTRATIVE HEARING

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF LOUISIANA EX REAL

LOUISIANA REAL ESTATE  
APPRAISAL BOARD

VERSUS CASE NUMBER  
2014-1500

IMORTGAGE SERVICES, LLC

HEARING TAKEN PURSUANT TO THE ADMINISTRATIVE  
PROCEDURES ACT, TAKEN AT THE LOUISIANA REAL  
ESTATE COMMISSION AND APPRAISAL BOARD, 9071  
INTERLINE AVENUE, BATON ROUGE, LOUISIANA, ON  
DECEMBER 8, 2015 COMMENCING AT 9:13 A.M.

REPORTED BY:

RACHEL TORRES-REGIS, CCR, RPR  
CERTIFIED COURT REPORTER



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES

[www.torresreporting.com](http://www.torresreporting.com)

1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**APPEARANCES OF COUNSEL:**

**FOR THE LOUISIANA REAL ESTATE APPRAISERS BOARD:**

**DELATTE, EDWARDS & MARCANTEL  
(BY: ARLENE EDWARDS, ESQUIRE)  
92487 BLUEBONNET BOULEVARD, SUITE C  
BATON ROUGE, LOUISIANA 70810**

**FOR THE DEFENDANT, IMORTGAGE SERVICES, LLC:**

**ADAMS AND REESE, LLP  
(BY: KELLEN J. MATHEWS, ESQUIRE)  
(BY: ROBERT L. RIEGER, JR., ESQUIRE)  
(BY: REBECCA S. HELVESTON, ESQUIRE)  
450 LAUREL STREET, SUITE 1900  
BATON ROUGE, LOUISIANA 70801**



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

**Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX**

**New Orleans, LA  
504.392.4791  
504.392.4852 FAX**



ADMINISTRATIVE HEARING

1 APPEARANCES OF THE LOUISIANA REAL ESTATE  
2 APPRAISERS BOARD MEMBERS:  
3  
4 ROLAND HALL  
5 JAMES PURGERSON  
6 NEWTON "BUTCH" LANDRY  
7 TOMMIE MCMORRIS  
8 JANIS BONURA  
9 MICHAEL GRAHAM  
10 CLAYTON LIPSCOMB  
11 TIMOTHY HAMMETT  
12 BRUCE UNANGST  
13  
14 ALSO PRESENT:  
15 JUDGE WHITE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**EXHIBIT INDEX**

**EXHIBITS ADMITTED BY THE STATE OF LOUISIANA:**

<b>EXHIBIT</b>	<b>PAGE:</b>
S1 --	30
S2 --	32
S3 --	34
S4 --	169
S5 --	169
S6 --	232



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX CONTINUED:	
EXHIBITS ADMITTED BY THE DEFENDANT	
EXHIBIT	PAGE
R1 --	52
R2 --	66
R3 --	84
R4 --	100
R5 --	104
R6 --	113
R7 --	189
R8 --	363
R9 --	365
R10 --	434



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**EXAMINATION INDEX**

**EXAMINATION OF ROBERT MAYNOR**

<b>EXAMINATION BY:</b>	<b>PAGE</b>
MS. EDWARDS.....	29, 27
MR. MATHEWS.....	44, 134

**EXAMINATION OF HENK VANDUYVENDIK**

<b>EXAMINATION BY:</b>	<b>PAGE:</b>
MS. EDWARDS.....	144, 230
MR. MATHEWS.....	171, 235

**EXAMINATION OF WILLIAM MATCHNEER**

<b>EXAMINATION BY:</b>	<b>PAGE:</b>
MR. RIEGER.....	272, 289, 324, 349
MS. EDWARDS.....	284, 317, 334

**EXAMINATION OF JEFF DICKSTEIN**

<b>EXAMINATION BY:</b>	<b>PAGE:</b>
MR. RIEGER.....	352

**EXAMINATION OF DEAN KELKER**

<b>EXAMINATION BY:</b>	<b>PAGE:</b>
MR. RIEGER.....	365, 471, 514, 526
MS. EDWARDS.....	449, 477



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
www.torresreporting.com  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. HALL:

We will call the hearing to order. The hearing will be pursuant to the Administrative Procedures Act, and ask Ms. Edwards to call the case. Let's see. The -- I'm not sure if I have a number.

MS. EDWARDS:

I have it.

MR. HALL:

Okay. We'll turn it over to the -- Ms. Arlene Edwards.

MS. EDWARDS:

Arlene Edwards on behalf of the Louisiana Real Estate Appraisers Board. This is Case No. 2014-1500, Louisiana Real Estate Appraiser Board versus iMortgage Services, LLC.

Bob, do you want to introduce yourself?

MR. RIEGER:

I will. May it please the Board, my name is Rob Rieger. I practice law with Adams and Reese.



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
www.torresreporting.com  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 With me are my colleagues, Kellen  
2 Mathews and Rebecca Helveston. We  
3 proudly represent iMortgage Service. I  
4 would like to take the opportunity to  
5 quickly introduce some of the people  
6 that the Board will hear as part of our  
7 case.

8 Arlene, if that's okay with  
9 you.

10 MS. EDWARDS:

11 Sure.

12 MR. RIEGER:

13 First of all is our company  
14 witness, Mr. Dean Kelker,  
15 vice-president and chief compliance  
16 officer. We also have Mr. Bill  
17 Matchneer as an expert in certain  
18 regulatory proceedings and the law at  
19 the federal level. He is a former CFPB  
20 member and is a lawyer.

21 And also Mr. Jeff Dickstein.  
22 Mr. Dickstein is a member of REVAA. He  
23 is appearing on behalf of REVAA. He is  
24 vice-president and senior compliance  
25 officer for Protect Services, also in



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 AMC. He has flown in from California.  
2 Mr. Kelker is in from Pittsburgh. And  
3 Mr. Matchneer is in from Washington  
4 D.C.

5 I just want to let the Board  
6 know our client is very, very serious  
7 about this, takes these proceedings  
8 very seriously. We want to put our best  
9 foot forward and let you understand  
10 some of the questions that we have  
11 about all of this.

12 Arlene?

13 And Judge White, good  
14 morning.

15 MS. EDWARDS:

16 And Judge White will be  
17 presiding.

18 Judge White, I'm going to ask  
19 that -- I think Mr. Matchneer is the  
20 expert.

21 MR. RIEGER:

22 Yes.

23 MS. EDWARDS:

24 Other than Mr. Matchneer, I'm  
25 going to ask for an order of



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES

[www.torresreporting.com](http://www.torresreporting.com)

1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 sequestration for the witnesses.

2 JUDGE WHITE:

3 Is there any objection to  
4 that, Mr. Rieger, an order of  
5 exclusion?

6 MR. RIEGER:

7 I see no reason why  
8 sequestration is required, Your Honor.  
9 This is not any matter of life and  
10 death. We are not talking about sums of  
11 money. We're basically saying witnesses  
12 of a hearing that -- I think it's a lot  
13 to do with the public interest and how  
14 the public is perceived in this  
15 particular area, as I understand it,  
16 and it may be among the first of its  
17 type.

18 I think it's important that  
19 the witnesses get a flavor for what  
20 other witnesses may say and that there  
21 is no need for sequestration in this  
22 instance.

23 JUDGE WHITE:

24 Do you have any legal  
25 authority to oppose it, Mr. Rieger?



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX



## ADMINISTRATIVE HEARING

1 MR. RIEGER:

2 I just feel like this is more  
3 of a quasi -- this is more of an  
4 administrative procedure than it is a  
5 quasi-judicial, if you will, Your  
6 Honor. I would argue that the  
7 sequestration rules don't necessarily  
8 apply.

9 JUDGE WHITE:

10 That's an interesting issue.  
11 Ms. Edwards, do you have anything that  
12 you could cite the Court to?

13 MS. EDWARDS:

14 No, Your Honor. I'm not aware  
15 of anything that would disallow the  
16 sequestration. The meeting is public,  
17 it's open to the public. The public is  
18 welcome to sit in here, but I think  
19 that an order of sequestration is  
20 appropriate for witnesses that will be  
21 testifying.

22 I don't believe it's in the  
23 public interest for one witness to  
24 necessarily get the flavor of the  
25 hearing or to hear what another witness



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 has to say. So it certainly is open,  
2 public meeting, but I think it's  
3 imperative that the witnesses be  
4 sequestered. The witnesses, other than  
5 an expert, which is the law, are  
6 allowed to sit in here. And an expert  
7 is allowed to sit, but the other -- I'm  
8 asking for an order of sequestration.

9 I know there's nothing in the  
10 law that would require that they be  
11 allowed to stay in here just because  
12 it's an administrative hearing.

13 JUDGE WHITE:

14 You can't cite anything in  
15 the administrative proceedings?

16 MR. RIEGER:

17 No, Your Honor, I cannot  
18 other than --

19 JUDGE WHITE:

20 Or, Mr. Rieger, on the issue  
21 particularly?

22 MS. EDWARDS:

23 I'm not aware of anything  
24 that would disallow it.

25 JUDGE WHITE:



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
www.torresreporting.com  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1 Well, then, the question is  
2 should we look to other bodies of law  
3 for the purpose of analyzing this  
4 issue. I'm going to grant the request  
5 and, Mr. Rieger, if you wish to note  
6 that.

7 So let's have -- do you want  
8 to have these witnesses sworn,  
9 Mr. Chairman, at this time?

10 MR. HALL:

11 Fine.

12 JUDGE WHITE:

13 All of the witnesses who may  
14 testify, would you please stand and  
15 raise your right hand?

16 If you may testify.

17 Do you solemnly swear or  
18 affirm the testimony you may offer in  
19 the matters before this Board shall be  
20 the truth and nothing but the truth so  
21 help you God.

22 PROSPECTIVE WITNESSES:

23 I do.

24 JUDGE WHITE:

25 Okay. All right. Let's

**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 have -- with the exception of the  
2 expert witness and you have got your  
3 first witness ready to go.

4 MS. EDWARDS:

5 My first witness is Robert  
6 Maynor. He's right here, Your Honor.

7 MR. RIEGER:

8 Your Honor, on that we have a  
9 little bit of administrative  
10 housekeeping. We have some  
11 stipulations, I think, that we can try  
12 to streamline this a little bit, so --

13 JUDGE WHITE:

14 Okay. Those witnesses then  
15 will step outside pending when you will  
16 be asked to come back and testify.

17 Proceed, Ms. Edwards,  
18 Mr. Rieger.

19 MR. RIEGER:

20 Thank you, Your Honor.  
21 Arlene, you want to start?

22 MS. EDWARDS:

23 Yes. We have some  
24 stipulations that are being entered  
25 into between the Louisiana Real Estate



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 Appraiser Board and iMortgage Services,  
2 LLC.

3 Documents will be provided to  
4 you, which will make a little bit more  
5 sense, but the transactions represented  
6 by the entries on the appraisal  
7 spreadsheet attached, which will be  
8 exhibit -- Attachment A represents  
9 transactions that form the basis for  
10 the allegations against iMortgage in  
11 Case No. 2014-1500 as forth in the  
12 November 17, 2015, preliminary Notice  
13 of Adjudication, which will be  
14 Attachment B.

15 The transactions represented  
16 by the entries on the appraisal order  
17 spreadsheet attached hereto as  
18 Attachment A are covered transactions  
19 as contemplated under 12 CFR Section  
20 226-42(b)(2). All of the transactions  
21 set forth in Attachment A3 of them  
22 listed are outside of the scope of the  
23 pertinent time period, which was set  
24 forth in the preliminary notice. It  
25 was December 1, 2013, through June 30,



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 2014, where these three transactions  
2 were actually created November 26,  
3 2013, several days before the dates  
4 that were contained within the  
5 preliminary notice, therefore, we have  
6 removed those.

7 Those order numbers  
8 331195513, Order No. 331196623, and  
9 Order No. 331193644.

10 Lastly, with regard to three  
11 additional transactions, the fees paid  
12 were equal to or exceed the median  
13 residential appraisal fee by region as  
14 set forth in the 2014 Louisiana  
15 Residential Real Estate Appraisal Fees,  
16 a study conducted by the Board for the  
17 Board by Southeastern Louisiana  
18 University Business Center. Those  
19 transactions are 331196623, 3321298400,  
20 3401202131.

21 To summarize, so that's not  
22 confusing, and Mr. Rieger will have an  
23 opportunity to address you on this,  
24 there were additionally or originally  
25 many more transactions that were going

**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING &amp; LITIGATION SERVICES

[www.torresreporting.com](http://www.torresreporting.com)

1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAXNew Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 to come before the Board. After meeting  
2 with iMortgage attorneys, we have  
3 been -- removed those that are not what  
4 we call cover transactions. We have  
5 removed those that are outside of the  
6 time period.

7 So what will be presented  
8 today really are nine separate  
9 appraisals that are covered  
10 transactions that the position's going  
11 to be of the -- of the staff that those  
12 transactions are in violation of the  
13 law and/or rules of the Louisiana Real  
14 Estate Appraiser Board, and iMortgage  
15 will take issue with that and present  
16 their case.

17 So basically what we're  
18 saying is by the stipulation, we've  
19 held it down to nine particular  
20 transactions.

21 MR. RIEGER:

22 On that, if I could be heard,  
23 Ms. Edwards. The original allegation  
24 letter that came out in July and then  
25 the original notice of the preliminary



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES

[www.torresreporting.com](http://www.torresreporting.com)

1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 Notice of Adjudication November 2014  
2 cited iMortgage with 150 separate  
3 instances of having not paid regional  
4 and customary.

5 Because of the discussions  
6 that we had with the staff and based on  
7 information that had previously been  
8 submitted to the staff with some fine  
9 tuning by us, over 135 were dismissed.

10 There were also five separate  
11 allegations alleging that iMortgage had  
12 not paid the appraisers on a timely  
13 basis as required by the statute of  
14 Louisiana Regs. After further  
15 investigation by the Board, those five  
16 allegations were, in fact, dismissed as  
17 well.

18 Coming down to the 15 that we  
19 got our November 17th notice of  
20 preliminary investigation, what  
21 Ms. Edwards just went through is  
22 further investigation, further proof  
23 and persuasion by iMortgage that  
24 another six of those allegations are,  
25 in fact, either outside the

**TORRES REPORTING & ASSOCIATES, INC.**COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll FreeBaton Rouge, LA  
225.751.0732  
225.752.7308 FAXNew Orleans, LA  
504.392.4791  
504.392.4852 FAX



## ADMINISTRATIVE HEARING

1     investigatory period or outside the  
2     period that the allegations were  
3     brought in, time period. And second of  
4     all, were, in fact, a paid -- a  
5     customary -- and reasonable and  
6     customary fee that was substantiated by  
7     the Southeastern 2014 fee study.

8             So we're going to trial  
9     again, as you said, on nine different  
10    allegations. We have defenses to each  
11    one of those that we believe firmly,  
12    firmly demonstrate that we paid  
13    customary and reasonable on all of  
14    that. We paid it timely. We took it  
15    into the fact all things required under  
16    Louisiana and federal law to do such of  
17    that.

18             Other stipulations, Arlene?

19             MS. EDWARDS:

20             No. That's it. I think those  
21    are the only stipulations unless there  
22    is something else that you are aware  
23    of.

24             MR. RIEGER:

25             Okay. I think that's it for



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

# **Tab 37 – Tab 38**

**REDACTED IN ENTIRETY**

# Tab 39

STATE OF LOUISIANA EX REAL

LOUISIANA REAL ESTATE  
APRAISERS BOARD

CASE NO. 2014-1500

Vs.

iMORTGAGE SERVICES, LLC

\*  
\*  
\*  
\*  
\*  
\*

---

STIPULATIONS

---

The Louisiana Real Estate Appraisers Board (the "Board" ), and Respondent, iMortgage Services, LLC ("iMortgage") hereby enter and offer into the record the following stipulations in the above-captioned matter:

1. The transactions represented by the entries on the Appraisal Order spreadsheet attached hereto as **Attachment "A"** represent all transactions that form the basis for the allegations against iMortgage in Case No. 2014-1500 as set forth in the November 17, 2015 Preliminary Notice of Adjudication attached hereto as **Attachment "B."**
2. The transactions represented by the entries on the Appraisal Order spreadsheet attached hereto as **Attachment "A"** are "covered transactions" as contemplated under 12 C.F.R. § 226.42(b)(2).
3. Of the transactions set forth in **Attachment "A"**, three (3) of the transactions listed fall outside of the scope of the pertinent time period as set forth in the complaint against iMortgage at Section 2(a) which provides the pertinent period as December 1, 2013 through June 30, 2014 where these three transactions were created on: November 26, 2013 (Order No. 331195513); November 27, 2013 (Order No. 331196623); and November 22, 2013 (Order No. 331193644).



4. With regard to four (4) of the transactions set forth in **Attachment "A"**, the fees paid to appraisers were equal to or exceeded the Median Residential Appraisal Fee by Region as set forth in the 2014 Louisiana Residential Real Estate Appraisal Fees, a study conducted for the Board by Southeastern Louisiana University Business Research Center. These transactions are: Order No. 331196623; Order No. 3321298400; Order No. 3401202131 and Order No. 340247911, respectively.

**iMortgage Services, LLC**  
**Appraisal Order Spreadsheet for December 1, 2013 through July 1, 2014**

Customer ID	Order Number	City	County	State	Total Customer Order Fee	Total Vendor Order Fee	Region	Median Residential Appraisal Fee, by Region, per 2014 Southeastern Fee Study	Billed Date	Assigned	Rejects	Product	Vendor ID	Date Created	Appraisal Type (Review, Default, Origination)	Form Type	Products Contained in Louisiana Fee Survey	Consumer Credit Transactions	Flagstar Fee Survey
FLA-6002	331195513	METAIRIE	JEFFERSON	LA	\$515.00	\$365.00	1	\$400.00	12/06/2013			S.F. Interior w/ Market Condition Add.- Flagstar Approved	143203	11/26/13	Origination	Form 1004	Y	Y	Y
FLA-6002	331196623	BATON ROUGE	East Baton Rouge	LA	\$575.00	\$425.00	2	\$400.00	12/06/2013	0	0.04	UAD FHA Single Family w Market Condition Add.- Flagstar Approved	168648	11/27/13	Origination	Form 1004	Y	Y	Y
FLA-6002	331299355	PRAIRIEVILLE	ASCENSION	LA	\$515.00	\$365.00	2	\$400.00	12/11/2013	0	0.04	S.F. Interior w/ Market Condition Add.- Flagstar Approved	168648	12/04/13	Origination	Form 1004	Y	Y	Y
FLA-6002	331193644	IREAUX BRIDG	SAINT MARTIN	LA	\$575.00	\$425.00	4	\$450.00	12/11/2013	1	0.13	S.F. Interior w/ Market Condition Add.- Flagstar Approved	176280	11/22/13	Origination	Form 1004	Y	Y	Y
FLA-6002	331297989	LAKE CHARLES	CALCASIEU	LA	\$515.00	\$365.00	5	\$400.00	12/17/2013	3	0.04	S.F. Interior w/ Market Condition Add.- Flagstar Approved	185415	12/02/13	Origination	Form 1004	Y	Y	Y
FLA-6002	331298400	SHREVEPORT	CADDO	LA	\$575.00	\$425.00	7	\$425.00	12/17/2013	1	0.04	UAD FHA Single Family w Market Condition Add.- Flagstar Approved	180421	12/03/13	Origination	Form 1004	Y	Y	Y
FLA-6002	340120213	BOGALUSA	WASHINGTON	LA	\$575.00	\$425.00	9	\$400.00	01/16/2014	1	0.04	USDA/Rural Development Appraisal w/MC addendum FHA APPR- Flagstar Approved	170609	01/08/14	Origination	Form 1004	Y	Y	Y
FLA-6002	340242731	New Orleans	ORLEANS	LA	\$515.00	\$380.00	1	\$400.00	02/14/2014	1	0.04	S.F. Interior w/ Market Condition Add.- Flagstar Approved	175844	02/07/14	Origination	Form 1004	Y	Y	Y
FLA-6002	340247911	RACELAND	LAFOURCHE	LA	\$575.00	\$425.00	3	\$400.00	02/26/2014	1	0.04	UAD FHA Single Family w Market Condition Add.- Flagstar Approved	187007	02/14/14	Origination	Form 1004	Y	Y	Y
FLA-6002	340484959	LOREAUVILLE	IBERIA	LA	\$515.00	\$380.00	4	\$450.00	04/22/2014	1	1.00	S.F. Interior w/ Market Condition Add.- Flagstar Approved	193765	04/08/14	Origination	Form 1004	Y	Y	Y
FLA-6002	340495269	HARVEY	JEFFERSON	LA	\$515.00	\$380.00	1	\$400.00	05/06/2014	1	0.04	S.F. Interior w/ Market Condition Add.- Flagstar Approved	187880	04/23/14	Origination	Form 1004	Y	Y	Y
FMC-1002	331212498	Moss Bluff	Calcasieu	LA	\$415.00	\$275.00	5	\$400.00	01/03/2014	1	0.08	Single Family Interior with Market Condition Addendum	185415	12/23/13	Origination	Form 1004	Y	Y	Y
FMC-1002	340626202	La Place	JOHN THE BAPT	LA	\$500.00	\$325.00	3	\$400.00	06/18/2014	0	0.04	UAD (XML W/PDF) FHA Single Family w Market Condition Addendum	187007	06/06/14	Origination	Form 1004	Y	Y	Y
LOA-1001	340378294	CUT OFF	LAFOURCHE	LA	\$465.00	\$250.00	3	\$400.00	04/09/2014	0	0.04	UAD (XML W/PDF) FHA Single Family w Market Condition Addendum	187007	03/31/14	Origination	Form 1004	Y	Y	
TFF-1001	340134598	MONROE	OUACHITA	LA	\$485.00	\$375.00	8	\$450.00	02/12/2014	1	0.04	USDA/Rural Development Appraisal w/MC addendum FHA APPR- Flagstar Approved	185227	01/28/14	Origination	Form 1004	Y	Y	
																		15	13

# Tab 40

December 08, 2015

ADMINISTRATIVE HEARING

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF LOUISIANA EX REAL

LOUISIANA REAL ESTATE  
APPRAISAL BOARD

VERSUS

CASE NUMBER  
2014-1500

IMORTGAGE SERVICES, LLC

HEARING TAKEN PURSUANT TO THE ADMINISTRATIVE  
PROCEDURES ACT, TAKEN AT THE LOUISIANA REAL  
ESTATE COMMISSION AND APPRAISAL BOARD, 9071  
INTERLINE AVENUE, BATON ROUGE, LOUISIANA, ON  
DECEMBER 8, 2015 COMMENCING AT 9:13 A.M.

REPORTED BY:

RACHEL TORRES-REGIS, CCR, RPR  
CERTIFIED COURT REPORTER



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
www.torresreporting.com  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX



ADMINISTRATIVE HEARING

1 TMI, Mr. Chair.  
2 (Laughter from entire room)  
3 (Whereupon a break was  
4 taken.)  
5 MR. HALL:  
6 Ready to go back into  
7 session.  
8 JUDGE WHITE:  
9 I believe everyone is here,  
10 Mr. Chairman, who was here when we  
11 recessed.  
12 MR. RIEGER:  
13 Yes, Your Honor.  
14 JUDGE WHITE:  
15 We are on the record.  
16 MR. HALL:  
17 Okay. What we're going to do  
18 now is after our deliberation, we're  
19 going to -- we have a motion and then  
20 we'll discuss it.  
21 MR. MCMORRIS:  
22 Tommie McMorris. I move the  
23 respondent iMortgage give -- they have  
24 the choice set forth in the written  
25 complaint. Further, after hearing all

**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING &amp; LITIGATION SERVICES

[www.torresreporting.com](http://www.torresreporting.com)

1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAXNew Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 the testimony and legal documents  
2 submitted, it is obvious that the  
3 respondent did not follow Louisiana law  
4 and rules establishing to pay  
5 reasonable and customary fees.

6 MR. HALL:

7 Do I have a second?

8 MS. BONURA:

9 I will second.

10 MR. HALL:

11 We have a motion and a

12 second. Do we have any further

13 discussion?

14 Okay. Not. We'll have a roll  
15 call vote. And I will call, and then I  
16 will keep track.

17 Michael Graham?

18 MR. GRAHAM:

19 Yes.

20 MR. HALL:

21 Janis Bonura?

22 MS. BONURA:

23 Here.

24 MR. HALL:

25 You are voting?



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
www.torresreporting.com  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1 MS. BONURA:  
2 Sorry. I'm voting yes. Thank  
3 you.  
4 MR. HALL:  
5 Tim Hammett?  
6 MR. HAMMETT:  
7 Yes.  
8 MR. HALL:  
9 Butch Landry?  
10 MR. LANDRY:  
11 Yes.  
12 MR. HALL:  
13 Clay Lipscomb?  
14 MR. LIPSCOMB:  
15 Yes.  
16 MR. HALL:  
17 Tommie McMorris?  
18 MR. MCMORRIS:  
19 Yes.  
20 MR. HALL:  
21 Jim Purgerson?  
22 MR. PURGERSON:  
23 Yes.  
24 MR. HALL:  
25 Okay. It's unanimous and --



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 MR. MCMORRIS:

2 I would like to say  
3 something, if I could, please.

4 MR. HALL:

5 Go ahead.

6 MR. MCMORRIS:

7 I'd like to state my primary  
8 reason for making my decision I did had  
9 a lot to do with the e-mail that I read  
10 in regards to the conflicting prices  
11 and stuff and the explanation that I  
12 got as well as the lack of an actual  
13 survey to actually review. That would  
14 probably help my determination in this  
15 case a lot better had I had that, and  
16 that's all I have to add.

17 MR. HALL:

18 Anybody else would like to  
19 say -- have any comments about why they  
20 voted the way they did?

21 MR. LIPSCOMB:

22 Yeah. I just felt like --

23 MR. HALL:

24 Identify.

25 MR. LIPSCOMB:



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
www.torresreporting.com  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1 Clay Lipscomb. I just felt  
2 like the staff showed that they didn't  
3 follow the Louisiana law as I had read  
4 it in establishing customary and  
5 reasonable fees.

6 MR. HALL:  
7 Anybody else?

8 MS. BONURA:  
9 For me, it's -- my decision  
10 was based on the charges that we heard  
11 very early this morning and then  
12 re-reading what reasonable and  
13 customary means, how we obtain it,  
14 objective, independent. That's my  
15 version opinion.

16 MR. HALL:  
17 Okay. Anybody else?  
18 Okay. Do we have any other  
19 motions?

20 MR. GRAHAM:  
21 Yes. I'd like to move that  
22 the -- that this Board impose the  
23 following penalties on iMortgage for  
24 the charges set forth in the written  
25 complaint as follows: No. 1, a penalty

**TORRES REPORTING & ASSOCIATES, INC.**COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll FreeBaton Rouge, LA  
225.751.0732  
225.752.7308 FAXNew Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 of \$10,000 to be paid by March 21,  
2 2016.

3 2, the cost of an  
4 adjudication -- of this adjudication  
5 payable to Louisiana Real Estate  
6 Appraisers Board to be paid by March  
7 21, 2016.

8 Also, a suspension for six  
9 months that will be stayed until March  
10 21st, 2016, subject to iMortgage's  
11 compliance of the customary and  
12 reasonable fee plan approved by the  
13 Louisiana Real Estate Appraisers Board.

14 And finally, if the approved  
15 compliance plan submitted to the  
16 Louisiana Real Estate Appraisers Board  
17 by March 21st, 2016, and the penalties  
18 and costs are paid by March 21st, 2016,  
19 the six-month suspension shall be  
20 vacated.

21 MR. HALL:

22 Do I have a second?

23 MR. MCMORRIS:

24 I second.

25 MR. HALL:



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
www.torresreporting.com  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1                   Okay. Is there any discussion  
2 in the -- it's my understanding that  
3 March the 21st is when we have a  
4 meeting in March. We have an audit in  
5 some other circumstances, so our  
6 meeting in January and February are  
7 kind of unusual. So this is basically  
8 90 days, plus or minus a few, to get  
9 this board to approve a compliance  
10 plan, and that's -- that's my  
11 discussion.

12                   Anybody else have any  
13 comments about it?

14                   MR. RIEGER:

15                   Mr. Chairman? Sorry.

16                   MR. MCMORRIS:

17                   I want to go back to Hammond.

18                   MR. PURGERSON:

19                   I want to say, I think Mr.  
20 Kelker has the ability to -- and staff  
21 to put together something very  
22 reasonable within 90 days. I don't  
23 think we're here to cause anymore  
24 burden, but hopefully we made it clear.  
25                   I'm going to vote against the

**TORRES REPORTING & ASSOCIATES, INC.**COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll FreeBaton Rouge, LA  
225.751.0732  
225.752.7308 FAXNew Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 motion, this second one just based on  
2 the fine. I think that doing the action  
3 plan is enough, but I fully respect  
4 those that do vote for it, but --

5 MR. HALL:

6 Okay. Is there not -- is  
7 there any other discussion before we  
8 have a roll call vote?

9 MR. RIEGER:

10 Your Honor -- excuse me,  
11 Mr. Chair, is it appropriate to ask  
12 questions at this point?

13 JUDGE WHITE:

14 Well, I will comment on that,  
15 Mr. Chairman, if you want me to.

16 MR. HALL:

17 Yes. I would -- go ahead.

18 JUDGE WHITE:

19 My experience as a hearing  
20 officer that the state licensing Board  
21 for contractors, there's been a very  
22 full opportunity for hearing. The  
23 matter has been placed in the hands of  
24 the board and at that particular point,  
25 I think the role is to listen rather



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX



## ADMINISTRATIVE HEARING

1 than -- there may be a motion for --  
2 under the administration --  
3 Administrative Procedures Act for  
4 rehearing, reconsideration, et cetera,  
5 or an appeal to the district court, but  
6 I believe it's really in the Board's  
7 hands, respectfully, Mr. Rieger, at  
8 this point to make these remarks.

9 MR. HALL:

10 Okay. I would like to -- the  
11 Board to finish our discussion and have  
12 a roll call vote and after we do that,  
13 you can ask a question if you want to  
14 ask a question.

15 MR. RIEGER:

16 Fair enough.

17 MR. HALL:

18 Okay. Michael Graham?

19 MR. GRAHAM:

20 Yeah.

21 MR. HALL:

22 And if you would, if you --  
23 that's fine. Michael Graham.

24 MR. GRAHAM:

25 Yes.



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1 MR. HALL:  
2 Janis Bonura?  
3 MS. BONURA:  
4 Yes.  
5 MR. HALL:  
6 Tim Hammett?  
7 MR. HAMMETT:  
8 Yes.  
9 MR. HALL:  
10 Troy Lipscomb?  
11 MR. LIPSCOMB:  
12 Yes.  
13 MR. HALL:  
14 Tommie McMorris?  
15 MR. MCMORRIS:  
16 Yes.  
17 MR. HALL:  
18 Jim Purgerson?  
19 MR. PURGERSON:  
20 No.  
21 MR. HALL:  
22 Okay. Motion carries.  
23 MS. BONURA:  
24 I think you forgot Mr.  
25 Landry.



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 MR. HALL:

2 Oh, Butch Landry.

3 MR. LANDRY:

4 Yes.

5 MR. HALL:

6 It's getting late, gentlemen.

7 I'm so sorry.

8 Is there anybody else that I  
9 missed? Because I'm not trying to miss  
10 anybody.

11 Okay. We have one, two,  
12 three, four, five, six yea's and one  
13 no. Motion passed. Is there anybody  
14 that would like any other comments that  
15 they have to make?

16 Okay. In that case, Mr.  
17 Rieger, I understand you want to say  
18 something and I want you to always know  
19 that we're always willing to listen.

20 MR. RIEGER:

21 Thank you. Question, and I'm  
22 trying to understand exactly how this  
23 sanction works. I understand penalties,  
24 pay a fine by March. Cost of the  
25 adjudication by March 21st, I got those



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 two.

2 A suspension of the license  
3 for six months, but that is stayed  
4 until March 21st contingent upon Board  
5 approval of a compliance plan that  
6 would give this Board assurance that  
7 iMortgage is charging customary and  
8 reasonable fees; is that correct?

9 MR. HALL:

10 Yes.

11 MR. RIEGER:

12 Okay. So there is no  
13 suspension at this time?

14 MR. HALL:

15 That is correct. We felt like  
16 that you should have time to come up  
17 with a plan, whatever else you need,  
18 and then submit it to us. And then my  
19 guess is we can do some communications  
20 to work it out and then -- because of  
21 the Louisiana Real Estates Appraisers  
22 Board business calendar, okay, we have  
23 a meeting, like, January the 25th and  
24 then February the 4th because we have  
25 the ASC audit. So it really --



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

## ADMINISTRATIVE HEARING

1 MR. RIEGER:

2 Sure.

3 MR. HALL:

4 We just kind of -- so the  
5 next available meeting would be March  
6 the 21st. That gives us time to --  
7 y'all to come up with a plan for us to  
8 approve, and then we'll deal with it at  
9 that time.

10 MR. RIEGER:

11 Okay. Very good. I think I  
12 understand that. Thank you-all.

13 MS. EDWARDS:

14 Thank you.

15 MR. HALL:

16 Thank you. Does anybody have  
17 any other comments? In light of the  
18 hour --

19 MR. PURGERSON:

20 Motion to adjourn.

21 MR. HALL:

22 I was fixing to say that, but  
23 what I want to do is I want everybody  
24 to know that we are going to take up  
25 the rest of our agenda at the next



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1 meeting. So I have a motion to adjourn.

2 Do I have a second?

3 MS. BONURA:

4 Second.

5 (Whereupon the hearing has been adjourned at  
6 10:44 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ADMINISTRATIVE HEARING

December 08, 2015



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES

[www.torresreporting.com](http://www.torresreporting.com)

1.866.982.6878 Toll Free

Baton Rouge, LA

225.751.0732

225.752.7308 FAX

New Orleans, LA

504.392.4791

504.392.4852 FAX

ADMINISTRATIVE HEARING

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25**REPORTER'S CERTIFICATE**

I, RACHEL TORRES-REGIS, Certified Court Reporter in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that the hearing after having been duly sworn by The Court upon authority of R.S. 37:2554, did testify as hereinbefore set forth in the foregoing 559 pages;

That this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding;

That the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board, and that I am informed about the complete arrangement, financial or otherwise, with the person or entity making arrangements for deposition services;

That I have acted in compliance

**TORRES REPORTING & ASSOCIATES, INC.**COURT REPORTING & LITIGATION SERVICES  
[www.torresreporting.com](http://www.torresreporting.com)  
1.866.982.6878 Toll FreeBaton Rouge, LA  
225.751.0732  
225.752.7308 FAXNew Orleans, LA  
504.392.4791  
504.392.4852 FAX

ADMINISTRATIVE HEARING

1 with the prohibition on contractual  
2 relationships, as defined by Louisiana Code of  
3 Civil Procedure Article 1434 and in rules and  
4 advisory opinions of the board;

5 That I have no actual knowledge of  
6 any prohibited employment or contractual  
7 relationship, direct or indirect, between a court  
8 reporting firm and any party litigant in this  
9 matter nor is there any such relationship between  
10 myself and a party litigant in this matter. I am  
11 not related to counsel or to the parties herein,  
12 nor am I otherwise interested in the outcome of  
13 this matter.

14  
15 Dated this 29th day of December, 2015.

16  
17  
18  
19  
20 \_\_\_\_\_  
21 RACHEL TORRES-REGIS, CCR, RPR  
22 CERTIFIED COURT REPORTER  
23  
24  
25



**TORRES REPORTING & ASSOCIATES, INC.**

COURT REPORTING & LITIGATION SERVICES  
www.torresreporting.com  
1.866.982.6878 Toll Free

Baton Rouge, LA  
225.751.0732  
225.752.7308 FAX

New Orleans, LA  
504.392.4791  
504.392.4852 FAX



# **Tab 41 – Tab 42**

**REDACTED IN ENTIRETY**

# Tab 43



State of Louisiana  
LOUISIANA REAL ESTATE APPRAISERS BOARD

JOHN BEL EDWARDS  
GOVERNOR

Mr. Dean Keller  
2570 Boyce Plaza Road  
Pittsburgh, PA 15241

March 10, 2016

Re: Case No. 2014-1500


Dear Mr. Keller,

We have received and reviewed your proposed compliance plan dated February 26, 2016 pursuant to the final order of the Louisiana Real Estate Appraisers Board resulting from the December 8, 2015 adjudicatory hearing. Your proposed plan is denied. The basis for this decision includes, but is not limited to, the following:

- 1) The use of a lender-developed fee schedule or study does not represent an independent, 3<sup>rd</sup> party study as the lender has a vested interest in each specific engagement and is, therefore, not independent of the transaction.
- 2) A lender fee study may be considered by the REAB for approval upon providing the Board with all documents showing or relating to the underlying data and methodology used in the development of such study, including the response rate and identity of market participants involved in any purported study. You may not rely on any such lender study but refuse to provide the Board with a copy of such study with the underlying supportive data.
- 3) Reliance on the evaluation of the six (6) factors listed in your proposed plan omits sufficient information inherent to the second step of this process. The second step in this process requires payment of customary and reasonable fees based on recent rates paid within the specific market area of the property being appraised. You have provided no data as to what market study has been undertaken by you, consistent with the minimal requirements set forth in Item 2) above. The mere fact that an individual appraiser may accept a certain fee does not in itself establish a fee as customary and reasonable per the federal presumptions of compliance as well as REAB interpretation.

We would be pleased to expedite review of any additional submittal you may desire to propose in the above captioned matter. However, time is of the essence as the deadline for approval of any plan you may submit expires March 21, 2016.

Sincerely,

  
Bruce Unangst  
Executive Director

cc: Robert L. Rieger, Jr.

POST OFFICE BOX 14785 BATON ROUGE, LA 70898-4785  
(225) 925-1929 1-800-821-4529 FAX (225) 925-4501  
www.lrec.state.la.us email: info@lrec.state.la.us



# Tab 44

**REDACTED IN ENTIRETY**

# Tab 45

MINUTES OF MEETING  
OF  
LOUISIANA REAL ESTATE APPRAISERS BOARD

March 21, 2016

The Louisiana Real Estate Appraisers Board held its regular business meeting on Monday, March 21, 2016, at 9:00 a.m., at 9071 Interline Avenue, Baton Rouge, Louisiana, according to regular call, of which all members of the board were duly notified, at which meeting the following members were present:

**BOARD**

Roland M. Hall, Sr., Chairman  
Clayton F. Lipscomb, Secretary  
Gayle Boudousquie  
Cheryl B. Bella  
Janis M. Bonura  
Timothy W. Hammett  
Newton J. Landry  
James R. Purgerson, Jr.

**STAFF**

Bruce Unangst, Executive Director  
Arlene Edwards, Legal Counsel  
Summer Mire, Confidential Assistant to Director  
Anne Brassett  
Mark Gremillion  
Robert Maynor  
Chad Mayo  
Ryan Shaw  
Henk VanDuyvendijk  
Jenny Yu

**GUESTS**

Melissa Bond, Appraisal Education Provider  
Rebecca Helveston, Adams and Reese, LLP

Board members Michael Graham and Tommie McMorris were unable to attend the meeting.

**Call to Order & Approval of Minutes**

Chairman Hall called the meeting to order and led the Invocation. Mr. Landry led the Pledge of Allegiance. On motion made by Mr. Lipscomb and seconded by Mr. Purgerson, the minutes of the February 4, 2016 meeting were unanimously approved as written and circulated.

**Budget Report**

Ms. Yu provided the budget report for the period ending February 29, 2016 (*See Attachment A*). The budget is in good shape and remains in the black.

**Director's Report**

Director Unangst asked the Board to entertain a motion to add "Executive Session" to the agenda. Ms. Bonura made motion, seconded by Mr. Lipscomb, to open the agenda for inclusion of an executive session. Motion passed by unanimous vote of 7-0.

Ms. Bonura made motion, seconded by Mr. Lipscomb, to go into Executive Session. Motion passed by unanimous vote of 7-0.

On motion made by Mr. Lipscomb and seconded by Ms. Boudousquie, the Board voted unanimously to exit executive session and return to the regular business meeting.

Director Unangst provided an overview of House Bill No. 804 (*See Attachment B*). He advised that this is basically a "clean-up" bill containing language recommended by the Appraisal Subcommittee relative to appraisal management companies and real estate appraisers.

House Bill No. 580 (*See Attachment C*), provides for preemption of actions for damages against real estate appraisers and appraisal companies, and allows for a prescriptive period for such actions.

**Public Comment** – None

**Unfinished Business**

Mr. Purgerson made motion, seconded by Mr. Hammett, to ratify approval of the final draft of the rules and regulations of the Board as filed with the Register (*See Attachment D*). Motion passed without opposition.

**New Business**

Director Unangst updated the Board on the revised compliance plan submitted by iMortgage Services, LLC (*See Attachment E*). Inasmuch as their plan utilizes the most recent Fee Study conducted by Southeastern Louisiana University Business Research Center and commissioned by the Board, Director Unangst acceptance of this plan. He further advised that the conditions of adjudication have been met and suspension of iMortgage Services, LLC's AMC license was stayed because of their willingness to comply with the directives of the Board's order.

Mr. Purgerson made motion, seconded by Mr. Lipscomb, to accept the compliance plan as presented by iMortgage Services, LLC. Motion passed 6-0, with Ms. Boudousquie abstaining from the vote.

There being no additional items to discuss, the meeting was adjourned on motion made by Mr. Hammett and seconded by Ms. Bonura.

---

Roland M. Hall, Sr., Chairman

---

Clayton F. Lipscomb, Secretary

# **Tab 46 – Tab 48**

**REDACTED IN ENTIRETY**



**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2017, I filed the foregoing document electronically using the FTC's E-Filing System and served the following via email:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
[ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov)

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document to:

W. Stephen Cannon  
Constantine Cannon LLP  
1001 Pennsylvania Avenue, NW  
Suite 1300N  
Washington, DC 20004  
scannon@constantinecannon.com

*Counsel for Respondent Louisiana Real Estate Appraisers Board.*

Dated: November 30, 2017

By: /s/ Lisa B. Kopchik  
Lisa B. Kopchik, Attorney

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Date: November 30, 2017

By: /s/ Lisa B. Kopchik  
Lisa B. Kopchik, Attorney