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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of	)	
Louisiana Real Estate Appraisers Board, Respondent	)	**Docket No. 9374**

MEMORANDUM OF RESPONDENT LOUISIANA REAL ESTATE APPRAISERS BOARD IN OPPOSITION TO COMPLAINT COUNSEL'S MOTION FOR PARTIAL SUMMARY DECISION ON RESPONDENT'S FOURTH AFFIRMATIVE DEFENSE

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INTRODUCTION

The Louisiana Real Estate Appraisers Board ("LREAB") promulgated and enforced its "customary and reasonable" residential appraisal fee regulation[1] in good faith, with an objectively and subjectively reasonable belief that its actions fulfilled the requirements of the Dodd-Frank Act,[2] federal regulation, and Louisiana statutes. Complaint Counsel's Motion does not seriously contest these facts, and abundant evidence shows why they cannot.[3]

The law is equally clear: A regulated entity acting in good faith to comply with a regulatory scheme has a complete defense to antitrust liability. *See, e.g., S. Pac. Commc'ns Co. v. AT&T*, 740 F.2d 980 (D.C. Cir. 1984). The commentators concur: "Antitrust condemnation of conduct that properly implements policies lawfully adopted by the regulators would be repugnant to the regulatory regime."[4] This good faith regulatory compliance defense fits this case to a T. To counsel's knowledge, this is the first time that the Commission asserts a State agency can be liable under Section 5 for attempting to comply with obligations Congress imposed on a State; indeed, on that specific agency respondent.

But rather than address the evidence of reasonableness or good faith, or the actual legal elements of LREAB's affirmative defense, the Motion for Partial Summary Decision attempts to foreclose LREAB's ability to present this defense at trial by importing requirements from the separate body of case law pertaining to implied immunity. However, both the relevant precedents from multiple circuits and the analyses of antitrust scholars hold regulatory

[1] La. Adm. Code tit. 46, pt. LXVII, Chapter 311 "Compensation of Fee Appraisers," Sec. 31101, "General Provisions; Customary and Reasonable Fees; Presumptions of Compliance" (hereinafter, "Rule 31101").
[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C. § 1639e(i), 12 U.S.C. § 3353(a).
[3] *See infra,* Statement of Facts; Affidavits of Bruce Unangst and LREAB Board members.
[4] P. Areeda & H. Hovenkamp, Antitrust Law ¶ 246a (4th ed. 2013).

compliance distinct from immunity. What matters for purposes of a regulatory compliance affirmative defense is whether the actor undertook the conduct at issue in an objectively and subjectively reasonable good faith attempt to comply with the regime that regulates it, assessed at the time the challenged actions were taken; here, what LREAB understood the Dodd-Frank Act and the Louisiana AMC Act[5] to require.

The Louisiana Legislature, as part of the federal scheme, in 2012 imposed upon LREAB the obligation to monitor and enforce Appraisal Management Company ("AMC") compliance with Dodd-Frank's requirements. Federal law and regulation required Louisiana to assign these obligations to register and regulate AMCs to LREAB, as the established state appraiser licensing agency. LREAB reasonably believed its implementation of the customary and reasonable fee regulation was required to comport with federal and state law, to protect the mortgage services market in Louisiana. And LREAB understood the federal government, through the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC"), monitored and supervised state appraisal agencies, including agencies' regulation of AMCs, and had the authority to impose sanctions on non-compliant states. Policy statements from this same regulatory body defined the "State boards" that regulate appraisers and AMCs as composed of the categories of market participants that comprise LREAB.[6]

The regulatory compliance defense is a fact-intensive inquiry, appropriate for decision here only upon a fully-developed record. As set forth in the attached Affidavits from LREAB's Executive Director and Board members, any material assertions in Complaint Counsel's "Statement of Undisputed Facts" are genuinely disputed, if not refuted outright.[7] In any event,

[5] Appraisal Management Company Licensing and Regulation Act, La. R.S. 37:3415, *et seq* ("the AMC Act").
[6] *Infra* pp. 7, 30.
[7] *See*, *e.g.*, LREAB's Response to Complaint Counsel Statement of Undisputed Facts ¶¶ 13, 22-48.

none of the purportedly "undisputed" facts is dispositive as to whether LREAB can assert the good-faith regulatory compliance defense as a matter of law.

LREAB's good-faith belief that it acted pursuant to requirements of federal and state regulation should be considered in assessing both the reasonableness of any alleged restraint, and the availability of a remedy. Consistent with appellate court precedent, LREAB is entitled to present at trial, with a fully-developed factual record, its defense to antitrust liability based on compliance in good faith with federal and state regulation. The Motion for Partial Summary Decision should be denied.

SUMMARY OF MATERIAL FACTS

A. LREAB

Louisiana Real Estate Appraisers Board is a state governmental regulatory board created in 1987, operating as part of the Office of the Governor, under the laws of the State of Louisiana. La. R.S. 37:3394; Affidavit of Bruce Unangst ("Unangst Aff.") ¶¶ 20-21. The legislature tasked the Board to license and regulate real estate appraisers and AMCs and bring the State into compliance with the minimum requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 3331 *et seq.*; La. R.S. 37:3395 and 37:3415. LREAB members are appointed by the Governor and confirmed by the Senate. La. R.S. 37:3394. The Louisiana Real Estate Appraisers Law, La. R.S. 37:3391, *et seq.* ("Appraisers Law"), and AMC Act direct LREAB to implement and enforce state regulations regarding real estate appraisers and AMCs in Louisiana, including obligations imposed on the State and State appraisal boards by FIRREA and the Dodd-Frank Act. Unangst Aff. ¶¶ 20-21.

B. Federal and State Regulation Over AMC Payments of Customary and Reasonable Residential Appraisal Fees

1. Federal Law provides for State regulation of residential appraisal fees paid by Appraisal Management Companies.

In response to the 2007-2008 housing crisis, the federal government mandated all states that license AMCs to impose minimum requirements for state appraisal boards to supervise and regulate AMCs. The Dodd-Frank Act requires that lenders and their agents compensate appraisers in "covered transactions" (primarily home mortgages) "at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised." 15 U.S.C. § 1639e(i).

In October 2010, the Federal Reserve issued Interim Final Rules under Dodd-Frank, specifying that AMCs may presumptively comply with the statutory "customary and reasonable" appraisal fee requirement in one of two ways. An AMC may pay 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. 12 C.F.R. § 226.42(f)(2). Alternatively, an AMC may pay a fee based on "objective third-party information," including fee schedules, studies, and independent surveys by third parties of recent residential appraisal fees (excluding fees paid by AMCs). 12 C.F.R. § 226.42(f)(3).

On April 9, 2014, the federal financial regulatory agencies issued a notice of proposed rulemaking concerning the "Minimum Requirements for Appraisal Management Companies." 79 Fed. Reg. 19,521 (Apr. 9, 2014). In its proposed rule, the federal financial regulatory agencies confirmed that participating states, *inter alia*:

> [M]ust have in place within the State appraiser certifying and licensing agency a licensing program that has authority to: …
>
> (3) examine the books and records of an AMC operating in the State and require the AMC to submit reports; …
> (5) conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;
> (6) discipline, suspend, terminate, and refuse to renew the registration of an AMC that violates applicable appraisal related laws, regulations, or orders; and
> (7) report an AMC's violations of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations to the ASC.

Id. at 19,527. The federal financial regulatory agencies further indicated that AMCs would not be able to provide "services related to Federally related transactions in a state that has not implemented the proposed rule." *Id.* at 19,532 n.51.

On June 9, 2015, the federal financial regulatory agencies jointly issued the final rule in the Minimum Requirement rulemaking. 80 Fed. Reg. 32,658 (June 9, 2015). The final rule remained largely unchanged from the April 9, 2014 proposed rule, including requiring that the state's appraiser certifying and licensing agency examine, conduct investigations, discipline, and report an AMC's violations of appraisal-related laws. *Id.* at 32,680. As part of the final rule, some commenters questioned if state appraiser licensing agencies should "investigate and enforce TILA Section 129E and its implementation regulations, which includes the requirements to pay appraisers customary and reasonable fees." *Id.* at 32,669. The federal financial regulatory agencies responded that state agencies "must require AMCs to require that appraisals are conducted in accordance with the valuation independence requirements of section 129E(a) through (i) of TILA," which includes the customary and reasonable fee provision of TILA §129E(i), and to enforce AMC compliance with that requirement. *Id.* The June 9, 2015 final

rule is codified in the Code of Federal Regulations identically, but separately, in the rules for each federal financial regulatory agency.[8]

2. The Appraisal Subcommittee

The Appraisal Subcommittee was created in 1989 pursuant to Title XI of FIRREA to "provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." 12 U.S.C. § 3331. Starting in 1989, the ASC was required to monitor and supervise the states licensure and regulation of appraisers "who are qualified to perform appraisals in connection with federally related transactions." 12 U.S.C. § 3332(a)(1)(A).

With the 2010 passage of Dodd-Frank, Congress expanded the ASC's monitoring and supervisory duties to include a state appraiser certifying licensing agency's licensure and regulation of AMCs. Specifically, Dodd-Frank amended FIRREA sections 1103, 1109, and 1118(a), that "describe the elements of State regulation of AMCs that will be monitored by the ASC." 79 Fed. Reg. 19,521, 19,527 & n.35 ("*See* 12 U.S.C. 3332(a)(1)(B) (requiring the ASC to monitor requirements established by the States for supervision of AMCs); 12 U.S.C. § 3338(a) (requiring each participating State to transmit reports to the ASC on supervisory activities involving AMCs and disciplinary actions taken); and 12 U.S.C. § 3347(a) (requiring the ASC to monitor States to assess whether a State has an effective regulatory program"). The ASC's monitoring and supervisory activities over state appraiser agencies thus included ensuring the

[8] See 12 C.F.R. pt. 34 (2015) (Department of Treasury); 12 C.F.R. pt. 323 (2015) (Federal Deposit Insurance Corporation); 12 C.F.R. pt. 1026 (2015) (Bureau of Consumer Financial Protection); and 12 C.F.R. pt. 1222 (2015) (Federal Housing Finance Agency).

state has: (1) policies consistent with the federal requirements; (2) processes for complaints and investigations of both appraisers and AMCs; (3) the ability to discipline and sanction both appraisers and AMCs; (4) an effective regulatory program; and (5) fulfilled its obligation to report complaints to the ASC. 12 U.S.C. § 3347(a)(1-5). The ASC "shall have the authority to impose sanctions" on any state certifying and licensing agency that fails to have an appraiser regulatory program that satisfies each of the above five requirements. *Id.* at § 3347(a)(5). An "effective regulatory program" included "the investigation of complaints, and enforcement actions against appraisers and appraisal management companies." 12 U.S.C. § 3347(a).

In June 2013, the ASC issued its first post-Dodd-Frank policy statement. Unangst Aff., Ex. 8. In the policy statement, the ASC indicated that the "State appraiser certifying and licensing agency" was often a "State board," defined by the ASC as "a group of individuals (usually appraisers, bankers, consumers, and/or real estate professionals) appointed by the Governor or a similarly positioned State official to assist and oversee State Programs." *Id.* at 42. In June 2015, the ASC issued a bulletin regarding "State Registration and Supervision of Appraisal Management Companies (AMCs)."[9] The ASC bulletin included the Dodd-Frank minimum requirements for states to "[c]onduct investigations of AMCs for potential violations of AMC related laws, regulations or orders" and "[d]iscipline AMCs that violate appraisal-related laws, regulations, or orders." *Id.* at 2. Further, the ASC mandated states to impose requirements on AMCs to "[e]stablish and comply with processes and controls to ensure AMCs engage competent and independent appraisers," and "[r]equire compliance with the requirements

[9] Appraisal Subcommittee, Federal Financial Institutions Examination Council, Bulletin No. 2015-01 (June 17, 2015), *available at* https://www.asc.gov/StaticFiles/Bulletin%20No.%202015-01%20to%20States%20-%20AMC%20Rules.pdf.

of section 129E(a) through (i) of the Truth and [sic] Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder." *Id.* at 3; 80 Fed. Reg. 32,658.

On September 20, 2017, the ASC issued its Proposed Revised Policy Statement. 82 Fed. Reg. 43,966 (Sept. 20, 2017). The ASC policy statement tracks Dodd-Frank amendments to FIREEA, including 12 U.S.C. § 3347(a)(1-5), the federal financial regulatory agencies' rules, and past ASC guidance. The ASC mandates that the state appraiser certifying and licensing agency carry out numerous tasks, including: (1) registering AMCs; (2) examining AMC records; (3) conducting investigations of AMCs "to assess potential violations of appraisal-related laws, regulations, or orders;" (4) disciplining AMCs for violations; and (5) reporting AMC violations to the ASC. 82 Fed. Reg. 43,966, 43,978. The ASC further indicates that "Title XI grants the ASC authority to impose sanctions on a State that fails to have an effective Appraiser *or AMC Program*." *Id.* at 43,981 (emphasis added).

3. The Good Faith Regulatory Compliance of the Louisiana Legislature and the Board

Since 1987, the Appraisers Law has empowered the LREAB to license and regulate general and residential appraisers. La R.S. 37:3391-3413 (1987). In accordance with FIREEA, the Board (as the state's appraiser certifying and licensing agency) was monitored and supervised by the ASC in its licensure and regulation of appraisers. In 2009, in response to the growing role of AMCs in the appraisal process but prior to the passage of Dodd-Frank, numerous states – including Louisiana – passed laws requiring state appraisal boards to register and regulate AMCs. Unangst Aff. ¶¶ 22-23. In 2010, Dodd-Frank mandated registration and regulation of AMCs also be performed by the "state appraiser certifying and licensing agency"; 12 U.S.C. § 3353(a)(1); *i.e.*, for Louisiana, the LREAB. Unangst Aff. ¶ 25, Ex. 2.

To fulfill the federal mandate of Dodd-Frank, in 2012, the Louisiana Legislature amended the AMC Act 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." Acts 2012, No. 429, § 1, eff. May 31, 2012; La. R.S. 37:3415.15(A).[10] The AMC Act requires LREAB to: (1) adjudicate complaints, including complaints by appraisers against AMCs; (2) enforce the AMC Act against AMCs that violate its provisions; and (3) adopt rules and regulations necessary for the enforcement of the Act. La. R.S. 37:3415. The Legislature made clear that its intent was to be consistent with Dodd-Frank's requirements by expressly stating that the customary and reasonable fee standard was to be implemented in a manner consistent with federal presumptions. *Id.* The amendments were supported by realtors, lenders, appraisers, and AMCs.[11] The 2012 amendments to the AMC Act empowered the Board to promulgate rules and regulations to enforce the C&R requirement, to require AMCs to produce business records relevant to alleged violations, and to hold adjudicatory hearings on such alleged violations. La. R.S. 37:3415.15, 3419-21.

To comply with the mandates of Dodd-Frank and the AMC Act, in 2013 LREAB promulgated Rule 31101, which requires that AMCs "shall compensate fee appraisers at a rate that is customary and reasonable." Unangst Aff. ¶¶ 33-36.[12] To ensure any proposed rule was in accordance with federal regulations, LREAB's Executive Director, Bruce Unangst, conferred with the Executive Director of the Appraisal Subcommittee, Mr. James R. Park, on multiple

[10] In 2016, following federal promulgation of the Final Rules, the Legislature amended the last clause to read "consistent with the requirements of 15 U.S.C. § 1639e and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222."
[11] Unangst Aff. ¶¶ 28-30.
[12] During the Board's promulgation of Prior Rule 31101, the Board's composition, which included general appraisers, residential appraisers, and bankers, met the ASC's definition of "State board." Unangst Aff., Ex. 8.

occasions, to understand the scope of the Board's obligations to comply with Dodd-Frank, and the consequences for failing to do so. Unangst Aff. ¶¶ 65-67.

Mr. Unangst also conferred with stakeholder representatives (such as the Appraisal Institute, the Real Estate Valuation Advocacy Alliance ("REVAA"), the Louisiana Bankers Association, the Louisiana Home Builders Association, and Louisiana REALTORS) to ensure that Rule 31101 was consistent with the federal mandate. Unangst Aff. ¶ 36 The Board held multiple public meetings and public hearings to discuss the proposed rule and compliance with Dodd-Frank and the AMC Act. Unangst Aff. ¶¶ 42-43. In those meetings, the Board received presentations and comments from industry members regarding what Dodd-Frank required the Board to do and how other states were addressing Dodd-Frank's mandate that AMCs pay customary and reasonable fees to residential real estate appraisers for covered transactions. Unangst Aff. ¶ 28, Ex. 3.

When the Board promulgated Prior Rule 31101, the Board members understood that Rule 31101 was not only consistent with Dodd-Frank but also required by both Dodd-Frank and Louisiana law.[13] Board members understood that Rule 31101 was consistent with prior Board practice, over three decades, implementing FIRREA and other applicable federal regulations.[14] The Board further understood that if it did not put into place a system for compliance with the C&R provisions of Dodd-Frank, AMCs would not be eligible to participate in federally-related transactions in Louisiana, which would prove financially harmful to AMCs. Unangst Aff. ¶ 34; Hall Aff. ¶ 7.[15]

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[13] *See* Affidavits of Cheryl Bella ¶ 8; Gail Boudousquie ¶ 7; Michael Graham ¶ 10; Heidi Lee ¶ 7; Clayton Lipscomb ¶ 8; Gary Littlefield ¶ 9; Leonard Pauley ¶ 9.
[14] *See* Lee Aff. ¶ 7.
[15] *See also* June 2014 comments of REVAA, noting that failure to enact AMC registration statutes (or repeal the statutes already adopted) would harm competition in appraisal management services. Kovacs Decl. Ex. 37, at 2.

As required by Louisiana's Administrative Procedure Act ("APA"), LREAB published in the Louisiana Register a Notice of Intent seeking written public comments to its initial proposed Rule 31101. Unangst Aff. ¶ 38, Ex. 6. Based on stakeholder comments to the first draft Rule, including comments from AMCs, LREAB withdrew its initial proposal and published in the Louisiana Register a revised Notice and proposed rule, and again requested written comments. *Id.* ¶ 38. In response to comments, LREAB again amended its draft rule, published it for comment in the Louisiana Register, and scheduled a hearing to receive additional public input. *Id.*¶ 38, Ex. 7. At that hearing, most stakeholder representatives supported adoption of the third draft rule as written. *Id.* ¶ 43. AMCs expressed concerns with the proposed language, but not with LREAB's obligation to enforce the C&R fee mandate. *Id.* ¶ 36. Having considered all comments, LREAB submitted this third iteration of the rule for Legislative oversight. *Id.* ¶ 44.

The APA requires House and Senate Commerce Committee oversight over the adoption of LREAB-proposed rules, with authority to hold hearings on a proposed regulation and approve or disapprove it, or to forego a hearing and thereby approve the rule without delay. La. R.S. 49:968(D)-(F); La. R.S. 37:3415.21(B) (2014) (repealed). On September 26, 2013, as prescribed by the APA, LREAB submitted for these Committees its report summarizing the rule, written and oral comments received, the record of the hearings, and comments adopted and rejected in the LREAB-approved rule. Unangst Aff. ¶ 49. The Senate Commerce Committee met November 13, 2013 and, being advised that a decision to not hold a hearing would allow the rule to proceed, a 6-2 majority of the Senate Commerce Committee voted for the rule to take effect without a hearing. *Id.* ¶ 46. The House Commerce Committee oversight subcommittee informed LREAB that it required no additional information and deemed a hearing unnecessary. *Id.* ¶ 45. The Louisiana Register published Rule 31101 on November 20, 2013, whereupon the rule

became final. *Id.* ¶ 48. The Governor permitted the proposed regulation to take effect. *Id.* ¶ 47; *see* La. R.S. 49:970.

Rule 31101 implements the AMC Act consistent with the requirements of Dodd-Frank by, first, stating the three methods by which AMCs can comply with the C&R mandate, including the two presumptions stated in the Federal Reserve Board's Interim Final Rule – (1) at a minimum, use the six factors to adjust recent rates in the relevant geographical area, and (2) geographically relevant and objective third-party information, including fee schedules and studies. Unangst Aff. ¶ 26; Rule 31101(A)(1) and (3); 12 C.F.R. § 226.42(f). The Rule also permits AMCs to rely on additional facts and circumstances as a third compliance method. *Id.* Second, in accordance with federal requirements and the AMC Act, Rule 31101 requires AMCs to maintain documentation substantiating the methods, factors, variations, and differences used to determine C&R compensation for each appraisal assignment in the geographic market of the property being appraised. Unangst Aff. ¶ 63; Rule 31101(B)-(C); 12 C.F.R. § 34.213(a) and (b); La. R.S. 37:3415.14. While the Board was also empowered under Rule 31101 to implement a fee schedule as a non-mandatory option for AMC compliance with La. R.S. 37:3415.15, the Board never did so.[16]

In response to comments from AMCs during the Federal Reserve's Dodd-Frank rulemaking process about the lack of existing fee studies and the complexities involved in undertaking a study, LREAB considered whether to fund an objective academic study of C&R fees paid by lenders to residential appraisers in Louisiana to assist compliance with this new regulatory obligation under the AMC Act and Rule 31101. The Board discussed the proposal at

[16] Nor has the LREAB any "present intention to establish such a schedule" under the readopted Rule 31101. Unangst Aff., Ex. 36.

a regularly-scheduled public meeting attended by appraisers and AMC representatives; no one voiced any objection to the plan. Unangst Aff. ¶ 50. The Board funded the Southeastern Louisiana University Business Center ("SLU") to conduct the study (hereinafter "SLU Survey."). Unangst Aff. ¶ 51. The SLU Survey excluded data regarding AMC payments of appraisal fees, consistent with the mandates of Dodd-Frank and its implementing regulations.[17]

C. The Pleadings

On May 30, 2017, the Commission issued the Complaint alleging that the Board, in promulgating and enforcing Rule 31101, "unreasonably restrained price competition" for residential real estate appraisal services provided to AMCs that act as agents for lenders in arranging for such services in Louisiana. The Complaint asserts the Board "effectively" set prices by allegedly "requiring AMCs to match or exceed" appraisal rates listed in the SLU Survey. Compl. ¶¶ 4-5. LREAB answered the Complaint on June 19, 2017, denying these factual averments and allegations of any Section 5 violation. Answer at 1, 3 ¶ 1; 4 ¶¶ 4-5. The Board further asserted a defense of good faith regulatory compliance: "LREAB has acted in good faith to comply with federal regulatory mandates." *Id.* at 12 ¶ 4. Complaint Counsel's Motion seeks to preclude this affirmative defense.

STANDARD FOR SUMMARY DECISION

Summary decisions may be granted only when "there is no genuine issue as to any material fact regarding liability or relief . . . ." FTC Rule 3.24; Fed. R. Civ. P. 56. "[S]ummary judgment is not a substitute for the trial of disputed fact issues." 10A C. Wright, A. Miller et al., Federal Practice and Procedure § 2712 (4th ed. & Apr. 2017 update) ("Wright & Miller"). Only

[17] 15 U.S.C. § 1639e(i)(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 known appraisal management companies.").

facts "that might affect the outcome of the suit under the governing law" are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Thus, facts are material "if they constitute a legal defense" to the relief sought by Complaint Counsel. 10A Wright & Miller § 2725, *citing Kennett-Murray Corp. v. Bone*, 622 F.2d 887, 892 (5th Cir. 1980) (reversing summary judgment). A dispute of material fact is "genuine" if, based on affidavits and admissible evidence, a reasonable factfinder could return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248. Further, summary judgment must be refused where ongoing discovery would "discover information that is essential to [the nonmovant's] opposition." *Anderson*, 477 U.S. at 250 n.5; *cf.* Fed. R. Civ. P. 56(d) (holding court may deny motion for summary judgment where nonmovant cannot present facts essential to justify its opposition). In evaluating a motion for summary decision, all inferences drawn from underlying facts must be viewed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986).

ARGUMENT

I. Good Faith Regulatory Compliance Is a Complete Defense to Antitrust Liability.

LREAB has pleaded a defense to antitrust liability based on its good faith belief that its actions were required by and wholly consistent with mandates in the Dodd-Frank Act, federal regulations, and the AMC Act to regulate and enforce AMC payments of customary and reasonable fees for appraisals of covered transactions. As the above Statement of Facts demonstrates, LREAB crafted, promulgated, and enforced Rule 31101 to comply with its analysis and understanding of the requirements of FIRREA, Dodd-Frank, and the AMC Act.

Courts of appeals recognize and apply the good faith regulatory compliance defense as a matter of law and sound antitrust policy; so do antitrust scholars. Good faith efforts to comply

with regulatory regimes eliminate antitrust liability in two ways: (1) as a factor for a court to determine whether a restraint was reasonable,[18] and (2) as an equitable defense against liability for unreasonable restraints.[19] Complaint Counsel concedes a good faith regulatory compliance defense exists, but attempts to escape it by mischaracterizing it as a type of "implied immunity." The case law and commentators disagree: the good faith regulatory defense is not an immunity. "Even when the conduct of a regulated firm has not been immunized from the antitrust laws … appraisal under the antitrust laws must take regulation into account." 1A P. Areeda and H. Hovenkamp, Antitrust Law ¶ 246a at 435. Complaint Counsel cannot negate the defense by mislabeling it, or by attempting to graft on a "checklist" of conditions from a distinctly inapposite defense. As shown below, LREAB is entitled to present its defense at trial, for decision upon a full factual record.[20]

A. Good Faith Regulatory Compliance Is *Not* an Implied Immunity.

Numerous courts of appeals have recognized the good faith regulatory compliance defense – not as an antitrust immunity but, rather, as a mixed question of law, policy, and fact that defeats liability. The Ninth Circuit concluded in *Phonetele, Inc. v. American Telephone & Telegraph Co.*, ("*Phonetele II*") that a defense of regulatory justification "should be viewed as a factual inquiry and the district court's determination reviewed by us under the clearly erroneous standard." *Id.*, 889 F.2d 224, 229 (9th Cir. 1989). In *Southern Pacific Communications Co. v.*

[18] *See Jacobi v. Bache & Co.*, 520 F.2d 1231 (2d Cir. 1975) (upholding district court decision taking self-regulation contemplated by the securities laws into account in rule of reason analysis, and finding uniform pricing arrangements not to be unreasonable in light of the defendants' regulatory environment).
[19] *See Phonetele, Inc. v. AT&T* ("*Phonetele I*"), 664 F.2d 716, 743 (9th Cir. 1981) (permitting defendant to show that actions were justified "by the constraints of the regulatory schemes in which they operated").
[20] Complaint Counsel offhandedly asserts that recent changes to the law regarding a monopolist's duty to deal possibly diminish the vitality of the regulatory compliance defense to antitrust liability. Mem. Of Law In Support Of Complaint Counsel's Mot. for Partial Summary Decision Dismissing Respondent's Fourth Affirmative Defense, Feb. 5, 2018, at 12, 13 n.10 ("FTC Br."). Regardless, the regulatory compliance defense does not apply solely in the context of a monopolist, and there is no basis to suggest the defense has disappeared.

American Telephone & Telegraph Co., the D.C. Circuit upheld a finding of no antitrust liability where a regulated carrier concluded in good faith that its conduct was an objectively and subjectively reasonable application of its regulatory obligations in the public interest. 740 F.2d 980. Likewise, the Fifth Circuit has held that a regulated entity's action in the public interest entitles it to "protection from the effects of the antitrust laws." *Mid-Texas Commc'ns Sys., Inc. v. AT&T*, 615 F.2d 1372, 1381 (5th Cir. 1980).[21]

Nor is a defense based on reasonable and good faith compliance with a regulatory scheme limited just to the telecommunications industry, as Complaint Counsel suggests, or to antitrust claims. It has been recognized as an affirmative defense to numerous causes of action asserted under federal law. *See Silver v. New York Stock Exch.*, 373 U.S. 341, 366 (1963) (finding no implied immunity but allowing the "interposing of a substantive justification" regarding compliance with regulatory setting for stock exchange); *Nat'l Gerimedical Hosp. and Gerontology Ctr. v. Blue Cross of Kansas City*, 452 U.S. 378, 393 n.19 (1981) (finding no implied immunity but remanding to "give attention to the particular economic context" of hospital and health insurance regulation); *cf. Mautz & Oren, Inc. v. Teamsters, Chauffeurs, and Helpers Union, Loc. No. 279*, 882 F.2d 1117, 1124 & n.14 (7th Cir. 1989) (finding regulatory compliance to be defense to monetary liability in labor case) (*citing S. Pac. Comnc'ns*, 740 F.2d at 1009-10).

[21] *See also*, *MCI Commc'ns Corp. v. AT&T*, 708 F.2d 1081, 1138 (7th Cir. 1983) (agreeing on propriety of jury instruction to find no liability under the antitrust laws where a regulated entity has a reasonable basis in regulatory policy to conclude in good faith that its actions were required to be undertaken in the public interest); *Sound, Inc. v. AT&T*, 631 F.2d 1324 (8th Cir. 1980) (implicitly adopting similar view by designating regulatory compliance a question for fact finding at trial); *Ne. Tel. Co. v. AT&T*, 651 F.2d 76 (2d Cir. 1981) (same).

The four conditions Complaint Counsel proffers as a bar to LREAB's regulatory compliance defense are not required by either of the regulatory compliance cases they cite,[22] nor any of the regulatory compliance precedent. Instead, these purported requirements apply only to a defense based on an implied immunity from antitrust law. *See Credit Suisse Securities (USA) LLC v. Billing*, 551 U.S. 264, 285 (2007) (using four-factor test to determine whether securities laws conflicted with and were "repugnant" to antitrust laws). But, the good faith regulatory compliance defense is different, and the defense will excuse liability even where an immunity defense could not. *See Phonetele I,* 664 F.2d at 743 ("There is no absolute antitrust immunity or exemption by virtue of federal or state law in this case, but the defendants below may offer to show that their actions were justified by the constraints of the regulatory schemes in which they operated."). Different policy reasons animate the regulatory compliance defense – to avoid "punish[ing] regulated firms for trying to act consistent with" regulatory policies. Areeda & Hovenkamp, Antitrust Law ¶ 246a. In contrast, an implied immunity arises "only where there is a convincing showing of clear repugnancy between the antitrust laws and the regulatory system." *Phonetele I*, 664 F.2d at 726 (*citing United States v. Nat'l Ass'n of Sec. Dealers*, 422 U.S. 694, 719-20 (1975)).

Whereas immunities result from clear statutory conflicts, the defense of regulatory compliance emanates from a more fundamental principle: that a regulatory agency or a regulated entity should not be punished for attempting in good faith to comply with other laws that govern its conduct. *Cf. Cantor v. Detroit Edison Co.*, 428 U.S. 579, 592 (1976) ("We may assume, *arguendo,* that it would be unacceptable ever to impose statutory liability on a party who had done nothing more than obey a state command"). Thus, the regulatory compliance defense

[22] *See* FTC Br. at 1- 2 (citing *S. Pac. Commc'ns* and *Phonetele II).*

encompasses a broader set of circumstances showing justifiable reliance on regulatory dictates, even though "the specific conduct challenged was not subject to regulatory approval or was not actually approved." Areeda & Hovenkamp, Antitrust Law ¶ 246a (explaining broader reach of regulatory compliance defense). Hence, the regulatory compliance defense is a fact-based examination that must be assessed in weighing the reasonableness of the conduct at issue, and the availability of certain remedies.[23] *Phonetele I*, 664 F.2d at 739 n.60.

In sum, the regulatory compliance defense is available where a regulated entity's conduct was a reasonable attempt to comply with the perceived requirements of a regulatory scheme, undertaken at the time in good faith. *Phonetele I*, 664 F.2d at 737, 739 n.60. Therefore, Complaint Counsel's characterization of the defense as an implied immunity is inapposite, and their four-factor checklist analysis—the central pillar in their house of cards—fails.

B. The Challenged Conduct Does Not Need to Be "Compelled" by a Regulatory Agency to Invoke the Regulatory Compliance Defense.

Where regulation is raised as a defense against antitrust liability, a standard of reasonableness—not compulsion—applies. *Phonetele I*, 664 F.2d at 742; *S. Pac. Commc'ns,* 740 F.2d at 1010. Complaint Counsel's singular reliance on case law regarding implied immunity to suggest otherwise cannot carry the day. FTC Br. at 10, 11, 17.

The test articulated in *Phonetele II* requires a regulated entity to establish "that *its conclusion* 'that its actions were necessitated by concrete factual imperatives recognized as legitimate by the regulatory authority' was *reasonable* at the time its conclusion was reached." *Phonetele II*, 889 F.2d at 230 (affirming application of defense of regulatory compliance) (quoting *Phonetele I*, 664 F.2d at 737-38*)* (first emphasis supplied). It is enough that the

[23] Respondent does not, as Complaint Counsel states, claim to be "shielded from antitrust scrutiny" by virtue of its reasonable attempt to comply with the requirements of federal and state law. FTC Br. at 1.

regulated entity reasonably believed its conduct was necessitated by a regulatory scheme; an antitrust enforcer or private plaintiff is not permitted to second guess this conclusion.

All facts and circumstances point to LREAB's reasonable belief that it undertook the conduct challenged in this matter in good faith to meet the requirements of federal and state regulation, and nothing in Complaint Counsel's Motion suggests otherwise. But, Complaint Counsel contends: (1) regulatory compliance cannot be at issue because Louisiana would not have been penalized for failing to implement an AMC regulatory program until August 2018; FTC Br. at 5, 15; and, (2) even though Dodd-Frank "encourages" states to regulate AMCs, this should not matter here because the LREAB is comprised—in Complaint Counsel's view—of active market participants. FTC Br. at 14. Each of these positions is erroneous and, at minimum, involves disputed issues of material fact.

First, there is no requirement that the regulated entity must have been threatened with a penalty or "sanctions," monetary or otherwise, for not complying with a perceived regulatory requirement. It is sufficient that the regulated entity has a public interest obligation, and undertakes conduct to fulfill that perceived obligation. It is unnecessary that the entity also prove it sought to avoid the threat of sanction.[24] *See MCI Commc'ns Corp. v. AT&T*, 708 F.2d at 1138; *Mid-Texas Commc'ns Sys., Inc. v. AT&T*, 615 F.2d at 1390.

Complaint Counsel therefore cannot ignore that the Louisiana Legislature found in the public interest to amend its AMC Act in 2012 and obligate LREAB to promptly implement the Dodd-Frank C&R fee mandate. Those amendments, effective May 31, 2012, required LREAB to promulgate rules and enforce AMC payment of C&R fees in direct response to *all* federal

[24] Regardless that the threat of penalty is not a requirement of the defense, the federal ASC does have explicit authority to sanction non-compliant states and state agencies. *See* FIRREA § 1118(a), as amended by Dodd-Frank, 12 U.S.C. § 3347(a) (authorizing ASC to monitor and impose "sanctions" on non-compliant state appraisal agencies including decertifying state appraiser agencies).

guidance indicating that the states that had already adopted AMC registration programs must empower the "appraiser certifying and licensing agency" to license and regulate AMCs.[25] The language of LREAB's Rule 31101, not surprisingly, was taken largely verbatim from Dodd-Frank and the Interim Federal Rules. Just like the California regulation overlaying the conduct in *Phonetele*, the AMC Act is "a state regulation that is in many ways an appendage of the dominant federal regulatory program." *Phonetele I*, 664 F.2d at 739 n.60.

When LREAB adopted Prior Rule 31101, it reasonably believed it was required to do so by Dodd-Frank and the Dodd-Frank implementing regulations. Appraisal Subcommittee, Bulletin No. 2015-01; Unangst Aff. ¶ 34. Indisputably, LREAB was mandated to do so by the AMC Act, and the Legislature found the "customary and reasonable" fee requirement to be in the public interest of the State. Unangst Aff. ¶ 31. LREAB Board members reasonably believed these additional regulatory mandates were required by the Dodd-Frank Act and consistent with almost three decades of the Board implementing the federal mandates of FIRREA. Lee Aff. ¶ 7. Board members and the Executive Director understood, as early as 2011, that Dodd-Frank mandated state regulation of customary and reasonable fees to residential real estate appraisers.[26]

Prior to the Board promulgating Rule 31101, Executive Director Bruce Unangst understood, from discussions with the ASC and other advisors in the industry, that Louisiana must regulate customary and reasonable fees to residential real estate appraisers to comply with federal law and ensure that AMCs could continue to provide services for federally-related transactions in Louisiana. Unangst Aff. ¶¶ 36, 66. Specifically, LREAB was concerned that

[25] *See e.g.* 79 Fed. Reg. 19,521, 19,523 ("conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders"); *id.* at 19,536; Appraisal Subcommittee, Bulletin No. 2015-01 (requiring state appraiser certifying and licensing agencies impose minimum requirements on AMCs, including C&R residential appraiser fee payments).

[26] Unangst Aff. ¶¶ 25-27; Bella Aff. ¶ 7; Boudousquie Aff. ¶ 7; Hall Aff. ¶ 8; Graham Aff. ¶ 9; Lee Aff. ¶ 8; Littlefield Aff. ¶ 8; Pauley Aff. ¶ 8.

failure to promulgate Rule 31101 and to have an effective enforcement regime in place by August 2018, would preclude non-federally regulated AMCs operating in the State (*i.e.,* any AMC not owned by a financial institution) from providing services for federally-related transactions in Louisiana.[27] Thus, contrary to Complaint Counsel's contention, the Board's failure to act would disrupt the marketplace that LREAB is obligated to supervise in the public interest. Unangst Aff. ¶¶ 34, 36; *see* FTC Br. at 5. The reasonableness of LREAB's belief further was confirmed by June 2014 REVAA comments to the federal financial regulatory agencies that if states failed to enact compliant AMC registration statues—or repealed the ones that they had already adopted—competition in appraisal management services would be harmed though the elimination of larger AMCs from the process. Kovacs Decl. Ex. 37, at 2 ("The proposed rule fails to address the adverse consequences for consumers that will result …[if] AMCs would be barred from providing appraisal related services in [] a state").[28]

Second, Complaint Counsel's arguments would present every state agency a Hobson's choice: either safeguard the public interest by enacting statutory regulations when the State legislature deems it necessary to fulfill federal mandates, or face federal antitrust liability for not waiting until it was "compelled" at the federal level. As a state regulatory agency, LREAB must follow Louisiana law. Moreover, LREAB bears an inherently greater duty to act in the public interest than the regulated common carriers in *Phonetele* or *S. Pac. Commc'ns*. Unlike a privately-owned common carrier, the "injury" of concern to a State agency is not just a matter of

[27] 82 Fed. Reg. at 43,980 ("As of 36 months from that date (August 10, 2018), an AMC may not provide appraisal management services for a federally related transaction in a non-participating State unless the AMC is a Federally regulated AMC."). This understanding was confirmed in both 2014 and 2015 by the federal financial regulatory agencies proposed and final rules, imposing minimum requirements on states to "require compliance with the requirements of section 129E(a) through (i) of the Truth and Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder." Unangst Aff. ¶¶ 54-55; 80 Fed. Reg. 32,658.

[28] It is notable in this regard that once LREAB received notice of the FTC's Part 2 Investigation, the Board put on hold all further enforcement of Rule 31101 out of a desired to refrain from actions that the FTC potentially viewed as a violation of the FTC Act. Unangst Aff. ¶ 94.

dollars and cents, fines or penalties imposed by a regulatory body. The interests of State agencies are "injured" where federally-imposed penalties harm the public interest — including harm to the integrity of the appraisal process, and harm to competition within the AMC industry LREAB regulates.

Third, Complaint Counsel's contention that States were merely "encouraged" by Dodd-Frank to regulate AMCs is incorrect. Because the Louisiana Legislature had already made the public policy decision to license and regulate AMCs through the 2009 AMC Act, Louisiana was required under federal mandates to meet the federal minimum requirements and to delegate that AMC regulation to LREAB. Unangst Aff. ¶¶ 25, 34; 79 Fed. Reg. at 19,536 (requiring state's AMC program to be "maintain[ed] within the State appraisers certifying and licensing agency.")

Finally, Complaint Counsel's contention that the Board was controlled by active market participants is not only erroneous as a matter of fact, it is immaterial as a matter of law. The argument conflates the requirements of state action immunity with the distinct elements of the good faith regulatory compliance defense. As of 2013, the ASC anticipated that the State's appraiser certifying and licensing agency would be a "State board," comprised of "appraisers, bankers, consumers, and/or real estate professionals," *i.e.* LREAB circa 2013. Unangst Aff., Ex. 8, at 42. The Board's composition thus has no effect on whether the Board and its members acted reasonably and in good faith. Moreover, the issue of whether the Board is controlled by market participants is a fact-based inquiry that cannot be resolved here on a motion for summary decision. As shown by the attached Affidavits from members of LREAB, the Board consists of three (now four) distinct categories of members, none of which comprises a majority; and the majority of LREAB members do not actively participate in residential appraisals of covered

transactions which are subject to the C&R fee rule.[29] Thus LREAB never was and is not controlled by active market participants.

The factual record demonstrates the reasonableness of LREAB's belief that its actions were good faith steps to comply with Dodd-Frank and the federal rules. But although Complaint Counsel's Motion does nothing to dispute that good faith, it is unlikely they would concede that the relevant facts are undisputed. To the extent any question exists as to the reasonableness and good faith of the Board's actions, including its justifiable lack of concern regarding its structure, at minimum Complaint Counsel's motion relies on disputed material facts, thus precluding summary decision.

C. The Regulatory Compliance Defense is Not Premised on "Active Federal Supervision."

Complaint Counsel asserts that "the ASC's monitoring of Respondent's AMC program provides an insufficient basis to displace antitrust enforcement." FTC Br. at 19. This argument again conflates the good faith regulatory compliance defense with state action or implied immunity. No court has required "active supervision" as an element of the defense of good faith regulatory compliance defense.

The regulatory compliance defense is not an exemption from the antitrust laws and, therefore, does not "displace" antitrust enforcement at all. Courts review actions taken to comply with non-antitrust regulatory regimes as a factor in determining whether a restraint is unreasonable, thus if an entity may be deemed liable; and informing whether any remedy can be sought. *See Phonetele I*, 664 F.2d at 739 n.60; *id.* at 722 ("Free competition is not irrelevant to the objectives of utility regulation, but determinations of whether a company's practices are in

[29] *See* Affs. of Bella ¶ 2; Boudousquie ¶ 2; Graham ¶ 2; Hall ¶ 2; Lee ¶ 2; Lipscomb ¶ 2; Littlefield ¶ 5; Pauley ¶ 2. *See also* Kovacs Decl. Ex. 38 (chart summarizing that at all times a majority of Board members performed no residential appraisals affected by Rule 31101).

the public interest as defined by the Act require FCC consideration of factors other than competition."); *National Gerimedical Hosp. and Gerontology Ctr.*, 452 U.S. at 393 n.19 (remanding case to lower court with instruction to "give attention to the particular economic context" in which the alleged antitrust misconduct occurred).

Complaint Counsel again relies on its erroneous labeling of the regulatory compliance defense as an immunity. Rather, the good faith regulatory compliance defense applies if the finder of fact determines that the defendant "at the time had a reasonable basis in regulatory policy to conclude, and in good faith concluded" that its actions were required by regulation. *MCI Commc'ns Corp.*, 708 F.2d at 1138. Hence, while the fact of regulatory supervision may be relevant in determining whether a regulated entity reasonably believed its conduct was mandated by a federal regulatory scheme, the degree of supervision is not dispositive to whether the defense applies.[30] *Phonetele I*, 664 F.2d at 742 ("Just as the administrative agency must consider the competitive premises of the antitrust laws, the antitrust court must consider the peculiarities of an industry as recognized in a regulatory statute."). (*quoting* I P. Areeda & D. Turner, Antitrust Law ¶ 223d; *cf. Cantor v. Detroit Edison*, 428 U.S. at 594-95 (noting "there may be cases in which the State's participation in a decision is so dominant that it would be unfair to hold a private party responsible for his conduct in implementing").

LREAB understood that Dodd-Frank, the Interim and Final federal rules, and the AMC Act required the Board to regulate AMC compliance with the C&R fee requirement. Unangst Aff. ¶¶ 22-28. Prior to promulgating Rule 31101, the Board understood that failing to regulate in

[30] The notion that the ASC should have to review every enforcement action by the LREAB to create a presumption of regulatory compliance is preposterous. FTC Br. at 18.

this area would have consequences for AMCs doing business in the State. Unangst Aff. ¶¶ 25, 34. The Board understood that the ASC required states to: (1) implement the C&R provisions of Dodd-Frank; and (2) have a system of "processes and controls" and efficient mechanisms for responding to complaints concerning AMC violations of the C&R fee requirement. Unangst Aff. ¶¶ 62-64, 74-75, 80. This understanding was later confirmed by the federal financial regulatory agencies' minimum requirements in 2015. *Id.* Moreover, the Board understood ASC compliance review could address LREAB's actual enforcement actions, such as use of fee surveys in adjudications and settlements, to ensure that they constitute administration in "an effective, consistent, equitable, and well-documented manner." *Id.*

II. Congress Passed Dodd-Frank to Prohibit Specific Marketplace Conduct.

Implicit in Complaint Counsel's Motion is the assumption that Congress, when it passed Dodd-Frank, had no intention or purpose to regulate the appraisal marketplace. This remarkable assertion is demonstrably incorrect. Congress specifically addressed competition concerns with respect to the integrity of the appraisal process, and its role in the nationwide collapse of the housing market, when it passed Dodd-Frank, including particularly the C&R fee requirement. A central purpose of Dodd-Frank, in response to the financial crisis of 2008, was to restore financial soundness to the housing market by prohibiting specific marketplace conduct that Congress believed would impinge upon the integrity of appraisals. As a result, the Dodd-Frank Act provides not only extensive consumer protections with respect to the housing finance market, but does so by imposing prudential restrictions on the pricing of specific residential appraisal transactions. Thus good-faith compliance with Congressional policy with respect to competition in housing finance is directly relevant to the question of whether the restraint "is one that promotes competition or one that suppresses competition" under the rule of reason. *Nat'l*

Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 691 (1978) (articulating the inquiry mandated by the rule of reason).

A. Congress Intended to Constrain the Pricing of Residential Appraisals.

The plain language of Dodd-Frank and the implementing federal rules demonstrate Congress' objective to impose restraints on the free market. If Congress wanted pure unfettered price competition as Complaint Counsel suggests, Dodd-Frank would have no provisions regulating payment of fees to residential appraisers or requiring that such fees be "customary and reasonable" rather than whatever the market will bear. Instead, federal intent to restrain competition is self-evident: the C&R fee requirement was intended by Congress, and understood by the Federal Reserve Board, to restrain the ability of AMCs and appraisers freely to negotiate appraisal fees for specific appraisal transactions—and thereby to avoid another collapse of the mortgage market due to inadequate appraisals by unqualified appraisers willing to work for a low-ball fee.

While the introduction to the Interim Final Rules states that the marketplace is the "primary determiner" of customary and reasonable ("C&R") fees, 75 Fed. Reg. 66,554, 66,570 (Oct. 28, 2010), it is not the only determiner. The text of the Rules and the Official Staff Comments and their explanation unmistakably demonstrate the intent to regulate and constrain pricing competition among appraisers for specific appraisals through the C&R fee requirement:

- To be "customary," fees must be "reasonably related" to "recent rates" paid for appraisal services in the relevant geographic market, which can be an MSA or parish. *Id.* at 66,572, 66,585-16 (Official Comment 42(f)(1)(2), 42(f)(2)(i)).

- References to "recent rates" reject the use of individual transactions by an AMC as a basis to define "customary and reasonable," as the commentary defines "recent rates" as payments in the relevant geographic market over the last 12 months. *Id.*, at 66,586, (Official Comment 42(f)(2)(ii)(2)).

- Dodd-Frank and the federal rules deem transaction-specific fees paid to appraisers by AMCs as unreliable and acceptable indicators of reasonableness. TILA § 129E(i)(1) and 12 C.F.R. § 226.42(f)(3)(iii) explicitly precludes use of AMC-appraiser fees in objective independent market surveys; such surveys only can rely on fees paid by lenders to appraisers.

- Official Comment 42(f)(1)(4) states: "A document signed by a fee appraiser indicating that the appraiser agrees that the fee paid to the appraiser is "customary and reasonable" does not by itself create a presumption of compliance with §226.42(f) or otherwise satisfy the requirement to pay a fee appraiser at a customary and reasonable rate." Such an affirmation is inherently unreliable, as it may reflect, for example, an appraiser who desperately needs work, or the desire of an inexperienced appraiser to break into the market. 75 Fed. Reg. at 66,586.

- The commentary even regulates the application of the C&R requirement to volume discounts: "Section 226.42(f)(1) does not prohibit a fee appraiser and a creditor (or its agent) from agreeing to compensation based on transaction volume, *so long as the compensation is customary and reasonable*." Official Comment 42(f)(1)(5), 75 Fed. Reg. at 66,586 (emphasis supplied).

- Indeed, that AMCs might conspire to keep appraisal fees low was recognized in the Official Comments. Official Comment 42(f)(2)(ii)(1), 75 Fed. Reg. at 66,586 ("For example, if appraisal management company A and appraisal management company B agreed to compensate fee appraisers at no more than a specific rate or range of rates, neither appraisal management company would qualify for the presumption of compliance.").

In sum, Dodd-Frank and the Federal regulations do not countenance a free-wheeling market for appraisal fees. To the contrary, "customary and reasonable" constrains the operation of the marketplace in ways that inherently affect competence, quality, and price—thereby regulating competition.[31]

[31] LREAB notes in this regard that the responsibility to interpret TILA § 129E and the Federal Reserve Board's Official Staff Commentaries thereto are not within the primary jurisdiction of the Commission; and, therefore, that a factfinder is not bound to accept Complaint Counsel's interpretations. Deference to the Federal Reserve's staff opinions is required when an adjudicatory body is faced with a question about TILA. *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 566 (1980) ("Congress has specifically designated the Federal Reserve Board and staff as the primary source for interpretation and application of truth-in-lending law."). Indeed, in an antitrust action, "Staff opinions are considered dispositive" unless "it is shown that the opinion is demonstrably irrational." *In re Currency Conversion Antitrust Litig.,* 265 F. Supp. 2d 385, 424 (S.D.N.Y 2003); (*Mayfield v. Gen. Elect. Capital Corp.,* 1999 WL 182586, No. 97 CIV. 2786(DAB), at *3 (S.D.N.Y. Mar. 31, 1999) (staff opinions dispositive "in construing TILA or Regulation Z") (*citing Ford Motor Credit Co.*, 444 U.S. at 565); *accord Pechinski v. Astoria Fed. Savings*

B. The Antitrust Savings Clause in Dodd-Frank Supports, Rather Than Precludes, the Regulatory Compliance Defense.

The "antitrust savings clause" in the Dodd-Frank Act stands for the unremarkable proposition that Dodd-Frank does not displace the antitrust laws. 12 U.S.C. § 5303. However, there is a difference between regulation that *displaces* antitrust law entirely, and the type of regulation (as described in the preceding section) that displaces and constrains competition in the marketplace.

The Dodd-Frank antitrust savings clause was adopted because Congress was regulating private conduct. As the commentary to the Interim Final Rule makes clear, Congress was concerned about AMC pricing power that could result in an inaccurate measure of what a "reasonable" fee should be. Official Comment 42(f)(2), 75 Fed. Reg. at 66,571. Congress saw no inconsistency between antitrust law and state agencies implementing and enforcing C&R fee regulation pursuant to Dodd-Frank. Indeed, Complaint Counsel's assertion that "Congress did *not* intend or contemplate" that state boards comprised of market participants would enforce Dodd-Frank and regulate C&R fees is patently incorrect. FTC Br. at 5. To the contrary, Congress deliberately *anticipated*, and in some cases *required*,[32] that regulation of AMCs would be the responsibility of state appraisal boards—which would have subject matter expertise and direct responsibility over regulating the appraisal market. *See* 12 U.S.C. § 3353 (indicating that the "State appraiser certifying and licensing agency" will license and regulate AMCs). Moreover, the ASC 2013 Policy Statement definition of "State board" expressly contemplated that the board would be composed of market participants. Unangst Aff. ¶¶ 39-40. LREAB

& Loan Ass'n, 238 F. Supp. 2d 640, 644 (S.D.N.Y. 2003) (noting that the Federal Reserve Board's Official Staff Interpretations of Regulation Z "are to be given deference by the judicial branch"). The express language of the Commentaries and the official explanation thereof controls.

[32] *See* 12 C.F.R. § 34.213(a)(6) (requiring any state already regulating AMCs to maintain within the state appraiser licensing agency mechanisms to discipline AMCs for violations of appraisal-related laws and regulations).

reviewed this policy statement at the time, which confirmed their understanding that LREAB's membership was consistent with Dodd-Frank's amendments to FIRREA. Unangst Aff. ¶ 41. This cannot simply be glossed over; and LREAB cannot be faulted for not foreseeing how the Supreme Court or federal oversight agencies might, years later, change the regulatory landscape.

Hence, Congress anticipated state appraisal boards comprised of market participants regulating AMCs, and the Commission should not presume Congress to have legislated an antitrust violation. LREAB had a good faith belief in its proper and lawful enforcement of AMC's C&R fee obligations under state and federal law. Consequently, using Section 5 to prohibit a State agency from requiring an AMC to pay an appraiser "customary and reasonable" fees, as constrained by Dodd-Frank and federal regulation, would infringe upon the antitrust savings clause: "just as the 1996 [Telecommunications] Act preserves claims that satisfy existing antitrust standards, it does not create new claims that go beyond existing antitrust standards; that would be equally inconsistent with the saving clause's mandate that nothing in the Act 'modify, impair, or supersede the applicability' of the antitrust laws." *Verizon Commc'ns v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004).

If the antitrust savings clause in Dodd-Frank has any bearing on the reasonableness of LREAB's conduct, it shows that LREAB's regulation and enforcement of C&R fees was reasonable and in good faith, given the concerns articulated by Congress about the pricing power of AMCs skewing particular fee payments toward a race to the bottom. As Complaint Counsel recognizes, Dodd-Frank's antitrust savings clause merely "bars a finding of implied immunity," FTC Br. at 11 (quoting *Trinko, LLP*, 540 U.S. at 406)—an issue that does not pertain here. It does not limit the applicability of the good faith regulatory compliance defense, or otherwise diminish LREAB's good faith.

CONCLUSION

The Motion for Partial Summary Decision should be denied.

Dated: February 20, 2018

Respectfully submitted,

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

RESPONDENT'S RULE 3.24(a)(2) RESPONSE TO COMPLAINT COUNSEL'S STATEMENT OF UNDISPUTED FACTS AND STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS A GENUINE ISSUE FOR TRIAL

Pursuant to Federal Trade Commission ("FTC") Rule of Practice 3.24(a)(2), and in response to Complaint Counsel's Statement of Undisputed Facts ("CCSUF"), Respondent Louisiana Real Estate Appraisers Board ("LREAB" or "Board") submits this *Separate Statement of Material Facts to Which There is a Genuine Issue for Trial*.

For convenience, the full text of each fact as to which Complaint Counsel claims there is no genuine issue is set out below, followed by LREAB's respective responses. LREAB's response to any material fact shall not constitute a waiver of any applicable objection, privilege, or other right in opposition thereto. Where required to respond to CCSUF, LREAB represents that it has undertaken good faith efforts to identify the information that would allow it to admit or deny such matters presented as undisputed facts.

In addition to LREAB's responses to the CCSUF demonstrating that there remains a genuine issue of material fact for trial, pursuant to 16 C.F.R. § 3.24(a)(3), LREAB has provided a set of additional facts from the Board's Executive Director as well as from nine current and former Board members.

GENERAL OBJECTIONS

The following general objections apply to CCSUF and LREAB's responses, and are in addition to specific objections, if applicable.

1. LREAB objects to CCSUF to the extent that they call for the disclosure of material protected by one or more of the following privileges

a. Attorney-client privilege;

b. Work product privilege;

c. Deliberative process privilege.

2. It is insufficient for purposes of Rule 3.24(a) for a movant to show "undisputed facts," as Complaint Counsel purports to do. The movant must show that the undisputed facts are also material. LREAB therefore objects to Complaint Counsel's Undisputed Facts to the extent they are neither relevant nor material to Complaint Counsel's Motion for Partial Summary Decision Dismissing Respondent's Fourth Affirmative Defense, which pertains only to if Respondent "has 'acted in good faith to comply' with the Dodd-Frank Wall Street Reform and Consumer Protection Act" ("Dodd-Frank"). FTC Br. at 1. A regulatory compliance defense is based on an entity's good faith efforts to meet its obligations under a state or federal regulatory system. CCSUF proffers numerous facts that are irrelevant and immaterial to the Board's good faith efforts to comply with the Dodd-Frank. *See* CCSUF ¶¶ 13, 22-48.

3. LREAB objects to CCSUF to the extent they are inaccurate, misleading, or so incomplete as to be inaccurate or misleading.

4. LREAB does not, by virtue of replying to any statement of material fact, admit to any legal or factual contention asserted in the text of any material statement, except as expressly stated.

5. LREAB objects to each statement of material fact to the extent that each calls for information that is not in the possession, custody, or control of LREAB.

6. To the extent that any statement of material fact quotes from a document or references a statement and solicits an admission that the quote or statement is evidence of the truth of the matter asserted, LREAB objects on grounds of hearsay.

7. LREAB objects generally because no definitions were provided for any terms referenced in CCSUF and many of the terms are open to widely different interpretations, making many of the statements inherently vague and ambiguous. Notwithstanding, LREAB has made a good faith effort to respond to CCSUF.

8. For the purposes of this response, the Board's usage of "Prior Rule 31101" is defined as the customary and reasonable fee rule promulgated by LREAB on November 20, 2013 and repealed and replaced on November 20, 2017.

RESPONSES TO COMPLAINT COUNSEL'S STATEMENT OF UNDISPUTED FACTS

Subject to the general objections above and the specified objections listed below, Respondent hereby responds to each of the statements in Complaint Counsel's Undisputed Facts.

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 1, La. R.S. 37:3394.

Response: Not disputed.

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

Response: Not disputed.

3. 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 3, La. R.S. 37: 3394 (B) (2013).

Response: Complaint Counsel's statement is disputed as misleading. From 2013 until August 1, 2014, the Board was to be comprised of "[n]ine members." Kennedy Decl. Tab 3, La. R.S. 37:3394 (B)(2013). Of those nine members, "at least four of the nine shall be general appraisers and at least two of nine shall be residential appraiser members." *Id.*

4. 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 3, La. R.S. 37: 3394 (B) (2013).

Response: Complaint Counsel's statement is disputed as misleading. The statute reads that "[t]he 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." Kennedy Decl. Tab 3, La. R.S. 37:3394 (B)(2013).

5. 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 3, La. R.S. 37: 3394 (B) (2013).

Response: Not disputed.

6. The Appraisers Law was modified in 2014. Kennedy Decl. Tab 3, 2014 Acts No. 347.

Response: Not disputed.

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

Response: Complaint Counsel's statement is disputed as misleading. Each of the ten Board members is appointed by the governor, but "[e]ach appointment by the governor shall be submitted to the Senate for confirmation." Kennedy Decl. Tab 1, La. R.S. 37:3394(C).

8. 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 1, La. R.S. 37: 3394.

Response: Complaint Counsel's statement is disputed as misleading. As of August 1, 2014, the Appraisers Law states that "[a]t least four of the ten members shall be general appraisers and at least two of the ten members shall be residential appraisers." Kennedy Decl. Tab 1, La. R.S. 37:3394(B)(2).

9. 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 1, La. R.S. 37: 3394.

Response: Not disputed.

10. 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 1, La. R.S. 37: 3394.

Response: Not disputed.

11. 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 1, La. R.S. 37: 3394.

Response: Not disputed.

12. 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 5, [redacted].

Response: Complaint Counsel's statement is disputed as incorrect. [redacted]; Kennedy Decl. Tab 1, La. R.S. 37:3394.

13. 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. In 2013, six of eight members of Respondent's board were licensed appraisers, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 6, [redacted]; CX0315 (screenshot of a Facebook page for "Gayle H Boudousquie

& Assoc"); CX0314 (screenshot of a webpage for "Mike Graham Real Estate Appraisal and Brokerage"); CX0313 (screenshot of a LinkedIn page for "NEWTON LANDRY"); CX0312 (screenshot of a LinkedIn page for "Tommie McMorris"); CX0311 (screenshot of a webpage for "The Pauley Corporation"); Tab 5, [redacted].

b. In 2014, six of eight members of Respondent's board were licensed appraisers, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 6, [redacted]; CX0315 (screenshot of a Facebook page for "Gayle H Boudousquie & Assoc"); CX0314 (screenshot of a webpage for "Mike Graham Real Estate Appraisal and Brokerage"); CX0313 (screenshot of a LinkedIn page for "NEWTON LANDRY"); CX0312 (screenshot of a LinkedIn page for "Tommie McMorris"); CX0311 (screenshot of a webpage for "The Pauley Corporation"); Tab 5, [redacted].

c. From January 2015 to June 2015, seven of nine members of Respondent's board were licensed appraisers, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 6, [redacted]; CX0315 (screenshot of a Facebook page for "Gayle H Boudousquie & Assoc"); CX0314 (screenshot of a webpage for "Mike Graham Real Estate Appraisal and Brokerage"); CX0313 (screenshot of a LinkedIn page for "NEWTON LANDRY"); CX0312 (screenshot of a LinkedIn page for "Tommie McMorris"); CX0311 (screenshot of a webpage for "The Pauley

Corporation"); CX0333 (screenshot of a LinkedIn page for "Appraisals Plus, LLC"); Tab 5, [redacted]; Tab 7, [redacted].

d. From August 2015 to December 2015, eight of ten members of Respondent's board were licensed appraisers, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 6, [redacted]; CX0315 (screenshot of a Facebook page for "Gayle H Boudousquie & Assoc"); CX0314 (screenshot of a webpage for "Mike Graham Real Estate Appraisal and Brokerage"); CX0313 (screenshot of a LinkedIn page for "NEWTON LANDRY"); CX0312 (screenshot of a LinkedIn page for "Tommie McMorris"); CX0331 (screenshot of a webpage for "Cheryl B. Bella, MAI, AI-GRS"); CX0332 (screenshot of a LinkedIn page for "Janis M. Bonura, SRA"); CX0333 (screenshot of a LinkedIn page for "Appraisals Plus, LLC"); Tab 5, [redacted]; Tab 7, [redacted].

e. In 2016, eight of ten members of Respondent's board were licensed appraisers, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 6, [redacted]; CX0315 (screenshot of a Facebook page for "Gayle H Boudousquie & Assoc"); CX0314 (screenshot of a webpage for "Mike Graham Real Estate Appraisal and Brokerage"); CX0313 (screenshot of a LinkedIn page for "NEWTON LANDRY"); CX0312 (screenshot of a LinkedIn page for "Tommie

McMorris"); CX0331 (screenshot of a webpage for "Cheryl B. Bella, MAI, AI-GRS"); CX0332 (screenshot of a LinkedIn page for "Janis M. Bonura, SRA"); CX0333 (screenshot of a LinkedIn page for "Appraisals Plus, LLC"); Tab 5, [redacted]; Tab 7, [redacted].

Response: Complaint Counsel's statement is disputed as irrelevant and immaterial to the application of the regulatory compliance defense. A board's composition is wholly unrelated to that board's good faith efforts to comply with Dodd-Frank. LREAB does not dispute that each identified Board member was a state licensed appraiser or that an appraiser with either a general appraiser license or a residential appraiser license is "authorized" to perform residential appraisals if she meets the additional requirements for performing residential appraisals imposed by the Appraisers Law, including compliance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice. LREAB disputes Complaint Counsel's statements 13(a)-(e) as incorrect, vague, and misleading because, as evidenced by the Board member affidavits attached to Respondent's Opposition, numerous Board members, including some listed in Complaint Counsel's statements, did not perform any residential appraisals, mainly performed commercial appraisals, or only performed appraisal reviews on behalf of lenders, not AMCs. *See* Bella Aff. ¶ 4; Boudousquie Aff. ¶ 4; Graham Aff. ¶¶ 5-6; Lee Aff. ¶ 4; Littlefield Aff. ¶ 5; Lipscomb Aff. ¶ 5; Pugh Aff. ¶ 5; *see also* Kovacs Decl. Ex. 38. In addition, Complaint Counsel fails to note the positions and licenses of the other 13 Board members who have served and continue to serve on the Board since the complaint was filed. Moreover, the statements are so incomplete as to be misleading in that they fail to identify which LREAB members were appointed in the distinct category of general appraisers, and which were appointed as residential appraisers; which members were licensed to only perform residential appraisals; and the extent

to which any individual member "authorized" to perform a residential appraisal actually did so as a meaningful part of his or her business.

14. AMCs are independent companies and act as agents of lenders. Kennedy Decl. Tab 8, Complaint ¶1; Answer ¶ 1.

Response: LREAB does not dispute that AMCs can "act as agents of lenders," but it is an unknown fact subject to dispute that all AMCs licensed in Louisiana were "independent companies." AMCs can and have been owned by lending institutions, and it is an unknown fact subject to dispute that any Louisiana licensed AMC was owned or a subsidiary of a lender at any relevant time in this case.

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

Response: LREAB does not dispute that AMCs typically pay an independent licensed appraiser to render an opinion of the value of the real estate offered as collateral for a residential mortgage, but it is an unknown fact subject to dispute that, at any relevant time in this case, a Louisiana licensed AMC utilized the services of a licensed employee to conduct an appraisal instead of contracting with an independent licensed appraiser.

16. In 2009, Louisiana enacted the Louisiana Appraisal Management Company Licensing and Regulation Act ("AMC Act"), effective January 1, 2010. Kennedy Decl. Tab 2, La. R.S. 37: 3415.1 *et seq*.

Response: Not disputed.

17. 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 2, La. R.S. 37: 3415.21.

Response: Not disputed.

18. 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 2, La. R.S. 37: 3415.19 (A) (2).

Response: Not disputed.

19. In 2012, the AMC Act was amended 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." Kennedy Decl. Tab 9, La. R.S. 37: 3415.15 (A) (2012).

Response: Not disputed.

20. 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 10, CX0306 (Minutes of Meeting of Louisiana Real Estate Appraisers Board ("Board Minutes"), January 14, 2013).

Response: Not disputed.

21. Rule 31101 took effect upon publication in the Louisiana Register on November 20, 2013, and states 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 ; (2) a fee

schedule established by Respondent; or (3) consideration of six factors. Kennedy Decl. Tab 11, 39 LR 3072 (November 20, 2013).

Response: While LREAB does not dispute that Prior Rule 31101 was promulgated in the Louisiana Register on November 20, 2013, Complaint Counsel's statement is disputed as incomplete and misleading. Prior Rule 31101 required that "[l]icensees 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)." Kennedy Decl. Tab 11. Evidence of the fees may be established by "by objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys" that exclude assignments ordered by appraisal management companies, establishment of a fee schedule by the Board, application, at a minimum, of six factors in addition to making "appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable;" or by considering all applicable facts and circumstances, including other factors in addition to the six factors. *Id;* Unangst Aff. Ex. 36. While the Board was empowered under Prior Rule 31101 to implement a fee schedule as a non-mandatory option for AMC compliance with La R.S. 37:3415.15, the Board never implemented a fee schedule nor has any "present intention to establish such a schedule" under the readopted Rule 31101. Unangst Aff. Ex. 36. Importantly, the Board's rules required that "[l]icensees 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." *Id.* (emphasis added). Meaning, Prior Rule 31101 was not concerned with the amount paid, but required that the licensee demonstrate its method of compliance with Louisiana customary and reasonable statute, La R.S. 37:3415.15.

22. 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 12, [redacted].

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

23. SLU surveyed lenders, licensed general appraisers, and licensed residential appraisers. Kennedy Decl. Tab 13, CX3010 (SLU survey report) at 2, 11.

Response: Complaint Counsel's statement is disputed as incomplete, because it fails to note that the SLU fee study did not include fees paid by AMCs to appraisers, in accordance with federal law. 12 C.F.R. 226.42(f)(3)(iii) ("In the case of information based on fee schedules, studies, and surveys, such fee schedules, studies, or surveys, or the information derived therefrom, excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies, as defined in paragraph (f)(4)(iii) of this section"). In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

24. 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 13, CX3010 (SLU survey report).

Response: Complaint Counsel's statement is disputed as misleading. The May 30, 2013 website posting indicated that the fee study was "a courtesy to all licensees; however, its use is not mandatory." Kennedy Decl. Tab 13, Answer ¶ 4. In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

25. 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 13, CX3010 (SLU survey report); http://www.reab.state.la.us/AMC.html (links to other surveys).

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

26. 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 13, CX3010 (SLU survey report) at 17-26; http://www.reab.state.la.us/AMC.html (links to other surveys).

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

27. [redacted]. Kennedy Decl. Tab 14, [redacted].

Response: Complaint Counsel's statement is disputed as incorrect, irrelevant, and immaterial. The Board investigations focused on the ability of an AMC to document compliance with one of the three methods of calculating a customary and reasonable fee as provided in Prior Rule 31101. Where the AMC demonstrated use of a compliant method, the investigation ended. Unangst Aff. ¶¶ 60, 73, 80, 82, 87, 93-94, 96, 104, 111-112. In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

28. [redacted]

[redacted].

Kennedy Decl. Tab 15, [redacted].

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

29. [redacted]. Kennedy Decl. Tab 15, [redacted].

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

30. On May 28, 2015, Coester and Respondent settled the Coester Complaint by signing a document entitled "Stipulations and Order." Kennedy Decl. Tab 16, [redacted].

Response: Complaint Counsel's statement is disputed as incomplete. [redacted]. Kennedy Decl. Tab 16. In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

31. [redacted]. Kennedy Decl. Tab 16, [redacted].

Response: Complaint Counsel's statement is disputed as incorrect, irrelevant, and immaterial. [redacted]

[redacted]." Kennedy Decl. Tab 26 (emphasis added). [redacted]. Unangst Aff. ¶ 113. In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

32. [redacted]. Kennedy Decl. Tab 17, [redacted].

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

33. 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 18, CX0283 (Board Minutes, June 5, 2015); Tab 16, [redacted].

Response: Complaint Counsel's statement is disputed as incorrect, irrelevant, and immaterial. On June 5, 2015, the Board approved the Coester Stipulation and Order. At that meeting, the Board Members confirmed that the term "fee schedule" in the Stipulation was intended to refer to the SLU survey as Coester's agreed method of compliance. Kennedy Decl. Tab 16. The Board did not set a "fee schedule" at that meeting, nor did it set a fee schedule at

any prior or subsequent meeting. Unangst Aff. Ex. 36. In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

34. 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 19, CX0080 (email dated January 24, 2019).

Response: Complaint Counsel's statement is disputed as not supported by the exhibits submitted. There is no attached exhibit indicating an AMC offered "to pay $200 for a specific appraisal." Kennedy Decl. Tab 19. In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

35. [redacted]. Kennedy Decl. Tab 20, [redacted].

Response: Complaint Counsel's statement is disputed as incorrect and incomplete. [redacted]. Unangst Aff. ¶¶ 117-118**.** In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

36. On December 8, 2015, Respondent held a hearing on allegations that iMortgage had violated Rule 31101 in nine transactions. Kennedy Decl. Tab 21, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015).

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

37. 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 22, CX0334 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services,* LLC, December 8, 2015).

Response: Complaint Counsel's statement is disputed as incomplete. In addition to violations of Prior Rule 31101, the Board determined that iMortgage had violated La. R.S. 37:3415.15. Unangst Aff. ¶ 124. Moreover, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

38. 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 22, CX0334 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015).

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

39. 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 22, CX0334 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC,* December 8, 2015).

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

40. 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 23, CX0309 (Findings of Fact, Conclusions of Law, and Order).

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

41. On February 26, 2016, iMortgage submitted a proposed compliance plan for Respondent's approval. Kennedy Decl. Tab 24, [redacted].

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

42. 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 24, [redacted].

Response: Complaint Counsel's statement is disputed as misleading, irrelevant, and immaterial. [redacted]." Kennedy Decl. Tab 24. [redacted]

[redacted]. *Id.*; Unangst Aff. ¶ 127. [redacted]. Kennedy Decl. Tab 25. Moreover, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

43. By letter dated March 10, 2016, the Executive Director rejected iMortgage's proposed compliance plan dated February 26, 2016. Kennedy Decl. Tab 25, [redacted].

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

44. On March 15, 2016, iMortgage submitted a second proposed compliance plan to Respondent for approval. Kennedy Decl. Tab 26, CX0308 (Second proposed compliance plan).

Response: Complaint Counsel's statement is disputed as misleading, irrelevant, and immaterial. iMortgage's second "compliance plan" indicated that iMortgage would not provide "data contained in the lender fee study" used by iMortgage to comply with Prior Rule 31101. Kennedy Decl. Tab 26. In addition, iMortgage did not provide any data to indicate how it planned to use the Six Factor Method. *Id.* Moreover, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

45. 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 26, CX0308 (Second proposed compliance plan).

Response: Complaint Counsel's statement is disputed as incomplete, irrelevant, and immaterial. Instead of modifying its original proposed plan in accordance with LREAB's basis for rejecting it, iMortgage proposed to rely on the SLU Survey. Kennedy Decl. Tab 26. The

Board would have been satisfied had iMortgage modified its original plan in accordance with the Board's March 10, 2016 letter; however, iMortgage declined to do so and instead decided to rely on the SLU Survey to establish compliance with federal and state law. Unangst Aff. ¶¶ 126-129. The second proposed compliance plan did not agree to pay "median fees" from the SLU study, but rather committed to rely on the SLU Study in determining fees. Kennedy Decl. Tab 26. In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

46. 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 27, CX0307 (Board Minutes, March 21, 2016).

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

47. Respondent's board accepted iMortgage's second proposed compliance plan by a vote of six to zero, with one member abstaining. Kennedy Decl. Tab 27, CX0307 (Board Minutes, March 21, 2016).

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

48. Respondent has resolved other allegations of violations of Rule 31101 through informal methods when the AMCs being investigated have agreed to pay appraiser fees consistent with the SLU survey. Kennedy Decl. Tab 28, [redacted]; [redacted].

Response: Complaint Counsel's statement is disputed as inaccurate, misleading, irrelevant, and immaterial. [redacted]. Kennedy Decl. Tab 28; Unangst Aff. ¶¶ 60, 73, 80, 82, 87, 93-94, 96, 104, 111-112. [redacted]." Kennedy Decl. Tab 28. [redacted]. *Id.* at CX3143. [redacted]." *Id.* at CX0475. [redacted]." *Id.* In addition, the statement is irrelevant and immaterial to the Board's good faith efforts to comply with Dodd-Frank.

49. The Appraisal Subcommittee ("ASC"), a small federal regulatory entity that is part of the Federal Financial Institutions Examination Council ("FFIEC"), is responsible for monitoring state programs for the regulation of appraisers and AMCs. Kennedy Decl. Tab 29, 12 U.S.C. §3332 (2015).

Response: Complaint Counsel's statement is disputed as incomplete and misleading. The ASC provides federal oversight over the state appraiser certifying and licensing agency's appraiser and AMC licensing and regulatory programs to "protect federal financial and public policy interests in real estate appraisal utilized in federally related transactions." *See ASC Home Page, available at* https://www.asc.gov/Home.aspx. Specifically, the ASC is required to "monitor the requirements established by States" of the "registration and supervision of the operations and activities of an appraisal management companies." Kennedy Decl. Tab 29, 12 U.S.C. §3332(a)(1)(B)(2015). The ASC's monitoring of the state's registration and regulation of AMCs requires the state mandate "compliance with the requirements of Section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder," which includes the Dodd-Frank customary and reasonable appraisal fees for covered transactions. Kennedy Decl. Tab 30, Appraisal Subcommittee, Bulletin No. 2015-01 (June 17, 2015).

50. As part of its monitoring role, the ASC maintains: (i) a national registry of state-licensed and state-certified appraisers who are eligible to perform appraisals in connection with federally regulated transactions; and (ii) a national registry of AMCs that either are registered with, and subject to supervision by, a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution. Kennedy Decl. Tab 29, U.S.C. § 3332(a)(3) & (6) (2010).

Response: Complaint Counsel's statement is disputed as incomplete and misleading. The ASC does not yet have a "National Registry" for AMCs. *See* Appraisal Subcommittee, Bulletin No. 2017-01 (November 21, 2017), *available at* https://www.asc.gov/Documents/GeneralCorrespondence/ASC%20Bulletin%202017-01%20-%20National%20Registry%20of%20AMCs%20-%202017.11.21.pdf ("The ASC will open the AMC Registry to States no later than June 4, 2018."). Additionally, in support of its national registry, the ASC has recently adopted "a final rule to implement collection and transmission of appraisal management company (AMC) annual registry fees… to be applied by State appraiser certifying and licensing agencies." Collection and Transmission of Annual AMC Registry Fees, 82 Fed. Reg. 44,493, 44,494 (Sept. 25, 2017).

51. Beginning on or about August 10, 2018, the ASC's Compliance Reviews will include "oversight of AMC Programs for any State with an AMC Program." Kennedy Decl. Tab 30, Appraisal Subcommittee, Bulletin No. 2015-01 at 2 (June 17, 2015), *available at* https://www.aaro.net/docs/Bulletin_No__2015-01_to_States_-_AMC_Rules.pdf; Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. 43,966, 43,978-80 (Sept. 20, 2017).

Response: Complaint Counsel's statement is disputed as incomplete. While the ASC will provide "formal" oversight over a state's supervision and regulation of AMCs, prior to that time, "ASC staff [would] informally monitor the State's progress to implement the requirements of Title XI and the AMC Rule." Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. 43,966, 43,977 (Sept. 20, 2017). LREAB, on numerous occasions, sought informal review from ASC staff concerning the consistency of the Board's implementation of its policies and

procedures with the provisions of Dodd-Frank and the AMC Rule concerning the licensing and regulation of AMCs in the State of Louisiana. Unangst Aff. ¶¶ 62-75. Moreover, "[f]ormal ASC oversight will consist of evaluating AMC Programs in participating States during the Compliance Review process to determine compliance or lack thereof with Title XI, and to assess implementation of the minimum requirements for State registration and supervision of AMCs as established by the AMC Rule," which includes the AMC's payment of customary and reasonable appraisal fees for covered transactions. Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. at 43,977-78. The ASC requires that the state agency effectively enforces its AMC Rule, which will require the agency to "investigate complaints, and if allegations are proven, take appropriate disciplinary or remedial action." *Id.* at 43,980. In addition, the state appraiser certifying and licensing agency must "report all disciplinary action taken against an AMC to the ASC… within 5 business days after the disciplinary action is final." *Id.* at 43,979. "Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and complete investigations in a reasonable time period, appropriately disciplines sanctioned AMCs and maintains an effective regulatory program. *Id.* at 43,980. Importantly, "Title XI grants the ASC authority to *impose sanctions on a State that fails to have an effective* Appraiser or *AMC Program*." *Id.* at 43,981 (emphasis added).

52. In January 2017 and again in September 2017, the ASC issued for public comment proposed Policy Statements regarding the anticipated monitoring of state AMC programs. Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. 2977 (Jan. 10, 2017);

Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. 43,966, 43,967 (Sept. 20, 2017).

Response: Complaint Counsel's statement is disputed as incomplete. In addition to the proposed Policy Statements in 2017, on June 15, 2017, the ASC issued a "Bulletin to provide information regarding registration and supervision of AMCs (State AMC Programs)." Kennedy Decl. Tab 30, Appraisal Subcommittee, Bulletin No. 2015-01 (June 17, 2015). The Bulletin not only summarizes the requirements of the "AMC Rule" that States "will need to implement as part of their AMC programs," but also indicates that the ASC will "informally monitor the State's progress to implement the requirements of the AMC Rule." *Id.* LREAB, on numerous occasions, sought informal review from ASC staff concerning the consistency of the Board's implementation of its policies and procedures with the provisions of Dodd-Frank and the AMC Rule concerning the licensing and regulation of AMCs in the State of Louisiana. Unangst Aff. ¶¶ 62-75

53. The proposed Policy Statements contemplate that the ASC will meet its obligation to monitor state AMC regulatory programs primarily through annual or bi-annual onsite visits by ASC staff, referred to as a Compliance Review. Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. 43,966, 43,967, 43,982 (Sept. 20, 2017).

Response: Complaint Counsel's statement is disputed as incomplete and misleading. In addition to making onsite visits that last over "a two to four-day period," the state agency "must report *all* disciplinary action taken against an AMC to the ASC via the extranet application within 5 business days after the disciplinary action is final." Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised

Policy Statements, 82 Fed. Reg. 43,966, 43,979, 43,982 (Sept. 20, 2017) (emphasis added). As a result, the ASC will constantly monitor state disciplinary actions against AMCs. In addition to annual reviews, the ASC may "conduct Follow-Up Reviews and additional monitoring." *Id.* at 43,983. Moreover, the ASC "will also schedule a Priority Contact visit for a State when a specific concern is identified that requires special attention." *Id.*

54. ASC staff will "review a [representative] sampling of documentation" regarding the state's AMC regulatory program. At the conclusion of this review, the ASC will issue a Compliance Review Report assessing the state's "overall compliance, or lack thereof" with Title XI of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") and the AMC Rule. Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. 43,966, 43,982 (Sept. 20, 2017).

Response: Complaint Counsel's statement is disputed as incomplete and misleading. The ASC reviews the "State's AMC Program and the four compliance areas," which requires "[s]ufficient documentation." Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. 43,966, 43,982 (Sept. 20, 2017) (emphasis added). In addition, the ASC constantly reviews the State's "disciplinary action taken against an AMC… within 5 business days after the disciplinary action is final." *Id.* at 43,979. Furthermore, the state agency "must notify the ASC as soon as practicable if an AMC listed on the AMC Registry is no longer registered with or operating in the State." *Id.*

55. The Appraisal Subcommittee staff conducted compliance reviews of the Louisiana appraiser regulatory program on February 4-6, 2014, and again on February 2-4, 2016

to determine whether it complied with Title XI of FIRREA. Kennedy Decl. Tab 4, Appraisal Subcommittee, *ASC Compliance Review of Louisiana's Appraiser Regulatory Program* (June 4, 2014), *available at* https://www.asc.gov/Documents/StateFieldReviewCorrespondence/2014.06.04%20LA%20Final%20Compliance%20Review.pdf; Appraisal Subcommittee; *ASC Compliance Review of Louisiana's Appraiser Regulatory Program* (May 31, 2016), *available at* https://www.asc.gov/Documents/StateFieldReviewCorrespondence/2016.05.31%20LA%20Final%20Complaince%20Review.pdf.

Response: Not disputed.

56. For each compliance review, the Appraisal Subcommittee issued a Compliance Review Report. The 2014 and 2016 reports show reviews of regulations regarding appraisers; neither report references Respondent's adoption or enforcement of Rule 31101. Kennedy Decl. Tab 4, Appraisal Subcommittee, ASC Compliance Review of Louisiana's Appraiser Regulatory Program (June 4, 2014), *available at* https://www.asc.gov/Documents/StateFieldReviewCorrespondence/2014.06.04%20LA%20Final%20Compliance%20Review.pdf; Appraisal Subcommittee; ASC Compliance Review of Louisiana's Appraiser Regulatory Program (May 31, 2016), *available at* https://www.asc.gov/Documents/StateFieldReviewCorrespondence/2016.05.31%20LA%20Final%20Complaince%20Review.pdf.

Response: Complaint Counsel's statement is disputed as misleading. While the ASC has not yet finalized its rules concerning the ASC's obligation to monitor and, where necessary, sanction the state appraiser certifying and licensing agency for its licensure and regulation of AMCs, as of June 2015, the ASC did offer to "informally monitor the State's progress to

implement the requirements of the AMC Rule," which includes regulation and enforcement of AMCs' payment of customary and reasonable appraisal fees for covered transactions. Kennedy Decl. Tab 30, Appraisal Subcommittee, Bulletin No. 2015-01 (June 17, 2015). Even prior to June 2015, LREAB, on numerous occasions, sought informal review from ASC staff concerning the consistency of the Board's implementation of its policies and procedures with the provisions of Dodd-Frank and the AMC Rule concerning the licensing and regulation of AMCs in the State of Louisiana. Unangst Aff. ¶¶ 62-75

Respectfully submitted,

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Dated: February 20, 2018

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board, **Docket No. 9374**
Respondent

AFFIDAVIT OF BRUCE UNANGST

I, Bruce Unangst, in support of the Opposition of Respondent Louisiana Real Estate Appraisers Board to Complaint Counsel's Motion for Partial Summary Decision, do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge and knowledge I have obtained during my employment with the State of Louisiana.

A. Professional Background

2. I am currently the Executive Director of the Louisiana Real Estate Commission ("LREC"). By law, I also serve as Executive Director of the Louisiana Real Estate Appraisers Board, the Respondent in this action ("LREAB" or "Board"). I have served as LREAB's Executive Director since November 15, 2010.

3. My prior employment experience as relevant to my current positions included serving as market area president in St. Tammany parish for a Louisiana bank, directing consumer, small-business and commercial banking operations, and operating a company that developed commercial real estate projects.

4. As Executive Director, I am not a member of LREAB. I do not vote on any LREAB matters. My compensation is not determined by LREAB, and LREAB can neither increase nor decrease my compensation. LREC, not LREAB, has authority to hire or fire the LREAB's Executive Director.

5. I am not licensed as a real estate appraiser, and I am not employed by a banking or lending institution or an appraisal management company ("AMC").

6. As Executive Director, I am responsible for the day-to-day operations of LREAB, such as scheduling Board meetings, preparing meeting minutes and other official records, and communications with Board members. I interact regularly on behalf of LREAB with departments and agencies within the office of the Governor and the leadership of the Louisiana Legislature. I am responsible for ensuring that regulations adopted by LREAB are promulgated in accordance with the requirements of the Louisiana Administrative Procedures Act ("Louisiana APA"). I also communicate with representatives of entities regulated by the Board and affected by LREAB regulations, including appraisers, lenders, builders, and AMCs.

7. An important part of my duties relates to promoting compliance by licensees with Board rules and regulations in accordance with state laws, including the Louisiana Real Estate Appraisers Law ("Appraisers Law") and the Appraisal Management Company Licensing and Regulation Act ("AMC Act"). I also supervise and am involved in efforts to enforce LREAB regulations promulgated pursuant to these laws.

8. As part of ensuring licensee compliance and efforts involving LREAB's promulgation of regulations pursuant to federal and state requirements, I personally have reviewed and sought expert and legal advice on numerous federal and state laws and rules,

including from federal financial agencies, that may implicate the Board's licensing and regulation of appraisers and AMCs in the State of Louisiana.

B. Board Members

9. The members of LREAB are appointed by the Governor and approved by the State Senate. La. R.S. 37:3394(A)-(C).

10. LREAB is comprised of members representing different geographic regions of the State and distinct professional interests relevant to the appraisal of real property. Until 2013, under La. R.S. 37:3394 the Board had nine members. Two members selected by the Governor represented lenders – one from a list of three individuals proposed by the Louisiana Bankers Association, and another from a list proposed by the Community Bankers Association. A minimum of four members were "general appraisers" and a minimum of two members were residential appraisers.

11. LREAB currently has ten members. Following passage of the 2012 amendments to the AMC Act, the legislature amended the Appraisers Law to add a member in the AMC category. My understanding is that this was done so that AMCs would have a voice on the Board.

12. My understanding is that the Board was constituted from these various groups so that every industry segment could contribute relevant knowledge and experience to the Board's deliberations. However, as LREAB's Mission Statement reflects, the purpose of the LREAB is to "serve and protect the public interest in all real estate appraisal related activities." Ex. 1.

13. To my knowledge, the general appraiser members of the Board do not regularly engage in performing residential appraisals. The types of commercial and industrial real estate appraisals that general appraisers do is significantly different from residential appraisals.

Appraisal of residential property requires knowledge and competence of the area's characteristics, including nearby rivers, bridges, highways, parks, railroad tracks, and utility lines. As a result, many general appraisers as a rule may not possess the level of geographic competence required of residential appraisers by the Uniform Standards of Professional Appraisal Practice – which standards apply to residential real estate appraisals used in conjunction with federally-related transactions such as those covered by prior and replacement Rules 31101.

14. Moreover, to my knowledge fees for general appraisals are not readily susceptible to considerations applicable to "customary and reasonable" ("C&R") fees. Each commercial appraisal has unique characteristics, such that each contract tends to be specifically negotiated according to the type of property and the scope of work involved. Considerations such as geographic competence are less crucial to general appraisals; in fact, many commercial appraisals are done by out of state appraisers.

15. Fees for general appraisals range in the thousands of dollars, and can be in the tens of thousands of dollars, for example, for significant commercial properties or hospitals. C&R fees for residential appraisals in Louisiana typically are in the hundreds of dollars.

16. For all of these reasons, based on my knowledge and experience, the difference between general appraisers and residential appraisers recognized under Louisiana law and appraisal practice is such that general appraisers would not be considered as active residential appraisers.

17. Similarly, although certain members may hold or have held residential appraiser licenses, they may not in fact engage in appraisals in the course of their current professional employment. For example, I am aware of Board members who hold residential appraisal licenses

but work exclusively in the banking industry or who do consulting work, and do not perform residential appraisals that are covered transactions subject to the C&R fee requirement.

18. At no time from 2012 to the present did residential appraisers comprise a majority of the Board. The Board membership by statute is constructed so that no single group ever comprises a majority of the Board.

19. Regardless, my experience with the Board is that the members take seriously their duty to act in the public interest, rather than in the private interests of themselves or the industry categories from which they have been appointed. I have seen occasions where members have voted in the public interest and against the interests of their professional category, and cannot recall any occasion where I believed members voted in their or their group's economic interest over the best interests of the public.

C. Louisiana Real Estate Appraisers Board Licensure and Regulation of AMCs

20. LREAB is the state government agency that administers and regulates the real estate appraiser and AMC licensing programs for the State of Louisiana. The Board enforces compliance with the obligations imposed by the Appraisers Law, the AMC Act, and the rules and regulations of the Board promulgated under those acts.

21. Since its creation in 1987, LREAB has been empowered with the licensing and regulation of general and residential appraisers in the State of Louisiana.

22. In response to the nationwide collapse of the residential housing market in 2008, the Louisiana Legislature passed the 2009 AMC Act. One major factor contributing to the housing crisis was the overvaluation of residential homes. Through the AMC Act, the Louisiana Legislature expanded the Board's authority and oversight to include both licensure and regulation of AMCs that provided appraisal management services in Louisiana.

23. The 2009 AMC Act was viewed as an important first step to help ensure that AMCs retained independent and competent residential appraisers to appraise specific types of residential property in the geographic market area. It is also my understanding that, in or around 2009, numerous other states also were seeking to license and regulate AMCs through the same state agency, often state appraiser boards, that licensed and regulated the state's appraisers.

24. In July 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). As part of Dodd-Frank, the federal government required that AMCs pay C&R fees for residential appraisals in covered transactions.

25. I understood that Dodd-Frank amended the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") by adding a new section requiring AMC licensure and regulation to be conducted by the "State appraiser certifying and licensing agency." Ex. 2. Since, in Louisiana, the LREAB was that agency, the AMC licensing and regulation was required to be enforced by the Board.

26. I was also aware that, as a result of Dodd-Frank, the federal government promulgated Interim Final Rules in October 2010 providing additional guidance and to assist all stakeholders with compliance with the C&R fee provision. Specifically, those rules offered two presumptions of compliance. The first presumption allowed a lender or AMC to adjust recent residential appraisal fees based on six factors; and the second presumption allowed the usage of independent and objective third-party information, including usage of government fee schedules and academic fee surveys, that did not reflect fees paid by AMCs to appraisers.

27. In 2011 and 2012, in direct response to Dodd-Frank and its mandates concerning licensure and regulation of AMCs, including the C&R provision, the Louisiana House and

Senate considered and passed a bill to amend the AMC Act for the State to comply with the requirements of Dodd-Frank and federal law and regulations.

28. I participated in numerous meetings with stakeholders concerning the language of the 2012 amendments to the AMC Act, including Board meetings wherein various stakeholders provided information concerning the AMC Act and others states' attempts to implement Dodd-Frank's C&R requirement. Ex. 3. To my knowledge, all stakeholders, including the AMCs and AMC advocacy associations, supported the Louisiana Legislature's 2012 amendment to the AMC Act to ensure the state's compliance with Dodd-Frank's mandates on residential real estate appraisals.

29. On May 1, 2012, I testified at a hearing on the bill before the House Commerce Committee to support the 2012 amendments to the AMC Act. At that same hearing, through written comments of their then president, Mr. Don Kelly, Real Estate Valuation Association ("REVAA"), the leading AMC association, indicated its support of all of the amendments to the AMC Act. In addition, members of the Louisiana Realtors and the Louisiana Bankers Association also supported the amendments to the AMC Act. A video of that hearing is available at http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house%2F2012%2FMay_2012%2F0501_12_CO.

30. During the negotiations on the final language of the 2012 amendments to the AMC Act, REVAA, through their counsel Mr. Robert Rieger, proposed the clause "consistent with the presumptions of compliance under federal law." Ex. 4. The proposed clause was offered by REVAA as a way to assure all stakeholders that the purpose of the 2012 amendments to the AMC Act was to ensure Louisiana's compliance with Dodd-Frank. The Board, and other

stakeholders, agreed to REVAA's proposed addition, and both REVAA and LREAB supported the final language of the 2012 amendments to the AMC Act.

31. With widespread stakeholder support, on May 31, 2012, the Louisiana Legislature amended the AMC Act. As part of those amendments, the Louisiana Legislature added La. R.S. 37:3415.15, which required AMCs licensed to do business in Louisiana to compensate residential real estate 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. Ex. 4.

32. In 2016, the Louisiana Legislature again amended the AMC Act. The 2016 amendments removed the language concerning "federal law" to include precise citations to the United States Code and Code of Federal Regulations that codified the Dodd-Frank mandates requiring states to license and regulate AMCs. Ex. 5.

D. The Board's Promulgation and Readoption of Rule 31101

33. The 2012 amendments to the AMC Act specifically required the Board to promulgate rules to ensure compliance and enforcement of the new amendments, including the requirement that AMCs pay a C&R residential appraisal fee. *See* La. R.S. 37:3415.21.

34. It was my understanding that due to the passage of Dodd-Frank and the 2012 amendments to the AMC Act, the Board needed a rule concerning AMC payment of C&R residential appraiser fees. Without such a C&R rule, AMCs licensed in Louisiana would be unable to obtain appraisals for federally-related transactions in the State, and would be excluded from participating in a significant segment of the market.

35. In my capacity as Executive Director, I assisted LREAB in developing these regulations, and in explaining the meaning of these regulations to the affected industry segments

to help promote compliance with the Rule's requirements. It was my responsibility to ensure that any proposed Board rule met both the requirements and mandates of Dodd-Frank, as well as the requirements and mandates of the Louisiana Legislature.

36. During the initial development of the C&R rule, I conferred with numerous stakeholders including REVAA, the Appraisal Institute, the Louisiana Bankers Association, the Louisiana Home Builders Association, and Louisiana REALTORS to obtain their views on whether the proposed rule would be consistent with the Dodd-Frank C&R mandate and would be in the public interest. While different stakeholders commented on the language of the several versions of the proposed C&R rule, all were in agreement that LREAB needed to promulgate a C&R rule to ensure compliance with Dodd-Frank and the 2012 amendments to the AMC Act.

37. Prior to submitting a draft rule to the Board for approval, I held education outreach meetings around the state, to discuss the AMC Act amendments and the C&R fee requirement in Dodd-Frank. These sessions were open without charge to anyone, including appraisers and AMCs.

38. The proposed rule (referred to hereinafter as "Prior Rule 31101"), went through three rounds of public comments. Each public comment period was initiated by publication in the Louisiana Register, as required by the Louisiana Administrative Procedures Act. The first draft of Prior Rule 31101 was published in a Notice of Intent on November 20, 2012. Ex. 6. After the first round of public comments and a public hearing on the draft, we published a revised draft rule in the Louisiana Register on February 20, 2013; and then, after a second round of public comment and hearing, a further revised rule was published in the Louisiana Register on June 20, 2013. Ex. 7.

39. During the promulgation of Prior Rule 31101, the Appraisal Subcommittee (the "ASC") of the Federal Financial Institutions Examination Council issued a "Policy Statement." Ex. 8. As part of my duties as Executive Director, I reviewed the June 1, 2013, ASC Policy Statement. It was my understanding that the new policy statement was issued as a response to Dodd-Frank's amendments to FIRREA. *Id.*

40. The ASC's June 2013 Policy Statement provided a definition of "State board," which states the following:

> As referenced herein, "State board" means a group of individuals (usually appraisers, bankers, consumers, and/or real estate professionals) appointed by the Governor or a similarly positioned State official to assist or oversee State Programs. A State agency may be headed by a board, commission or an individual.

Id. at 42.

41. My review of the ASC's June 2013 Policy Statement confirmed that LREAB's composition was consistent with federal requirements, and that LREAB's promulgation of Prior Rule 31101 was consistent the Dodd-Frank amendments to FIRREA that require that the State's appraiser certifying and licensing agency license and regulate AMCs.

42. Following the first and second rounds of public comments and hearings, the Board amended the draft rule to address comments that the Board considered consistent with the purposes of the C&R fee requirements in Dodd-Frank and the AMC Act and in the public interest.

43. Following the third round of written comments, LREAB held a public hearing on the third iteration of Prior Rule 31101 on July 22, 2013. At that public hearing, the Board considered the written and oral comments of all witnesses, and determined that the proposed rule should proceed toward adoption.

44. On September 26, 2013, as prescribed by the Louisiana APA, the Board submitted a summary report describing the Board's decision to approve Prior Rule 31101 to the Speaker of the House and the President of the Senate, for the purpose of exercising legislative oversight from the House and Senate Commerce Committees. The report included descriptions of the rule, the public comments received by the Board, and the reasons supporting the Board's decision.

45. At the time the report was submitted, the Louisiana Legislature was not in session. Under Louisiana law at that time, the House and Senate Commerce Committee oversight subcommittees each would review the report submitted by the Board, and would determine whether a hearing on the rule was necessary. A decision not to hold a hearing on a proposed LREAB rule within 45 days from submission of the report allowed the rule to take effect. I conferred with representatives of the House Commerce Committee during the 45-day period and was informed that, after consideration of the report, no member requested additional information, no member of the subcommittee believed a hearing was necessary and that the Committee saw no reason why the rule should not go forward. It was my understanding that the House Committee believed that the Board's promulgation of Prior Rule 31101 was in accordance with both Dodd-Frank and the AMC Act.

46. The Senate Commerce Committee considered whether to hold a hearing on the rule at a meeting on November 13, 2013. I attended that meeting, as did a representative of REVAA on behalf of AMCs. The Committee Chairman reminded the members that a decision to not hold a hearing would allow the rule to take effect quickly, and that a decision to hold such a hearing would delay its adoption. That committee, being so advised, voted 6-2 to allow Rule 31101 to proceed. A video recording of that meeting is available on the website of the Senate

Commerce Committee at http://senate.la.gov/video/videoarchive.asp?v=senate/2013/11/111313COM. It was my understanding that the Senate's oversight subcommittee believed that the Board's promulgation of Prior Rule 31101 was in accordance with both Dodd-Frank and the AMC Act.

47. Governor Jindal had authority thereafter to disapprove the rule, and allowed Prior Rule 31101 to take effect.

48. Prior Rule 31101 was published in the Louisiana Register on November 20, 2013, and became final and adopted. Kennedy Decl. Tab 11.

E. Southeastern Louisiana University Business Research Center Fee Survey

49. In the process leading to the adoption of the October 2010 federal Interim Final Rules, the Federal Reserve Board received comments from AMCs and others that the lack of available third party studies should lead to the rejection of the presumption of compliance concerning objective and independent third party information. 75 Fed. Reg. 66,554, 66,574 (Oct. 28, 2010). The Federal Reserve Board rejected those comments, but failed to offer any additional guidance as to what objective and independent fee studies would be acceptable, leaving that to future rulemaking proceedings.

50. Given the lack of guidance from the Federal Reserve Board, LREAB believed it could be helpful to compliance with Prior Rule 31101 for the Board to fund a survey that stakeholders could reference in accordance with the Interim Final Rules. The Board discussed its intention at its public meetings in 2013, and no opposition was received from any stakeholders, including appraisers, AMCs, or their representatives.

51. In 2013, the Board retained Southeastern Louisiana University Business Research Center to conduct an objective and independent survey of recent rates paid for five different

types of residential appraisals by lenders in the nine relevant state geographic areas ("SLU Survey"). Kennedy Decl. Tab 13.

52. As an academic study comprised of data from lenders and appraisers, it was the Board's judgment that the 2013 SLU Survey, and every annual version thereafter, met the requirements of Dodd-Frank, the AMC Act, and Prior Rule 31101(A)(1).

53. When LREAB published the SLU Survey, LREAB issued a "Notice to Appraisal Management Companies" which advised AMCs that the SLU Survey "is provided as a courtesy to all licensees; however its use is not mandatory." Ex. 9. That statement was a true and correct statement of the Board's policy with respect to the survey. LREAB posted the Notice on its website, and the Notice remained on the Board's website until the SLU Survey was removed by the Board in November 2017.

54. After Prior Rule 31101's promulgation on November 20, 2013, the federal financial regulatory agencies issued an April 9, 2014 notice of proposed rulemaking concerning the "Minimum Requirements for Appraisal Management Companies." 79 Fed. Reg. 19,521 (Apr. 9, 2014). It was my understanding that the federal financial regulatory agencies' proposed rules confirmed the State of Louisiana and the Board's approach to complying with the licensure and regulation of AMCs, including the Board's enforcement of Dodd-Frank's C&R provision.

55. The April 9, 2014 proposed rules were adopted by the federal financial regulatory agencies on June 9, 2015. 80 Fed. Reg. 32,658 (June 9, 2015). It was my understanding that the final rules did not alter the April 9, 2014 proposed rules, and therefore, confirmed the approach taken by the Louisiana legislature's AMC Act, and the 2012 amendments to the AMC Act, which empowered the Board to promulgate rules concerning licensure and regulation of AMCs.

F. Readoption of Rule 31101

56. On July 11, 2017, Louisiana Governor John Bel Edwards issued Executive Order 17-16, entitled Supervision of the Louisiana Real Estate Appraisers Board Regulation of Appraisal Management Companies. Ex. 10. The Executive Order provided additional active supervision over LREAB's promulgation and enforcement of its C&R rule, and expressed its purpose to ensure LREAB could "faithfully execute its mandates under the Dodd-Frank Act and La. R.S. 37:3415.15." *Id.*

57. After the Governor issued Executive Order 17-16 on July 11, 2017, the Board met on July 17, 2017, and unanimously passed a Resolution requiring me, as Executive Director, to take a number of actions, including to present the Board with a proposed C&R fee rule for submission to the Commissioner of Administration, resulting in the repeal and replacement of Prior Rule 31101. Ex. 11.

58. I proposed to the Board that the text of Prior Rule 31101 be re-promulgated (hereinafter referred to as "Replacement Rule 31101"). Following approval by the Board, I took steps to repromulgate the rule following the requirements of the Louisiana APA (including publication for comment in the Louisiana Register and legislative oversight) and additional supervision required by the Governor's Executive Order. As part of that process, the Board again received and considered public comment from various stakeholders and held a public hearing, and pursuant to the Executive Order, submitted the proposal to the Commissioner for his review and approval, along with the full record of the repromulgation proceeding. In addition, pursuant to the requirements of the Louisiana APA, I sent a report to the Speaker of the House and President of the Senate concerning Replacement Rule 31101. I obtained confirmation from both the Chairmen of the House and Senate Commerce Committees that no Committee members

considered an oversight hearing to be necessary, particularly since Replacement Rule 31101 still sought to ensure compliance with Dodd-Frank's and the AMC Act's requirements.

59. On November 20, 2017, the Louisiana Register published the adopted Replacement Rule 31101 and repealed Prior Rule 31101. Ex. 12.

60. Both versions of Rule 31101, since they contain the same text, relied upon the methods of compliance from the federal Interim Final Rules in support of Dodd-Frank. The Rule provides three methods for an AMC to calculate C&R fees. First, at a minimum, an AMC can use six defined factors to adjust recent rates according to the complexity of the appraisal, the skill of the appraiser, the relevant geographical area, and so forth. Second, an AMC can use geographically relevant and objective third-party information, including fee schedules and studies. These are set out in Rule 31101(A) subsections (1) and (3), and are derived from 12 C.F.R. 226.42. Third, the Rule permits AMCs to rely on facts and circumstances in addition to the six named factors. Under Dodd-Frank, an AMC that uses one of the first two methods is entitled to a presumption of compliance with the C&R fee mandate.

61. In the case where an AMC uses objective third-party information, Rule 31101 permits and anticipates that the AMC may use that information as a basis for adjustment due to other factors.

G. Federal Financial Institutions Examination Council's Appraisal Subcommittee

62. In promulgating and enforcing Prior Rule 31101, the Board made every effort to ensure that it was in compliance with both federal and state regulations. This includes compliance with the requirements enforced by the Federal Financial Institutions Examination Council's Appraisal Subcommittee. The ASC oversees LREAB's regulation and licensure of appraisers and AMCs in the State of Louisiana.

63. To facilitate the ASC's monitoring of the Board's actions, the Board is required to provide documentation to the ASC of its policies and procedures concerning regulation and licensure of appraisers and AMCs. This includes a requirement that the Board maintain records concerning any investigation into a violation of TILA section 129E(a) through (i), which includes investigational records concerning an investigation into any AMC that potentially violated Dodd-Frank's C&R provision. Kennedy Decl. Tab 30. In accordance with the ASC requirements, the Board has maintained all records of every investigation into an AMC, including allegations of an AMC's failure to pay C&R fees to residential appraisers in the State of Louisiana.

64. It is my understanding that if the Board fails to demonstrate appropriate policies and procedures concerning its regulation and licensure of AMCs in the State of Louisiana, the ASC can impose sanctions on LREAB.

65. To ensure compliance and avoid potential sanctions from the ASC, the Board has always endeavored to follow ASC guidance and rules, and I have had regular communications with the ASC staff in this regard.

66. I had numerous conversations with Mr. James R. Park, Executive Director of the ASC, seeking guidance on Dodd-Frank's mandates and our Board's implementation and enforcement of Prior Rule 31101. I sought Mr. Park's advice on all topics concerning the ASC's supervision over the Board's actions, including the Board's licensure and regulation of AMCs. During the Board's promulgation of Prior Rule 31101, I sought information and guidance from Mr. Park on when the ASC would issue final rules providing specific requirements to the different state agencies implementing the licensure and regulation of AMCs. Mr. Park indicated

that the ASC, and other federal agencies, would eventually issue rules, but could not provide me a date certain.

67. In other conversations, Mr. Park indicated that, to comply with Dodd-Frank, the Board would have to have policies and procedures in place to ensure appropriate licensure and regulation of AMCs, including for any potential Board enforcement proceedings against an AMC.

68. On February 6, 2014, as part of the ASC's Compliance Review of the Board, Mr. Park, Neal Fenochietti, Policy Manager of the ASC, and Kristi Klamet, Policy Manager of the ASC, attended a regularly-scheduled monthly meeting of the Board. Ex. 13. At that meeting, Board members and ASC staff discussed the ASC's supervision over the Board. During that same meeting, with ASC staff present, the Board discussed the need to reauthorize a new version of the SLU Survey. The Board then voted, in accordance with the requirements of Dodd-Frank, to update the SLU Survey to ensure the usage of current residential appraisal fee data.

69. The ASC has never suggested to the Board or to me that the Board could not subsidize an independent and objective third party academic survey as a courtesy to licensees. On June 1, 2016, Ms. Vicki Ledbetter Metcalf of the ASC reached out to the Board regarding the Board's usage of the SLU Survey. Ex. 14. I responded to the ASC's inquiry that day, indicating that the SLU Survey was an independent academic fee study utilizing both lender and appraiser data, and was offered solely as a "courtesy" to AMCs. I also indicated that the Board "has consistently made clear that use of this study is not mandatory but provided as a guide" for AMCs and other stakeholders. *Id.*

70. Since that June 1, 2016 email, the ASC has made no further inquiries regarding the SLU Survey.

71. While the ASC offered a Policy Statement in June 2013 concerning the ASC's monitoring and supervision of state agencies post-Dodd-Frank, it is my understanding that the ASC did not issue any official guidance on its supervision over state agencies' licensure and regulation of AMCs until the ASC's June 17, 2015 Bulletin No. 2015-01. Ex. 8; Kennedy Decl. Tab 30. On or around June 17, 2015, I reviewed the ASC's Bulletin. The ASC's Bulletin No. 2015-01 reinforced my understanding of the Board's responsibilities under Dodd-Frank to license and regulate AMCs. In particular, the ASC reaffirmed that the Board was to "impose requirements on AMCs" that included ensuring "compliance with the requirements of section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder." Kennedy Decl. Tab 30.

72. While the 2015 Bulletin indicated that its "[f]ormal ASC oversight of State AMC Program" was scheduled to begin as part of the next scheduled Compliance Review once the AMC Registry is operational, the Board has yet to receive a formal ASC Compliance Review of its licensure and regulation of AMCs. Kennedy Decl. Tab 30. However, the Board has consistently sought informal advice and review from the ASC over the Board's program of licensing, regulation, and enforcement.

73. [redacted]. Confidential Ex. 15. [redacted]

[redacted].

74. On September 20, 2017, the ASC issued a Proposed Revised Policy Statement ("Proposed Policy Statement") that provided further guidance to the Board in its licensure and regulation of AMCs. Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. 43,966 (Sept. 20, 2017). Shortly after its issuance, I reviewed the ASC's Policy Statement. Based on my review, I believe that the Board's policies and procedures concerning the licensure and regulation of AMCs align with the requirements in the ASC's Proposed Policy Statement. In particular, the Board has policies and procedures in place to ensure "[e]ffective enforcement" over AMC conduct, include the ability to investigate complaints, and take appropriate disciplinary or remedial action wherein an AMC is found in violation of any of the provisions of Dodd-Frank or the federal financial rules implementing Dodd-Frank. *Id.* at 43,980.

75. Moreover, the ASC's Proposed Policy Statement requires "[w]ell-[d]ocumented [e]nforcement," which requires the state agency to obtain and maintain sufficient relevant documentation concerning AMC investigations. *Id.* The AMC Act requires AMCs to maintain detailed documentation of every fee paid for residential appraisals, which the Board may request in investigation of AMC compliance with the C&R fee requirement. La. R.S. 34:3415.14. Since Louisiana passed the 2012 amendments to the AMC Law, the Board has documented its investigations into any allegations involving an AMC, including creating complaint files and investigational reports. The Board has always anticipated having to provide such substantive

documentation concerning AMC enforcement to the ASC and, [redacted]. Confidential Ex. 15.

76. The Board understands that the ASC will commence its next bi-annual Compliance Review of the Board's licensure and regulation activities in April 2018.

H. Enforcement of Prior Rule 31101

77. In accordance with Dodd-Frank, the ASC's Bulletin, and the ASC's September 2017 Proposed Policy Statement, the Board has put in place policies and procedures to ensure its enforcement of Dodd-Frank, the AMC Act, and the Board's rules and regulations concerning AMCs is well-documented and follows federal and state law requirements.

78. La. R.S. 37:3415.19 requires the Board to "censure an appraisal management company, conditionally or unconditionally suspend, or revoke any license issued under this Chapter, levy fines or impose civil penalties..." for:

> (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.

Ex. 16.

79. As prescribed by the Final Rule, 12 C.F.R. § 225.193 and the ASC's Bulletin and Policy Statement, La. R.S. 37:3415.19 empowers and requires LREAB to censure and sanction any AMC that violates either La. R.S. 37:3415.15, the C&R fee statute, or the Board's Rule 31101.

80. To ensure that the Board meets the Final Rule's requirement that LREAB require that AMC's establish "processes and controls reasonable designed to ensure" that AMC's conduct their appraisal management services in accordance with, e.g., the C&R requirement, 12

C.F.R. § 225.193(b)(5), and the ASC's requirement of "well-documented enforcement" and compliance with Dodd-Frank, Rule 31101 requires that the AMC "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." Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. at 43,980; Kennedy Decl. Tab 11.

81. The Board's enforcement of Prior Rule 31101 was a "complaint-driven" process. The ASC requires that the Board track all complaints issued against AMCs. Kennedy Decl. Tab 30, Appraisal Subcommittee of the Federal Financial Institutions Examination Council; Proposed Revised Policy Statements, 82 Fed. Reg. at 43,980. In accordance with federal requirements, La. Admin. Code tit. 46, pt. LXVII, ("LAC") § 30900 grants the Board the power, "upon verified complaint in writing of any person" to "investigate the actions of a licensee." Kennedy Decl. Tab 11. Under LAC § 30900, "[t]he executive director of [LREAB] may issue written authorization to investigate apparent violations" of the AMC Act, including a violation of the C&R provision. *Id.*

82. In response to complaints, the Board requires AMCs to produce documentation showing the method of compliance used to determine C&R fees for residential appraisal services, so that the Board can investigate the AMC's assertion of compliance with state law. This compliance information necessarily would be part of any investigation file submitted to the ASC as it supervises the Board's licensure and regulation of AMCs.

83. Pursuant to its mandate under La. R.S. 37:3415.19, and through LAC § 30900, the Board received and investigated 49 different AMCs in response to complaints of violations of

various aspects of the AMC Act and Board rules and regulations including: (1) late payments to the appraiser, LAC § 31101(D); (2) improper removal from an AMC panel, LAC § 30701(A)(4); (3) unlicensed activity in the State of Louisiana, La. R.S. 37:3415.3(A); (4) and failure to document or demonstrate compensation of residential appraisals at a customary and reasonable rate, La. R.S. 37:3415.15.

84. Twelve of those investigations involved allegations concerning a potential violation of the C&R fee requirement of La. R.S. 37:3415.15. Five of those 12 were withdrawn by the complainant, and the investigation concluded.

85. All but one of the seven remaining investigations were resolved informally. In two instances, the investigation concluded with a finding that the AMC had provided sufficient evidence of compliance using the "six-factor" presumption of Rule 31101(B) or the "all facts and circumstances" test. In three cases, the AMCs voluntarily submitted a compliance plan that was acceptable to the Board, based on use of the SLU Survey as a reference for C&R fees for a period of one year. Inasmuch as each AMC could have voluntarily complied with Rule 31101 by using any objective survey, the Board accepted their voluntary compliance plans. In the investigation of Coester, the Board accepted for the same reasons Coester's proposed settlement to use the SLU Survey for one year.

86. The Board's investigative staff, under my direction, followed a set of protocols designed to create a well-documented enforcement record for any investigation of an AMC. Form letters and language were developed to use when initiating and following-up on an investigation.

87. The initial letter informed the AMC that complaints had been received, and required the AMC to produce documents showing the method of compliance used by the AMC

as provided by Rule 31101. Confidential Ex. 17. Where such information demonstrated compliance, the investigation was closed.

88. If the AMC could not produce such information, or refused to do so, a follow-up letter was sent requiring production of additional and more detailed information. Confidential Ex. 18.

Investigations Closed Upon Finding of Compliance with "Six-Factor" Test

89. [redacted]. Confidential Ex. 19.

90. [redacted]. Confidential Ex. 20.

91. [redacted]. Confidential Ex. 21.

92. On [redacted]. Confidential Ex. 22.

93. [redacted]. Confidential Ex. 23. [redacted]." *Id.* at FTC-LAB-00042585.

94. [redacted]. Confidential Ex. 24; Ex. 11.

Informal Resolution of Other Investigations

95. The Board also closed formal investigations into alleged violations of La. R.S. 37:3415.15 after the AMC provided a proposal to ensure compliance with federal and Louisiana C&R requirements.

96. [redacted]. Confidential Ex. 25. [redacted]." *Id.*

97. [redacted]." Confidential Ex. 26.

98. [redacted]. Confidential Ex. 27. [redacted]

[redacted]

[redacted]." *Id.*

99. [redacted]. Confidential Ex. 28. [redacted]:

> [redacted].

Id. at 1.

100. [redacted]. Confidential Ex. 29.

101. [redacted]. Confidential Ex. 30. [redacted]. *Id.* [redacted]. *Id.* [redacted]. *Id.* [redacted].

Coester Investigation and Voluntary Stipulation and Order

102. [redacted]. Kennedy Decl. Tab 15.

103. [redacted]. Kennedy Decl. Tab 15.

104. [redacted]. Kennedy Decl. Tab 15.

105. [redacted]. Kennedy Decl. Tab 15.

106. [redacted].

107. [redacted]. Kennedy Decl. Tab 15.

108. [redacted]. Kennedy Decl. Tab 15. [redacted]

[redacted].

109. [redacted]. Kennedy Decl. Tab 16.

110. [redacted].

111. [redacted]. Kennedy Decl. Tab 16. [redacted].

112. [redacted].

Kennedy Decl. Tab 16.

113. [redacted].

114. On June 4, 2015, the Board approved the Coester Stipulation and Order. At that meeting, the Board Members first sought to resolve an ambiguity or inaccuracy in Coester's draft and assure that both Coester and confirmed Coester's interpretation that its use of the term "fee schedule" in the Stipulation was intended to refer to the SLU Survey, which would meet one of the presumptions of compliance. Kennedy Decl. Tab 18. The Board did not set a "fee schedule" at that meeting or at any prior or subsequent meeting.

115. The Coester Stipulation and Order expired by its terms on June 5, 2016. Kennedy Decl. Tab 16.

iMortgage Investigation, Enforcement Hearing, and Order

116. On January 29, 2014, the Board received a complaint regarding iMortgage Services' compliance with Rule 31101. Kennedy Decl. Tab 19.

117. [redacted]. Kennedy Decl. Tab 20.

118. [redacted]." Confidential Ex. 31; Kennedy Decl. Tab 20.

119. [redacted]. Confidential Ex. 32.

120. [redacted].

121. [redacted].

122. [redacted]. Confidential Ex. 33.

123. At a hearing, conducted over some 14 hours, iMortgage did not submit any evidence that it had complied with state law in determining the fees paid to residential real estate appraisers for those nine transactions. Kennedy Decl. Tabs 21-22.

124. At the end of the hearing, the Board found iMortgage violated Prior Rule 31101, and the AMC Act, section 37:3415.15. The Board required iMortgage to pay a $10,000 penalty

and costs of adjudication, and stayed suspension of iMortgage's license for six months with the condition that iMortgage submit a compliance plan by March 21, 2016. Kennedy Decl. Tab 23.

125. iMortgage petitioned LREAB for rehearing. The Board scheduled deliberation of the iMortgage rehearing petition on the agenda of its next regular meeting on February 10, 2016. The Board gave iMortgage notice of the meeting by email, and posted public notice of the meeting on the LREAB website and on the entrance to Board's offices. No iMortgage representative attended the meeting. The Board voted unanimously to deny the petition, and advised iMortgage of the Board's decision.

126. [redacted]. Kennedy Decl. Tab 24.

127. [redacted] Decl. Tab 25. [redacted]. *Id.*

128. On March 15, 2016, five days after LREAB's rejection of the initial proposed compliance plan, iMortgage submitted a second proposed compliance plan. Kennedy Decl. Tab 26. [redacted]. Instead, iMortgage proposed to rely on the SLU Survey.

Id. My understanding was that iMortgage's proposed method would presumptively comply with the C&R fee requirement under the federal rules and Rule 31101.

129. On March 21, 2016, at a regularly scheduled Board meeting, in accordance with my recommendation, the Board approved iMortgage's second proposed compliance plan. Kennedy Decl. Tab 27.

130. On March 10, 2016, iMortgage filed a Petition for Judicial Review of the Board's December 8, 2015 Order with the 19th Judicial District Court, Parish of East Baton Rouge, Louisiana. Ex. 34. Under the Louisiana APA, the 19th Judicial District has jurisdiction to review administrative decisions of the LREAB. La. Const. Art. 5 § 16; La. R.S. 37:3415.20; La. R.S. 49:964; and LAC § 10509 (2016).

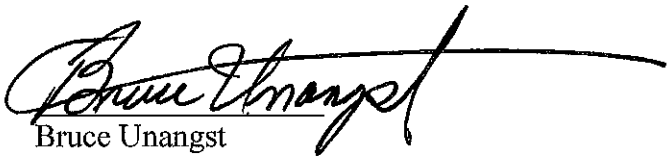
131. [redacted]. Confidential Ex. 35. [redacted]. Ex. 36; Confidential Ex. 35.

132. As of the date of this Affidavit, LREAB has neither initiated nor brought enforcement actions under Replacement Rule 31101.

133. I hereby attest that each attached exhibit is a true and correct copy of the referenced document or sections of the referenced document.

VERIFICATION OF AFFIDAVIT OF BRUCE UNANGST

I certify under penalty of perjury that the foregoing is true and correct.



Bruce Unangst
Executive Director
Louisiana Real Estate Appraisers Board

February 16, 2017

EXHIBIT 1

LOUISIANA
REAL ESTATE APPRAISERS BOARD

Mission Statement

As a state government regulatory agency, our mission is to serve and protect the public interest in all real estate appraisal related activities. We accomplish this through the fair and equitable administration and enforcement of the Louisiana Real Estate Appraisers Law (LSA-R.S. 37:3391 et seq.), the development of education programs that promote advancement of the real estate appraisal industry, and the adoption of regulations and standards that reinforce the role of the real estate appraiser in performing objective and impartial appraisals. It is our goal to ensure that real estate appraisal services are provided to the people of Louisiana by qualified and competent practitioners who adhere to the law and rules and established professional standards.

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Louisiana Real Estate Appraisers Board

Physical Address:
9071 Interline Avenue ~ Baton Rouge, LA 70809
Mailing Address:
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Phone: (225) 925-1923
Toll Free (In Louisiana Only): 1-800-821-4529
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EXHIBIT 2

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 12. Banks and Banking
Chapter 34A. Appraisal Subcommittee of Federal Financial Institutions Examination Council

12 U.S.C.A. § 3353

§ 3353. Appraisal management company minimum requirements

Currentness

(a) In general

The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection shall jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies. Such requirements shall include a requirement that such companies--

(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

(2) verify that only licensed or certified appraisers are used for federally related transactions;

(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 1639e of Title 15.

(b) Relation to State law

Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a).

(c) Federally regulated financial institutions

The requirements of subsection (a) shall apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency. An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State.

(d) Registration limitations

An appraisal management company shall not be registered by a State or included on the national registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

(e) Reporting

The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection shall jointly promulgate regulations for the reporting of the activities of appraisal management companies to the Appraisal Subcommittee in determining the payment of the annual registry fee.

(f) Effective date

(1) In general

No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date on which the regulations required to be prescribed under subsection (a) are prescribed in final form unless such company is registered with such State or subject to oversight by a Federal financial institutions regulatory agency.

(2) Extension of effective date

Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this chapter.

CREDIT(S)

(Pub.L. 101-73, Title XI, § 1124, as added Pub.L. 111-203, Title XIV, § 1473(f)(2), July 21, 2010, 124 Stat. 2192.)

12 U.S.C.A. § 3353, 12 USCA § 3353
Current through P.L. 115-90. Also includes P.L. 115-92 to 115-117, 115-119, and 115-122. Title 26 current through 115-122.

End of Document

EXHIBIT 3

MINUTES OF MEETING

OF

LOUISIANA REAL ESTATE APPRAISERS BOARD

September 19, 2011

The Louisiana Real Estate Appraisers Board held its regular business meeting on Monday, September 19, 2011, 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

Gayle Boudousquie, Secretary
Mike Graham
Newton J. "Butch" Landry
Heidi C. Lee
Gary Littlefield
Tommie McMorris

STAFF

Arlene Edwards, Legal Counsel
Anne Brassett
Mark Gremillion
Robert Maynor
Summer Mire
Marsha Stafford
Jenny Yu

GUESTS

Cheryl Bella
Bill Brumfield
Carla DeYoung
Kelly Johnson
Joe Mier
Terry Myers
Jerald Saltzman
Ross Shuffield

Board members Pete Pauley, Roland Hall and Wayne Pugh, recently appointed to replace Dan Derbes, were unable to attend the meeting.

Call to Order/Approval of Minutes

Board secretary, Gayle Boudousquie, called the meeting to order. Ms. Lee led the Invocation. Mr. Littlefield led the Pledge of Allegiance. On motion made by Ms. Lee and seconded by Mr. Littlefield, the minutes of the August 22, 2011 meeting were unanimously approved as written and circulated.

Personal Appearances

Guests at today's meeting were in attendance to discuss the issue of AMCs and customary and reasonable fees. First to address the Board was Joe Mier, a certified residential real estate appraiser for the past 18 years. Mr. Mier spoke at length about problems faced not only by the appraisal and banking industries, but by consumers as well, since enactment of the Dodd-Frank Bill. He provided the Board with a compilation of information regarding many issues of concern *(See Attachment A)*, and urged them to consider regulation requiring AMCs to adhere to a minimum customary and reasonable fee. Doing so will encourage the most qualified and competent appraisers to seek assignments from AMCs, resulting in a greater reliability for consumers and the financial sector.

Carla DeYoung, a certified residential appraiser since June of 2002, briefly addressed the Board. She advised that AMCs are not using the proper rotation of appraisers, as required by Dodd-Frank. She gave as an example being contacted by various AMCs to accept an appraisal order. When she advises them of her fee to perform the assignment, the AMCs will no longer request her services.

Kelly Johnson, President of the Louisiana Chapter of the Appraisal Institute and certified residential appraiser since May of 1990, advised that the average age of licensed appraisers in the field today is 52-54. Many of these appraisers are leaving the business because they can no longer earn a sufficient income. There has also been a drastic decline in the number of newly licensed appraisers because of the stringent education and experience requirements set forth by the Appraiser Qualifications Board. Obviously, this will have an adverse effect on the Board and the appraisal industry.

In conferring with legal counsel, Ms. Lee was reminded that Dodd-Frank is a federal law; this Board is only allowed to deal with enforcement of state law with respect to appraisals or AMCs and the rules and regulations supported by that law. Counsel noted that the general consensus of the audience is for the Board to amend its law and rules to include and/or define "customary and reasonable". She believes that doing so will result in the Board being in court quite often for hearings. Mr. Mier advised that the intent is not for the Board to set a fee, but to put back necessary language that was stripped from the initial bill. Ms. Lee stated that the revision to the bill was done at the last minute, unbeknownst to the Board. She noted that REEVA has a very strong lobby arm and suggested that Mr. Mier and others work to generate support from REEVA, bankers, and realtors.

Next to address the Board was Cheryl Bella. Ms. Bella is a certified general appraiser as well as an appraisal advisor for various financial institutions for the past 20 years. Ms. Bella brought up a seminar held recently regarding the relationship between the lender and the appraiser. During the seminar, Dodd-Frank legislation was discussed. Appraisers love the verbiage on penalties as outlined in Dodd-Frank; it certainly speaks in support of the appraisers. However, there is some question as to whether or not the penalties are actually being enforced. Last Friday, Ms. Bella emailed Boards across the nation to determine how, and if, they are responding to the issue of customary and reasonable fees. As of this morning, she had received responses from 18 Boards, and she expects to hear from many more today. Ms. Bella provided an overview of the responses received *(See Attachment B)*. She also recommended several links that can be included on the Board's website, such as the Consumer Finance Protection Bureau and the FDIC, for appraisers to report any issues regarding customary and reasonable fees. Ms. Lee asked Ms. Bella if she would draft something for the website and to be blasted to all licensed appraisers, via email, advising of steps that appraisers may take to protect themselves. Ms. Bella will email the draft to Ms. Brassett for review by counsel Mr. Graham thanked Ms. Bella and all those present at today's meeting for their time and effort.

Mr. Shuffield was last to address the Board. He will be teaching two Board-sponsored USPAP seminars this month, and is here to observe today's discussion regarding customary and reasonable fees, which is a hot topic right now. Many appraisers are very grateful for AMCs, because that's how they survive. AMCs have existed long before Dodd-Frank, and there are many good ones out there. Mr. Shuffield thanked Johnny Dunaway, Cheryl Bella, Kelly Johnson, and Wayne Pugh. These individuals gave their free time to put together the seminar project that Mr. Shuffield brought before the Board in January. The seminar has been offered in two locations thus far, and response has been very positive. Mr. Shuffield advised that there are plans to offer the seminar in various locations throughout the state, incorporating more local talent, in hopes of raising the level of awareness with respect to appraiser competency.

Experience Review Report

Ms. Lee made motion, seconded by Mr. Graham, to approve **Evan J. Himel** (#T2898), and **Terry G. Peterson** (#T1844) for their **Certified Residential** licenses, and **Faith A. Roper** (#T2201) for her **Certified General** license. Motion passed without opposition.

Budget Report

Ms. Boudousquie and Ms. Yu discussed the budget report. Ms. Boudousquie advised that the budget will be $28,531.00 in the red, with all assets depleted by July 1, 2012. She noted that the Board is not a "for profit" Board, but must be able to pay their expenses to function. Ms. Yu stated that the Board will have no income until the AMC renewal fees begin coming in at the end of this year. Members were asked to review the Independent Accountant's Report *(See Attachment B)* and contact Ms. Yu with any questions. Board members were reminded that corporate travel cards will be phasing out at the end of the year. Effective January 1, 2012, members must use their personal credit card for any Board related travel and expenses.

New Business

Due to Mr. Pauley's absence, discussion of proposing legislation to enact an "inactive status" for appraisers was deferred until next month's meeting.

Members were advised that Ms. Lee has retired from Whitney Bank and will be opening her own appraisal review and consultation company. In that she feels this would be a conflict of interest, today will be her last meeting as a member of the Board. During her eight years of service, Ms. Lee has been a valuable asset to all, and she will be sorely missed.

There being no additional items to discuss, the meeting was adjourned on motion made by Ms. Lee and seconded by Mr. McMorris.

_____ _____

Gayle A. Boudousquie, Secretary Michael A. Graham, Board Member

EXHIBIT 4

2012 La. Sess. Law Serv. Act 429 (H.B. 1014) (WEST)

LOUISIANA 2012 SESSION LAW SERVICE

2012 Regular Session

Additions are indicated by **Text**; deletions by
~~***~~ or by =~~Text~~ .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

ACT NO. 429
H.B. No. 1014
REAL ESTATE APPRAISALS

BY REPRESENTATIVE HOFFMANN

AN ACT to amend and reenact R.S. 37:3397(B)(4), 3401(D), 3410, 3415.3(B)(10) and (11), 3415.13, and 3415.21 and to enact R.S. 37:3415.2(11), (12), and (13), 3415.3(C) and (D), and 3415.15, relative to real estate appraisals; to repeal the maximum time an individual may hold a real estate appraiser trainee license; to provide for reciprocity for real estate appraiser licenses; to define certain terms; to require an appraiser's license to perform appraisal reviews; to provide that administrative reviews of an appraisal do not require an appraiser's license; to require a surety bond; to provide for the competency of appraisers; to provide for customary and reasonable fees for appraisers; to provide for disclosure of fees paid to appraisers by appraisal management companies; to provide for the disclosure of administration fees charged by appraisal management companies; to require that administrative rules receive affirmative approval from the Louisiana Legislature; to repeal an outdated grandfathering clause; to provide for applicability; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 37:3397(B)(4), 3401(D), 3410, 3415.3(B)(10) and (11), 3415.13, and 3415.21 are hereby amended and reenacted and R.S. 37:3415.2(11), (12), and (13), 3415.3(C) and (D), and 3415.15 are hereby enacted to read as follows:

<< LA R.S. 37:3397 >>

§ 3397. License classifications; criteria

* * * * * * * * * *

B.

* * * * * * * * * *

(4) ~~A real estate appraiser trainee may not be licensed in this category in excess of six years.~~ All trainees who have been licensed in excess of two years shall be required to obtain continuing education that is equivalent to fifteen classroom hours of instruction for each year.

* * * * * * * * * *

<< LA R.S. 37:3401 >>

§ 3401. Nonresident license; temporary registration; reciprocity

* * * * * * * * * *

D. If the board determines that another jurisdiction has substantially equivalent certification or license requirements to those of this state, the board may ~~enter into a reciprocal agreement with the appropriate authority to~~ allow any resident applicant who is certified under the laws of that jurisdiction to obtain a reciprocal license as a real estate appraiser in this state. ~~The terms and conditions shall be determined by written agreement between the jurisdictions.~~

* * * * * * * * * *

<< LA R.S. 37:3410 >>

§ 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 Subcommittee of the Federal Financial Institutions Examination Council, 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.

* * * * * * * * * *

<< LA R.S. 37:3415.2 >>

§ 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:

* * * * * * * * * *

(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 § 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.

<< LA R.S. 37:3415.3 >>

§ 3415.3. License required

* * * * * * * * * *

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

* * * * * * * * * *

(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.

~~(11) Any other information required by the board.~~

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.

* * * * * * * * * *

<< LA R.S. 37:3415.13 >>

§ 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.

* * * * * * * * * *

<< LA R.S. 37:3415.15 >>

§ 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.

* * * * * * * * * *

<< LA R.S. 37:3415.21 >>

§ 3415.21. Rulemaking authority~~; effective date~~

A. The board ~~shall have the power to~~ **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.**

~~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.~~

<< Note: LA R.S. 37:3415.3 >>

Section 2. The provisions of R.S. 37:3415.3(B)(10) and (C) shall apply to any new or renewed license after December 31, 2011, and only upon promulgation of rules by the board concerning the provisions of R.S. 37:3415.3(B)(10) and (C).

Section 3. 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.

Approved May 31, 2012.

End of Document

EXHIBIT 5

2016 La. Sess. Law Serv. Act 259 (H.B. 804) (WEST)

LOUISIANA 2016 SESSION LAW SERVICE

2016 Regular Session

Additions are indicated by **Text**; deletions by ~~Text~~ .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

ACT NO. 259
H.B. No. 804
REGULATION OF REAL ESTATE APPRAISERS AND APPRAISAL MANAGEMENT COMPANIES

BY REPRESENTATIVE PUGH

AN ACT to amend and reenact R.S. 37:3397(B)(1) and (3), 3411, 3415.10, 3415.15(A) and to enact R.S. 37:3415.22, relative to the regulation of real estate appraisers and appraisal management companies; provides for licensing classifications and requirements; to regulate record keeping requirements; to change a sunset provision; to regulate real estate appraiser compensation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 37:3397(B)(1) and (3), 3411, 3415.10, 3415.15(A) are hereby amended and reenacted and R.S. 37:3415.22 is hereby enacted to read as follows:

<< LA R.S. 37:3397 >>

§ 3397. License classifications; criteria

* * *

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:

(i) Has been licensed as a certified real estate appraiser **in Louisiana** for at least three years prior to becoming a supervising appraiser.

(ii) 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.

* * *

(3) ~~The appraiser trainee shall maintain a separate appraisal log for each supervising licensed appraiser that includes, at a minimum, the following information for each appraisal~~ **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) ~~Client name and address~~ **Date of report**.

(c) Address of appraised property.

(d) Description of work performed by the ~~appraiser trainee and supervising appraiser~~ **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) ~~Name,~~ The signature~~,~~ and state ~~license~~ **certification** number of the ~~supervising~~ **supervisory** appraiser. **Separate appraisal logs shall be maintained for each supervisory appraiser if applicable.**

* * *

<< LA R.S. 37:3411 >>

§ 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 ~~after the trial date~~ **from final disposition**.

* * *

<< LA R.S. 37:3415.10 >>

§ 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, ~~2015~~ **2017**.

* * *

<< LA R.S. 37:3415.15 >>

§ 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~~ **requirements of 15 U.S.C. 1639(e) and the final** federal ~~law~~ **rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222**.

* * *

<< LA R.S. 37:3415.22 >>

§ 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.

Approved May 26, 2016.

End of Document

EXHIBIT 6

This public document was published at a total cost of $3,760. Five hundred copies of this public document were published in this monthly printing at a cost of $3,760. The total cost of all printings of this document including reprints is $3,760. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 49:981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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

8. fee appraiser work quality;

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

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

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

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

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

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

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

Chapter 309. Investigations; Disciplinary Authority; Enforcement and Hearing

§30900. Investigations

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

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

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

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

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

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

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

Chapter 311. Compensation of Fee Appraisers

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

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

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

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

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

1. the type of property;

2. the scope of work;

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

4. fee appraiser qualifications;

5. fee appraiser experience and professional record; and

6. fee appraiser work quality.

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

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

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

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

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

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

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

Family Impact Statement

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

Public Comments

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

Bruce Unangst
Executive Director

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Bruce Unangst
Executive Director
1211#048

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Real Estate Appraisers Board

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

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

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

A. - C. …

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

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

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

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

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

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

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

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

a. examination of appraisals or other work samples;

EXHIBIT 7

This public document was published at a total cost of $3,000. Five hundred copies of this public document were published in this monthly printing at a cost of $3,000. The total cost of all printings of this document including reprints is $3,000. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 49:981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

Potpourri

POTPOURRI

Department of Health and Hospitals
Office of Public Health
Bureau of Family Health

Maternal and Child (MCH) Block Grant Application

The Department of Health and Hospitals (DHH) intends to apply for Maternal and Child (MCH) Block Grant federal funding for FY 2013-2014 in accordance with Public Law 97-35 and the Omnibus Budget Reconciliation Act of 1981. The Office of Public Health, Bureau of Family Health is responsible for program administration of the grant.

The block grant application describes in detail the goals and planned activities of the Bureau of Family Health for the next year. Program priorities are based on the results of a statewide needs assessment conducted in 2010, which is updated annually based on relevant data collection.

Interested persons may request copies of the application from:

State of Louisiana
DHH-Office of Public Health
Maternal and Child Health Program
1450 Poydras Street, Room 2032
New Orleans. LA 70112

Or view a summary of the application at: http://www.dhh.louisiana.gov/index.cfm/page/935.

Additional information may be gathered by contacting Karen Webb at (504) 568-3504.

J.T. Lane
Assistant Secretary

1306#084

POTPOURRI

Department of Insurance
Office of Health Insurance

Annual HIPAA Assessment Rate

Pursuant to Louisiana Revised Statute 22:1071(D)(2), the annual HIPAA assessment rate has been determined by the Department of Insurance to be .00022 percent.

James J. Donelon
Commissioner

1306#065

POTPOURRI

Office of the Governor
Real Estate Appraisers Board

Public Hearing—Substantive Changes to Proposed Rule
Real Estate
(LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101)

The Louisiana Real Estate Appraisers Board published a Notice of Intent in the *Louisiana Register*, on February 20, 2013, to amend Chapters 303, 305 and 309, and to promulgate Chapters 304 and 311. The notice invited interested parties to submit written comments. After a thorough review and careful consideration of the received comments, the board proposes to amend certain portions of the proposed rules:

Amend Subsection 30401.A.5 to provide for a written certification from an appaiser that he or she is aware that misrepresentation of competency may be subject to the mandatory reporting requirement of the Uniform Standards of Professional Appraisal Practice (USPAP).

Amend Subsection 30501.B.7 to insert *turn time* in lieu of *time frame*, as it relates to the time allowed for performing an appraisal.

Amend Subsection 30501.B.10 to correct the spelling of *monetary*.

Amend Subsection 30900 to include 30900.F, which provides for compliance audits authorized by the board or its executive director.

Amend Subsection 31101.A to provide for appraiser compensation at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised and to identify how the market area shall be identified.

Amend Subsection 31101.A.1 to provide that evidence for fees may be established by third-party information and to provide for examples and exclusions thereof.

Amend Subsection 31101.A.2 to allow the board, at its discretion, to establish a customary and reasonable rate of compensation for licensee use.

Amend Subsection 31101.A to include A.3 to provide for factors that shall be considered to ensure that reasonable compensation is made, if an appraiser is compensated on any basis other than an established fee schedule.

Delete Subsection 31101.C-C.1, relative to customary and reasonable fees, third-party information, and geographic markets, as the content thereof is included in other subsections. With the deletion of these parts, Subsection

31101.D will become 31101.C and is amended to provide how records relative to the methods, factors, variations, and differences used to determine customary and reasonable rate of compensation for each appraisal assignment shall be mainntained. Subsequently, Subsection 31101.E will become 31101.D and is amended to provide for appraiser payment guidelines and exceptions thereto.

No fiscal or economic impact will result from the amendments proposed in this notice.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate

Subpart 3. Appraisal Management Companies

Chapter 304. Competency

§30401. Appraiser License Verification

A - A.4 …

5. is aware that misrepresentation of competency may be subject to the mandatory reporting requirement in the most current version of the Uniform Standards of Professional Appraisal Practice (USPAP).

B. …

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

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

Chapter 305. Responsibilities and Duties

§30501. Record Keeping

A. - B.6. …

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

8. - 9 …

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

C. - E …

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

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

Chapter 309. Investigations; Disciplinary Authority; Enforcement and Hearing

§30900. Investigations

A. - E …

F. Full or partial compliance audits may be authorized by the executive director, or by affirmative vote of the Board, to determine compliance with all provisions of applicable law and rules. A maximum of 10 percent of all registered licensees may be subject to audit in any calendar year. Licensees selected for audit shall be given 10 days written notice prior to commencement of the audit

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

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

Chapter 311. Compensation of Fee Appraisers

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

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

1. Evidence for such fees may be established by objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by appraisal management companies.

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

3. Licensees electing to compensate fee appraisers on any basis other than an established fee schedule as described in Paragraphs 1 or 2 above shall, at a minimum, review the factors listed in Subsection 31101.B.1-6 on each assignment made, and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

B. - B.6. …

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

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

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

2. in accordance with another payment schedule agreed to in writing by the appraiser and the appraisal management company.

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

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

In accordance with the provisions of the Administrative Procedure Act, specifically R.S. 49:968(H)(2) the board gives notice of a public hearing to receive additional comments and testimony on these substantive amendments to the proposed rules. The hearing will be held at 9:00 a.m. on Monday, July 22, 2013 at the office of the Louisiana Real Estate Appraisers Board, 9071 Interline Avenue, Baton

Rouge, LA. At that time, all interested parties will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. Interested parties may submit written comments to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809, by 9:00 a.m. on Monday, July 22, 2013.

Bruce Unangst
Executive Director

1306#019

POTPOURRI

Department of Natural Resources
Office of Conservation

Electric Well Logs (LAC 43:XIX.107)

LAC 43:XIX.107 currently sets forth, among other things, the regulations for electrical logs, when run, of all test wells, or wells drilled in search of oil, gas, sulphur and other minerals. The Office of Conservation announces that it intends to promulgate revised rules to replace portions of LAC 43:XIX.107 and solicit comments from interested parties prior to promulgating the amended rules. The purpose of this proposed rule amendment is to update regulations regarding the type of logs, when run, that shall be submitted to the Office of Conservation. The proposed rule revisions would apply to all logs, specifically all wellbore data and associated logs including, but not limited to, the minimum requirements of spontaneous potential, gamma ray, formation resistivity and conductivity, acoustic (sonic), dip-meter, neutron, and density logs. Further, other types of formation measurements, tests and sample data obtained shall be submitted to the Office of Conservation upon request by the commissioner of conservation.

The proposed Rule will consider wellbore conditions or other obstacles that prevent logging of the wellbore, such conditions may be considered by the commissioner of conservation or the director of the Engineering Division of the Office of Conservation to determine if such obstacles are reasonable to grant a waiver of the logging requirement.

In addition to commenting on the substance of the proposed rule changes themselves, the Office of Conservation also seeks information from current operators to assist in drafting the Fiscal and Economic Impact Statement required by R.S. 49:953, and to specifically provide information concerning the proposed Rule change's estimated costs and/or economic benefits to directly affected persons or non-governmental groups and the estimated effect on competition and employment.

A copy of the current rules can be found online at the Office of Conservation portion of the LDNR website under the section titled "rules" on http://dnr.louisiana.gov. For more information, please contact Tyler Gray at (225) 342-5500. This notice is available on the Department of Natural Resources, Office of Conservation's website.

James H. Welsh
Commissioner

1306#066

POTPOURRI

Department of Natural Resources
Office of Conservation

Legal Notice—Docket No. ENV 2013-L02

Notice is hereby given that the Commissioner of Conservation will conduct a hearing at 8:30 a.m., Monday, August 5, 2013, at the LaSalle Building located at 617 North Third Street, Baton Rouge, Louisiana.

At such time, the Commissioner, or his designated representative, will conduct a hearing pursuant to LAC Title 43, Part XIX. Subpart 1. Statewide Order No. 29-B relative to the matter of Agri-South Group, LLC versus Exxon Mobile Corporation, et al., Docket Number 24132, 7th Judicial District Court, Catahoula Parish, pertaining to a plan for the evaluation of environmental damage to property commonly referred to as the Plug Road property which is located within the South Shoe Bayou oil and gas field approximately three miles southwest of Lake Larto in southwestern Catahoula Parish.

Any concerns should be directed to:

Office of Conservation
Environmental Division
P.O. Box 94275
Baton Rouge, Louisiana 70804
Re: Docket No. ENV 2013-L02

James H. Welsh
Commissioner

1306#067

POTPOURRI

Department of Natural Resources
Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Quintana Petroleum Corp.	Bayou Chevreuil	L	Bowie LBR Co	001	132435
Pan-American Engineering Co	Greenwood-Waskom	S	Gill et al	003	58804
Landsberger-North	Melville	L	M J Artall	001	58766

EXHIBIT 8

Appraisal Subcommittee

Federal Financial Institutions Examination Council

POLICY STATEMENTS

(Revised)

Requirements and Guidance to State Appraiser Regulatory Programs For Compliance with Title XI

[June 1, 2013]

Contents

Introduction and Purpose

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (Title XI), established the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).[1] The purpose of Title XI is to provide protection of Federal financial and public policy interests by upholding Title XI requirements for appraisals performed for federally related transactions. Specifically those appraisals shall be performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Pursuant to Title XI, one of the ASC's core functions is to monitor the requirements established by the States[2] for certification and licensing of appraisers qualified to perform appraisals in connection with federally related transactions.[3] The ASC performs periodic Compliance Reviews[4] of each State appraiser regulatory program (Program) to determine compliance, or lack thereof, with Title XI, and to assess the Program's implementation of the AQB Criteria as adopted by the Appraiser Qualifications Board (AQB).

Pursuant to authority granted to the ASC under Title XI, the ASC is issuing these Policy Statements[5] to provide States with the necessary information to maintain their Programs in compliance with Title XI. Policy Statements 1 through 7 correspond with the categories that are evaluated during the Compliance Review process and included in the ASC Compliance Review Report (Report). Policy Statement 8 entitled *Interim Sanctions* sets forth required procedures in the event that interim sanctions are imposed against a State by the ASC.

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[1] The ASC board is made up of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration). The other two members are designated by the heads of the Department of Housing and Urban Development and the Federal Housing Finance Agency.

[2] See Appendix B, Glossary of Terms, for the definition of "State."

[3] See Appendix B, Glossary of Terms, for the definition of "federally related transaction."

[4] See Appendix A, Compliance Review Process.

[5] These Policy Statements, adopted April 10, 2013, supersede all previous Policy Statements adopted by the ASC, the most recent version of which was issued in October 2008.

POLICY STATEMENT 1

Statutes, Regulations, Policies and Procedures Governing State Programs

A. State Regulatory Structure

Title XI requires the ASC to monitor each State appraiser certifying and licensing agency for the purpose of determining whether each such agency has in place policies, practices and procedures consistent with the requirements of Title XI.[6] The ASC recognizes that each State may have legal, fiscal, regulatory or other factors that may influence the structure and organization of its Program. Therefore, a State has flexibility to structure its Program so long as it meets its Title XI-related responsibilities.

States should maintain an organizational structure for appraiser certification, licensing and supervision that avoids conflicts of interest. A State agency may be headed by a board, commission or an individual. State board[7] or commission members, or employees in policy or decision-making positions, should understand and adhere to State statutes and regulations governing performance of responsibilities consistent with the highest ethical standards for public service. In addition, Programs using private entities or contractors should establish appropriate internal policies, procedures, and safeguards to promote compliance with the State agency's responsibilities under Title XI and these Policy Statements.

B. Funding and Staffing

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended Title XI to require the ASC to determine whether States have sufficient funding and staffing to meet their Title XI requirements. Compliance with this provision requires that a State must provide its Program with funding and staffing sufficient to carry out its Title XI-related duties. The ASC evaluates the sufficiency of funding and staffing as part of its review of all aspects of a Program's effectiveness, including the adequacy of State boards, committees, or commissions responsible for carrying out Title XI-related duties.

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[6] Title XI § 1118 (a), 12 U.S.C. § 3347.
[7] *See* Appendix B, *Glossary of Terms,* for the definition of "State board."

C. Minimum Criteria

Title XI requires States to adopt and/or implement all relevant AQB Criteria. Historically, requirements established by a State for certified residential or certified general classifications have been required to meet or exceed AQB Criteria. Effective July 1, 2013, requirements established by a State for licensed appraisers, as well as for trainee and supervisory appraisers, must also meet or exceed the AQB Criteria, as required by the Dodd-Frank Act.

D. Federally Recognized Appraiser Classifications

1. ***State Certified Appraisers***

   "State certified appraisers" means those individuals who have satisfied the requirements for residential or general certification in a State whose criteria for certification meet or exceed the applicable minimum AQB Criteria. Permitted scope of practice and designation for State certified residential or certified general appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

2. ***State Licensed Appraisers***

   As of July 1, 2013, "State licensed appraisers" means those individuals who have satisfied the requirements for licensing in a State whose criteria for licensing meet or exceed the applicable minimum AQB Criteria. Effective July 1, 2013, the permitted scope of practice and designation for State licensed appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

3. ***Trainee Appraiser and Supervisory Appraiser***

   As of July 1, 2013, any minimum qualification requirements established by a State for individuals in the position of "trainee appraiser" and "supervisory appraiser" must meet or exceed the applicable minimum AQB Criteria. ASC staff will evaluate State designations such as "registered appraiser," "apprentice appraiser," "provisional appraiser," or any other similar designation to determine if, in substance, such designation is consistent with a "trainee appraiser" designation and, therefore, administered to comply with Title XI. Effective July 1, 2013, the permitted scope of practice and designation for trainee appraisers and supervisory appraisers must be

consistent with State and Federal laws, including regulations and supplementary guidance.

Any State or Federal agency may impose additional appraiser qualification requirements for State licensed, certified residential or certified general classifications or for trainee and supervisor classifications, if they consider such requirements necessary to carry out their responsibilities under Federal and/or State statutes and regulations, so long as the additional qualification requirements do not preclude compliance with AQB Criteria.

E. Non-federally Recognized Credentials

States using non-federally recognized credentials or designations[8] must ensure that they are easily distinguished from the federally recognized credentials.

F. Appraisal Standards

Title XI and the Federal financial institutions regulatory agencies' regulations mandate that all appraisals performed in connection with federally related transactions be in written form, prepared in accordance with generally accepted appraisal standards as promulgated by the Appraisal Standards Board (ASB) in the Uniform Standards of Professional Appraisal Practice (USPAP), and be subject to appropriate review for compliance with USPAP.[9] States that have incorporated USPAP into State law should ensure that statutes or regulations are updated timely to adopt the latest version of USPAP, or if State law allows, automatically incorporate the latest version of USPAP. States should consider ASB Advisory Opinions, Frequently Asked Questions, and other written guidance issued by the ASB regarding interpretation and application of USPAP.

Any State or Federal agency may impose additional appraisal standards if they consider such standards necessary to carry out their responsibilities, so long as additional appraisal standards do not preclude compliance with USPAP or the Federal financial institutions regulatory agencies' appraisal regulations for work performed for federally related transactions.

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[8] *See* Appendix B, *Glossary of Terms*, for the definition of "non-federally recognized credentials or designations."
[9] *See* Appendix B, *Glossary of Terms* for the definition of "Uniform Standards of Professional Appraisal Practice."

The Federal financial institutions regulatory agencies' appraisal regulations define "appraisal" and identify which real estate-related financial transactions require the services of a state certified or licensed appraiser. These regulations define "appraisal" as a "written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s) supported by the presentation and analysis of relevant market information." Per these regulations, an appraiser performing an appraisal review which includes the reviewer providing his or her own opinion of value constitutes an appraisal. Under these same regulations, an appraisal review that does not include the reviewer providing his or her own opinion of value does not constitute an appraisal. Therefore, under the Federal financial institutions regulatory agencies' regulations, only those transactions that involve appraisals for federally related transactions require the services of a state certified or licensed appraiser.

H. Exemptions

Title XI and the Federal financial institutions regulatory agencies' regulations specifically require the use of only State certified or licensed appraisers in connection with the appraisal of certain real estate-related financial transactions.[10] A State may not exempt any individual or group of individuals from meeting the State's certification or licensing requirements if the individual or group member performs an appraisal when Federal statutes and regulations require the use of a certified or licensed appraiser. For example, an individual who has been exempted by the State from its appraiser certification or licensing requirements because he or she is an officer, director, employee or agent of a federally regulated financial institution would not be permitted to perform an appraisal in connection with a federally related transaction.

I. ASC Staff Attendance at State Board Meetings

ASC staff regularly attends open State board meetings as part of the on-site Compliance Review process. States are expected to make available for review by ASC staff minutes of closed meetings and executive sessions. The efficacy of the ASC's Compliance Review process rests on the ASC's ability to obtain reliable information about all areas of a State's Program. States

[10] Title XI § 1112, 12 U.S.C. § 3341; Title XI § 1113, 12 U.S.C. § 3342; Title XI § 1114, 12 U.S.C. § 3343.

are encouraged to allow ASC staff to attend closed and executive sessions of State board meetings where such attendance would not violate State law or regulation or be inconsistent with other legal obligations of the State board. ASC staff is obligated to protect information obtained during the Compliance Review process concerning the privacy of individuals and any confidential matters.

J. Summary of Requirements

1. States must require that appraisals be performed in accordance with the latest version of USPAP.[11]
2. States must, at a minimum, adopt and/or implement all relevant AQB Criteria.[12]
3. States must have policies, practices and procedures consistent with Title XI.[13]
4. States must have funding and staffing sufficient to carry out their Title XI-related duties.[14]
5. States must use proper designations and permitted scope of practice for certified residential or certified general classifications, and as of July 1, 2013, a State must use the proper designations and permitted scope of practice for the licensed classification, and trainee and supervisor classifications.[15]
6. State board members, and any persons in policy or decision-making positions, must perform their responsibilities consistent with Title XI.[16]
7. States' certification and licensing requirements must meet the minimum requirements set forth in Title XI.[17]
8. State agencies must be granted adequate authority by the State to maintain an effective regulatory Program in compliance with Title XI.[18]

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[11] Title XI § 1101, 12 U.S.C. § 3331; Title XI § 1118 (a), 12 U.S.C. § 3347; AQB *Real Property Appraiser Qualification Criteria.*
[12] Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. § 3345; Title XI § 1118 (a), 12 U.S.C. § 3347.
[13] Title XI § 1118 (a), 12 U.S.C. § 3347.
[14] *Id;* Title XI § 1118 (b), 12 U.S.C. § 3347.
[15] Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. § 3345; Title XI § 1118 (a), 12 U.S.C. § 3347; Title XI § 1113, 12 U.S.C. § 3342; AQB *Real Property Appraiser Qualification Criteria.*
[16] Title XI § 1118 (a), 12 U.S.C. § 3347.
[17] Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. § 3345.
[18] Title XI § 1118 (b), 12 U.S.C. § 3347.

POLICY STATEMENT 2

Temporary Practice

A. Requirement for Temporary Practice

Title XI requires State agencies to recognize, on a temporary basis, the certification or license of an out-of-State appraiser entering the State for the purpose of completing an appraisal assignment[19] for a federally related transaction. The out-of-State appraiser must register with the State agency in the State of temporary practice (Host State). A State may determine the process necessary for "registration" provided such process complies with Title XI and is not" burdensome" as determined by the ASC or involve excessive fees. Thus, a credentialed appraiser[20] from State A has a statutory right to enter State B (the Host State) to perform an assignment concerning a federally related transaction, so long as the appraiser registers with the State agency in State B prior to performing the assignment. Though Title XI contemplates reasonably free movement of credentialed appraisers across State lines, an out-of-State appraiser must comply with the Host State's real estate appraisal statutes and regulations and is subject to the Host State's full regulatory jurisdiction. States should utilize the National Registry to verify credential status on applicants for temporary practice.

B. Excessive Fees or Burdensome Requirements

Title XI prohibits States from imposing excessive fees or burdensome requirements, as determined by the ASC, for temporary practice.[21] Adherence by State agencies to the following mandates and prohibitions will deter the imposition of excessive fees or burdensome requirements.

1. Host State agencies must:
   a. issue temporary practice permits on an assignment basis;
   b. issue temporary practice permits within five business days of receipt of a completed application, or notify the applicant and document the file as to the circumstances

[19] *See* Appendix B, *Glossary of Terms*, for the definition of "assignment."
[20] *See* Appendix B, *Glossary of Terms,* for the definition of "credentialed appraisers."
[21] Title XI § 1122 (a) (2), 12 U.S.C. § 3351.

justifying delay or other action;

c. issue temporary practice permits designating the actual date of issuance;

d. take regulatory responsibility for a temporary practitioner's unethical, incompetent and/or fraudulent practices performed while in the State;

e. notify the appraiser's home State agency[22] in the case of disciplinary action concerning a temporary practitioner; and

f. allow at least one temporary practice permit extension through a streamlined process.

2. Host State agencies may not:

a. limit the valid time period of a temporary practice permit to less than 6 months, except in the case of an appraiser not holding a credential in active status for at least that period of time;

b. limit an appraiser to one temporary practice permit per calendar year;[23]

c. charge a temporary practice permit fee exceeding $250, including one extension fee;

d. impose State appraiser qualification requirements upon temporary practitioners that exceed AQB Criteria for the credential held;

e. require temporary practitioners to obtain a certification or license in the State of temporary practice;

f. require temporary practitioners to affiliate with an in-State licensed or certified appraiser;

g. refuse to register licensed or certified appraisers seeking temporary practice in a State that does not have a licensed or certified level credential; or

h. prohibit temporary practice.

3. Home State agencies may not:

a. delay the issuance of a written "letter of good standing" or similar document for more than five business days after receipt of a request; or

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[22] See Appendix B, Glossary of Terms, for the definition of "home State agency."

[23] State agencies may establish by statute or regulation a policy that places reasonable limits on the number of times an out-of-State certified or licensed appraiser may exercise his or her temporary practice rights in a given year. If such a policy is not established, a State agency may choose not to honor an out-of-State certified or licensed appraiser's temporary practice rights if it has made a determination that the appraiser is abusing his or her temporary practice rights and is regularly engaging in real estate appraisal services within the State.

b. fail to take disciplinary action, if appropriate, when one of its certified or licensed appraisers is disciplined by another State agency for unethical, incompetent or fraudulent practices under a temporary practice permit.

C. Summary of Requirements

1. States must recognize, on a temporary basis, appraiser credentials issued by another State if the property to be appraised is part of a federally related transaction.[24]
2. State agencies must adhere to mandates and prohibitions as determined by the ASC that deter the imposition of excessive fees or burdensome requirements for temporary practice.[25]

[24] Title XI § 1122 (a) (1), 12 U.S.C. § 3351.
[25] Title XI § 1122 (a) (2), 12 U.S.C. § 3351.

POLICY STATEMENT 3

National Registry

A. Requirements for the National Registry

Title XI requires the ASC to maintain a National Registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions.[26] Title XI further requires the States to transmit to the ASC: (1) a roster listing individuals who have received a State certification or license in accordance with Title XI; (2) reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, revocations and suspensions; and (3) the Registry fee as set by the ASC[27] from individuals who have received certification or licensing. States must notify the ASC as soon as practicable if a credential holder listed on the National Registry does not qualify for the credential held.

Roster and Registry fee requirements apply to all individuals who receive State certifications or licenses, originally or by reciprocity, whether or not the individuals are, in fact, performing or planning to perform appraisals in federally related transactions. If an appraiser is certified or licensed in more than one State, the appraiser is required to be on each State's roster of certified or licensed appraisers, and a Registry fee is due from each State in which the appraiser is certified or licensed.

Only AQB-compliant certified and, effective July 1, 2013, AQB-compliant licensed appraisers in active status on the National Registry are eligible to perform appraisals in connection with federally related transactions.

Some States may give State certified or licensed appraisers an option to not pay the Registry fee. If a State certified or licensed appraiser chooses not to pay the Registry fee, then the Program must

[26] Title XI § 1103 (a) (3), 12 U.S.C. § 3332.
[27] Title XI § 1109, *Roster of State certified or licensed appraisers; authority to collect and transmit fees,* requires the ASC to consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. (Title XI § 1109 (a), 12 U.S.C. § 3338.)

ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals in connection with non-federally related transactions.[28] The Program must place a conspicuous notice directly on the face of any evidence of the appraiser's authority to appraise stating, "Not Eligible To Appraise Federally Related Transactions," and the appraiser must not be listed in active status on the National Registry.

The ASC extranet application allows States to update their appraiser credential information directly to the National Registry. Only Authorized Registry Officials are allowed to request access for their State personnel (see section C below). The ASC will issue a User Name and Password to the designated State personnel responsible for that State's National Registry entries. Designated State personnel are required to protect the right of access, and not share their User Name or Password with anyone. State agencies must adopt and implement a written policy to protect the right of access, as well as the ASC issued User Name and Password. The ASC will provide detailed specifications regarding the data elements on the National Registry and reporting procedures to those States not using the ASC extranet application.[29] The ASC strongly encourages the States to utilize the extranet application as a more secure method of submitting information to the National Registry.

The ASC creates a unique National Registry number for each listed appraiser and protects each appraiser's privacy rights. This unique identifier is available to appropriate State and Federal regulatory agencies to simplify multi-State queries regarding specific appraisers.

B. Registry Fee and Invoicing Policies

Each State must remit to the ASC the annual Registry fee, as set by the ASC, for State certified or licensed appraisers within the State to be listed on the National Registry. Requests to prorate refunds or partial-year registrations will not be granted. If a State collects multiple-year fees for multiple-year certifications or licenses, the State may choose to remit to the ASC the total amount of the multiple-year Registry fees or the equivalent annual fee amount. The ASC will, however, record

[28] *See* Appendix B, *Glossary of Terms*, for the definition of "non-federally related transactions."
[29] *See* section D, *Information Sharing,* below requiring all States to report disciplinary action via the extranet application by July 1, 2013.

appraisers on the National Registry only for the number of years for which the ASC has received payment. Nonpayment by a State of an appraiser's National Registry fee may result in the status of that appraiser being listed as "inactive." When a State's failure to pay a past due invoice results in appraisers being listed as inactive, the ASC will not change those appraisers back to active status until payment is received from the State. An inactive status on the National Registry, for whatever the reason, renders an appraiser ineligible to perform appraisals in connection with federally related transactions.

C. Access to National Registry Data

The ASC website provides free access to the public portion of the National Registry at www.asc.gov. The public portion of the National Registry data may be downloaded using predefined queries or user-customized applications.

Access to the full database, which includes non-public data (e.g., certain disciplinary action information), is restricted to authorized State and Federal regulatory agencies. States must designate a senior official, such as an executive director, to serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the designated Authorized Registry Official. States should ensure that the authorization information provided to the ASC is updated and accurate.

D. Information Sharing

Information sharing (routine exchange of certain information among lenders, governmental entities, State agencies and the ASC) is essential for carrying out the purposes of Title XI. Title XI requires the ASC, any other Federal agency or instrumentality, or any federally recognized entity to report any action of a State certified or licensed appraiser that is contrary to the purposes of Title XI to the appropriate State agency for disposition. The ASC believes that full implementation of this Title XI requirement is vital to the integrity of the system of State appraiser regulation. States are encouraged to develop and maintain procedures for sharing of information among themselves.

The National Registry's value and usefulness are largely dependent on the quality and frequency

of State data submissions. Accurate and frequent data submissions from all States are necessary to maintain an up-to-date National Registry. States must submit appraiser data in a secure format to the ASC at least monthly. If there are no changes to the data, the State agency must notify the ASC of that fact in writing. States are encouraged to submit data as frequently as possible.

State agencies must report as soon as practicable any disciplinary action[30] taken against an appraiser to the ASC. Prior to July 1, 2013, at a minimum, this information must be submitted with the State's monthly, or more frequent, Registry data submission. As of July 1, 2013, all States will be required to report disciplinary action via the extranet application. States not reporting via the extranet application will be required to provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement. For the most serious disciplinary actions (i.e., voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice), the State agency must notify the ASC of such action as soon as practicable, but no later than five (5) business days after the disciplinary action is final, in order for the appraiser's status to be changed on the National Registry to "inactive," thereby making the appraiser ineligible to perform appraisals for federally related transactions or other transactions requiring the use of State certified or licensed appraisers.

Title XI also contemplates the reasonably free movement of certified and licensed appraisers across State lines. This freedom of movement assumes, however, that certified and licensed appraisers are, in all cases, held accountable and responsible for their actions while performing appraisal activities.

E. Summary of Requirements

1. States must reconcile and pay National Registry invoices in a timely manner.[31]
2. States must submit all disciplinary actions to the ASC for inclusion on the National Registry.[32]
3. As of July 1, 2013, all States will be required to report disciplinary action via the extranet

[30] *See* Appendix B, *Glossary of Terms*, for the definition of "disciplinary action."
[31] Title XI § 1118 (a), 12 U.S.C. § 3347; Title XI § 1109 (a), 12 U.S.C. § 3338.
[32] *Id.*

application as soon as practicable.[33]

4. States must designate a senior official, such as an executive director, who will serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the selected Authorized Registry Official, and any individual(s) authorized to act on their behalf.[34] (States should ensure that the authorization information provided to the ASC is kept current.)
5. States using the ASC extranet application must implement written policies to ensure that all personnel with access to the National Registry protect the right of access and not share the User Name or Password with anyone.[35]
6. States must ensure the accuracy of all data submitted to the National Registry.[36]
7. States must submit appraiser data to the ASC at least monthly. If a State's data does not change during the month, the State agency must notify the ASC of that fact in writing.[37]
8. States must notify the ASC as soon as practicable of voluntary surrenders, suspensions, revocations, or any other action that interrupts a credential holder's ability to practice.[38]
9. If a State certified or licensed appraiser chooses not to pay the Registry fee, the State must ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals only in connection with non-federally related transactions.[39]

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[33] *Id.*
[34] Title XI § 1118 (a), 12 U.S.C. § 3347.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*

POLICY STATEMENT 4

Application Process

AQB Criteria sets forth the minimum education, experience and examination requirements applicable to all States for credentialing of real property appraisers. In the application process, States must, at a minimum, employ a reliable means of validating both education and experience credit claimed by applicants for credentialing.[40]

A. Processing of Applications

States must process applications in a consistent, equitable and well-documented manner. Applications for credentialing should be timely processed by State agencies (within 90 days). Any delay in the processing of applications should be sufficiently documented in the file to explain the delay. States must ensure appraiser credential applications submitted for processing do not contain expired examinations as established by AQB Criteria.

B. Qualifying Education for Initial or Upgrade Applications

States must verify that:

(1) the applicant's claimed education courses are acceptable under AQB Criteria; and

(2) the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought.

Documentation must be provided to support education claimed by applicants for initial credentialing or upgrade. States may not accept an affidavit for education claimed from applicants for certification. Effective July 1, 2013, States may not accept an affidavit for education claimed from applicants for any federally recognized credential.[41] States must maintain

[40] Includes applications for credentialing of State licensed, certified residential or certified general classifications, and trainee and supervisor classifications.

[41] If a State accepts education-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require documentation to support the appraiser's educational qualification for the certified classification, not just the

adequate documentation to support verification of education claimed by applicants.

C. Continuing Education for Reinstatement and Renewal Applications

1. *Reinstatement Applications*

States must verify that:

(1) the applicant's claimed continuing education courses are acceptable under AQB Criteria; and

(2) the applicant has successfully completed all continuing education consistent with AQB Criteria for reinstatement of the appraiser credential sought.

Documentation must be provided to support continuing education claimed by applicants for reinstatement. States may not accept an affidavit for continuing education claimed from applicants for reinstatement. States must maintain adequate documentation to support verification of claimed education.

2. *Renewal Applications*

States must ensure that continuing education courses for renewal of an appraiser credential are consistent with AQB Criteria and that continuing education hours required for renewal of an appraiser credential were completed consistent with AQB Criteria. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure that adheres to the following objectives and requirements:

a. *Validation objectives* – The State's validation procedures must be structured to permit acceptable projections of the sample results to the entire population of subject appraisers. Therefore, the sample must include an adequate number of affidavits to have a reasonable chance of identifying appraisers who fail to comply with AQB Criteria, and the sample must include a statistically relevant representation of the appraiser population being sampled.

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incremental amount of education required to move from the non-certified to the certified classification. This requirement applies to all federally recognized credentials effective July 1, 2013.

b. Minimum Standards – The following minimum standards apply to these audits:

1) Validation must include a prompt post-approval audit. Each audit of an affidavit for continuing education credit claimed must be completed within 60 days from the date the renewed credential is issued;
2) States must audit the continuing education-related affidavit for each credentialed appraiser selected in the sampling procedure;
3) The State must determine that the education courses claimed conform to AQB Criteria and that the appraiser successfully completed each course;
4) When a State determines that an appraiser's continuing education does not meet AQB Criteria, the State must take appropriate action to suspend the appraiser's eligibility to perform appraisals in federally related transactions until such time that the requisite continuing education has been completed. The State must notify the ASC as soon as practicable after taking such action in order for the appraiser's record on the National Registry to be updated appropriately; and
5) If more than ten percent of the audited appraisers fail to meet the AQB Criteria, the State must take remedial action[42] to address the apparent weakness of its affidavit process. The ASC will determine on a case-by-case basis whether remedial actions are effective and acceptable.

c. Documentation – States must maintain adequate documentation to support its affidavit renewal and audit procedures and actions.

d. List of Education Courses – To promote accountability, the ASC encourages States accepting affidavits for continuing education credit claimed for credential renewal to require that the appraiser provide a list of courses to support the affidavit.

[42] For example:
(1) a State may conduct an additional audit using a higher percentage of audited appraisers; or
(2) a State may publically post action taken to sanction non-compliant appraisers to increase awareness in the appraiser community of the importance of compliance with continuing education requirements.

D. Experience for Initial or Upgrade Applications

States must ensure that appraiser experience logs conform to AQB Criteria. States may not accept an affidavit for experience credit claimed by applicants for certification. Effective July 1, 2013, States may not accept an affidavit for experience credit claimed by applicants for any federally recognized credential.[43]

1. Validation Required

States must implement a reliable validation procedure to verify that each applicant's:

(1) experience meets AQB Criteria;

(2) experience is USPAP compliant; and

(3) experience hours have been successfully completed consistent with AQB Criteria.

2. Validation Procedures, Objectives and Requirements

a. Selection of Work Product

Program staff or State board members must select the work product to be analyzed for USPAP compliance; applicants may not have any role in selection of work product. States must analyze a representative sample of the applicant's work product.

b. USPAP Compliance

For appraisal experience to be acceptable under AQB Criteria, it must be USPAP compliant. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP. Persons analyzing work product for USPAP compliance must have sufficient knowledge to make that determination.

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[43] *See* Appendix B, *Glossary of Terms,* for the definition of "federally recognized credential." If prior to July 1, 2013, a State accepted experience-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require experience documentation to support the appraiser's qualification for the certified classification, not just the incremental amount of experience required to move from the non-certified to the certified classification. For example, if a State accepted an experience affidavit from an appraiser to support the appraiser's initial hours to qualify for the licensed classification, and subsequently that appraiser applies to upgrade to the certified residential classification, the State must require documentation to support the full experience hours required for the certified residential classification, not just the difference in hours between the two classifications.

c. Determination of Experience Time Periods

When measuring the experience time period required by AQB Criteria, States must review each appraiser's experience log and note the dates of the first and last acceptable appraisal activity performed by the applicant. At a minimum, the time period spanned between those appraisal activities must comply with the AQB Criteria.

d. Supporting Documentation

States must maintain adequate documentation to support validation methods. The applicant's file, either electronic or paper, must include the information necessary to identify each appraisal assignment selected and analyzed by the State, notes, letters and/or reports prepared by the official(s) evaluating the report for USPAP compliance, and any correspondence exchanged with the applicant regarding the appraisals submitted. This supporting documentation may be discarded upon the completion of the first ASC Compliance Review performed after the credential issuance or denial for that applicant.

E. Examination

States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized appraiser classifications requiring an examination.

F. Summary of Requirements

Processing of Applications

1. States must process applications in a consistent, equitable and well-documented manner.[44]
2. States must ensure appraiser credential applications submitted for processing do not contain expired examinations as established by AQB Criteria.[45]

[44] Title XI § 1118 (a), 12 U.S.C. § 3347.
[45] Title XI § 1118 (a), 12 U.S.C. § 3347; AQB *Real Property Appraiser Qualification Criteria.*

Education

1. States must verify that the applicant's claimed education courses are acceptable under AQB Criteria, whether for initial credentialing, renewal, upgrade or reinstatement.[46]
2. States must verify that the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought, whether for initial credentialing, renewal, upgrade or reinstatement.[47]
3. States must maintain adequate documentation to support verification.[48]
4. States may not accept an affidavit for education claimed from applicants for certification. Effective July 1, 2013, States may not accept an affidavit for education claimed from applicants for any federally recognized credential.[49]
5. States may not accept an affidavit for continuing education claimed from applicants for reinstatement.[50]
6. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure.[51]
7. Audits of affidavits for continuing education credit claimed must be completed within sixty days from the date the renewed credential is issued.[52]
8. States are required to take remedial action when it is determined that more than ten percent of audited appraiser's affidavits for continuing education credit claimed fail to meet the minimum AQB Criteria.[53]
9. States must require the 7-hour National USPAP Update Course for renewals consistent with AQB Criteria.[54]
10. States must take appropriate action to suspend an appraiser's eligibility to perform appraisals in federally related transactions when it determines that the appraiser's continuing education does not meet AQB Criteria until such time that the requisite

[46] *Id.*
[47] *Id.*
[48] Title XI § 1118 (a), 12 U.S.C. § 3347.
[49] *Id.*
[50] *Id.*
[51] Title XI § 1118 (a), 12 U.S.C. § 3347; AQB *Real Property Appraiser Qualification Criteria.*
[52] Title XI § 1118 (a), 12 U.S.C. § 3347.
[53] *Id.*
[54] Title XI § 1118 (a), 12 U.S.C. § 3347; AQB *Real Property Appraiser Qualification Criteria.*

continuing education has been completed. The State must notify the ASC as soon as practicable after taking such action in order for the appraiser's record on the National Registry to be updated appropriately.[55]

Experience

1. States may not accept an affidavit for experience credit claimed from applicants for certification. Effective July 1, 2013, States may not accept an affidavit for experience credit claimed from applicants for any federally recognized credential.[56]
2. States must ensure that appraiser experience logs conform to AQB Criteria.[57]
3. States must use a reliable means of validating appraiser experience claims on all initial or upgrade applications for appraiser credentialing.[58]
4. States must select the work product to be analyzed for USPAP compliance on all initial or upgrade applications for appraiser credentialing.[59]
5. States must analyze a representative sample of the applicant's work product on all initial or upgrade applications for appraiser credentialing.[60]
6. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP on all initial applications for appraiser credentialing.[61]
7. Persons analyzing work product for USPAP compliance must have sufficient knowledge to make that determination.[62]

Examination

1. States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized credentials requiring an examination.[63]

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[55] Title XI § 1118 (a), 12 U.S.C. § 3347.
[56] *Id.*
[57] Title XI § 1118 (a), 12 U.S.C. § 3347; AQB *Real Property Appraiser Qualification Criteria.*
[58] Title XI § 1118 (a), 12 U.S.C. § 3347.
[59] Title XI § 1118 (a), 12 U.S.C. § 3347.
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] Title XI § 1118 (a), 12 U.S.C. § 3347; AQB *Real Property Appraiser Qualification Criteria.*

POLICY STATEMENT 5

Reciprocity

A. Reciprocity Policy

Title XI contemplates the reasonably free movement of certified and licensed appraisers across State lines. Beginning July 1, 2013, the ASC will monitor Programs for compliance with the reciprocity provision of Title XI as amended by the Dodd-Frank Act.[64] Title XI requires that in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a policy in place for issuing reciprocal credentials IF:

a. the appraiser is coming from a State (Home State) that is "in compliance" with Title XI as determined by the ASC; AND

b. (i) the appraiser holds a valid credential from the Home State; AND
(ii) the credentialing requirements of the Home State (as they exist at the time of application for reciprocal credential) meet or exceed those of the reciprocal credentialing State (Reciprocal State) (as they exist at the time of application for reciprocal credential).

An appraiser relying on a credential from a State that does not have such a policy in place may not perform appraisals for federally related transactions. A State may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy. However, States cannot impose additional impediments to issuance of reciprocal credentials.[65]

For purposes of implementing the reciprocity policy, States with an ASC Finding[66] of "Poor" do not satisfy the "in compliance" provision for reciprocity. Therefore, States are not required to recognize, for purposes of granting a reciprocal credential, the license or certification of an appraiser credentialed in a State with an ASC Finding of "Poor."

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[64] Title XI § 1122 (b), 12 U.S.C. § 3351.
[65] Effective July 1, 2013, States will be evaluated for compliance with this Title XI requirement.
[66] *See* Appendix A, *Compliance Review Process*, for an explanation of ASC Findings.

B. Application of Reciprocity Policy

The following examples illustrate application of reciprocity in a manner that complies with Title XI. The examples refer to the reciprocity policy requiring issuance of a reciprocal credential IF:

a. the appraiser is coming from a State that is "in compliance"; AND

b. (i) the appraiser holds a valid credential from that State; AND

(ii) the credentialing requirements of that State (as they currently exist) meet or exceed those of the reciprocal credentialing State (as they currently exist).

1. Additional Requirements Imposed on Applicants

State A requires that prior to issuing a reciprocal credential the applicant must certify that disciplinary proceedings are not pending against that applicant in any jurisdiction. Under b (ii) above, if this requirement is not imposed on all of its own applicants for credentialing, STATE A cannot impose this requirement on applicants for reciprocal credentialing.

2. Credentialing Requirements

An appraiser is seeking a reciprocal credential in STATE A. The appraiser holds a valid credential in STATE Z, even though it was issued in 2007. This satisfies b (i) above. However in order to satisfy b (ii), STATE A would evaluate STATE Z's credentialing requirements as they currently exist to determine whether they meet or exceed STATE A's current requirements for credentialing.

3. Multiple State Credentials

An appraiser credentialed in several states is seeking a reciprocal credential in State A. That appraiser's initial credentials were obtained through examination in the original credentialing State and through reciprocity in the additional States. State A requires the applicant to provide a "letter of good standing" from the State of original credentialing as a condition of granting a reciprocal credential. State A may not impose such a requirement since Title XI does not distinguish between credentials obtained by examination and credentials obtained by reciprocity for purposes of granting reciprocal credentials.

C. Appraiser Compliance Requirements

In order to maintain a credential granted by reciprocity, appraisers must comply with the

credentialing State's policies, rules and statutes governing appraisers, including requirements for payment of certification and licensing fees, as well as continuing education.[67]

D. Summary of Requirements

1. Effective July 1, 2013, in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a reciprocity policy in place for issuing a reciprocal credential to an appraiser from another State under the conditions specified in Title XI.[68]
2. States may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy; however, States may not impose additional impediments to issuance of reciprocal credentials.[69]

[67] A State may offer to accept continuing education (CE) for a renewal applicant who has satisfied CE requirements of a home State; however a State may not impose this as a requirement for renewal, thereby imposing a requirement for the renewal applicant to retain a home State credential.
[68] Title XI § 1122 (b), 12 U.S.C. § 3351.
[69] *Id.*

POLICY STATEMENT 6

Education

AQB Criteria sets forth minimum requirements for appraiser education courses. This Policy Statement addresses proper administration of education requirements for compliance with AQB Criteria. (For requirements concerning qualifying and continuing education in the application process, see Policy Statement 4, *Application Process*.)

A. Course Approval

States must ensure that approved appraiser education courses are consistent with AQB Criteria and maintain sufficient documentation to support that approved appraiser education courses conform to AQB Criteria.

States should ensure that course approval expiration dates assigned by the State coincide with the endorsement period assigned by the AQB's Course Approval Program or any other AQB-approved organization providing approval of course design and delivery.

States should ensure that educational providers are afforded equal treatment in all respects.[70]

The ASC encourages States to accept courses approved by the AQB's Course Approval Program.

B. Distance Education

States must ensure that distance education courses meet AQB Criteria and that the delivery mechanism for distance education courses offered by a non-academic provider has been approved by an AQB-approved organization providing approval of course design and delivery.

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[70] For example:

(1) consent agreements requiring additional education should not specify a particular course provider when there are other providers on the State's approved course listing offering the same course; and

(2) courses from professional organizations should not be automatically approved and/or approved in a manner that is less burdensome than the State's normal approval process.

C. Summary of Requirements

1. States must ensure that appraiser education courses are consistent with AQB Criteria.[71]
2. States must maintain sufficient documentation to support that approved appraiser courses conform to AQB Criteria.[72]
3. States must ensure the delivery mechanism for distance education courses offered by a non-academic provider has been approved by an AQB-approved organization providing approval of course design and delivery.[73]

[71] Title XI § 1118 (a), 12 U.S.C. § 3347; AQB *Real Property Appraiser Qualification Criteria*.
[72] Title XI § 1118 (a), 12 U.S.C. § 3347.
[73] Title XI § 1118 (a), 12 U.S.C. § 3347; AQB *Real Property Appraiser Qualification Criteria*.

POLICY STATEMENT 7

State Agency Enforcement

A. State Agency Regulatory Program

Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned appraisers and maintains an effective regulatory program.[74]

B. Enforcement Process

States must ensure that the system for processing and investigating complaints[75] and sanctioning appraisers is administered in a timely, effective, consistent, equitable, and well-documented manner.

1. Timely Enforcement

States must process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure effective supervision of appraisers, and when appropriate, that incompetent or unethical appraisers are not allowed to continue their appraisal practice. Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date. Special documented circumstances are those extenuating circumstances (fully documented) beyond the control of the State agency that delays normal processing of a complaint such as: complaints involving a criminal investigation by a law enforcement agency when the investigative agency requests that the State refrain from proceeding; final disposition that has been appealed to a higher court; documented medical condition of the respondent; ancillary civil litigation; and complex fraud cases that involve multiple individuals and reports. Such special documented circumstances also include those periods when State rules require referral of a complaint to another State entity for review and the State agency is precluded from further processing of the complaint until it is returned. In that

[74] Title XI § 1118 (a), 12 U.S.C. § 3347.
[75] *See* Appendix B, *Glossary of Terms*, for the definition of "complaint."

circumstance, the State agency should document the required referral and the time period during which the complaint was not under its control or authority.

2. Effective Enforcement

Effective enforcement requires that States investigate allegations of appraiser misconduct or wrongdoing, and if allegations are proven, take appropriate disciplinary or remedial action. Dismissal of an alleged violation solely due to an "absence of harm to the public" is inconsistent with Title XI. Financial loss or the lack thereof is not an element in determining whether there is a violation. The extent of such loss, however, may be a factor in determining the appropriate level of discipline.

Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP and States must document how such persons are so qualified.

States must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint.

Closure of a complaint based on a State's statute of limitations results in dismissal of a complaint without the investigation of the merits of the complaint, and is inconsistent with the Title XI requirement that States assure effective supervision of the activities of credentialed appraisers.[76]

3. Consistent and Equitable Enforcement

Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.

[76] Title XI § 1117, 12 U.S.C. § 3346.

4. Well-Documented Enforcement

"Well-documented" means that States obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

a. Complaint Files

Complaint files must:

- include documentation outlining the progress of the investigation;
- demonstrate that appraisal reports are analyzed and all USPAP violations are identified;
- include rationale for the final outcome of the case (i.e., dismissal or imposition of discipline);
- include documentation explaining any delay in processing, investigation or adjudication;
- contain documentation that all ordered or agreed upon discipline, such as probation, fine, or completion of education is tracked and that completion of all terms is confirmed; and
- be organized in a manner that allows understanding of the steps taken throughout the complaint, investigation, and adjudicatory process.

b. Complaint Logs

States must track all complaints using a complaint log. The complaint log must record all complaints, regardless of their procedural status in the investigation and/or resolution process, including complaints pending before the State board, Office of the Attorney General, other law enforcement agencies, and/or offices of administrative hearings. The complaint log must include the following information (States are strongly encouraged to maintain this information in an electronic, sortable format):

1. Case number
2. Name of respondent
3. Actual date the complaint was received by the State
4. Source of complaint (e.g., consumer, lender, bank regulator,

appraiser, hotline)

5. Current status of the complaint
6. Date the complaint was closed (e.g., final disposition by the administrative hearing agency, Office of the Attorney General, State Appraiser Regulatory Agency or Court of Appeals)
7. Method of disposition (e.g., dismissal, letter of warning, consent order, final order)

C. Summary of Requirements

1. States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[77]
2. States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date, except for special documented circumstances.[78]
3. States must ensure that the system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner.[79]
4. States must track complaints of alleged appraiser misconduct or wrongdoing using a complaint log.[80]
5. States must appropriately document enforcement files and include rationale.[81]
6. States must regulate, supervise and discipline their credentialed appraisers.[82]
7. Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP, and States must document how such persons are so qualified.[83]

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[77] Title XI § 1118 (a), 12 U.S.C. § 3347.
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*

POLICY STATEMENT 8

Interim Sanctions

A. Authority

Title XI grants the ASC authority to impose interim sanctions on individual appraisers pending State agency action and on State agencies that fail to have an effective Program as an alternative to or in advance of a non-recognition proceeding. In determining whether a Program is effective the ASC shall conduct an analysis as required by Title XI. An ASC Finding of Poor on the Report issued to a State at the conclusion of an ASC Compliance Review will trigger an analysis by the ASC for potential interim sanction(s).[84] The following provisions apply to the exercise by the ASC of its authority to impose interim sanction(s) on State agencies.

B. Opportunity to be Heard or Correct Conditions

The ASC shall provide the State agency with:

1. written notice of intention to impose an interim sanction; and
2. opportunity to respond or to correct the conditions causing such notice to the State.

Notice and opportunity to respond or correct the conditions shall be in accordance with section C, *Procedures*.

C. Procedures

This section prescribes the ASC's procedures which will be followed in arriving at a decision by the ASC to impose an interim sanction against a State agency.

1. Notice

The ASC shall provide a written Notice of intention to impose an interim sanction (Notice) to the State agency. The Notice shall contain the ASC's analysis as required by

[84] Imposition of an interim sanction against a State agency may result in appraisers credentialed by that State being removed from the National Registry on an interim basis, not to exceed 90 days, pending State agency action.

Title XI of the State's licensing and certification of appraisers, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers, the investigation of complaints, and enforcement actions against appraisers.[85] The ASC shall verify the State's date of receipt, and publish both the Notice and the State's date of receipt in the *Federal Register.*

2. State Agency Response

Within 15 days of receipt of the Notice, the State may submit a response to the ASC's Executive Director. Alternatively, a State may submit a Notice Not to Contest with the ASC's Executive Director. The filing of a Notice Not to Contest shall not constitute a waiver of the right to a judicial review of the ASC's decision, findings and conclusions. Failure to file a Response within 15 days shall constitute authorization for the ASC to find the facts to be as presented in the Notice and analysis. The ASC, for good cause shown, may permit the filing of a Response after the prescribed time.

3. Briefs, Memoranda and Statements

Within 45 days after the date of receipt by the State agency of the Notice as published in the *Federal Register*, the State agency may file with the ASC's Executive Director a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice and analysis.

4. Oral Presentations to the ASC

Within 45 days after the date of receipt by the State agency of the Notice as published in the *Federal Register*, the State may file a request with the ASC's Executive Director to make oral presentation to the ASC. If the State has filed a request for oral presentation, the matter shall be heard within 45 days. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and is not a Meeting[86] of the ASC. On the appropriate date and time, the State agency will make the oral presentation before the ASC. Any ASC member may ask

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[85] *Id.*

[86] The proceeding is more in the nature of a Briefing not subject to open meeting requirements. The presentation is an opportunity for the State to brief the ASC – to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and for the ASC members to ask questions. Additional consideration is given to the fact that this stage of the proceeding is pre-decisional.

pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. Summary notes will be taken by ASC staff and made part of the record on which the ASC shall decide the matter.

5. Conduct of Interim Sanction Proceedings

(a) *Written Submissions.* All aspects of the proceeding shall be conducted by written submissions, with the exception of oral presentations allowed under subsection 4 above.

(b) *Disqualification.* An ASC member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record.

(c) *Authority of ASC Chairperson.* The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings.

(d) *Rules of Evidence*

Except as is otherwise set forth in this section, relevant material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. §§ 551-559) and other applicable law.

6. Decision of the ASC and Judicial Review

Within 90 days after the date of receipt by the State agency of the Notice as published in the *Federal Register*, or in the case of oral presentation having been granted, within 30 days after presentation, the ASC shall issue a final decision, findings and conclusions and shall publish the decision promptly in the *Federal Register*. The final decision shall be effective on issuance. The ASC's Executive Director shall ensure prompt circulation of the decision to the State agency. A final decision of the ASC is a prerequisite to seeking judicial review.

7. Computing Time

Time computation is based on business days. The date of the act, event or default from which the designated period of time begins to run is not included. The last day is included unless it is a Saturday, Sunday, or Federal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday.

8. Documents and Exhibits

Unless otherwise provided by statute, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the ASC's Executive Director in the proceeding's file and will be available for public inspection and copying.

9. Judicial Review

A decision of the ASC under this section shall be subject to judicial review. The form of proceeding for judicial review may include any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction in a court of competent jurisdiction.[87]

[87] 5 U.S.C. § 703 - *Form and venue of proceeding.*

Appendix A – Compliance Review Process

The ASC monitors State Programs for compliance with Title XI. The monitoring of a State Program is largely accomplished through on-site visits known as a Compliance Review (Review). A Review is conducted over a two- to four-day period, and is scheduled to coincide with a meeting of the Program's decision-making body whenever possible. ASC staff reviews the seven compliance areas addressed in Policy Statements 1 through 7. Sufficient documentation demonstrating compliance must be maintained by a State and made available for inspection during the Review. ASC staff reviews a sampling of documentation in each of the seven compliance areas. The sampling is intended to be representative of the State Program in its entirety.

Based on the Review, ASC staff provides the State with an ASC staff report detailing preliminary findings. The State is given 60 days to respond to the ASC staff report. At the conclusion of the Review, a Compliance Review Report (Report) is issued to the State with the ASC Finding on the Program's overall compliance, or lack thereof, with Title XI. Deficiencies resulting in non-compliance in any of the seven compliance areas are cited in the Report. "Areas of Concern"[88] which potentially expose a Program to compliance issues in the future are also addressed in the Report. The ASC's final disposition is based upon the ASC staff report, the State's response and staff's recommendation.

The following chart provides an explanation of the ASC Findings and rating criteria for each ASC Finding category. The ASC Finding places particular emphasis on whether the State is maintaining an effective regulatory Program in compliance with Title XI.

[88] *See* Appendix B, *Glossary of Terms*, for the definition of "Areas of Concern."

ASC Finding	Rating Criteria	Review Cycle*
Excellent	• State meets all Title XI mandates and complies with requirements of ASC Policy Statements • State maintains a strong regulatory Program • Very low risk of Program failure	2-year
Good	• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements • Deficiencies are minor in nature • State is adequately addressing deficiencies identified and correcting them in the normal course of business • State maintains an effective regulatory Program • Low risk of Program failure	2-year
Needs Improvement	• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements • Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program • State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies • State regulatory Program needs improvement • Moderate risk of Program failure	2-year with additional monitoring
Not Satisfactory	• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements • Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program • State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing • State regulatory Program has substantial deficiencies • Substantial risk of Program failure	1-year
Poor[89]	• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements • Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program • State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies • High risk of Program failure	Continuous monitoring

*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

[89] An ASC Finding of "Poor" may result in significant consequences to the State. *See* Policy Statement 5, *Reciprocity*; *see also* Policy Statement 8, *Interim Sanctions*.

The ASC has two primary Review Cycles: two-year and one-year. Most States are scheduled on a two-year Review Cycle. States may be moved to a one-year Review Cycle if the ASC determines more frequent on-site Reviews are needed to ensure that the State maintains an effective Program. Generally, States are placed on a one-year Review Cycle because of non-compliance issues or serious areas of concerns that warrant more frequent on-site visits. Both two-year and one-year Review Cycles include a review of all aspects of the State's Program.

The ASC may conduct Follow-up Reviews and additional monitoring. A Follow-up Review focuses only on specific areas identified during the previous on-site Review. Follow-up Reviews usually occur within 6-12 months of the previous Review. In addition, as a risk management tool, ASC staff identifies State Programs that may have a significant impact on the nation's appraiser regulatory system in the event of Title XI compliance issues. For States that represent a significant percentage of the credentials on the National Registry, ASC staff performs annual on-site Priority Contact visits. The primary purpose of the Priority Contact visit is to review topical issues, evaluate regulatory compliance issues, and maintain a close working relationship with the State. This is not a complete Review of the Program. The ASC will also schedule a Priority Contact visit for a State when a specific concern is identified that requires special attention. Additional monitoring may be required where a deficiency is identified and reports on required or agreed upon corrective actions are required monthly or quarterly. Additional monitoring may include on-site monitoring as well as off-site monitoring.

Appendix B – Glossary of Terms

AQB Criteria: Refers to the *Real Property Appraiser Qualification Criteria* as established by the Appraiser Qualifications Board of the Appraisal Foundation setting forth minimum education, experience and examination requirements for the licensure and certification of real property appraisers, and minimum requirements for "Trainee" and "Supervisory" appraisers.

Assignment: As referenced herein, for purposes of temporary practice, "assignment" means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement.

Complaint: As referenced herein, any document filed with, received by, or serving as the basis for possible inquiry by the State agency regarding alleged violation of Title XI, Federal or State law or regulation, or USPAP by a credentialed appraiser, appraiser applicant, or for allegations of unlicensed appraisal activity. A complaint may be in the form of a referral, letter of inquiry, or other document alleging appraiser misconduct or wrongdoing.

Credentialed appraisers: Refers to State licensed, certified residential or certified general appraiser classifications.

Disciplinary action: As referenced herein, corrective or punitive action taken by or on behalf of a State agency which may be formal or informal, or may be consensual or involuntary, resulting in any of the following:

a. revocation of credential
b. suspension of credential
c. written consent agreements, orders or reprimands
d. probation or any other restriction on the use of a credential
e. fine
f. voluntary surrender in lieu of disciplinary action
g. other acts as defined by State statute or regulation as disciplinary

With the exception of voluntary surrender, suspension or revocation, such action may be exempt from reporting to the National Registry if defined by State statute, regulation or written policy as "non-disciplinary."

Federally related transaction: Refers to any real estate related financial transaction which: a) a federal financial institutions regulatory agency engages in, contracts for, or regulates; and b) requires the services of an appraiser. (See Title XI § 1121 (4), 12 U.S.C. § 3350.)

Federal financial institutions regulatory agencies: Refers to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration. (See Title XI § 1121 (6), 12 U.S.C. § 3350.)

Home State agency: As referenced herein, State agency or agencies that grant an appraiser a licensed or certified credential. Residency in the home State is not required. Appraisers may have more than one home State agency.

Non- federally recognized credentials or designations: Refers to any State appraiser credential or designation other than State licensed, certified residential or certified general classifications, and trainee and supervisor classifications as defined in Policy Statement 1, and which is not recognized by the federal regulators for purposes of their appraisal regulations.

Real estate related financial transaction: Any transaction involving:

a) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

b) the refinancing of real property or interests in real property; and

c) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(See Title XI § 1121 (5), 12 U.S.C. 3350.)

State: Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands. (American Samoa does not have a Program.)

State board: As referenced herein, "State board" means a group of individuals (usually appraisers, bankers, consumers, and/or real estate professionals) appointed by the Governor or a similarly positioned State official to assist or oversee State Programs. A State agency may be headed by a board, commission or an individual.

Uniform Standards of Professional Appraisal Practice (USPAP): Refers to appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation establishing minimum requirements for development and reporting of appraisals, including real property appraisal. Title XI requires appraisals prepared by State certified and licensed appraisers to be performed in conformance with USPAP.

EXHIBIT 9

LOUISIANA
REAL ESTATE APPRAISERS BOARD

NOTICE TO APPRAISAL MANAGEMENT COMPANIES
June 11, 2013

The Louisiana Real Estate Appraisers Board recently commissioned an independent appraisal fee study by the Southeastern Louisiana University Business Research Center. The study was completed in accordance with the Louisiana Appraisal Management Company Licensing and Regulation Act and is consistent with the presumptions of compliance put forth by the federal Dodd-Frank Act and the Federal Reserve Board's Interim Final Rule on Valuation Independence. It is the intent of the board to provide annual updates to the study, so as to continuously conform to the Interim Final Rule.

This study is provided as a courtesy to all licensees; however, its use is not mandatory. Any licensee that elects to use the data provided by the study will be considered in presumptive compliance with LA R.S. 37:3415.15, which is relative to customary and reasonable fees.

The study is entitled *Louisiana Residential Real Estate Appraisal Fees: 2012* and can be found on the board website at www.reab.state.la.us.

Bruce Unangst
Executive Director

EXHIBIT 10

State of Louisiana

EXECUTIVE DEPARTMENT
EXECUTIVE ORDER NUMBER 17-16

SUPERVISION OF THE LOUISIANA REAL ESTATE APPRAISERS BOARD REGULATION OF APPRAISAL MANAGEMENT COMPANIES

WHEREAS, the Louisiana Real Estate Appraisers Board ("the LREAB") protects Louisiana consumers and mortgage lenders by licensing residential appraisers and regulating the integrity of the residential appraisal process;

WHEREAS, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act established requirements for appraisal independence, including requirements that lenders and their agents pay "customary and reasonable" fees for residential mortgage appraisals, and mandating that the same state agency that regulates appraisers must require that appraisals ordered by appraisal management companies ("AMCs") be conducted pursuant to the appraisal independence standards established in Truth In Lending Act section 129E;

WHEREAS, the legislature has recognized this federal requirement in enacting La. R.S. 37:3415.15(A) of the Louisiana Appraisal Management Company Licensing and Regulation Act, requiring that: "an appraisal management company shall compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the requirements of 15 U.S.C. 1639E [TILA section 129E] and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222";

WHEREAS, on November 20, 2013, consistent with the authority described by La. R.S. 37:3415.21 and the procedure for rule adoption described by La. R.S. 49:953 of the Administrative Procedure Act, the LREAB published in the *Louisiana Register* final rules implementing La. R.S. 37:3415.15(A), Louisiana Administrative Code Title 46, section 31101; and

WHEREAS, questions concerning the scope of the U.S. Supreme Court decision in *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015), raise the possibility of federal antitrust law challenges to state board actions affecting prices, which may prevent the LREAB from faithfully executing mandates under the Dodd-Frank Act and Louisiana law under La. R.S. 37:3415.15.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Prior to finalization of a settlement with or the filing of an administrative complaint against an AMC regarding compliance with the customary and reasonable fee requirements of La. R.S. 37:3415.15(A), such proposed action and the record thereof shall be submitted to the Division of Administrative Law (DAL) for approval, rejection, or modification within 30 days of the submission. Such review is to ensure fundamental fairness and that the proposed action serves Louisiana's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs for such an appraisal are customary and reasonable. The LREAB shall enter into a contract with the DAL within ninety (90) days of this order to establish the procedure for this review.

SECTION 2: The LREAB is directed to submit to the Commissioner of Administration (or the Commissioner's designee) for approval, rejection, or modification within 30 days of the submission any proposed regulation related to AMC compliance with the customary and reasonable fee requirement of La. R.S. 37:3415.15(A), along with its rulemaking record, to ensure that such proposed regulation serves Louisiana's public policy of protecting the integrity of the residential mortgage appraisals by requiring that the fees paid by AMCs for an appraisal are to be customary and reasonable. The Commissioner (or his designee) may extend the 30-day review period upon a determination that such extension is needed.

SECTION 3: This Order is effective upon signature and shall continue in effect unless amended, terminated, or rescinded by the Governor.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana at the Capitol, in the City of Baton Rouge, on this 11th day of July, 2017.

GOVERNOR OF LOUISIANA

ATTEST BY
THE GOVERNOR

SECRETARY OF STATE

EXHIBIT 11

State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

JOHN BEL EDWARDS
GOVERNOR

LOUISIANA REAL ESTATE APPRAISERS BOARD

P. O. Box 14785

Baton Rouge, LA 70898-4785

July 17, 2017

RESOLUTION

WHEREAS, under provisions of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act and the Louisiana Appraisal Management Company Licensing and Regulation Act, as amended by Act 429 of the 2012 Regular Session, the Louisiana Real Estate Appraisers Board (the "Board") is obligated to ensure that Appraisal Management Companies (AMC) pay appraisers a customary and reasonable fee for residential mortgage appraisals, La. R.S. 37:3415.15(A);

WHEREAS, pursuant to La. R.S. 37:3415.15, 37:3415.21 and the Louisiana Administrative Procedures Act, the Board promulgated Louisiana Administrative Code Title 46, section 31101 ("Rule 31101") setting out rules for AMC compliance with the customary and reasonable fee standard;

WHEREAS, the Board has investigated complaints of AMC violations of Rule 31101, and has entered into settlement agreements and/or compliance plans, where appropriate;

WHEREAS, on July 11, 2017, Governor John Bel Edwards signed Executive Order Number 17-16, entitled "Supervision of the Louisiana Real Estate Appraisers Board Regulation of Appraisal Management Companies," which reinforces the State's active supervision over the regulatory and enforcement activities of the LREAB, by directing:

a. Prior to finalization of any settlement or filing of an administrative complaint by LREAB against an AMC regarding compliance with a customary and reasonable rule under La. R.S. 37:3415.15(A), the proposed LREAB action shall be submitted for review to the Division of Administrative Law for approval, rejection, or modification. The purpose of the review is to ensure that such proposed action serves Louisiana's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs for such an appraisal are customary and reasonable.

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

b. Within 90 days of entry of the Executive Order, the LREAB must enter into a contract with the Division of Administrative Law establishing procedures for this review.

c. The LREAB must submit to the Commissioner of Administration or the Commissioner's designee for approval, rejection, or modification any proposed regulation relating to AMC compliance with the customary and reasonable fee requirement.

AND WHEREAS, the Board intends its ongoing rules and enforcement activities concerning AMC compliance with the obligation to pay appraisers customary and reasonable fees for residential mortgage appraisals to proceed pursuant to the reinforced active supervision established by Executive Order JBE 17-16:

THEREFORE, it is resolved:

1. The Executive Director shall, on or before July 31, 2017 present to the Board a proposed rulemaking that proposes a rule regarding customary and reasonable appraisal fees for review by the Board for submission to the Commissioner of Administration pursuant to Executive Order Section 2, resulting in the repeal and replacement of current Rule 31101;

2. The Executive Director shall negotiate, within 90 days, the contract with the Division of Administrative Law as specified in Executive Order Section 1, for approval by the Board;

3. The Board having determined in all pending investigations of alleged violations of Rule 31101 that the subject payments were customary and reasonable, the Executive Director is directed to close all such pending investigations and to only initiate future investigations once a replacement rule is adopted; and

4. The Executive Director is authorized to seek settlement or other resolution of all decrees, settlements, and compliance plans arising from alleged or adjudicated violations of Rule 31101 that have not expired by their terms.

THUS DONE AND SIGNED this 17th day of July 2017.

Chairman

Secretary

EXHIBIT 12

	Coinsurance	
	Network Providers	Non-Network Providers
Preventive Care - Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (*For a complete list of benefits, refer to the Preventive and Wellness/Routine Care Article in the Benefit Plan.*)	100% - 0%[3]	100% - 0%[3]
Rehabilitation Services - Outpatient: • Speech • Physical/Occupational (*Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.*) • (*Visit limits do not apply when services are provided for Autism Spectrum Disorders.*)	80% - 20%[1]	60% - 40%[1]
Skilled Nursing Facility (*limit 90 Days per Plan Year*)	80% - 20%[1,2]	60% - 40%[1,2]
Sonograms and Ultrasounds - Outpatient	80% - 20%[1]	60% - 40%[1]
Urgent Care Center	80% - 20%[1]	60% - 40%[1]
Vision Care (Non-Routine) Exam	80% - 20%[1]	60% - 40%[1]
X-Ray and Laboratory Services (*low-tech imaging*)	80% - 20%[1]	60% - 40%[1]
[1]Subject to Plan Year Deductible, if applicable [2]Pre-Authorization Required, if applicable. Not applicable for Medicare primary. [3]Age and/or Time Restrictions Apply		

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:364 (February 2015), effective March 1, 2015, amended LR 43:2160 (November 2017), effective January 1, 2018.

§507. Prescription Drug Benefits

A. Prescription Drug Benefits

Network Pharmacy	Member pays
Tier 1 - Generic	50% up to $30
Tier 2 - Preferred	50% up to $55
Tier 3 - Non-preferred	65% up to $80
Tier 4 - Specialty	50% up to $80
90 day supplies for maintenance drugs from mail order OR at participating 90-day retail network pharmacies	Two and a half times the cost of your applicable co-payment
Co-Payment after the Out Of Pocket Amount of $1,500 Is Met	
Tier 1 - Generic	$0
Tier 2 - Preferred	$20
Tier 3 - Non-preferred	$40
Tier 4 - Specialty	$40
Prescription drug benefits-31 day refill	
Maintenance drugs: not subject to deductible; subject to applicable copayments above.	
Plan pays balance of eligible expenses.	
Diabetic supplies are not subject to a copayment if enrolled in the In-Health/Disease Management Program.	
Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug & the generic drug, plus the co-pay for the brand-name drug; the cost difference does not apply to the $1,500 out of pocket maximum.	
Medications available over-the-counter in the same prescribed strength are not covered under the pharmacy plan.	
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.	
This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.	

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:365 (February 2015), effective March 1, 2015.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:341 (February 2015), effective March 1, 2015, amended LR 43:2161 (November 2017), effective January 1, 2018.

Tommy Teague
Chief Executive Office

1711#007

RULE

Office of the Governor
Real Estate Appraisers Board

Compensation of Fee Appraisers (LAC 46:LXVII.31101)

Under the authority of the Louisiana real estate appraisers law, R.S. 37:3397 et seq., and Executive Order JBE 17-16, 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 readopted Chapter 311 (Compensation of Fee Appraisers) to provide additional oversight.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXVII. Real Estate
Subpart 3. Appraisal Management Companies
Chapter 311. Compensation of Fee Appraisers

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

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

1. Evidence for such fees may be established by objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by appraisal management companies.

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

3. Licensees electing to compensate fee appraisers on any basis other than an established fee schedule as described

in Paragraphs 1 or 2 above shall, at a minimum, review the factors listed in §31101.B.1-6 on each assignment made, and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013), amended LR 42:872 (June 2016), repromulgated LR 43:2161 (November 2017).

Bruce Unangst
Executive Director

1711#052

RULE

Department of Health
Board of Pharmacy

Equivalent Drug Product Interchange
(LAC 46:LIII.2511 and 2517)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended §2511 and §2517 of its rules. The amended rules implement Act 391 of the 2015 Legislature, which amended the statutory definition of the term *equivalent drug product* and imposed certain communication requirements on pharmacists dispensing certain interchangeable biological products.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 25. Prescriptions, Drugs, and Devices
Subchapter B. Prescriptions

§2511. Prescriptions

A - C.6. ...

D. Oral Prescriptions

1. Upon the receipt of an oral prescription from an authorized prescriber, the pharmacist or pharmacy intern or pharmacy technician shall reduce the order to a written form prior to dispensing the medication. As an alternative to recording such prescriptions on paper forms, a pharmacist may enter the prescription information directly into the pharmacy's dispensing information system. In the event a pharmacy intern or pharmacy technician transcribes such a prescription, the supervising pharmacist shall initial or countersign the prescription form prior to processing the prescription.

E. Electronic Prescriptions

1. The prescription shall clearly indicate the authorized prescriber's name, licensure designation, address, telephone number, and if for a controlled substance, the DEA registration number.

F. Exclusion. The provisions of this Section shall not apply to medical orders written for patients in facilities licensed by the Department of Health or its successor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 29:2102 (October 2003), effective January 1, 2004, LR 41:98 (January 2015), LR 41:2147 (October 2015), amended by the Department of Health, Board of Pharmacy, LR 43:2162 (November 2017).

§2517. Prescription Dispensing

A. - A.6. ...

B. Equivalent Drug Product Interchange

1. The pharmacist shall not select an equivalent drug product when the prescriber prohibits interchange by any one of the following methods.

a. On a prescription generated in written form, the prescriber shall handwrite a mark in a check box labeled "Dispense as Written", or the abbreviation "DAW", or both, and shall manually sign the prescription form.

i. For prescriptions reimbursable by the state Medicaid program, the prescriber shall handwrite the words "Brand Necessary" or "Brand Medically Necessary" on the prescription form or on a sheet of paper attached to the prescription form.

b. On a prescription generated in oral or verbal form, the prescriber (or the prescriber's agent) shall indicate a specific brand name drug or product is ordered by the practitioner, and the pharmacist shall note such information on the file copy of the prescription.

c. On a prescription generated in electronic form, the prescriber shall indicate "Dispense as Written", "DAW", or "Brand Medically Necessary."

EXHIBIT 13

MINUTES OF MEETING

OF

LOUISIANA REAL ESTATE APPRAISERS BOARD

February 6, 2014

The Louisiana Real Estate Appraisers Board held its regular business meeting on Thursday, February 6, 2014, 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
Newton J. "Butch" Landry
Clay F. Lipscomb
Gary S. Littlefield
Tommie E. McMorris, Sr.

STAFF

Bruce Unangst, Executive Director
Tad Bolton
Anne Brassett
Debbie DeFrates
Mark Gremillion
Robert Maynor
Chad Mayo
Summer Mire
Ryan Shaw
Jenny Yu

GUESTS

Neal Fenochietti, Policy Manager, Appraisal Subcommittee
Kristi Klamet, Policy Manager, Appraisal Subcommittee
Jim Park, Executive Director, Appraisal Subcommittee
Rob Rieger
Tim Theriot

Board members Gayle Boudousquie, Michael Graham, Pete Pauley were unable to attend the meeting.

Call to Order

Chairman Hall called the meeting to order and led the Invocation. Mr. Littlefield led the Pledge of Allegiance. Chairman Hall requested a moment of silence in memory of Oren Russell, one of the first licensed Certified General real property appraisers in Louisiana who passed away last week at the age of 82. On motion made by Mr. Littlefield and seconded by Mr. Morris, the minutes of the November 18, 2013 meeting were unanimously approved as written and circulated.

Budget Report

Ms. Yu provided the budget report for the period ending December 31, 2013 *(See Attachment A)*.

Director's Report

Director Unangst provided members with a list of 42 appraisers who have expressed an interest in serving on the Peer Review Committee. Letters outlining the responsibilities of the committee will be sent out, and those individuals still willing to serve shall be appointed. There is no limit to the number of appraisers who may serve on the committee at any given time. However, good geographical coverage is very important.

Director Unangst recognized ASC members. He feels confident that we have come a long way in improving our appraisal program since their last visit.

New Business

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All members previously received and reviewed three (3) stipulation and consent orders issued as a result of informal hearings conducted on January 15, 2014 *(See Attachment B).*

Motions to approve the orders were as follows:

On motion made by Mr. Littlefield and seconded by Mr. Lipscomb, the board voted unanimously to approve the order executed as a result of Case Number 2012-1267. Mr. Littlefield mad motion, seconded by Mr. McMorris, to approve the order executed as a result of Case Number 2013-45. Motion passed without opposition. On motion made by Mr. Littlefield and seconded by Mr. Landry, the board voted unanimously to approve the order executed as a result of Case Number 2013-42.

Mr. Littlefield made motion, seconded by Mr. Landry, to approve the following nominations to the Education Committee: Cheryl Bella, Gayle Boudousquie, Ed Gardiner, Roland Hall, Heidi Lee, Clay Lipscomb, Joe Mier, and Wayne Pugh. Motion passed without opposition.

Norman Morris, Senior Vice President of Governmental Affairs with Louisiana Realtors, asked Chairman Hall to bring the issue of board term limitations to the table for discussion. The law currently stipulates that all members shall be appointed for three year terms, with no members appointed to serve more than two consecutive terms. Provided the Governor is agreeable, Mr. Lipscomb made motion, seconded by Mr. McMorris, to amend the current limitation to three, three-year terms. Motion passed without opposition.

Mr. Landry made motion, seconded by Mr. McMorris, to leave the current officers of the board in place for 2014. Motion passed by unanimous vote.

Director Unangst gave the floor to Ms. Klamet, ASC Policy Manager. All board members previously met her and Mr. Fenochietti, who were here in May and August of this year for follow-up visits to their last formal review in March of 2012. Ms. Klamet provided members with copies of the ASC Annual Report, ASC Policy Statements, and most recent copy of the AQB Real Property Criteria. She advised that this is the ASC's first year using the new rating system to determine the states' compliance with Title XI *(See Attachment C)*, which she feels is more reflective of how states are actually performing. Ms. Klamet provided the following comments with regard to their audit:

- Statutes and Regulations – Several areas of concern were noted during the previous audit. While most have been corrected, there are a few changes that still need to be addressed. Ms. Klamet and Mr. Fenochietti assisted staff in providing proper language to correct these minor problems.

- Temporary Practice – Files are well documented and permits continue to be issued timely. We may wish to rethink the current six-month permit limitation, as well as the fee currently assessed. The board now charges $50.00 per property rather than per assignment. Under Title XI, states cannot charge more than $250.00 for a temporary license. Staff will poll neighboring states regarding their temporary permit fees.
- National Registry – Operating very well; kept up to date. This is very important because the registry is checked to verify that applicants for temporary practice and reciprocal licenses are in good standing in all states in which they hold a license credential.
- Application Process – Ms. Klamet congratulated staff for the great improvement over problems found with applications during the previous audit. She advised that the checklist now accompanying each application makes the review very easy, and files are in great order. Of all the files looked at, only three didn't meet the required subject matter elective criteria for residential or general certification. Staff has been in contact with these three individuals, who intend to take care of this oversight immediately.
- Reciprocity – Reciprocal applications are in good order and being processed according to Dodd-Frank.
- Education – Ms. Klamet acknowledged several areas of concern noted during the 2012 audit regarding documentation of files. All was found to be in good order during this year's review.
- Enforcement – Problems with enforcement were noted during the last audit. Those problems are nonexistent now and reports are well done.

Mr. Littlefield thanked staff for their hard work in preparing for the audit. Chairman Hall and Director Unangst echoed Mr. Littlefield's thoughts. Director Unangst advised ASC staff

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that the agency's Operating Procedures Manuals for the LREC and LREAB are finished, and commended Ms. Shaw for doing such a superb job on the manuals.

Ms. Klamet invited Mr. Park to say a few words to the board regarding any upcoming federal regulatory issues. Mr. Park advised that the ASC Complaint Hotline is up and running. While the hotline does not take complaints, it refers complainants to the proper federal or state regulatory agency. Mr. Park acknowledged his surprise at the lack of calls the hotline has received thus far. Director Unangst believes appraisers don't file complaints because they don't feel anything will be done.

He will reference the ASC Complaint Hotline on the board's website and in the newsletter.

On the issue of AMCs, the ASC now has rule-making authority, per Dodd-Frank, and is in the process of establishing an Advisory Committee.

Approximately a year or so ago, the board sent out an RFP for a fee survey. Southeastern Louisiana University was awarded the bid, and did a fabulous job. Director Unangst advised that several other states have utilized our survey. Under Dodd-Frank, it is recommended that the survey be updated every year to ensure current data. Director Unangst has been in contact with SLU, who will prepare an update for $4,968 (the initial survey cost between $8,000 and $9,000). If the board chooses to give Director Unangst the authority to order the update through SLU, there will be no need to prepare another RFP. Board members recommended opening the agenda to include this item under New Business. Mr. Littlefield made motion, seconded by Mr. Lipscomb, to update the survey annually with Southeastern Louisiana University. Motion passed without opposition.

There being no additional items to discuss, the meeting was adjourned on motion made by Mr. Littlefield and seconded by Mr. McMorris.

Roland M. Hall, Sr., Chairman

Gayle A. Boudousquie, Secretary

FTC_LAB-00071050

EXHIBIT 14

From: Bruce Unangst </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9EFE56BAD823425F9E0F5C7FABF72D66-BUNANGST>
Sent: Wednesday, June 1, 2016 8:55 PM
To: Vicki Ledbetter Metcalf <vicki@asc.gov>
Cc: Summer Mire <smire@lrec.state.la.us>; Robert Maynor <rmaynor@lrec.state.la.us>; Henk VanDuyvendijk <henk@lrec.state.la.us>
Subject: RE: Customary and Reasonable Fee

Vicki,
Chapter 311 Subsection §31101 of the Louisiana Real Estate Appraisers Broad's rules and regulations provides several options for appraisal management companies to use in establishing customary and reasonable fees. The first option provides for use of government agency fee schedules such as the Veteran Affairs schedule. Academic studies and independent private sector surveys are also permitted provided they exclude appraisal assignments from known appraisal management companies. Commentary from AMC representatives contained within the Interim Final Rules "raised concerns that appropriate appraisal fee studies do not exist". To mitigate this concern, the Louisiana Board authorized Southeastern Louisiana University to conduct an independent academic fee study inclusive of both lenders and appraisers as courtesy guidance to AMC's who wished to utilize the information. The Louisiana Board has consistently made clear that use of this study is not mandatory but provided as a guide for AMC's desirous of using same, and avoiding the cost of conducting their own study. This study has been updated annually.

A digital copy of our updated study is posted on our website and forwarded to all AMC licensees. They are presumed to be in compliance with our laws and rules should they elect to use this independent study. The study also serves as a guide to lenders who bear responsibility for their "agents" to comply with federal regulations.

Bruce Unangst
Executive Director
Louisiana Real Estate Commission
Louisiana Real Estate Appraisers Board
Post Office Box 14785-4785
Baton Rouge, LA 70898-4785
(225) 925-1923 Ext. 236
(800) 821-4529 (in state only)
bunangst@lrec.state.la.us

From: Vicki Ledbetter Metcalf [mailto:vicki@asc.gov]
Sent: Wednesday, June 01, 2016 2:10 PM
To: Bruce Unangst
Subject: Customary and Reasonable Fee

Good Afternoon,

I know your state commissioned a study on Customary and Reasonable fees. How is your State using the information resulting from that Study?

EXHIBIT 15

CONFIDENTIAL - REDACTED IN ITS ENTIRETY

EXHIBIT 16

West's Louisiana Statutes Annotated
Louisiana Revised Statutes
Title 37. Professions and Occupations (Refs & Annos)
Chapter 51-a. Appraisal Management Company Licensing and Regulation Act (Refs & Annos)

LSA-R.S. 37:3415.19

§ 3415.19. Enforcement

Effective: January 1, 2010
Currentness

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.

Credits
Added by Acts 2009, No. 502, § 1, eff. Jan. 1, 2010.

LSA-R.S. 37:3415.19, LA R.S. 37:3415.19
Current through the 2017 Second Extraordinary Session.

EXHIBITS 17 - 33

CONFIDENTIAL - REDACTED IN THEIR ENTIRETY

EXHIBIT 34

iMORTGAGE SERVICES, LLC		**SUIT NO. 646670 SEC. 27**
	*	
VERSUS	*	**19th JUDICIAL DISTRICT COURT**
	*	
LOUISIANA REAL ESTATE APPRAISERS BOARD	*	**PARISH OF EAST BATON ROUGE**
	*	
	*	**STATE OF LOUISIANA**

PETITION FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISION

NOW INTO COURT, through undersigned counsel, comes iMortgage Services, LLC ("Petitioner" or "iMortgage"), who requests judicial review of the December 8, 2015 decision of the Louisiana Real Estate Appraisers Board (the "Board" or "LREAB") rendered in Case No. 2014-1500.

iMortgage asserts that all Exhibits attached hereto are true and correct copies of the original documents and are incorporated into this Petition by reference.

In support of its Petition, iMortgage respectfully avers as follows:

PARTIES

1.

Petitioner is a limited liability company organized under the laws of the Commonwealth of Pennsylvania. Petitioner maintains a license from the Defendant to provide certain appraisal management services in Louisiana.

2.

The Defendant is the Louisiana Real Estate Appraisers Board (the "Board" or "LREAB"), a body composed of nine members appointed by the Governor, with one member appointed from each congressional district and four members appointed at large, created pursuant to La. R.S. 37:3394.

JURISDICTION AND VENUE

3.

This claim arises from actions taken by the Defendant relative to Case No. 2014-1500, captioned Louisiana Real Estate Appraisers Board vs. iMortgage Services, LLC.

4.

This Court has jurisdiction over the subject matter of this action pursuant to La. Const. Art. 5 § 16, La. R.S. 37:3409, La. R.S. 37:3415.20, La. R.S. 49:964 and 46 LAC Pt LXVII, § 10509.

5.

This Petition for Judicial Review is timely filed within thirty (30) days of the Board's final decision on iMortgage's request for rehearing, dated February 10, 2016.[1]

6.

Venue is proper under La. R.S. 37:3409 and La. R.S. 37:3415.20.

BACKGROUND FACTS

7.

The Louisiana Real Estate Appraisers Board is the state government agency that administers and regulates appraisal management company ("AMC") licensing and activity, as well as licensed real estate appraisers, which are both integral parts of the transaction valuation process in Louisiana.

8.

Following the 2008 collapse of housing bubble and resultant financial crisis, residential real estate appraisal reform was one of the numerous changes implemented across the finance industry.

9.

In 2009, the Home Valuation Code of Conduct ("HVCC") was implemented as a result of investigations by the New York State Attorney General's Office relative to home valuations, which were allegedly inordinately high.

[1] The Clerk of Court for the Parish of East Baton Rouge offices were closed due to inclement weather on Friday, March 11, 2016, which was the 30th day following the Board's decision on iMortgage's Request for Rehearing. Pursuant to La. R.S. 1:55(E)(2), the Clerk declared March 11, 2016 a legal holiday and thus iMortgage timely files its Petition for Judicial Review on March 14, 2016, i.e. the next day that is not a legal holiday.

10.

The HVCC set forth certain requirements with regard to independence of fee appraisers. Specifically, the HVCC was designed to promote professional appraisals free from inappropriate pressure from lenders, borrowers and brokers by isolating parties with a financial interest in a mortgage loan transaction from appraiser selection and retention.

11.

Subsequently, in 2010, Congress passed Section 1472 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[2] ("Dodd-Frank"), which amended the Truth in Lending Act ("TILA")[3] to establish minimum requirements for providing appraisal management services. These rules were effective on December 7, 2010 and replaced the HVCC. More specifically, the Final Rule on Minimum Requirements for Appraisal Management Companies ("Final Rule") implements Section 129E of TILA, which is applicable to AMCs whenever they provide appraisal management services in certain home mortgage transactions.[4]

12.

As part of both the HVCC and the new appraisal independence rules under TILA, fee appraisers are prohibited from having direct contact with loan company origination and production staff.

13.

As a result of these restrictions on contact, AMCs proliferated as many lenders began utilizing their services to provide a necessary layer of independence, appraisal product integrity, and objective competence in the appraisal ordering process.

14.

AMCs, by acting as an intermediary, eliminate direct communications between lenders and appraisers, thereby providing assurance that there is no undue influence by lenders over appraisers, thus guarding against violations of applicable federal law.

15.

Accordingly, many lenders exclusively deal with AMCs and do not directly communicate with or contract with individual appraisers and non-AMC appraiser entities. AMCs provide a critical function in the appraisal industry by working with lenders and appraisers to facilitate the

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[2] 12 U.S.C.A. § 5301.
[3] 12 C.F.R. § 226.
[4] 80 FR 32658-01.

ordering, tracking, quality control and delivery of appraisal products. These reports are customized to the specific demands of each lender requesting the appraisal.

16.

The applicable federal regulations require that "[i]n any covered transaction, the creditor and its agents shall compensate a fee appraiser for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised."[5] A "covered transaction" is defined as "an extension of consumer credit that is or will be secured by the consumer's principal dwelling." *Id.* For example, a "covered transaction" includes first mortgages, home equity loans and similar origination transactions secured by a borrower's primary residence. Second mortgages and foreclosure transactions are not "covered transactions" subject to the aforementioned federal regulations.

17.

Dodd-Frank also requires that states establish licensing criteria for AMCs, which criteria meet the minimum standards set forth in Dodd-Frank and in applicable regulations, within 36 months of the effective date of the Final Rule, which had an effective date of August 10, 2015.

18.

Prior to Dodd-Frank, the State of Louisiana did not regulate AMCs. Then, in 2010, in furtherance of TILA and Dodd-Frank, the Louisiana Legislature promulgated the Appraisal Management Company Licensing and Regulation Act (the "Act").[6] The Act requires AMCs to become licensed and to maintain certain compliance criteria in order to engage in appraisal management services in Louisiana.

19.

LREAB subsequently passed rules and regulations pertaining to the licensing and regulation of appraisal management companies in accordance with La. R.S. 37:3395 and 3415.21, which became effective in November, 2013.[7]

20.

As noted above the LREAB had not regulated AMCs prior to the Act, yet, since the enactment of the Louisiana Real Estate Appraisers Law and Rules, the Board has issued no guidance or pronouncements on the subject of compliance with same.

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[5] 12 C.F.R. § 1026.42(f).
[6] *See* La. R.S. 37:3415.15(A).
[7] *See* 46 LAC Pt LXVII, § 30101.

21.

iMortgage is an AMC currently licensed in 38 states and has been licensed in Louisiana since January 1, 2011, and has maintained its license in good standing with the Board. On information and belief, many of these other states have reciprocity provisions that compel licensees to report disciplinary actions taken by other states in which they are licensed.

ADMINISTRATIVE PROCEDURAL HISTORY

22.

This matter commenced when the Board received a complaint in May 2014 from an appraiser alleging that iMortgage was in violation of the Louisiana Real Estate Appraisers Law and Rules (the "Complaint").

23.

Specifically, the Complaint indicated that iMortgage had offered a fee to an appraiser that was not in compliance with the Louisiana Real Estate Appraisers Law and Rules. Notably, there was never any allegation of harm or even the threat of harm to members of the public, to borrowers or lenders, through iMortgage's actions.

24.

Moreover, the transaction that was the catalyst for the Complaint fell outside the ambit of the federal and state laws relative to customary and reasonable compensation and, as such, was not within the jurisdiction of the LREAB. Notwithstanding this fact and based solely on the allegations in the Complaint, the Board opened an investigation of iMortgage in June 2014.

25.

iMortgage received notice of the Board's investigation by correspondence dated July 1, 2014 (the "Allegation Letter").[8]

26.

The Allegation Letter contained no details of the allegations made against iMortgage and as such provided no information or other details to apprise iMortgage of the scope of LREAB's investigation. Instead, the letter requested a broad list of documents relating to iMortgage's activities in Louisiana for a period beginning December 1, 2013 through July 1, 2014. Notably, the investigative time period began immediately after the effective date of the Louisiana Real Estate Appraisers Law and Rules.

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[8] **Exhibit "A"**- July 1, 2014 Allegation Letter.

27.

In the spirit of full compliance, iMortgage submitted all requested documentation for the seven (7) month investigative period to the Board on July 28, 2014.[9]

28.

The documentation submitted showed that iMortgage completed approximately one hundred and fifty (150) appraisal transactions of various types, including review, default and origination appraisal products[10], between the dates of December 1, 2013 and July 1, 2014.

29.

Included in the materials provided was ample information to allow LREAB to determine that the vast majority of these appraisal transactions were not "covered transactions" subject to the jurisdiction of TILA, the Dodd-Frank Act and Louisiana Real Estate Appraisers Law and Rules and as such no action should have commenced.

30.

Following this initial submission, no one from LREAB contacted iMortgage to request any additional information or clarification regarding any of the transactions disclosed to LREAB by iMortgage.[11]

31.

On November 21, 2014, iMortgage received what was styled a Preliminary Notice of Adjudication from the Board indicating that a formal adjudicatory hearing would take place to address the charges alleged in the Complaint.[12]

32.

This Preliminary Notice of Adjudication did not set forth any specific charges; instead making only the vague indication that iMortgage may be in violation of the Board's rules. As such, iMortgage was not put on notice of the charges that the Board intended to bring against iMortgage at that time.

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[9] **Exhibit "B"-** July 28, 2014 correspondence from iMortgage.

[10] A "default" appraisal is generally performed for a lender or servicer to assess the value and/or inherit risk in the lender's overall servicing portfolio. A "review" appraisal is generally related to post-closing quality control work associated with the loan file of which the borrower has no involvement in either the process or the cost. An "origination" appraisal is generally related to the process of creating a home loan or mortgage secured by a borrower's primary residence.

[11] The LREAB and/or Board Staff operated under the erroneous presumption that every single appraisal transaction conducted by iMortgage in Louisiana was a covered transaction subject to the aforementioned provisions in the Dodd Frank Act and its Louisiana counterpart rules.

[12] **Exhibit "C"**-November 21, 2014 1st Preliminary Notice of Adjudication.

33.

Roughly a year after iMortgage submitted materials in response to the Board's request, on June 24, 2015, iMortgage received its first substantive communication from the Board in the form of a **second** Preliminary Notice of Adjudication and a formal complaint.[13]

34.

In this June 24, 2015 communication, for the first time, LREAB provided iMortgage with notice of the allegations against it where the Board cited iMortgage for one hundred and fifty (150) violations, alleging that "iMortgage failed to 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."

35.

The June 24, 2015 complaint also cited iMortgage for five (5) additional violations, alleging that iMortgage made payments to appraisers in excess of the thirty (30) days after the completed appraisal reports were provided "pursuant to LSA-R.S. 37:3415.15 and Section 31101D(1) of the Rules and Regulations of the Louisiana Real Estate Appraisers Board."

36.

Finally apprised of the charges against it, iMortgage responded by submitting evidence to the Board clearly illustrating that in all five of the instances where the Board cited iMortgage for untimely payment as described in Paragraph 35, *supra,* iMortgage had in fact made timely payments, in complete compliance with Louisiana Real Estate Appraisers Law and Rules.

37.

On September 16, 2015, following the supplemental submission referenced in Paragraph 20, *supra.*, iMortgage received a **third** Preliminary Notice of Adjudication and formal complaint from the Board, wherein the Board removed the five violations alleging untimely payment.[14] This third Preliminary Notice of Adjudication maintained the one hundred and fifty (150) appraisal transactions cited in the second Preliminary Notice of Adjudication.

38.

iMortgage re-submitted evidence that it had previously provided to the Board in its July 28, 2014 response to the Allegation Letter, packaged in a way that aided the Board in

[13] **Exhibit "D"**- June 24, 2015 2nd Preliminary Notice of Adjudication.
[14] **Exhibit "E"**- September 16, 2015 3rd Preliminary Notice of Adjudication.

understanding that the majority of the one hundred and fifty (150) appraisal transactions at issue were not subject to TILA, Dodd-Frank and the Louisiana Real Estate Appraisers Law and Rules, and as such, were beyond the scope of the Board's investigation and could not form the basis for any lawful charges.

39.

On November 17, 2015, iMortgage received a **fourth** Preliminary Notice of Adjudication and formal complaint from LREAB in which the Board stuck one hundred and thirty five (135) of the one hundred and fifty (150) alleged violations, or all but fifteen (15) of the one hundred and fifty (150) alleged violations.[15]

40.

Subsequent to receipt of this fourth Preliminary Notice of Adjudication, iMortgage again provided evidence to assist the Board; these materials illustrated that only nine (9) of the remaining fifteen (15) appraisal transactions at issue were arguably under the purview of the laws and rules the Board.

41.

LREAB conducted a formal adjudicatory hearing lasting approximately twelve (12) hours on December 8, 2015 (the "December Hearing").

42.

At the close of the Board's case-in-chief and prior to iMortgage's defense of the allegations, counsel for iMortgage moved for dismissal of the charges due to LREAB Staff's failure to establish essential elements of the allegations against iMortgage.

43.

Following argument by both counsel for iMortgage and counsel for the LREAB, Board member Tommie McMorris, Sr., ostensibly reading from a prepared statement, made a motion to "find the respondent, iMortgage, guilty of the charges set forth in the written complaint."[16]

44.

Judge Darrell White (retired Baton Rouge City Court Judge) who presided as Hearing Officer on evidentiary and procedural matters, clarified for the Board that iMortgage still had the opportunity to set forth its case.[17]

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[15] **Exhibit "F"**-November 17, 2015 4th Preliminary Notice of Adjudication.
[16] **Exhibit "G"**- Hearing Transcript at p. 262-263.
[17] Exh. "G" at p. 263-264.

45.

Following the December Hearing, after going into executive session, despite the absence of grounds for so doing, so that it could deliberate outside of the public eye, the Board rendered a decision finding that iMortgage was in violation of the Louisiana Real Estate Appraisers Law and Rules. Notably, the Board's decision was moved by the same member who had previously moved to find iMortgage "guilty" of the charges against it ***before*** any hearing of iMortgage's evidence or witness testimony.

46.

The Board subsequently issued a brief three-page document purporting to be their Findings of Fact, Conclusions of Law and an Order ("Findings") dated December 14, 2015. The Order directed that iMortgage be censured for the violations committed; that iMortgage pay a fine in the amount of $10,000.00 and the administrative costs of the adjudicatory proceeding; and that iMortgage's license be suspended for a period of six (6) months with a stay of enforcement to be placed on such suspension pending iMortgage providing the Board with a compliance plan to be reviewed and approved by the Board.

47.

On December 28 2015, iMortgage filed a timely Request for Rehearing of the Findings pursuant to La. R.S. 49:959.

48.

Subsequently, on February 4, 2016, inexplicably and without providing any notice to iMortgage, the Board at an irregularly scheduled Board meeting, conducted a "hearing" on iMortgage's Request for Rehearing and summarily denied the same.

49.

The Board knows how to properly provide notice of a hearing or action to a party and thus it just inexplicably failed to do so in the case of the February 4, 2016 hearing on iMortgage's Request for Rehearing. This point is underscored by the fact that the Board circulated proper notice to iMortgage of its action, denying iMortgage's request by way of correspondence dated February 10, 2016 (received February 11, 2016).[18]

[18] **Exhibit "H"** – February 10, 2016 correspondence from LREAB denying Request for Rehearing; **Exhibit "I"** - Minutes from the February 4, 2016 LREAB meeting. Notably, the Board, in the minutes from the February 4, 2016 meeting made the false statement that: "although timely notification of today's meeting was sent to Mr. Robert L. Rieger, Jr., representative for I Mortgage Services, LLC, neither Mr. Rieger, or any other representative(s) for I Mortgage Services, LLC were present." This self-serving statement is not supported by any evidence.

50.

On February 19, 2016, iMortgage filed a Request for Reconsideration of the Board's Decision to deny its Request for Rehearing.

51.

On February 26, 2016, iMortgage submitted a compliance plan in accordance with the Board's Order, which more than adequately established a plan to comply with all applicable laws and regulations with respect to any covered transactions.[19]

52.

iMortgage's compliance plan was summarily rejected by the Board on March 10, 2014.[20] In its rejection, the Board echoed its erroneous findings from the December Hearing.[21]

53.

Despite the fact that its February 26, 2016 compliance plan was fully compliant with all applicable laws and rules, iMortgage will submit a revised compliance plan to the Board, using the most recent version of the fee study conducted by Southeastern Louisiana University Business Research Center, which was commissioned by the Board and which the Board Staff has indicated is an approved fee study.[22]

54.

As of the filing of this Petition, the Board has not rendered a decision relative to iMortgage's Request for Reconsideration.

APPEAL AND JUDICIAL REVIEW OF ADMINISTRATIVE PROCESS AND DECISION

iMortgage seeks an appeal and judicial review of the Board's December 14, 2015 decision based on the following nonexclusive particulars:

FAILURE TO FOLLOW STANDARD OPERATING PROCEDURES

55.

iMortgage avers that LREAB acted arbitrarily and capriciously in failing to follow its established and documented Standard Operating Procedures, which require, *inter alia,* that upon

[19] Exh. "I"- iMortgage Compliance Plan.
[20] **Exhibit "J"**- Mar. 10, 2016 correspondence from LREAB.
[21] *Id.*
[22] **Exhibit "K"**- Dep. of Henk Vanduyvendijk at p. 64-65; Exh. "G"- Hearing Transcript at p. 191.

intake of a complaint the "Director of Investigations reviews complaints to determine whether or not LREC/LREAB has jurisdiction over the accused violation."[23]

56.

Here, as set forth through the above facts, the Board Staff apparently failed to review the Complaint against iMortgage to determine whether the Board in fact had jurisdiction.

57.

The Board's investigation was flawed *ab initio*. The Complaint that spawned the investigation did not involve a "covered transaction" and thus was outside the Board's jurisdiction. Indeed, the Complaint was among the one hundred and forty one (141) alleged violations dismissed by the Board prior to the December Hearing. Accordingly, every action taken by the Board and its Staff based on the Complaint was improper and void.

58.

The Board demonstrated a wanton, reckless and, arguably, intentional disregard for the Board's own processes in order to further a calculated agenda regarding AMCs where it:

(a) initiated an investigation based on a Complaint involving a transaction that clearly did not fall within the Board's jurisdiction;

(b) failed to conduct any interviews to gather additional information; and

(c) exhibited a total lack of understanding as to what a "covered transaction" entails.

For these reasons, the instant investigation was produced as part of the Board's blatant overreaching of its authority to conduct investigations.

59.

Moreover, the Board's investigation was flawed from the outset, since, by their own admission, LREAB investigators: (i) are not familiar with the TILA and the Dodd-Frank Act;[24] (ii) failed to complete their investigation within the timeframe set forth in the Board's internal guidelines;[25] and (iii) failed to track the activities performed by the investigators.[26]

60.

The Louisiana Supreme Court has made it abundantly clear that it is arbitrary and capricious for an adjudicatory body to fail to apply its own rules in adjudication before it. *Washington-St. Tammany Elec. Co-op., Inc. v. Louisiana Pub. Serv. Comm'n*, 95-1932 (La. 4/8/96); 671 So.2d 908. This principle is logical and serves to inject a modicum of fairness and

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[23] **Exhibit "L"**- LREAB Standard Operating Procedure, Section 4.1.2.
[24] Exh. "G"- Hearing Transcript at p. 121.
[25] *Id.* at p. 77.
[26] See, *e.g., Id.* at p.70.

due process into adjudicatory proceedings by providing parties called before an adjudicatory body with some sense of the nature of the process. As set forth above, iMortgage was deprived of even the semblance of administrative due process at every turn because it did not receive a fair or reliable investigation.

61.

Not only was iMortgage deprived of a fair and reliable investigation, but it was also denied an unbiased trial as evidenced by statements of the Board's own investigative Staff and Board members; including statements made ***during*** the hearing. The tainted nature of the December Hearing is underscored by the fact that a Board member, ostensibly reading from a prepared statement, made a "motion to find iMortgage guilty" at the close of the Board's case and ***before*** iMortgage had the chance to put on its defense. The Board member's motion was based on absolutely no evidence and illustrates- in addition to a fundamental misunderstanding of the procedure at a hearing- the fact that the outcome of this matter was decided by at least one Board member ***before*** iMortgage had a chance to present any evidence, which clearly demonstrates undue prejudice and the complete lack of objective decision making on the part of the Board, guaranteed by the Louisiana constitution.

VIOLATION OF OPEN MEETINGS LAW

62.

The Board's Order is also facially defective because the Board conducted deliberations outside of the public eye in violation of the provisions of Open Meetings Law.[27]

63.

The circumstances under which a public body may hold an executive session are exclusively enumerated in La. R.S. 42:17(A), including: "discussion of the character, professional competence, or physical or mental health of a person..."[28]; "strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation" under certain circumstances[29]; "discussion regarding the report, development, or course of action regarding security personnel, plans, or devices"[30]; and "investigative proceedings regarding allegations of misconduct"[31]; and "cases of extraordinary

[27] La. R.S. 42:17(A).
[28] La. R.S. 42:17(A)(1).
[29] La. R.S. 42:17(A)(2).
[30] La. R.S. 42:17(A)(3).
[31] La. R.S. 42:17(A)(4).

emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions..."[32]

64.

The Board's closed deliberations in the matter of iMortgage fall under no such exception. As such, the Board went beyond the matters allowed to be exempted from public deliberation, thus violating the Open Meetings Law. This violation renders the Board's decision at the December Hearing without effect.

DECISION BASED ON ADMINISTRATIVE PROCEDURE IRREGULARITIES

65.

Moreover, the Board's decision was made upon unlawful procedure because the Board Staff failed to satisfy its burden of proof and the Board rendered a decision based on absolutely no evidence. It is axiomatic that, as the proponent of the action against iMortgage, it was the Board Staff that had the burden of proof in the instant adjudication as the Board adopted the relevant rules. *Louisiana Medical Mutual Ins. Co. v. Green*, 94-0616 (La. App. 1 Cir. 5/31/95); 657 So.2d 1052, 1055-56. However, the Board Staff failed to introduce, and therefore the record is completely devoid of, any support or evidence establishing that the amount of compensation paid to the fee appraisers by iMortgage in the nine (9) transactions at issue was not customary and reasonable.[33] By contrast, iMortgage, through direct testimony, meticulously detailed compliance with Louisiana law and federal law. As such, the Board rendered a decision without proving the elements necessary under the applicable the Louisiana Real Estate Appraisers Law and Rules.

66.

Additionally, the Board Staff demonstrated that they do not understand the relationship or interplay between the federal and state laws on this topic, as evidenced by the fact that the Board originally cited iMortgage for one hundred and fifty (150) alleged violations of which only nine (9) were ultimately relevant. The Board and Board Staff exhibited an appalling lack of knowledge as to (i) the application of the Dodd Frank Act, (ii) the Louisiana counterpart rules and regulations and (iii) their own evidentiary burden.

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[32] La. R.S. 42:17(A)(5).

[33] The Board Staff called only two (2) witnesses at the December Hearing, the LREAB Director of Investigations and the LREAB Investigator assigned to the instant case. Both of these witnesses ostensibly lacked the mastery of the applicable federal and state laws.

67.

The LREAB Director of Investigations admitted to having no knowledge as to the applicable federal rules and the application of the federal and state customary and reasonable fee requirements to "covered transactions."[34] Consequently, the Board's purported Findings are incomplete, conclusory and legally defective. The Board's Findings, in pertinent part, consist of the conclusory statement that "iMortgage failed to 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."

68.

The Board's application of the Louisiana Real Estate Appraisers Rules pertaining to customary and reasonable compensation conflicts with the relevant federal and is anti-competitive in nature. While the Rules may not have been drafted to restrict marketplace competition, the application of these Rules in this instance effectively raises prices and inhibits price competition for "covered transaction" related appraisal services in Louisiana.

69.

Independent of the December Hearing is the fact that the Louisiana Real Estate Appraisers Rules were improperly promulgated and are without effect. The Rules are unconstitutional for two reasons: (i) the Board failed to follow the rulemaking provisions of the Administrative Procedure Act in promulgation of the Rules since the Board did not conduct the requisite impact study on small businesses required by La. R.S. 49:965.5 and (ii) the Board's application of the Rules conflicts with the relevant federal law. A Board does not have the authority to determine the constitutionality of its own rules.[35]

STANDARD OF REVIEW

70.

The Board's findings of fact are to be accepted by the reviewing trial court where there is substantial evidence in the record to support them.[36] A court must reverse a Board's decision where there is a showing of legal error or a failure to follow the correct procedural standards.[37]

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[34] Exh. "G"- Hearing Transcript p. 119-121. This is particularly detrimental to due process when one considers that he would have been directly involved with the function of making the initial determination of violation, which is tantamount to a finding of probable cause in a criminal setting.

[35] *Albe v. Louisiana Workers' Comp. Corp.*, 97-0581 (La. 10/21/97, 6); 700 So.2d 824, 827 *on reh'g in part sub nom. Clark v. Schwegmann Giant Supermarket*, 97-0581 (La. 11/21/97); 701 So.2d 1324.

[36] *St. Pierre's Fabrication and Welding, Inc. v. McNamara*, 495 So.2d 1295, 1298 (La.1986).

71.

Due to the myriad irregularities in the Board's investigation and the clearly biased nature of the instant adjudication, which yielded the Board's facially defective Findings, application of the Board's erroneous Findings in accordance with La. R.S. 37:3409(C)(2)- which would purportedly limit the Court to a review of the law and require acceptance of the tortured factual conclusions of the Board as conclusive- would result in a violation of iMortgage's substantive and procedural due process rights under state and federal law. These irregularities produce an unlawful agency result, which deprive iMortgage of its legal right to full and meaningful judicial review. For all these reasons, this Court must apply the standard of review and rigorous examination of the agency's actions set forth in La. R.S. 49:964.

72.

Pursuant to La. R.S. 49:964(G), this court may reverse or modify the decision of the Board, 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; and/or

(6) Not supported and sustainable by a preponderance of evidence.

73.

iMortgage asserts that the Board's decision in this matter must be reversed in the clear abundance that substantial constitutional and statutory rights of iMortgage have been prejudiced where the Board's findings, inferences, conclusions, or decisions of the Board were clearly, *inter alia*: (i) made upon unlawful procedure; (ii) arbitrary, capricious and characterized by abuse of the Board's discretion; (iii) far exceeds its legal authority and (iv) isnot supported and/or sustainable by the record and evidence.

[37] *See, e.g., Cochrane v. Louisiana Tax Comm'n*, 2004-1671 (La.App. 4 Cir. 5/18/05, 4); 905 So.2d 353, 356-57.

74.

Based on the rampant administrative irregularities set forth above, iMortgage seeks to conduct discovery pursuant to La. R.S. 49:964(F).[38]

75.

Due to the allegations that the Louisiana Real Estate Appraisers Rules, La. Admin Code. tit. 46, pt. LXVII, § 30101 *et.seq.*, were unconstitutionally promulgated and/or unconstitutionally applied in this instance, iMortgage provides notice to the attorney general pursuant to La. C.C.P. art. 1180 and La. R.S. 13:4448.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, iMortgage Services, LLC prays that after all due proceedings, this Honorable Court grant its Petition for Judicial Review and render judgment in its favor and against the Defendant:

(a) Reversing the decision of the Louisiana Real Estate Appraisers Board's December 8, 2015 hearing;

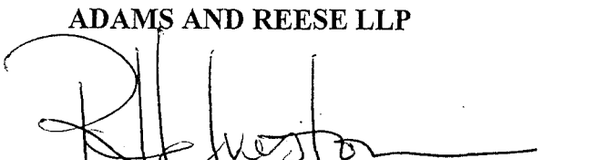
(b) Awarding its costs herein; and

(c) Ordering such other general and equitable relief to iMortgage Services, LLC is this Honorable Court deems fit and proper at law or in equity.

WHEREFORE, Petitioner, iMortgage Services, LLC further prays that this Court issue an Order directing that the Louisiana Real Estate Appraisers Board lodge the complete administrative record, including the transcript of the December 8, 2015 hearing, in accordance with La. R.S. 49:964(A)(D).

Respectfully Submitted:

ADAMS AND REESE LLP



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iMORTGAGE SERVICES, LLC

[38] La. R.S. 49:964(F) provides in pertinent part that in cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court.

EXHIBIT 35

CONFIDENTIAL - REDACTED IN ITS ENTIRETY

EXHIBIT 36

STATEMENT OF POLICY BY THE LOUISIANA REAL ESTATE APPRAISERS BOARD UPON ADOPTION OF REPLACEMENT RULE 31101

On November 20, 2017, the Board published in the Louisiana Register the text of Rule 31101 as a replacement for the Board's prior rule requiring Appraisal Management Companies ("AMCs") to pay "customary and reasonable" fees for residential appraisals. The text of the replacement Rule 31101 is the same as the text of the prior rule. However, pursuant to Governor John Bel Edwards's Executive Order Number 17-16 (July 11, 2017), the process leading to adoption of the rule included additional supervisory steps by the Commissioner of Administration as well as the State Legislature; and the process for future enforcement of the Rule will be subject to supervision by an Administrative Law Judge of the Louisiana Division of Administrative Law.

Given these events and procedural changes, the Board believes it would assist all stakeholders (including lenders, AMCs, and appraisers) to explain how the Board interprets and will enforce Rule 31101.

1. Repeal of Prior Rule 31101, and Adoption of Replacement Rule 31101

The Governor's July 11 Executive Order required the Board to submit to the Commissioner of Administration (or his designee) for approval, rejection, or modification within 30 days any proposed regulation related to AMC compliance with the customary and reasonable fee requirement of La. R.S. 37:3415.15(A), with its rulemaking record, to ensure that the proposed regulation serves Louisiana's public policy to protect the integrity of residential mortgage appraisals by requiring that the fees paid by AMCs for an appraisal are to be customary and reasonable.

On July 17, 2017, the Board met and adopted a Resolution requiring the Executive Director to submit such a proposed rulemaking and regulation to Board by July 31. On July 31, the Board unanimously passed a motion to propose replacing prior Rule 31101 with a new rule having the same text as the prior rule. The Executive Director submitted the proposed rule and the history of promulgation of the prior rule to the Commissioner of Administration, who approved publication of the new Rule in a Notice of Intent in the Louisiana Register. That Notice of Intent to re-adopt Rule 31101 was published by the Louisiana Register on August 20, setting a September 8 return date for written comments and a potential public hearing for September 27. The Board received 77 written stakeholder comments, including letters from the Louisiana Bankers Association, the Louisiana Home Builders Association, Louisiana REALTORS, and the

Appraisal Institute in support of the proposed rule; one letter from the Real Estate Valuation Advocacy Association (REVAA) expressing concerns with and suggesting amendments to the proposed rule; and short supportive comments via email from more than 70 individual appraisers and appraisal businesses in Louisiana. The Board held a public hearing to receive additional comments on September 27.

Following the hearing, the Board forwarded the proposed Rule along with the full record of promulgation of the Rule to the Commissioner of Administration and to the Louisiana Senate and House Commerce Committees having oversight responsibility over the activities of the Board in accordance with the Administrative Procedures Act.

On November 9, 2017, the Division of Administration issued a written decision approving the proposed re-adoption of Rule 31101. The November 9, 2017 letter determined that Rule 31101 "will further the public policy goals of the State of Louisiana by ensuring that real estate appraisers will be paid a customary and reasonable fee by AMCs. This, in turn, will strengthen the accuracy, integrity, and quality of real estate appraisals, which, among other benefits, can prevent a recurrence of the real estate bubble from the last decade."

The Louisiana Senate and House Commerce Committee oversight subcommittees each informed the Board of their decision that it was unnecessary to hold hearings concerning the proposed Rule, and that the promulgation of the Rule should therefore proceed.

Upon its publication in the Louisiana Register on November 20, 2017, Rule 31101 has been adopted.

2. Board Guidance for Interpretation of Rule 31101

Louisiana's Appraisal Management Company Licensing and Regulation Act (the "AMC Law"), particularly La. R.S. 37:3415, requires AMCs to compensate appraisers at a rate that is customary and reasonable for residential real estate appraisals being performed in the market area of the property being appraised, consistent with the requirements of 15 U.S.C. §1639e and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222. Rule 31101 implements those requirements.

The following sets forth the Board's interpretation of Rule 31101. Inasmuch as the text of the Replacement Rule 31101 is the same as the prior Rule, the Board believes that this interpretation is consistent with how the prior rule was interpreted by the Board, and so this Guidance may also serve to answer any questions about how the Board has interpreted the prior Rule in practice.

PLEASE NOTE: While the following represents the interpretation that will be applied by the Board, the text of Rule 31101 governs AMC compliance, and the Board and AMCs ultimately will be bound by the interpretation of Rule 31101 by an administrative law judge or a court of competent jurisdiction.

Rule 31101 provides four methods by which AMCs may comply with the AMC Law requirements. As in the Federal Reserve's Interim Final Regulations implementing the Dodd-Frank Act (TILA 129E), an AMC is entitled to a presumption of compliance—

- Under Rule paragraph (A)(1) where the AMC relies on evidence of recent rates established by objective third-party information, such as government fee schedules, academic studies, or independent private sector surveys (excluding fees for appraisal services paid by AMCs); or
- Under Rule paragraph (A)(3) and (B) of the Rule where the AMC can document that its fees were based on, at minimum, the six enumerated factors, applied to recent fees in the relevant geographic market.

A third method of compliance under Rule paragraph (A)(3) enables the AMC to demonstrate that its fees are "customary and reasonable" under all applicable facts and circumstances, including other factors in addition to the six factors listed in Rule paragraph (B)(1)-(6), applied to recent fees in the relevant geographic market.

Under each of these three methods, the Rule contemplates that the AMC may make necessary and appropriate adjustments to recent rates paid in the relevant geographic market to ensure that the amount of compensation is "reasonable" as well as customary. The relevant market area is identified by zip code, parish, or metropolitan area.

The Board had applied these three methods in investigations conducted under the prior Rule, and notes that AMCs had relied on at least one of each of these methods to comply with the "customary and reasonable" requirement. In such investigations, the AMC is required to state which of the above methods it employed to comply with Rule 31101with respect to a particular fee, and to provide evidence showing how it applied the selected method.

The Rule provides that the Board, at its discretion, may establish a schedule of customary and reasonable fees as a fourth option for AMCs to comply. The Board had not established such a schedule under prior Rule 31101, and has no present intention to establish such a schedule under replacement Rule 31101.

Statements by the Federal Reserve Board provide additional interpretive guidance as to customary and reasonable fees. For example, the introduction to the FRB final Interim Rules state that "the marketplace should be the primary determiner of the value of [residential] appraisal services, and hence the customary and reasonable rate of compensation for fee appraisers." 75 Fed. Reg. 66554, 66569 (Oct. 28, 2010). The FRB further explains that, to reflect the marketplace in fees paid for particular appraisals, "recent rates for appraisal services in the relevant geographic market" (*i.e.*, "customary" fees) are to be adjusted "as necessary to account for factors in addition to geographic market that affect the level of compensation appropriate in a given transaction" (*i.e.*, "reasonable"). *Id.*; Supplement I to Part 1026, Official Interpretations, 12 C.F.R. 1026.42(f)(2)(i)(2) (2017). "Recent rates" are those paid for the same type of services within the preceding twelve (12) months in the geographic market.

3. Guidance for Enforcement of Rule 31101

The Board investigates compliance with the Rule based on documented complaints of offers or payments below what the complainant believes to be a customary and reasonable fee for the requested services in that market area, and may investigate or randomly audit compliance in the absence of a complaint.

The Board's general policies with respect to enforcement are as follows:

A. The Board's primary goal is that AMCs comply with the AMC Law and Rule 31101.
B. The Board strives to enforce the customary and reasonable fee requirement on a non-discriminatory basis.
C. AMCs found in non-compliance will be required to submit an effective plan to come into compliance. This was the primary focus under prior Rule 31101, and will remain the principal objective under replacement Rule 31101.
D. The Board's policy has been to assess penalties where it is clear the AMC has not made reasonable efforts to comply with the Rule. Examples would include where an AMC cannot document use of any of the three methods to demonstrate that the fees it paid were customary and reasonable; or where an AMC fails to follow through with representations it had made in response to an enforcement action; or in the case of repeated violations.
E. However, the customary and reasonable fee obligation has been part of Louisiana law since 2013. Going forward, AMCs should expect that "reasonable efforts" will no longer be considered sufficient, such that penalties for failure to comply with the law

will become more common in addition to requirements for remedial action to achieve compliance.

Under the Executive Order, the Board's enforcement efforts henceforth will be supervised and reviewed by an independent Administrative Law Judge ("ALJ") appointed under a contract between the Board and the Division of Administrative Law effective July 1, 2017. Prior to initiating any enforcement action, the ALJ will review whether evidence submitted by the Board shows a likelihood of noncompliance, and whether the proposed action would serve Louisiana state policies to protect the integrity of mortgage appraisals. The ALJ also will review whether proposed informal resolutions, settlements, or dismissals of any approved enforcement action are consistent with those policies. The ALJ further will review the record of any hearing and any proposed relief in an enforcement action conducted by the Board, consistent with the standards of review set forth in the Louisiana Administrative Procedures Act and the aforementioned state policies, and will approve, reject, or modify the Board's recommended decision and proposed relief. The Board will adopt and implement the ALJ's determination. An AMC may appeal the decision to the 19th Judicial Circuit Court, as today.

4. Statement of Policies with Respect to Actions under Prior Rule 31101

The Board states below its policies with respect to any investigations or enforcement actions taken under prior Rule 31101.

A. With the November 20, 2017 publication of replacement Rule 31101, prior Rule 31101 has been repealed. Prior Rule 31101 cannot and will not be the basis of any further enforcement action by the Board.
B. As of November 20, 2017, there are no pending enforcement actions before the Board under either prior Rule 31101 or replacement Rule 31101.
C. All actions under prior Rule 31101 have been terminated by the Board with no finding of violation, or have expired by their own terms, or have been vacated by the Board.
D. No proposed fee or payment that occurred prior to November 20, 2017 will be the basis of, or admissible as evidence in, any enforcement action under replacement Rule 31101.
E. The fact of any prior investigation or enforcement action against an AMC under prior Rule 31101 will not be admissible as evidence in any enforcement action under replacement Rule 31101.

5. Statement of Board Policy as to the SLU Survey

As noted in Section 2 above, Rule 31101 provides three current methods by which AMCs can comply with the "customary and reasonable" fee obligation, and one of those methods relies on the use of objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. The Board neither requires nor prohibits AMC use of objective third-party information, and AMCs that use such information are not precluded from demonstrating, by reference to the six-factor analysis, why adjustments to particular findings in such studies or surveys would be "reasonable" for a particular transaction.

Since 2013, the Board has paid for an annual independent survey by Southeastern Louisiana University of fees paid by lenders for various types of residential appraisals in the relevant geographic markets of the State of Louisiana over the prior year. The Board's intention in funding and making publicly available this SLU Survey was to assist AMC compliance with the law by providing information that might qualify as an objective academic study for purposes of the presumption under prior Rule 31101(A)(1), as well as the Dodd-Frank Act and the Federal Reserve Board Interim Final Rules. The Board posted the survey along with the notice: "This study is provided as a courtesy to all licensees; however, its use is not mandatory."

Under prior Rule 31101, AMCs that used the SLU survey as permitted under the Dodd-Frank Act and prior Rule 31101 were entitled to the benefit of the (A)(1) presumption. In some investigations, AMCs voluntarily agreed to bring themselves into compliance under the presumption using the SLU Survey, for a limited time not to exceed one year. Because use of the SLU Survey prior to the investigation would have entitled that AMC to the benefit of the presumption, the Board was willing to accept that representation in resolution of the investigation as well.

Some have questioned the Board's use of the SLU Survey. A complaint filed against the Board by the Federal Trade Commission suggests that the Board's effort to assist AMCs' compliance instead was an attempt to fix, maintain, or stabilize prices for AMC payments for residential appraisal services. The Board categorically rejects that characterization; but such aspersions and allegations have impeded the Board's efforts to fulfill its regulatory responsibilities under the AMC Act. The Board remains mindful that Governor Edwards issued his Executive Order in large measure to obviate federal antitrust law questions that "may prevent the LREAB from faithfully executing mandates under the Dodd-Frank Act and Louisiana law."

The Board therefore has decided not to fund the SLU Survey in the future, and will remove the survey from the Board's website. Use by any AMC of any survey, including the SLU Survey, under replacement Rule 31101 will continue to be subject to the conditions for use of any objective

third-party information that qualifies for the presumption under the federal rules and Rule 31101. Please note that the most recent SLU Survey studied fees paid in 2016 and, consistent with the requirement to study "recent rates," the SLU Survey no longer will meet those conditions after December 31, 2017. Per Section 3 above, in connection with an enforcement action (including informal resolutions, settlements, or hearings), any AMC's use of objective third-party information, including the SLU Survey, will be subject to ALJ review.

Affidavit of Cheryl B. Bella

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeny

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF CHERYL B. BELLA

I, Cheryl B. Bella, do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge.

2. I am licensed by the State of Louisiana as a general appraiser.

3. I have served as a member of the Louisiana Real Estate Appraisers Board ("the Board"), as a general appraiser, from July 17, 2015 to present.

4. During the time that I have served on the Board, I have not performed or reviewed any residential real estate appraisals. Moreover, I have not served on an Appraisal Management Company residential real estate appraiser panel.

5. I do not derive income from customary and reasonable fees paid to residential real estate appraisers.

6. My professional experience includes providing educational courses and seminars to participants in the appraisal market in Louisiana. Prior to joining the Board, I had researched

how various states were addressing the Dodd-Frank Act customary and reasonable fee requirement in their laws and regulations.

7. Based on my research, I understood that the Dodd-Frank Act mandated the regulation of customary and reasonable fees to residential real estate appraisers in Louisiana. In 2011, I made that point in a presentation to the LREAB. I further understood that Rule 31101 was consistent with the mandates of the Dodd-Frank Act and Louisiana law.

8. Currently, it continues to be my understanding that Rule 31101 is consistent with the mandates of the Dodd-Frank Act and Louisiana law.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.

Cheryl B. Bella

Cheryl B. Bella

February 13, 2018

Affidavit of Gayle Boudousquie

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF GAYLE BOUDOUSQUIE

I, Gayle Boudousquie, do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge.

2. I am licensed by the State of Louisiana as a general appraiser.

3. I served as a member of the Louisiana Real Estate Appraisers Board ("the Board"), as a general appraiser, from July 1, 2003 to March 17, 2017.

4. During the time that I served on the Board, I did not perform any residential form real estate appraisals for lending purposes. I have reviewed a narrative eminent domain valuation assignment containing the taking of a residence. I have not reviewed any residential form reports for a lender. Moreover, I did not serve on any Appraisal Management Company residential real estate appraiser panels.

5. I do not derive income from customary and reasonable fees paid to residential real estate appraisers.

6. Prior to voting to adopt Rule 31101, I reviewed the proposed rule, input from stakeholders, presentations, and various materials regarding the Dodd-Frank Act, the Dodd-Frank implementing regulations, and the 2012 Amendments to the Louisiana AMC law.

7. Based on my research, I understood that the Dodd-Frank Act mandated the regulation of customary and reasonable fees to residential real estate appraisers in Louisiana. I further understood that Rule 31101 was consistent with the mandates of the Dodd-Frank Act and Louisiana law.

8. Currently, it continues to be my understanding that Rule 31101 is consistent with the mandates of the Dodd-Frank Act and Louisiana law.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.

_____

Gayle Boudousquie

February 14, 2018

Affidavit of Michael A. Graham

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF MICHAEL A. GRAHAM

I, Michael A. Graham, do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge.

2. I am licensed by the State of Louisiana as a general appraiser.

3. I served as a member of the Louisiana Real Estate Appraisers Board ("the Board") from October 22, 2008 to March 17, 2017.

4. I served as the Vice Chair of the Board from September 21, 2015 to March 17, 2017.

5. While I served on the Board, I rarely, but on occasion, performed complex, narrative format, residential real estate appraisal assignments (i.e., eminent domain). To my knowledge, none of these residential appraisal assignments were "covered transactions" governed by the customary and reasonable fee provisions of the Dodd-Frank Act.

6. Further, while I served on the Board, I did not perform any residential real estate appraisal assignments for an Appraisal Management Company ("AMC") and did not sit on any AMC panel for residential real estate appraisers.

7. I served on the Board at the time the Board first considered Rule 31101, and in November 2013, when Rule 31101 was promulgated.

8. Prior to voting to adopt Rule 31101, I reviewed the proposed rule, input from stakeholders, presentations, similar laws from other states, and various materials regarding the Dodd-Frank Act, the Dodd-Frank implementing regulations, and the 2012 Amendments to the Louisiana AMC law.

9. Based on my review of the Dodd-Frank Act and the implementing regulations, I understood that the Dodd-Frank Act mandated the regulation of customary and reasonable fees to residential real estate appraisers in Louisiana.

10. At the time the Board voted to promulgate Rule 31101, I understood that Rule 31101 fell within the parameters of the Dodd-Frank Act and Louisiana law.

11. Currently, it continues to be my understanding that Rule 31101 is consistent with the mandates of the Dodd-Frank Act and Louisiana law.

12. While I served on the Board, I also understood that the Appraisal Subcommittee exercised a federal oversight function over the Board. To my knowledge, whenever the Appraisal Subcommittee made a recommendation, it was the Board's policy to follow that recommendation consistent with federal and state law.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.

_____

Michael A. Graham

February 13, 2018

Affidavit of Roland Hall

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF ROLAND HALL

I, Roland Hall, do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge.

2. I am a licensed residential real estate appraiser.

3. I served as a member of the Louisiana Real Estate Appraisers Board ("the Board") from July 25, 2008 to March 17, 2017.

4. I served as the Chairman of the Board from March 9, 2012 to March 17, 2017.

5. I served on the Board at the time the Board first considered Rule 31101, and in November 2013, when Rule 31101 was promulgated.

6. Prior to voting to promulgate Rule 31101, I reviewed the proposed rule, input from stakeholders, presentations, similar laws from other states, and various materials regarding the Dodd-Frank Act, the Dodd-Frank implementing regulations, and the 2012 Amendments to the Louisiana AMC law.

7. Based on my review of the Dodd-Frank Act and the implementing regulations, I understood that the Dodd-Frank Act mandated the regulation of customary and reasonable fees to residential real estate appraisers in Louisiana for covered transactions. I further understood that if the Board did not regulate in Louisiana by a date certain, some AMCs in Louisiana would not be eligible to participate in covered transactions in the state.

8. At the time the Board voted to adopt Rule 31101, I understood that Rule 31101 was not only consistent with the mandates of the Dodd-Frank Act and Louisiana law but also was modeled to follow the presumptions of compliance in the Dodd-Frank implementing regulations.

9. Currently, it continues to be my understanding that Rule 31101 is consistent with the mandates of the Dodd-Frank Act and Louisiana law.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.

Roland L M. Hall, SRA

_____

Roland Hall

February 15, 2018

Affidavit of Heidi C. Lee

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF HEIDI C. LEE

I, Heidi C. Lee, do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge.

2. I am licensed by the State of Louisiana as a general appraiser.

3. I served as a member of the Louisiana Real Estate Appraisers Board ("the Board"), as a general appraiser, from July 1, 2003 to October 1, 2011.

4. While I served on the Board, I did not perform any residential real estate appraisals. I occasionally reviewed residential real estate appraisals as a Commercial Review Appraiser at Whitney Bank, but I was primarily responsible for reviewing commercial real estate appraisals.

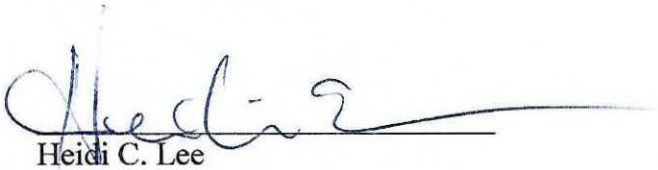
5. The payment of customary and reasonable fees to residential real estate appraisers does not have any impact on my income.

6. I served on the Board at the time the Dodd-Frank Act became federal law.

7. It was my understanding that the Dodd-Frank Act regulated states the same way the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) regulated states. During the time that I served on the Board, the Board was responsible for implementing federal mandates articulated by FIRREA.

8. Based on my review of the Dodd-Frank Act, I understood that the Dodd-Frank Act and its implementing regulations required the Board to regulate the payment of customary and reasonable fees to residential real estate appraisers.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.



Heidi C. Lee

February 12, 2018

Affidavit of Clayton Lipscomb

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF CLAYTON LIPSCOMB

I, Clayton Lipscomb, do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge.

2. I am licensed by the State of Louisiana as a general appraiser.

3. I have served as a member of the Louisiana Real Estate Appraisers Board ("the Board"), as a general appraiser, from October 19, 2011 to present.

4. I have served as the Chairman of the Board since April 17, 2017.

5. While serving on the Board, I have not performed any residential real estate appraisals. Moreover, I have not served on an Appraisal Management Company residential real estate appraiser panel.

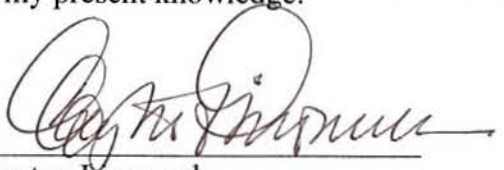
6. I do not derive income from customary and reasonable fees paid to residential real estate appraisers.

7. I am familiar with the Dodd-Frank Act and have reviewed its contents as part of my ongoing obligations as the Vice President and Western Region Manager at Regions Financial Corporation.

8. At the time the Board voted to readopt Rule 31101, I understood that Rule 31101 was consistent with the Dodd-Frank Act and Louisiana law, which mandated the regulation of customary and reasonable fees to residential real estate appraisers in Louisiana.

9. Currently, it continues to be my understanding that Rule 31101 is consistent with the mandates of the Dodd-Frank Act and Louisiana law.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.



Clayton Lipscomb

February 14, 2018

Affidavit of Gary Littlefield

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF GARY LITTLEFIELD

I, Gary Littlefield, do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge.

2. I am the Market President of the Baton Rouge Division of Gulf Coast Bank & Trust Co.

3. I served as a member of the Louisiana Real Estate Appraisers Board ("the Board") from November 5, 2009 to September 11, 2015.

4. I was appointed to the Board by the Governor from the list of names submitted by the Louisiana Bankers Association pursuant to §3394(B)(a) of the Louisiana Real Estate Appraisers Law.

5. I am not a licensed appraiser and have never performed a residential real estate appraisal.

6. I served on the Board at the time the Board first considered Rule 31101, and in November 2013, when Rule 31101 was promulgated.

7. Prior to voting to promulgate Rule 31101, I reviewed the proposed rule, input from stakeholders, presentations, and various materials regarding the Dodd-Frank Act, the Dodd-Frank implementing regulations, and the 2012 Amendments to the Louisiana AMC law.

8. Based on my review of the Dodd-Frank Act and the Louisiana AMC law, I understood that the board was charged with the responsibility under Federal and State law to regulate the payment of customary and reasonable fees to residential real estate appraisers in Louisiana.

9. At the time I voted to promulgate Rule 31101, I understood that Rule 31101 was consistent with the mandates of the Dodd-Frank Act and Louisiana law.

10. Currently, it continues to be my understanding that Rule 31101 is consistent with the mandates of the Dodd-Frank Act and Louisiana law.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.

Gary Littlefield

February 13, 2018

Affidavit of Leonard E. Pauley Jr.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF LEONARD E. PAULEY JR

I, Leonard E. Pauley, Jr., do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge.

2. I am licensed by the State of Louisiana as a general appraiser.

3. I served as a member of the Louisiana Real Estate Appraisers Board ("the Board") from July 1, 2003 to July 17, 2015.

4. I served as the Chair from March 16, 2009 to March 9, 2012 and Vice Chair of the Board from March 9, 2012 to July 17, 2015.

5. During the time period I served on the Board, I occasionally performed residential real estate appraisals, but did not consider residential appraisals to be a significant part of my business.

6. I served on the Board at the time the Board first considered Rule 31101, and in November 2013, when Rule 31101 was promulgated.

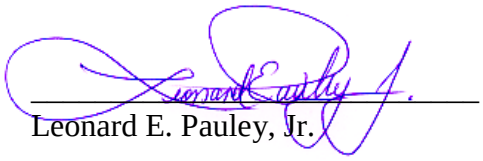
7. Prior to voting to adopt Rule 31101, I reviewed the proposed rule, input from stakeholders, presentations, similar draft laws from other states, and various materials regarding the Dodd-Frank Act, the Dodd-Frank implementing regulations, and the 2012 Amendments to the Louisiana AMC law.

8. Based on my review of the Dodd-Frank Act and the implementing regulations, I understood that the Dodd-Frank Act mandated the regulation of customary and reasonable fees to residential real estate appraisers in Louisiana. Further, other states similarly understood that the Dodd-Frank Act mandated regulation of customary and reasonable fees.

9. At the time the Board voted to promulgate Rule 31101, I understood that Rule 31101 was consistent with the Dodd-Frank Act and Louisiana law.

10. Currently, it continues to be my understanding that Rule 31101 is consistent with the mandates of the Dodd-Frank Act and Louisiana law.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.



Leonard E. Pauley, Jr.

February 13, 2018

Affidavit of R. Wayne Pugh

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF R. WAYNE PUGH

I, R. Wayne Pugh, do hereby declare as follows:

1. The facts stated in this affidavit are based on my personal knowledge.

2. I am licensed by the State of Louisiana as a general appraiser.

3. I served as a member of the Louisiana Real Estate Appraisers Board ("the Board") from July 1, 2003 to July 24, 2008 and again from September 7, 2011 to May 22, 2012.

4. I served as the Chairman of the Board from August 18, 2003 to July 21, 2008.

5. While I served on the Board, I did not perform any residential real estate appraisals. Moreover, I did not serve on any Appraisal Management Company residential real estate appraiser panels.

6. I did not derive income from customary and reasonable fees paid to residential real estate appraisers.

7. Based on my review of the Dodd-Frank Act, I understood that the Dodd-Frank Act mandated the regulation of customary and reasonable fees to residential real estate appraisers in Louisiana.

8. While on the Board, I understood that the Appraisal Subcommittee served as a mandated entity to ensure state appraisal boards acted and operated in compliance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.

R. Wayne Pugh

February 14, 2018

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

DECLARATION OF JAMES J. KOVACS

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 for Respondent Louisiana Real Estate Appraisers Board in this proceeding.

3. Attached to this declaration are two exhibits submitted in support of Respondent's Opposition to Complaint Counsel's Motion for Partial Summary Decision Dismissing Respondent's Fourth Affirmative Defense.

4. Exhibit 37 is a true and correct copy of June 9, 2014 Real Estate Valuation Advocacy Association's public comments concerning OCC Docket ID OCC-2014-0002, Proposed Rule, Minimum Requirements for Appraisal Management Companies, as downloaded from https://www.regulations.gov/document?D=OCC-2014-0002-0056.

5. Exhibit 38 is a demonstrative exhibit setting forth true and correct information regarding the membership of the Louisiana Real Estate Appraisers Board from 2011 through 2017.

VERIFICATION OF DECLARATION OF JAMES J. KOVACS

I certify under penalty of perjury that the foregoing is true and correct.

Dated: February 20, 2018

/s/ James J. Kovacs
James J. Kovacs
Constantine Cannon LLP
1001 Pennsylvania Ave. NW, Ste. 1300N
Washington, DC 20004
Telephone: (202) 204-3518
jkovacs@constantinecannon.com

Counsel for Respondent,
Louisiana Real Estate Appraisers Board

EXHIBIT 37

Real Estate Valuation Advocacy Association
734 15th Street, NW Ste 900
Washington, DC 20005

June 9, 2014

regs.comments@occ.treas.gov
Legislative and Regulatory Activities Division
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400 7th Street SW, Suite 3E-218
Mail Stop 9W-11
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regcomments@ncua.gov
Mr. Gerard Poliquin, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

regs.comments@federalreserve.gov
Mr. Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
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Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

comments@FDIC.gov
Mr. Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RegComments@fhfa.gov
Mr. Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA61
Federal Housing Finance Agency, Eighth Floor
400 Seventh Street SW
Washington, DC 20024

Re: Proposed Rule, Minimum Requirements for Appraisal Management Companies
OCC Docket ID OCC-2014-0002
Federal Reserve System Docket No. R-1486
FDIC RIN 3064-AE10
NCUA RIN 3133-AE22
CFPB Docket No. CFPB-2014-0006
FHFA RIN 2590-AA61

The Real Estate Valuation Advocacy Association ("REVAA") expresses our appreciation to the Agencies for their efforts in developing this proposed rule as directed by the Dodd-Frank Act ("DFA"). We have carefully reviewed and considered the proposal, and we offer our comments and observations as well as suggest several key areas for substantial revision. REVAA is the valuation industry's leading trade association representing Appraisal Management Companies ("AMCs") and supporting valuation related products and services. REVAA represents its members and is an active participant in industry and public policy forums in Washington, DC and around the country. REVAA advocates on federal and state related issues including state registration of AMCs as required by the DFA. In addition to letters of comment, REVAA has testified before the Committee on Financial Institutions of the U.S. House of Representatives.

Our comments highlight five areas of concern, and we address them along with the questions raised by the Agencies in the proposal. Our key concerns with respect to the proposed rule include the following issues.

First, the Appraisal Subcommittee ("ASC") should serve as a federal regulatory backstop to register AMCs if a state states declines to adopt conforming regulations. The proposed rule fails to address the adverse consequences for consumers that will result if a state fails to adopt conforming regulations. AMCs would be barred from providing appraisal related services in such a state.

The apparent assumption in the proposal is that all states will adopt required regulations and that no state with such regulations in place before the effective date of the final rule will repeal them. We believe this to be ill-considered, particularly if distinctions between AMCs and appraisal firms are not effectively addressed by the Agencies. By authorizing the ASC to serve as a backstop, consumers, home buyers, and lenders would not face a lack of competition and choice among entities performing appraisal related functions and be left with fewer choices for services. Consumer choice should be a driving factor in this proposal.

Second, the proposed rule should not permit state appraiser certifying agencies to directly investigate, interpret and enforce the federal independence standards of the Truth in Lending Act and Regulation Z ("TILA"). Section 1124 of FIRREA does not mandate such authority, but obligates AMCs to require that appraisals are performed in compliance with the TILA appraisal independence standards. In addition, state regulatory enforcement of a federal banking law would undermine the authority of the CFPB to pre-empt such regulations that would interfere with the power the CFPB has to establish a single national standard in these areas.

Third, the proposed rule should not distinguish between AMCs (which generally would be subject to its requirements) and appraisal firms (which generally would not be subject to its requirements) that are not required by the DFA and that will cause substantial harm to the goals of the DFA. Consumers should receive the same protections regardless of who manages the appraisal fulfillment process. Both AMCs and appraisal firms, regardless of their structure, perform essentially the same functions (appraisal review, due diligence, administration, appraisal delivery, client maintenance and oversight).

Fourth, the proposed definition of an AMC unnecessarily undermines smaller AMCs, by effectively requiring them to register in multiple states when their AMC business may be concentrated in only one state. Fairness dictates that numerical triggers should not be arbitrary, and proper accounting for appraiser panel members, such as those that perform no assignments, is required. We believe panel members should be counted only after accepting and delivering an assignment. Because the appraisal independence rules mandated in DFA are meant to govern appraisals being performed, panel membership should likewise be calculated based on whether an appraiser actually accepts and completes an assignment from an AMC in a given year.

Fifth, the ASC should be required to establish and maintain reporting functions for Federally regulated AMCs. Imposing this requirement on state agencies will be challenging as many states: (i) are neither

well-staffed nor funded to handle the expectation; (ii) are will not be in a sound position to verify any information that is provided; and (iii) have no supervisory authority over Federally regulated AMCs.

We strongly encourage your reconsideration of these issues, and would be pleased to engage in such further dialog as you may desire.

Below are our comments on the questions posed in the proposal.

1) Question 1 – Request for comment on all aspects of the proposed definition of AMC.

    a) Comment 1 – A key element of the AMC definition is that an AMC oversees, within a given year, an appraiser panel of more than 15 state-certified or –licensed appraisers in a given state or 25 or more state-certified or –licensed appraisers in two or more states. Unfortunately, this definition does not reflect how AMCs typically operate, and is counter-productive. An AMC may maintain a relatively large panel of appraisers who are eligible to receive appraisal assignments, usually to help assure that the potential needs of clients are met. Typically, not all appraisers on a panel receive an assignment from the AMC in a given year and there is no guarantee that an appraiser will receive an assignment. The relevant factor should be whether an appraiser accepts and completes an assignment from an AMC. To that end, this portion of the AMC definition should be reformulated so that it is based on the number of appraisers in a given state to whom an AMC offers an assignment and who accept such assignments.

2) Question 2 – Request for comment on the proposed definition of "appraiser network or panel" (including whether this should include employees as well as independent contractors) and whether and how the term "independent contractor" should be defined.

    a) Comment 1 – There is no substantive difference between entities that use employees to perform appraisals (which would not be subject to the proposed rule) and entities that utilize independent contractors to perform appraisals (which would be subject to the proposed rule). In either case the entity will by necessity perform appraisal management services, which include: (i) recruiting, selecting, and retaining appraisers; (ii) managing the process of having appraisals performed, including paying appraisers; and (iii) reviewing and verifying the work of appraisers.

        The entity will perform these functions without regard to whether the appraiser in question is an employee or independent contractor. Therefore, the definition of "appraiser network or panel" should include employees as well as independent contractors. Further, the proposed rule fails to make meaningful distinctions between and among AMCs on the one hand, and appraisal firms on the other hand. For example, the proposed rules would not prevent in any way an appraisal firm from being owned by someone who had an appraisal license revoked, which does not serve the interests of consumers. Entities performing the same core functions should be similarly regulated.

b) Comment 2 – There does not appear to be consensus among states for the definition of "independent contractor". We would recommend the more uniform IRS definition. Since many AMCs operate in multiple states, a uniform definition would promote greater consistency for the benefit of consumers.

c) Comment 3 – As described above, the appraiser panel should be defined as including only those appraisers who actually have accepted and completed appraisal assignments from an AMC in a given time period. As noted, AMCs often maintain a large pool of appraisers to whom they can offer appraisal assignments in order to ensure that they can meet current and prospective client expectations.

   If each of these appraisers is included in the appraiser panel, the resulting annual fee that each state would have to collect from an AMC and transmit to the ASC could be considerable. For example, an AMC might maintain a pool of 1,000 appraisers in a given state, but only offer assignments to 250 of them. If all of the appraisers are included in the definition of the appraiser panel and are therefore considered to have "contracted with" the AMC, the annual AMC National Registry fee payable by the AMC would be $25,000, as opposed to a fee of $6,250 if only those appraisers who actually performed appraisals for the AMC are counted. We see no consumer benefit to imposing such a fee on what amounts to a contingent basis.

d) Comment 4 – The Agencies should clarify whether, for the purposes described in Comment 3 above, an appraiser who is licensed in multiple states and performs work for an AMC in those states is counted in each state for the fee purposes. Without clarification this could result in AMCs paying for multiple registrations, essentially paying a fee for the same appraiser multiple times. Additionally, the Agencies should clarify whether persons who are in the process of being trained as appraisers would count for these purposes.

e) Comment 5 – The Agencies should clarify what constitutes an "appraisal" for purposes of determining whether an appraiser has performed an appraisal for an AMC and therefore should be included on the AMC's appraiser panel. For example, appraisers performing evaluations, such as inspections, should not be considered to have performed an appraisal under the proposed rule.

3) Question 3 – Request for comment on the distinction the Agencies have drawn between employees and independent contractors as a basis for exclusion of appraisal firms from the definition of an AMC.

a) Comment 1 – As noted above, there is no substantive difference between the appraisal management services performed by an appraisal firm with respect to its employees and the appraisal management services performed by an AMC with respect to its independent contractors. We believe consumers and lenders deserve the same level of service to ensure that a quality appraisal is prepared by a properly qualified appraiser.

This appears to be a distinction whose only purpose is to prevent appraisal firms from being considered as AMCs. We don't see a rationale for treating entities performing the same functions differently. Consumer protection is the desired goal. Subjecting one class of appraisal management entity to strict supervision, while exempting another class of appraisal management entity from such supervision entirely, presents a serious risk that consumers will be harmed where appraisal management services are performed by the unsupervised entity.

4) Question 4 – Request for comment on references to NCUA and insured credit unions should be removed from the definition of "Federally regulated AMC".

   a) No comment.

5) Question 5 – Request for comment on proposed definition of "secondary market participant".

   a) No comment.

6) Question 6 – Request for comment on the proposed minimum requirements for state registration and supervision of AMCs.

   a) Comment 1 – AMCs not owned and controlled by an insured depository institution and not regulated by a federal financial institutions regulatory agency must register with, and be subject to supervision by, the state appraiser certifying and licensing agency in order to do AMC business in that state. If a state does not establish such a conforming registration program, and at the current time 12 states do not, then AMCs will not be able to do business in that state. Such a perverse outcome would directly limit competition and harm all participants in the market, most importantly consumers, by denying them choice.

      In order to prevent this unwelcomed and unintended result, we suggest that the rule expressly permit and authorize the ASC to establish overarching "registration" requirements and systems for AMCs to utilize in those states that do not implement AMC registration systems. We see nothing in the DFA that would prevent the Agencies from including such a provision in its final rule--and thereby requiring the ASC to play a "stand by" or "back up" role if needed.

   b) Comment 2 – The proposed rule mandates that AMCs establish and comply with processes and controls reasonably designed to ensure that it conducts its appraisal management services in accordance with the requirements of Section 129E(a)–(i) of TILA, 15 U.S.C. § 1639e(a)–(i), and regulations thereunder. We believe this proposed rule is inconsistent with FIRREA and would result in significant unintended consequences to consumers.

      Section 1124(a)(4) of FIRREA requires the Agencies to mandate by regulation that all AMCs must require that appraisals are conducted independently and free from inappropriate influence and

coercion pursuant to the appraisal independence standards established under Section 129E of TILA. This requirement unambiguously applies to appraisals being performed, and not appraisal management services, and current law supports this position. Section 1124(a)(4) is consistent with the other mandates for AMCs, such as requiring appraisers to comply with USPAP and be properly credentialed when performing an appraisal for federally related transactions. There are clear requirements in Section 129E of TILA that apply to appraiser behavior. For example, an appraiser may not have a conflict of interest in a subject property. We urge the Agencies to amend the proposed rule to impose an obligation on AMCs to require that appraisers comply with the appraisal independence standards established under Section 129E of TILA.

In addition, the proposed rule suggests that states would have the ability to directly interpret and enforce the appraisal-related requirements of TILA, which is a federal statute enforced by the CFPB and interpreted generally by the federal courts. Under the DFA, to the extent that a state law is inconsistent with the provisions of Title X of the DFA, that state law is preempted to the extent of the inconsistency. Title X of the DFA bestows on the CFPB primary rulemaking and enforcement authority over federal consumer financial protection laws, including TILA, and states that one of the CFPB's main objectives is ensuring that such laws are enforced consistently in order to promote fair competition.

Under the proposed rules, AMCs could therefore be subject to multiple entities interpreting and enforcing the same federal statute, which could potentially lead to serious conflicts of law, and would seriously undermine the federally pre-emptive nature of such federal rules and regulations.

The proposed rules therefore should make clear that to the extent a state must investigate potential violations of applicable federal appraisal-related laws and enforce such laws, the state will rely upon the regulations and interpretations promulgated by the CFPB with respect to such laws and will not attempt to separately interpret such laws in a way that would interfere with fair nation-wide consistency. For example, if TILA permits an AMC to determine customary and reasonable appraiser compensation using a certain method, a state should be prohibited from interpreting TILA in a different manner (or imposing new requirements) that would prohibit the AMC from utilizing this method.

The consequence of conflicting interpretations of TILA between states or even within the same jurisdiction are higher appraisal costs for borrowers. The potential risk of conflicting interpretations over what a lender or AMC must pay an appraiser, for example, will result in the passing of that risk to consumers by way of higher fees.

c) Comment 3 – As part of the required supervision by state agencies under the proposed rules, states must ensure that AMCs include on their panels only state-licensed or state-certified appraisers. We propose that AMCs should be able to rely upon the national registry of state-licensed or –certified appraisers maintained by the ASC, as described in Section 1103 of FIRREA.

d) Comment 4 – Part of the supervision required by state agencies under the proposed rule requires AMCs to design reasonable processes to assure that AMCs select appraisers who are independent of the transaction and who are competent to perform the appraisal assignment. This is beyond the scope of AMCs to be able to assure independence.

   Only appraisers themselves are able to assure that they are independent, competent, and able to perform appraisals in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). In order to avoid placing an unreasonable burden on AMCs (who are already required to direct appraisers to perform appraisals in compliance with USPAP), we recommend permitting AMCs to rely upon appraisers' own assessments and attestations that they are independent and competent to perform appraisal assignments offered to them for consideration by AMCs.

7) Question 7 – Request for comment on the proposed approach to the appraisal review issue.

   a) No comment.

8) Question 8 – Request for comment on what barriers, if any may make it difficult for a state to implement the proposed AMC rules.

   a) Comment 1 – Adjustments in the definition of an appraisal company to include any entity providing appraisal management services and managing a panel of employee and/or independent contractors, as described above, should give states ample direction on developing appropriate regulations. As described below, however, we believe states should be given a sufficient opportunity to implement the proposed AMC rules in order to ensure the rules can be properly met.

9) Question 9 – Request for comment on what aspects of the rule will be challenging for states to implement within 36 months.

   a) Comment 1 – States may be unable to fully adopt the requirements of the proposed rule even in a 36-month timeframe, due to the interaction between the rules and the role of the ASC. For example, states will not be able to fully implement the proposed rules until the ASC establishes the AMC national registry. Additionally, it is likely that some states will have a difficult time implementing portions of the rules before the ASC issues clarifying regulations. We recommend that the Agencies modify the proposed rule so that states have 36 months to implement the rules, beginning once the ASC establishes the national registry and issues clarifying regulations.

10) Question 10 – Request for comments as to whether there are any barriers to a state collecting information on Federally regulated AMCs and submitting such information to the ASC.

a) Comment 1 – This will be burdensome for the states to implement, since the states currently do not have any process for the collection of this information from Federally regulated AMCs in place. Since the ASC itself must establish a reporting mechanism applicable to such Federally regulated AMCs, we recommend simply requiring that the ASC intake the information directly from Federally regulated AMCs, and share this information with the states.
b) Comment 2 – We note that with respect to Federally regulated AMCs, the proposed rule does not define or describe what it means for an AMC to be a subsidiary that is owned and controlled by a federally regulated financial institution. We recommend that the Agencies offer further guidance on this issue.

11) Question 11 – Request for comments on questions raised by differences between state law and the proposed rule.

a) Comment 1 – Several of these potential issues have already been addressed; for example, the inappropriateness of state agencies interpreting and enforcing federal regulations such as TILA.

b) Comment 2 – For purposes of determining when appraisers are or are not included on an appraisal panel, the proposed rule contemplates permitting each state to establish its own 12-month period (for example, April to April) for determining when an appraiser is no longer a member of an AMC's panel. This would be highly confusing, inefficient, and unwieldy for AMCs operating in multiple states, if each state imposes a different 12 month period. We recommend that the calendar year be required to be used in each state instead.

12) General Comments – The following are general comments on portions of the proposed rule not specifically included in one of the Agency questions.

a) Section 215(a) – This provision states that an AMC may not be registered by a state or included on the National Registry if it is owned, in whole or in part, directly or indirectly, by any person who has had an appraiser license or certification revoked, refused, denied, or the like. For an AMC that is itself a publically-traded company, or owned by a publicly-traded company or investment fund, it likely will be impossible to determine if an AMC is owned “in part” and “indirectly” by such a person.

The Agencies should clarify this requirement. Additionally, there is no similar requirement prohibiting the ownership of an appraisal firm by a person who has had an appraiser license or certification revoked, refused, denied, or the like, and the Agencies have not presented a reason as to why AMCs should be treated differently from appraisal firms in this respect. As noted above, the more that one class of entities performing appraisal management functions is treated differently than another class of entities performing those same functions, the greater the likelihood is that consumers ultimately will be harmed.

Finally, we urge the Agencies to reconsider the breadth of this proposed requirement. State appraisal boards typically have broad discretion to revoke, or even suspend, an appraiser license, and under the proposed rule, it would only take one state exercising such discretion to effectively terminate the ability of a person to be a whole or part owner of an AMC across the nation, even if another state normally would not revoke or suspend that person's appraiser license in a similar circumstance. This gives each state an inordinate amount of control over the ability of a person to own an AMC anywhere in the country, and we recommend that the Agencies reconsider this provision with these concerns in mind.

b) Section 215(b) – AMCs may be owned by corporate entities, for whom "good character" is impossible to determine and for whom background checks are inapplicable. The Agencies should clarify that this requirement applies only to natural persons.

REVAA again commends the agencies on their efforts to create this proposal, and their consideration of the foregoing comments, observations and suggestions. We would be pleased to address any questions the agencies may have as you consider these issues, and would welcome the opportunity to engage further with you as you complete your work toward implementation of a final rule.

Very truly yours,

Donald E. Kelly
Executive Director
Real Estate Valuation Advocacy Association

EXHIBIT 38

2011-2017 Louisiana Real Estate Appraisers Board

	2011	2012	2013	2014	2015-2016	2017
Banker	Gary Littlefield[1]	Gary Littlefield	Gary Littlefield	Gary Littlefield	James Purgerson[2]	James Purgerson
Banker	Heidi C. Lee[3]	Clay Lipscomb[4]	Clay Lipscomb	Clay Lipscomb	Clay Lipscomb	Clay Lipscomb
General Appraiser	Gayle Boudousquie[5]	Gayle Boudousquie	Gayle Boudousquie	Gayle Boudousquie	Gayle Boudousquie	Kara Platt[6]
General Appraiser	Michael Graham[7]	Michael Graham	Michael Graham	Michael Graham	Michael Graham	Margaret Young
General Appraiser	H. Dan Derbes	Wayne Pugh			Cheryl Bella[8]	Cheryl Bella
General Appraiser	Leonard Pauley, Jr.[9]	Leonard Pauley, Jr.	Leonard Pauley, Jr.	Leonard Pauley, Jr.	Leonard Pauley, Jr. Janis Bonura[11]	Rebecca Rothschild[10]
Residential Appraiser	Roland Hall	Roland Hall	Roland Hall	Roland Hall	Roland Hall	Janis Bonura
Residential Appraiser	Newton Landry	Newton Landry	Newton Landry	Newton Landry	Newton Landry	Terry Myers
Residential Appraiser	Tommie McMorris, Sr.	Tommie McMorris, Sr.	Tommie McMorris, Sr.	Tommie McMorris, Sr.	Tommie McMorris, Sr.	Seymon Hartzog
AMC Member (added in 2015 by AMC Act)					Timothy Hammett	Robert McKinnon

[1] Does not perform residential appraisals.
[2] Does not perform residential appraisals.
[3] Does not perform residential appraisals.
[4] Does not perform residential appraisals for covered transactions or Appraisal Management Companies.
[5] Does not perform residential appraisals.
[6] Does not perform residential appraisals.
[7] Does not perform residential appraisals for covered transactions or Appraisal Management Companies.
[8] Does not perform residential appraisals.
[9] Performs 80% commercial appraisals.
[10] Does not perform appraisals of covered transactions; occasionally appraises residential properties associated with eminent domain and rights of way acquisition.
[11] Janice Bonura replaced Leonard Pauley on the Board in mid-2015.

Notice of Electronic Service

I hereby certify that on February 26, 2018, I filed an electronic copy of the foregoing Respondent's Opposition to Complaint Counsel's Motion for Partial Summary Decision on Fourth Affirmative Defense, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on February 26, 2018, I served via E-Service an electronic copy of the foregoing Respondent's Opposition to Complaint Counsel's Motion for Partial Summary Decision on Fourth Affirmative Defense, upon:

Lisa Kopchik
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Complaint

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