

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

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

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December 12, 2017

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Affidavit of Clayton Lipscomb

Affidavit of Leonard E. Pauley

Affidavit of Kara Ann Platt

Affidavit of R. Wayne Pugh

Affidavit of Rebecca Rothschild

INTRODUCTION

To avert a recurrence of the housing market collapse of 2007-2008, the State of Louisiana amended its laws to require Appraisal Management Companies (“AMCs”) to retain qualified real estate appraisers to perform residential appraisals, and to pay for each appraisal a “customary and reasonable” (“C&R”) fee, as mandated by the Dodd-Frank Act.¹ The AMC Act empowers Respondent Louisiana Real Estate Appraisal Board (“LREAB”), *inter alia*, to register state-licensed AMCs and to promulgate and enforce regulations implementing the C&R fee mandate.

Respondent LREAB complied with that imperative. It proposed Rule 31101,² implementing largely verbatim the minimum requirements of Dodd-Frank and its Interim Final Rules. After three rounds of public comments and two public hearings, LREAB sent the proposed Rule and supporting report for oversight by the Louisiana Senate and House Commerce Committees. Having conducted hearings on the AMC Act the prior year, and finding further hearings unnecessary, those committees allowed Rule 31101 to take effect by the fastest means provided by Louisiana law.

LREAB does not set C&R fees; rather, AMCs do. LREAB enforces the C&R mandate by requiring AMCs, in response to appraiser complaints, to document their calculation of C&R fees under any of three methods in Rule 31101. In all but one of LREAB’s relatively few enforcement matters, LREAB either found an AMC’s documentation sufficient and closed the

¹ Appraisal Management Company Licensing and Regulation Act, La. R.S. 37:3415 (“AMC Act”); Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C. § 1639e(i), 12 U.S.C. § 3353(a).

² La. Adm. Code tit. 46, pt. LXVII, Chapter 311 “Compensation of Fee Appraisers,” § 31101, “General Provisions; Customary and Reasonable Fees; Presumptions of Compliance.”

investigation; or, if past efforts were deficient, accepted an AMC-proposed plan to prospectively comply with the C&R requirement.

Accordingly, LREAB is not a rate-setting board and this is not a rate-setting case. Complaint Counsel's reliance on rate-setting cases exposes the fundamental weakness of their Motion. Indeed, the Complaint alleges only that Louisiana's enforcement of the Dodd-Frank mandate "effectively" constitutes price-fixing. But any effect on appraisal prices is the direct result of Dodd-Frank and the AMC Act—not the implementation of those federal and state mandates by LREAB.³

LREAB denies Rule 31101 or its enforcement of the federal/state C&R mandate violated FTC Act Section 5. LREAB's Answer includes an affirmative defense that, as a matter of law and fact, LREAB's regulatory actions are immune from federal antitrust liability under the State action doctrine. The Motion for Partial Summary Decision disputes the State's entitlement to assert that defense, contending LREAB is controlled by "active market participants," and the authority exercised by Louisiana's State Legislature, Governor, and courts over LREAB's promulgation and enforcement of the C&R fee mandate falls short of Complaint Counsel's view of "active supervision."

The Motion should be denied merely based on the existence of disputed material facts, as set forth in LREAB's Response to Complaint Counsel's Statement of Undisputed Material Facts, and the Affidavits of Board Members and its Executive Director Bruce Unangst and exhibits thereto; and as premature given that discovery hardly has begun. Notwithstanding, the Motion should be denied for three additional reasons.

³ Contrast with *N. Carolina State Bd. of Dental Examiners v. F.T.C.*, 135 S. Ct. 1101, 1108 (2015), in which that board received no similarly-specific legislative authority.

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First, the Complaint is moot. With the express intent to remove this cloud of litigation and return LREAB to its important business of “faithfully executing mandates under the Dodd-Frank Act and Louisiana law,” the Governor of Louisiana issued an Executive Order adding new layers of active supervision to previously-existing requirements. The State then adopted a replacement for Rule 31101 under this newly-mandated supervision regime.⁴ The Governor further required all LREAB enforcement actions to be reviewed by an Administrative Law Judge in addition to state court review. And, LREAB irreversibly eliminated any potential lingering effects of past enforcement actions. While none of these measures was necessary before, there can be no dispute as to active supervision now: no further Section 5 violation is possible, and none of the relief sought in the Complaint can be granted.⁵

Second, prior State supervision of the LREAB satisfied “active supervision.” Legislative committees and the Governor had authority to approve, reject, or amend Prior Rule 31101, and approved it in accordance with State law. Any dispute over LREAB’s enforcement of that Rule was appealable as a matter of right to State court with traditional appellate authority to affirm, reverse, or remand based on errors of law, preponderance of evidence, or abuse of discretion.

Third, LREAB is not controlled by active market participants. By law, LREAB members represent distinct market interests with no single interest constituting a majority. Residential appraisers affected by Rule 31101 were a minority of LREAB members. Case law requires more than just a hypothetical or generic conflict of interest by board members. Properly focusing the inquiry on the actual interests in the market regulated by the Rule, only a minority of members

⁴ For clarity, LREAB refers to the rule promulgated in 2013 as Prior Rule 31101, and the rule adopted November 20, 2017 as Replacement Rule 31101.

⁵ For these reasons, LREAB’s separate Motion to Dismiss should be granted.

could have actively participated in that market, thus rendering State active supervision over Prior Rule 31101 unnecessary.

Wherefore, for the reasons set forth fully below, the Motion for Partial Summary Decision should be denied. Oral argument is requested.

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. The Legislature tasked the Board to license and regulate real estate appraisers and AMCs, and to bring the State into compliance with the minimum requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 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 (“Appraisers Law”) prescribes professionally and geographically diverse representation for the ten-member Board: Louisiana banker associations nominate two members; at least one member represents a Louisiana-certified AMC; at least four members must be licensed to perform commercial appraisals (“general” appraisers); at least two members shall be licensed to do only residential appraisals. *Id.* One member comes from each of six congressional districts, and four members serve at large. *Id.* Thus, by law, individuals in the relevant market for residential appraisals affected by Rule 31101 comprise a minority of LREAB. *Id.*; Unangst Aff. ¶¶7-10. In fact, the majority of LREAB’s

general appraiser members perform no residential appraisals at all, and none performs residential appraisals subject to Rule 31101 as a significant activity.⁶

The Executive Director of the Louisiana Real Estate Commission (“LREC”) serves as Executive Director of the LREAB. La. R.S. 37:1435(G); La. R.S. 37:3994(E). Authority to set the salary of the Executive Director and to remove the Executive Director for cause rests solely with LREC, not LREAB. La. R.S. 37:1435(G). Bruce Unangst, LREAB’s Executive Director at all times relevant to the Motion, is not a real estate appraiser. Unangst Aff. ¶¶2-5.

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. Dodd-Frank requires that lenders and AMCs 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). The Appraisal Subcommittee of the Federal Financial Institutions Examination Council evaluates state licensing boards’ adherence to these mandates, and has authority to impose sanctions on state boards that fail to do so. 12 U.S.C. § 3347(a).

⁶ See Affidavits of Cheryl Bella (no residential appraisals); Gayle Boudousquie (no residential appraisals); Michael Graham (95% commercial appraisals); Heidi Lee (no appraisals); Clayton Lipscomb (no appraisals); Kara Ann Platt (no residential appraisals); R. Wayne Pugh (no residential appraisals); Rebecca Rothschild (no residential appraisals). Several members only review appraisals on behalf of lenders, which implicates no interest in the appraisal fee. The occasional Department of Veterans Affairs (“VA”) loan appraisals performed by another board member (Aff. of Leonard Pauley) are assigned by the VA, and do not involve payments by an AMC. See, *Lenders Handbook*, VA Pamphlet 26-7, Ch. 15 “Lender Appraisal Processing Program,” https://www.benefits.va.gov/WARMS/pam26_7.asp.

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 of recent residential appraisal fees (excluding fees paid by AMCs). 12 C.F.R. 226.42(f)(3).

In 2015, federal banking agencies jointly issued rules requiring any state that regulates AMCs to require any AMC not regulated by a federal banking agency to “[e]stablish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with” Dodd-Frank’s appraisal independence requirements, including the C&R fee requirement. *See* 12 U.S.C. § 3353(a); 12 C.F.R. 34.213(b)(5), referring to 15 U.S.C. § 1639e(i). Any state that regulates AMCs must maintain an AMC licensing program within the state appraiser licensing agency, with mechanisms to discipline AMCs for violations of appraisal-related laws and regulations. 12 C.F.R. 34.213(a)(6).

2. Louisiana’s AMC Act, and State supervision over promulgation of Rule 31101

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

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(3) adopt rules and regulations necessary for the enforcement of the act. La. R.S. 37:3415. In accordance with 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.” La. R.S. 37:3415.15(A).⁷ The amendments were supported by realtors, lenders, appraisers, and AMCs.⁸ 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. 37:3415.20.

To comply with the mandates of Dodd-Frank and the Louisiana AMC Act, in 2013 LREAB promulgated Rule 31101, which requires that AMCs “shall compensate fee appraisers at a rate that is customary and reasonable.” LREAB published Notices of Intent requesting written comments to its initial proposed rule. Unangst Aff. ¶¶25-27.⁹ Each Notice of Intent published included a Fiscal and Economic Impact Statement reflecting the judgment of LREAB and the Louisiana Legislative Fiscal Office that the proposed rule would have no impact on competition or employment. *Id.* ¶¶28-30. Based on stakeholder comments to the first draft Rule, LREAB withdrew its initial proposal and published a new Notice and revised rule, and again requested written stakeholder comments. *Id.* ¶26. In response to comments, LREAB again amended its

⁷ In 2016, the Legislature amended the last clause to read “consistent with the requirements of 15 U.S.C. § 1639(e) and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222.”

⁸ Unangst Aff. ¶23.

⁹ Citations to the Unangst Affidavit incorporate the exhibits cited in the referenced paragraphs.

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draft rule, and scheduled a hearing to receive additional public input. *Id.* ¶31. At that hearing, most stakeholder representatives supported adoption of the rule as written. *Id.* AMCs expressed concerns with the proposed language, but not with LREAB’s obligation to enforce the C&R fee mandate. *Id.* Having considered all comments, LREAB adopted this third iteration of the rule. *Id.* ¶32.

The Louisiana Administrative Procedures Act (“APA”) requires House and Senate Commerce Committee oversight over the Board, with authority to hold hearings on a proposed LREAB 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) (2013) (repealed). On September 26, 2013, as prescribed by the APA, LREAB submitted to 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. ¶33. 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 majority of the Senate Commerce Committee voted for the rule to take effect without a hearing. *Id.* ¶34. The House Commerce Committee oversight subcommittee informed LREAB that it required no additional information and deemed a hearing unnecessary. *Id.* The Louisiana Register published Rule 31101 on November 20, 2013, whereupon the rule became final. *Id.* ¶35. The Governor permitted the proposed regulation to take effect. *Id.* ¶36; *see* La. R.S. 49:970.

Rule 31101 implements the AMC Act requirements 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

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recent rates in the relevant geographical area, and (2) geographically relevant and objective third-party information, including fee schedules and studies. Unangst Aff. ¶37; 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.* ¶37. Second, in accordance with federal requirements, 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. ¶46; Rule 31101(B)-(C); 12 C.F.R. 34.213(a) and (b).

To help AMCs comply with Rule 31101, the Board funded an objective independent study by Southeastern Louisiana University Business Research Center of recent rates paid for residential appraisers by lenders in the relevant geographic markets (“SLU Survey”).¹⁰ Unangst Aff. ¶¶50-52. LREAB published the SLU Survey on its website with a “Notice to Appraisal Management Companies” that the SLU Survey “is provided as a courtesy to all licensees; however, its use is not mandatory.” Unangst Aff. ¶53. LREAB has never required any AMC to use the SLU Survey. Unangst ¶54.

3. LREAB Enforcement of Rule 31101

LREAB does not set rates for residential appraisal services. Unangst Aff. ¶41. LREAB neither requires an AMC to pay fees at a particular level, nor finds violations based on a particular fee amount. *Id.* ¶¶42-43. LREAB investigates appraiser complaints regarding C&R fees by determining whether the AMC complied with the methods set forth in Rule 31101 of

¹⁰ The VA publishes a fee schedule that AMCs could use for presumptive compliance under Rule 31101. *See* Interim Final Rules, 75 Fed. Reg. 66556 (2010). However, the VA schedule rates for Louisiana exceed the comparable rates shown in the SLU Survey. Unangst Aff. ¶49.

determining C&R fees. *Id.* ¶¶39, 44, 67-69. LREAB requires the AMC to produce documentation demonstrating the method used to comply with Rule 31101. *Id.* ¶¶37-46.¹¹ In the few investigations LREAB conducted—

- Investigations were closed based on proper reliance on use of the Rule 31101 six-factor presumption or the all-facts-and-circumstances test. Unangst Aff. ¶¶70-75;
- [REDACTED]
[REDACTED] *Id.* ¶76. [REDACTED]
[REDACTED]
[REDACTED]. *Id.* ¶¶55-59, 76-81, 94. [REDACTED]
[REDACTED]
[REDACTED] *Id.* ¶¶54-56, 65, 94-97.
- [REDACTED] [REDACTED] [REDACTED]
[REDACTED] *Id.*
¶¶101-109. [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] *Id.* ¶¶111-112.

LREAB never precluded any AMC from using the six-factor test, a different objective survey or schedule, or the all-facts-and-circumstances test. *Id.* ¶¶37, 59. LREAB has not alleged a violation of Rule 31101 where an AMC adjusted fees from a survey based on documented factors and circumstances relevant to a particular appraisal. *Id.* ¶¶37-39, 96.

¹¹ Four investigations pending at the time of the Complaint were closed on August 17, 2017 upon a Board finding that the documentation supported the payment of C&R fees. *Id.* ¶¶120-121.

Every LREAB order is appealable to a Louisiana state court. La. Admin. Code tit. 46, §30903. On appeal, APA standards of review apply whereby the court reviews questions of law *de novo*, factual findings by preponderance of the evidence, and discretionary acts as arbitrary, capricious, or abuse of discretion. La. R.S. 49:964; Unangst Aff. ¶¶115-116.

Upon receiving the FTC Civil Investigative Demand, LREAB refrained from further enforcement of Rule 31101, and took no action with respect to any pending complaint until August 2017. Unangst Aff. ¶¶117-122.

C. 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 “requiring AMCs to match or exceed” appraisal rates listed in an objective independent study conducted at the Board’s expense by the SLU Survey. Complaint ¶¶4-5.

LREAB answered the Complaint on June 19, 2017, denying these factual averments and allegations of any Section 5 violation. Answer at 1. The Board asserted State action immunity as an affirmative defense: “LREAB is immune from federal antitrust liability under *Parker v. Brown*, 317 U.S. 341 (1943).” *Id.* at 12 ¶9.¹²

¹² LREAB further asserted the Complaint failed to adequately allege control by active market participants, by failing to allege the proper relevant market in which the Board members allegedly actively participate. *Id.* ¶3; *see infra* at 29-30.

STANDARD FOR SUMMARY DECISION

Summary decision may be granted only where there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law. FTC Rule 3.24; Fed. R. Civ. P. 56. Only facts that might affect the outcome under the governing substantive law are “material.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). 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. *Id.* At summary decision, the judge may not weigh the evidence and determine the truth of the matter, but only determine whether a genuine issue remains for trial. *Id.* at 249. 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. The Motion for Partial Summary Decision Should Be Denied as Moot.

The Commission should deny the Motion because all Contemplated Relief requested in the Complaint has been rendered moot. To enable LREAB to resume its statutory obligations, and in an effort to satisfy Commission concerns over the Board’s right to regulate, the State—

- required and exercised additional active supervision over re-promulgation of Rule 31101,
- established prospective active supervision over all enforcement actions of LREAB, and
- eliminated any further impact of any past LREAB actions on AMCs and the residential appraisal market.¹³

¹³ On November 27, LREAB moved to dismiss the Complaint on this basis. Although the facts with respect to Prior Rule 31101 establish state action immunity, recent actions of the Governor and the Board – to promote Louisiana’s “policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs for such

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All requested relief for LREAB’s conduct under Prior Rule 31101 has been achieved through LREAB’s actions, and LREAB’s promulgation and enforcement of Replacement Rule 31101 are immune from federal antitrust enforcement under the state action doctrine. There remains no conduct to remedy by an Order of the Commission, and the Motion should be denied for mootness.

A case is moot when (1) interim relief or events completely and irrevocably eradicate the effects of the alleged violation and, (2) there is no reasonable expectation that the alleged violation will recur. *United States v. W.T. Grant Co.*, 345 U.S. 629, 632-33 (1953); *Cty. of L.A. v. Davis*, 440 U.S. 625, 631 (1979). Mootness occurs “when a court cannot grant effective relief.” *Burlington N. R.R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1244 (9th Cir. 1991) (citation omitted); *see also Mills v. Green*, 159 U.S. 651, 653 (1895) (“an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment”).

Out of concern that “federal antitrust law challenges to state board actions affecting prices [i.e., the Complaint] ... may prevent the LREAB from faithfully executing mandates under the Dodd-Frank Act and Louisiana law,” Louisiana Governor John Bel Edwards issued Executive Order 17-16, entitled *Supervision of the Louisiana Real Estate Appraisers Board Regulation of Appraisal Management Companies*, on July 11, 2017. Unangst Aff. ¶118. Pursuant to the Executive Order, first, the Louisiana Commissioner of Administration or his designee (“COA”) reviewed, and adopted, a newly-promulgated Rule 31101, and the rule became effective November 20, 2017. *Id.* ¶¶119, 125. Second, all Board enforcement of its C&R

an appraisal are customary and reasonable” – reinforce the State’s *Parker* immunity with respect to promulgation and enforcement of Replacement Rule 31101. *See* Unangst Aff. ¶¶118-137.

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rule, including initiation, settlement, or hearing determinations, must be reviewed and approved, modified, or rejected, by an independent Administrative Law Judge (“ALJ”) from the Louisiana Division of Administrative Law (“DAL”). Unangst Aff. ¶¶119-121. The State’s active supervision over promulgation and enforcement of Rule 31101 advances clearly articulated State policies under the AMC Act to displace competition in the market for residential real estate appraisal fees, and therefore immunizes the Board’s actions from further federal antitrust scrutiny. Unangst Aff. ¶¶118-119, 122-123.¹⁴ Accordingly, there is no further conduct for the Commission to prevent, or from which the Board must cease and desist, under the Complaint.¹⁵ *See Campbell v. Greisberger*, 80 F.3d 703 (2d Cir. 1996) (affirming district court’s decision to dismiss case after a challenged question on the bar application was removed by the New York Bar); *see also Mosley v. Hairston*, 920 F.2d 409, 414-15 (6th Cir. 1990) (holding case moot where a proposed federal regulation established procedures designed to address issues raised in the complaint).

Although LREAB’s enforcement of Prior Rule 31101 did not violate Section 5, no remedy remains for past Board conduct either. LREAB eliminated potential current and prospective effects of its past promulgation and enforcement of its prior C&R rule by: repealing Prior Rule 31101 and precluding any further enforcement thereunder;¹⁶ terminating or vacating any pending investigative actions; precluding Board use of past AMC conduct or complaints as

¹⁴ Complaint Counsel do not contest the State’s clearly articulated intent to regulate competition under the AMC Law and Rule 31101 for purposes of its Motion.

¹⁵ The Notice of Contemplated Relief seeks an order requiring the Board to “rescind and to cease and desist from enforcing Rule 31101, any order based on an alleged violation of Rule 31101, and any agreement with an AMC or other person resolving an alleged violation of Rule 31101.” Complaint at 10.

¹⁶ Under Louisiana law, repeal occurs when the replacement rule takes effect. La. R.S. 49:953.

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evidence in future investigative hearings; and removing and committing to no longer fund the objective independent SLU Survey that the Complaint alleged “effectively” set prices. Unangst Aff. ¶¶124, 132-145. Thus, any past conduct alleged to violate Section 5 has terminated and cannot recur. All Contemplated Relief as to such past conduct has been obviated or achieved.

There is no reasonable expectation that the alleged violation can recur. The Governor’s Executive Order, the actions of the COA, and the obligations of the DAL establish a new legal framework to reinforce active supervision over LREAB’s enforcement of compliance with the C&R fee requirement. Because this active supervision regime, along with the provisions of La. R.S. 37:3415.15(A), satisfy both prongs of the *Midcal* test,¹⁷ future LREAB conduct constitutes State action in accordance with the sovereign policies of Louisiana. Thus, LREAB’s promulgation and enforcement of Replacement Rule 31101 cannot violate federal antitrust law; the alleged violations cannot recur; and none of the relief sought in the Complaint pertains. *See Native Vill. of Noatak v. Blatchford*, 38 F.3d 1505, 1509 (9th Cir. 1994) (finding mootness where “the statute which gave rise to the allegedly discriminatory state actions was repealed”). That Replacement Rule 31101 contains the same language as Prior Rule 31101 is irrelevant. Replacement Rule 31101 was promulgated and will be enforced under a substantively different supervisory regime.¹⁸

¹⁷ *Cal. Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105-06 (1980) (requiring non-sovereign state boards to meet a two-pronged test: a clear and affirmative state policy to displace competition, and active supervision by the State).

¹⁸ *Cf. Citizens for Responsible Gov’t State PAC v. Davidson*, 236 F.3d 1174, 1182 (10th Cir. 2000) (finding alleged conduct could not recur because differences between the prior and current statutes were “fundamental”); *see also Ayyoubi v. Holder*, 712 F.3d 387, 392 (8th Cir. 2013) (dismissing case on mootness grounds because the “agency’s regulations have changed materially” since the lawsuit was filed); *see also Princeton Univ. v. Schmid*, 455 U.S. 100, 102-03 (1982) (finding mootness where Princeton “amended its regulations”).

Similarly, the “voluntary cessation” exception to the mootness doctrine does not apply. LREAB compliance with the Executive Order and promulgation and enforcement of Replacement Rule 31101 is not “voluntary.” It is a legally-mandated change ordered by the Governor in his sovereign capacity that binds LREAB (as a board within the Office of the Governor). Although a *private* party’s voluntary cessation of an allegedly-unlawful activity will not necessarily moot a case, a government entity’s alteration or cessation of administrative policies “has been treated with more solicitude by the courts than similar action by private parties,” and “such self-correction provides a secure foundation for a dismissal based on mootness so long as it appears genuine.”¹⁹ *Mosley v. Hairston*, 920 F.2d at 415 (citations omitted). A government actor’s “change of policy presents a special circumstance in the world of mootness” and “unlike in the case of a private party, we presume the government is acting in good faith.” *Am. Cargo Transp., Inc. v. United States*, 625 F.3d 1176, 1180 (9th Cir. 2010).²⁰ See also *Rio Grande Silvery Minnow*, 601 F.3d at 1117 (indicating in the “governmental context” there must be “clear showings of reluctant submission... and a desire to return to the old ways.”).

The two cases in which the Commission has denied motions to dismiss for mootness where a state board abandoned the challenged regulation during litigation are inapposite. In *In*

¹⁹ Voluntary cessation turns on two factors: (1) whether the defendant can return to its “old ways,” and, (2) whether it is likely the defendant will do so. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 92 (2013) (citation omitted); *Jews for Jesus v. Hillsborough Cty. Aviation Auth.*, 162 F.3d 627, 629 (11th Cir. 1998) (case was moot because the airport instituted a new policy and did not return to its old ways).

²⁰ See also, *Brown v. Buhman*, 822 F.3d 1151, 1167 (10th Cir. 2016) (“the burden [to show mootness despite voluntary cessation] is not insurmountable, especially in the context of government enforcement”); *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 981 (6th Cir. 2012) (change to an ordinance mooted a case because it “constitutes an entirely new statutory scheme”); *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1111 (10th Cir. 2010) (citation omitted) (finding mootness because the establishment of a biological opinion with a “new regulatory framework” superseded the prior challenged regulations); *Bahn Miller v. Derwinski*, 923 F.2d 1085, 1089 (4th Cir. 1991) (finding certain issues moot after the Department of Veteran Affairs issued a change in administrative policy).

the Matter of Mass. Bd. Of Registration in Optometry, 110 F.T.C. 549 (1988), Massachusetts state agencies already had deemed that board's actions unlawful, and required that board to undo its regulations; nevertheless, that board continued its "old ways." In *In the Matter of S.C. State Bd. of Dentistry*, the Commission deferred the question of mootness because it was factually unclear, despite the change in regulations, whether the board could resume the challenged conduct. 138 F.T.C. 229 (2004). Here, by contrast, the Governor of Louisiana has mandated additional active supervision over the Board's promulgation and enforcement of C&R appraisal fees to ensure that the Board carries out the requirements of Dodd-Frank and Louisiana law; LREAB has complied with the Executive Order requirements; and LREAB terminated any future effects of past enforcement. LREAB *cannot* return to its old ways, and therefore, the voluntary exception to mootness does not pertain.²¹

II. The State of Louisiana Actively Supervised LREAB's Promulgation and Enforcement of Prior Rule 31101.

As prescribed by Louisiana law, the State Executive, Legislative, and Judicial branches exercised active supervision over the pre-Complaint regulatory actions of LREAB. In 2012, the Louisiana legislature passed, and the Governor signed, amendments to the AMC Act regulating competition by requiring AMCs to pay C&R fees for residential appraisers, as mandated by Dodd-Frank. The AMC Act empowered LREAB to promulgate and enforce regulations implementing the C&R fee requirement. In compliance with the APA, the Senate and House

²¹ Complaint Counsel cannot rely on the other exception to mootness, that the alleged conduct is capable of repetition yet evading review. That exception to mootness applies only in "exceptional situations" in which two factors are simultaneously present: "(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 481 (1990) (quoting *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (*per curiam*)). Given that the Board has promulgated a Replacement Rule 31101 that is protected by the state action doctrine, neither of those factors is present in this case.

Commerce Committee legislative oversight subcommittees and the Governor supervised LREAB's promulgation of Prior Rule 31101. Unangst Aff. ¶¶33-36. LREAB's enforcement decisions are reviewable by a Louisiana state court under the APA. This multiple-layered legislative, executive, and judicial review satisfy the requirements for active supervision under *Midcal* and *N.C. Dental*.

A. Standards for Active Supervision

Active supervision “requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.” *Patrick v. Burget*, 486 U.S. 94, 101 (1988); *accord N.C. Dental*, 135 S. Ct. at 1112. “Active supervision need not entail day-to-day involvement in an agency’s operations or micromanagement of its every decision. Rather, the question is whether the State’s review mechanisms provide ‘realistic assurance’ that a nonsovereign actor’s anticompetitive conduct ‘promotes state policy, rather than merely the party’s individual interests.’” *N.C. Dental* at 1116 (internal citations omitted). *Accord, Destec Energy, Inc. v. Southern California Gas Co.*, 5 F. Supp. 2d 433, 456 (S.D. Tex. 1997) (regulatory authority need not retain “unfettered discretion continually to modify approved contracts” to satisfy active supervision).

The adequacy of state supervision over particular conduct depends on an evaluation of all pertinent circumstances. *N.C. Dental*, 135 S. Ct. at 1116-17. Active supervision exists where the supervisor: (1) reviews the substance of the allegedly anticompetitive decision, not merely the procedures followed to produce it; (2) has power to veto or modify particular decisions to ensure they accord with state policy; and (3) is not itself an active market participant. *N.C. Dental*, 135 S. Ct. at 1116-17, *citing Patrick*, 486 U.S. at 100-101.

B. Louisiana’s System of Legislative and Executive Oversight Over Promulgation of Prior Rule 31101 Met Federal Standards for Active Supervision.

Louisiana’s supervisory regime for Prior Rule 31101 met all active supervision criteria. Legislative and Executive oversight occurred in accordance with Louisiana law in the promulgation of Prior Rule 31101. Unangst Aff. ¶¶33-36. The Louisiana House and Senate Commerce Committees reviewed the substance of the LREAB’s decision, not just procedural sufficiency leading to adoption. *Id.*; La. R.S. 49:968(C); *N.C. Dental*, 135 S. Ct. at 1116. Each Committee had authority to veto or modify the proposed Rule to accord with state policy and the AMC Act. Both Committees decided to allow Prior Rule 31101 to become effective without delay or further amendment. Unangst Aff. ¶34; La. R.S. 49:968(D)-(F).

It was hardly surprising that neither Committee deemed another hearing necessary. The previous year, Senate and House Commerce Committees held hearings that considered Board and industry comments, and passed the AMC Act amendments to incorporate the C&R fee mandate. Unangst Aff ¶23; La. R.S. 37:3415.15, 37:3415.19. The Legislature authorized LREAB to adopt rules and regulations necessary for the enforcement of the C&R mandate. La. R.S. 37:3415.21. Each Committee had before it for consideration the requisite information relating to the Rule’s promulgation as prescribed by Louisiana law. Unangst Aff. ¶33. And, understanding that under Louisiana law a hearing would delay from coming into force any rule they supported and saw no need to amend, each Committee decided—with the Senate Committee voting 6-3—a hearing was unnecessary before allowing the Rule to proceed. Unangst Aff. ¶34; La. R.S. 49:968(D)-(F). The Governor then allowed prior Rule 31101 to proceed. Unangst Aff. ¶36; La. R.S. 49:970(A). Thus, each Committee and the Governor possessed and exercised their

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respective legislative and executive authority under Louisiana law, and deemed it proper for Prior Rule 31101 promptly to take effect.²² Those decisions are no less supervisory because they occurred without a hearing the Committees considered unnecessary. To hold otherwise would deprive the State of its ability to allow regulations to take effect in the fastest manner provided by Louisiana law.

This LREAB oversight regime readily can be distinguished from cases where the FTC found supervision absent or deficient. “[U]ndisputed facts showed that there was no such supervision” in *In the Matter of the North Carolina Bd. of Dental Examiners*, 2011 F.T.C. LEXIS 290, *17 (2011). In *In the Matter of Kentucky Household Goods Carriers Ass’n, Inc.*, the supervisor had “no formula or methodology for determining whether the Kentucky Association’s collective rates comply with statutory standards.” 139 F.T.C. 404, 422 (2005). Here, the Louisiana legislative committees recently had passed the AMC Act amendments embodying the C&R fee mandate, reviewed and considered the prescribed record, and determined to allow Prior Rule 31101 to come promptly into force. Whereas Kentucky’s supervisory program lacked “procedural elements” such as “public input, hearings, and written decisions – that courts have found to be important indicators of active supervision,”²³ here the Prior Rule received multiple rounds of written and oral public comment over the course of a year, prior to oversight by the Legislative subcommittees and the Governor.

²² Contrast Louisiana’s exercise of its prescribed review authority with the “mere potential for supervision” in other cases. In *Ticor*, a rate-setting case, certain states at most checked mathematical accuracy of rate calculations, or were provided oversight information years after the rates took effect. *FTC v. Ticor*, 504 U.S. 621, 638 (1992). And in *324 Liquor Corp. v. Duffy*, the Court held the potential for periodic legislative reexamination of a law did not satisfy active supervision. 479 U.S. 336, 345 n.7 (1987). Here, before the Rule could become effective, the Louisiana legislative committees reviewed the record and determined whether to adopt, reject, or revise Prior Rule 31101.

²³ *Kentucky Household*, 139 F.T.C. at 426.

The Motion’s reliance on two rate-setting cases (Complaint Counsel Memorandum (“CC Mem.”) at 14-15) is misplaced. The boards in *Ticor* and *Kentucky Household Goods Carriers* established the rates to be charged in state title insurance and moving services markets, respectively.²⁴ By contrast, Prior Rule 31101 does not establish rates. AMCs set their own rates under a statutory requirement to compensate residential appraisers at C&R fees. Prior Rule 31101 only reiterates the federally-prescribed methods by which AMCs can demonstrate presumptive or actual compliance with that requirement, and requires AMCs to maintain records showing how their rates were derived. *Id.*; Unangst Aff. ¶¶37. LREAB enforced Prior Rule 31101 by requiring AMCs to produce evidence documenting use of one or more of those methods of compliance. Unangst Aff. ¶¶39, 46.²⁵ Whether compliance with the Rule resulted in payment of any particular fee was immaterial to LREAB. *Id.* ¶¶42-43.²⁶

C. Louisiana’s System of Enforcement of Prior Rule 31101 Met Federal Standards for Active Supervision.

LREAB enforcement of Prior Rule 31101 also met the standards for active supervision. Under the APA, all LREAB determinations of violations under Prior Rule 31101 are

²⁴ *Ticor*, 504 U.S. 621; *In the Matter of Kentucky Household Goods Carriers Ass’n, Inc.*, 139 F.T.C. 404.

²⁵ Because Prior Rule 31101 enforced compliance with the AMC Act and did not establish rates, it had no economic impact on the market independent of the economic effects caused by the Dodd-Frank and AMC Act C&R fee mandate. Thus, unlike the price-setting regimes reviewed in *Ticor* or *Kentucky Household Goods Carriers*, see CC Mem. at 14 and 16 n.13, active supervision over Rule 31101 did not require collection of proprietary AMC and lender data concerning residential appraisal rates or any assessment of AMC costs, revenues, or profit margins.

²⁶ In that respect, the facts readily refute and render implausible the Complaint’s contention that LREAB “effectively” sets prices by allowing AMCs to presumptively comply using the SLU Survey, as permitted by federal rules and Rule 31101. Where compliance could not be demonstrated, LREAB afforded that AMC the opportunity to submit a plan for prospective compliance. Unangst Aff. ¶¶79-81. The choice of any AMC to use the SLU Survey was theirs, not LREAB’s; and LREAB has found compliance by AMCs using other surveys and other methods. Unangst Aff. ¶¶54-59, 70-76, 80, 94.

Unangst Aff. ¶¶103-105, 112.

independently reviewable by the state court. All questions of law are reviewed *de novo*. Factfinding is reviewed for a preponderance of the evidence. Deference is given only to LREAB's determinations of witness credibility, and LREAB's discretionary decisions may be reversed if contrary to State policies and procedures (*i.e.*, arbitrary, capricious, or an abuse of discretion). La. R.S. 49:964(G). Hence, the state court has full authority to affirm, reverse, or remand any LREAB decisions; to interpret the AMC Act and Rule 31101; to determine whether LREAB actions comport with State policy to adopt and enforce the C&R mandate as embodied in the AMC Act; to determine whether any violation of Rule 31101 occurred; and to assess the propriety of the recommended remedy. La. R.S. 49:964(G). Further, in evaluating whether an AMC properly relied on the Rule 31101(A)(1) presumption of compliance, the State court necessarily would evaluate as a matter of law and fact whether any schedule, study, or survey meets the qualifications for "objective third-party information."

The Supreme Court has not precluded use of judicial review as active supervision. *See Patrick v. Burget*, 486 U.S. at 103-104. Notwithstanding, the APA review is far more comprehensive than the review at issue in *Patrick v. Burget*, where the state court exercised limited supervision over procedures, not the merits. *Id.* at 103-105; *see Ticor*, 504 U.S. at 638-639.

Moreover, there is nothing "contingent" about judicial supervision. CC Mem. at 17 n.14. Any AMC may invoke its right to judicial review of LREAB actions to resolve disputes over enforcement or unacceptable settlement terms. Conversely, there is no requirement for active supervision over LREAB's authority to accept voluntary settlements – particularly since the terms of every settlement entered into by LREAB were proposed by the AMC, not LREAB. *See*

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Unangst Aff. ¶¶80. Where a settlement is voluntary, there is no aggrieved party, no differences to resolve, and no reason for supervision. Indeed, AMCs that proposed to use the SLU Survey made a rational business decision to temporarily comply using a less expensive alternative method. *Id.* ¶¶53-59. Where any AMC desires to appeal an adverse finding, the broad scope of APA review assures a full assessment of the law, the preponderance of the evidence, and the exercise of LREAB discretion.²⁷ Moreover, it is factually inaccurate to contend no such judicial supervision has occurred. [REDACTED]

Finally, if LREAB were to contravene State policies, the State could exercise its ultimate supervisory authority. The Governor has authority to remove and replace any LREAB member. La. R.S. 37:3394(A), (D). Similarly, LREC has authority to remove and replace LREAB's Executive Director. La. R.S. 37:1435(G).²⁸

* * *

The State of Louisiana therefore actively supervised promulgation and enforcement of the C&R fee rule. By implementing Dodd-Frank in the AMC Act, the State Legislature clearly articulated its policy that residential real estate appraisers be paid C&R fees, despite any foreseeable consequences such a policy might have on competition. The Legislature required LREAB to enforce the AMC Act and to promulgate regulations over compliance and enforcement. The Legislature and Governor exercised their supervisory review authority over

²⁷ Unangst Aff. ¶¶ 115-116. Complaint Counsel assumes, without proof, that AMCs lack incentives to challenge LREAB findings that might benefit other AMCs. CC Mem. at 17 n.14. That is simply not the case. Enforcement actions under Rule 31101 are AMC-specific, *i.e.*, whether that AMC properly could demonstrate how its fees met the AMC Act C&R standards.

²⁸ See also La. R.S. 37:1432(E) (Governor's authority to remove any LREC member for cause).

LREAB promulgation of Prior Rule 31101, and allowed the Rule to take prompt effect. Any contested enforcement action by LREAB is appealable, with a substantive review of the law and facts. This is precisely the type of state-sanctioned, closely-supervised conduct that *Parker*, *Midcal*, and *N.C. Dental* protect from antitrust scrutiny. LREAB's regulatory activities under this regime and Prior Rule 31101 therefore are immune from federal antitrust laws.

III. The LREAB Boards that Promulgated and Enforced Prior Rule 31101 Were Not Controlled by Active Market Participants, Therefore Summary Decision Should be Denied.

At all times relevant to the Complaint, LREAB never was controlled by active participants in the relevant market, and did not need active supervision to invoke State action immunity over Rule 31101. Active supervision over a state licensing board is required only if that board is controlled by active market participants. *N.C. Dental*, 135 S. Ct. at 1112. This rule provides “realistic assurance” that a board as a whole will act in the governmental interests of the State rather than to further the interests of its individual members. *Id.*

The Motion misconstrues facts relevant to each part of the inquiry. Louisiana law establishing LREAB composition prescribed different member categories from distinct relevant industry stakeholders, and assured no single category had a controlling majority. *Unangst Aff.* ¶¶6-10, 16. Second, the relevant market for purposes of Rule 31101 (and the Motion) is “covered transactions” – residential mortgage appraisals – and residential appraisers by law comprise a minority of LREAB membership. Third, only active residential appraiser members of LREAB would be affected by Rule 31101. The majority of members (*e.g.*, from banking institutions and general appraisers) had no affected interest. *Unangst Aff.* ¶¶8, 14.

Finally, fact-dependent questions such as market definition and active participation should not be resolved on summary decision, particularly where discovery has hardly begun. *See infra* at 31.

A. The Louisiana Legislature Established the Composition of the Board to Preclude Control by Any Single Interest Group, and Determined General Appraisers and Residential Appraisers to Have Distinct Interests.

The Appraisers Law requires the Governor to appoint members in different categories reflecting *different* professional expertise and interests. Unangst Aff. ¶¶7-10; La. R.S. 37:3394. No one category comprises a majority of the membership. Unangst Aff. ¶16.

The Appraisers Law recognizes “general appraisers” and “residential appraisers” as distinct categories. La. R.S. 37:3392(7) and (13). “General appraisers” are higher-skilled appraisers licensed to do complex appraisals of industrial and office buildings, commercial establishments, hotels, government buildings, hospitals, and other non-residential structures and properties. Fees for such complex appraisal work are many times greater than fees for appraisals that can be performed by residential appraisers. Unangst Aff. ¶¶11-14. Moreover, because general appraisers rarely do residential appraisals, they may lack geographic or other competence factors necessary to perform residential appraisals.²⁹ By contrast, “residential appraisers” who appraise covered transactions under Rule 31101 appraise 1-4 unit residences and homes valued under \$250,000; and C&R fees for such transactions are multiple times lower than general

²⁹ *See* The Appraisal Foundation, Uniform Standards of Professional Appraisal Practice (USPAP), at 12 (2016-2017) (“Competency may apply to factors such as, but not limited to, an appraiser’s familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method. If such a factor is necessary for an appraiser to develop credible assignment results, the appraiser is responsible for having the competency to address that factor or for following the steps outlined below to satisfy this COMPETENCY RULE.”), http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbf4-41b3-9878-fac35923d2af.

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appraisal fees. Unangst Aff. ¶¶11-14. Under Rule 31101, the residential appraiser must possess knowledge and competence with respect to covered transactions that general appraisers often lack. *See* Rule 31101(A)(3), (B)(1)-(6). For these reasons, general appraiser members of LREAB do not actively participate in the market for residential real estate appraisals. Unangst Aff. ¶¶11- 14; *see also*, LREAB Member Affidavits cited *supra* note 6, at 5. Further, LREAB’s Executive Director is not a licensed appraiser and is independently appointed to the LREAB by operation of law. Unangst Aff. ¶¶4, 5, 18; La. R.S. 37:3394.

The legislature thus designed LREAB so that no one market interest could control its affairs; rather, the LREAB is comprised of political appointees who represent different market sectors relevant to regulating the appraisal industry. The "practical indicia" and "industry [and] public recognition" of these two separately-licensed occupations support the existence of two separate occupational markets under *N.C. Dental. Cf. Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962). Louisiana’s determination that residential appraisers and general appraisers operate in distinct markets is therefore entitled to deference under well-established federalism principles. *Dent v. West Virginia*, 129 U.S. 114, 122 (1889) (“[the] nature and extent of the qualifications required [for a license] must depend primarily upon the judgment of the State as to their necessity”; *see also N.C. Dental*, 135 S. Ct. at 1115 (acknowledging the tradition of states drawing upon “the expertise and commitment of professionals.”).³⁰

³⁰ Courts look to a state's licensing scheme as relevant information for determining geographic and product markets in federal antitrust analysis. *See, e.g., In re Blue Cross Blue Shield Antitrust Litig.*, 2017 U.S. Dist. LEXIS 99705, at *27-28 (N.D. Ala. June 28, 2017) (noting that extensive state regulation of health plans was relevant to geographic market of health insurance).

B. Under Dodd-Frank and the AMC Act, the Only Relevant Market is the Market for Covered Residential Real Estate Transactions.

The relevant market in this case is limited to certain residential real estate appraisals. The C&R mandate of Dodd-Frank and the AMC Act applies only to appraisals of “covered transactions”; *i.e.*, extensions of consumer credit “secured by the principal dwelling of the consumer.” 15 U.S.C. § 1639(a). Residential appraiser members who performed “covered transactions” comprised a minority of LREAB. As a matter of federal and Louisiana law, LREAB was not controlled by active market participants when it decided to promulgate and enforce Prior Rule 31101.³¹

Complaint Counsel argues that differences between general and residential appraisers are irrelevant to the *N.C. Dental* inquiry because any form of “industry self-regulation requires supervision.” CC Mem. at 12. Nothing in *N.C. Dental* supports such a broad proposition. To the contrary, the Court rejected formalistic arguments in favor of context-specific determinations. *Id.* 135 S. Ct. at 1114 (“the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade”). As the Motion observes, the *N.C. Dental* analysis must “relate to a *specific action or decision* alleged to be anticompetitive.” CC Mem. at 15, n.11 (emphasis added).

³¹ Other LREAB members with appraisal licenses do not even work as appraisers, but rather as bankers and consultants. Unangst Aff. ¶15; Affidavits of Bella, Lee, Lipscomb, Platt. They do not actually compete in the residential real estate appraisal industry, so are not active participants. *Rivera-Nazario v. Corporacion del Fondo del Seguro del Estado*, 2015 WL 9484490, at *7–8 (D.P.R. Dec. 29, 2015) (analyzing whether board members actually competed in relevant market when determining active market participation).

C. Only Residential Appraisers Could be “Active” Participants in the Relevant Market.

Complaint Counsel’s argument that merely holding a professional license constitutes market participation proves too much. Such a facile approach would require every state board in the country with industry members (*i.e.*, those best qualified to assist the state in regulating an industry) to be actively supervised, regardless of whether the members have any cognizable pecuniary interest in the regulations at issue, and regardless of other checks that ensure that state agencies pursue public objectives. Courts that have considered the active market participation question following *N.C. Dental* look instead to the structure of the state board, the specific conduct at issue, and the policy rationale underlying the rule. *See infra* at 29.

Prior Rule 31101 focused exclusively on residential mortgage appraisals. The Louisiana Legislature structured LREAB to represent distinct interests, and ensured that approval from more than one group was required to pass any action. LREAB promulgated a rule that affected only the interests of residential appraisers; no controlling interest was involved. Finally, the policy rationale underlying the rule was not unique to any of the represented groups. Rather, the integrity of the residential real estate market was essential to the public interest mission of the LREAB, and crucial to every Louisiana home owner. To deem such broad-based interests a conflict effectively would require supervision over any appraisal board merely because each member owned a home – an absurd result.

D. Disputed Facts Regarding Whether the Board Was Controlled by Active Market Participants Preclude Summary Decision.

Since *N.C. Dental*, courts determining whether a state board is controlled by active market participants have conducted a fact-intensive inquiry, considering not only the structural

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make-up of the board, but also whether there was a meaningful risk that the board acted pursuant to private, rather than public, interests with respect to the alleged violation. *See, e.g., Rivera-Nazario*, 2015 WL 9484490, at *7–8 (finding medical council board was not controlled by active market participants in the market for chiropractic services where, among other structural checks and balances, the statute allowed appointment of medical doctors who could work in a variety of fields that did not necessarily compete directly in that market); *Turner v. Virginia Dep't of Med. Assistance Servs.*, 230 F. Supp. 3d 498, 506–07 (W.D. Va. 2017) (examining closely board structure and risk of private interests in determining that board was not controlled by active market participants).

Structural features of the Board present disputed material fact questions regarding control. Because the Board was comprised of lenders, bankers, licensed appraisers, and later an AMC member (many of whom do not actively participate at all in the relevant market), a factfinder will need to look closely at the Board's decision-making and affairs to determine whether active market participants "controlled" the Board's relevant activities. *See, e.g., Century Aluminum of S.C., Inc. v. S.C. Pub. Serv. Auth.*, 2017 WL 4443456, at *9 (D.S.C. Oct. 4, 2017) (examining closely the facts regarding board structure and composition to determine whether it was controlled by active market participants). *Century Aluminum of S.C., Inc. v. S.C. Pub. Serv. Auth.*, 2017 WL 4443456, at *8–9.

1. Market Definition is a Fact-Dependent Question that Should Not be Resolved on Summary Judgment.

To resolve whether the Board was controlled by "active market participants" there must first be a determination of the relevant market. Determining the relevant market in an antitrust

case is a fact-dependent inquiry based on the special characteristics of the industry involved. *See, e.g., Yoder Bros. v. California-Florida Plant Corp.*, 537 F.2d 1347, 1366 (5th Cir. 1976); *Twin City Sportservice, Inc. v. Charles O. Finley & Co.*, 676 F.2d 1291, 1299 (9th Cir. 1982).

Complaint Counsel asserts that the relevant market broadly “consists of real estate appraisal services sold to AMCs in Louisiana” (Complaint ¶49), but its allegations (and Rule 31101) relate more narrowly to residential real estate appraisal services for “covered transactions.” LREAB has challenged Complaint Counsel’s market definition. Answer at 12, ¶2 (“The Complaint fails adequately to allege a plausible relevant services market.”). Under a properly-defined market, a controlling number of LREAB members would not be considered “active participants.”³²

Further, as the attached Affidavits from past and present LREAB general appraiser members demonstrate, at least there exist disputed questions of fact whether these individuals—most of whom performed no residential appraisals—could be considered “active” or “market” participants. *Supra* note 6, at 5. Thus, market definition presents disputed issues of material fact that must be determined before the Commission can decide whether LREAB is controlled by active market participants.

2. Disputed Issues of Material Fact Preclude Summary Decision Whether LREAB Members Pursued Private Rather than Public Interests.

Whether Board members pursued proper policy or private interests is another fact-intensive inquiry that cannot be determined on a motion for summary decision. *N.C. Dental* provided limited guidance for lower courts to determine whether a state board is controlled by active market participants. Thus, district courts have relied on the rationale behind the *N.C.*

³²Additionally, no discovery has been taken regarding the market definition issue. Neither party has had the opportunity to prepare expert reports regarding market definition.

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Dental decision to evaluate the risk that active market participants will pursue private interests. See, e.g., *Rivera-Nazario*, 2015 WL 9484490, at *7–8 (“even if *Board of Dental Examiners* is interpreted more broadly, the CFSE does not pose the risk that active market participants will pursue private interests that the Court was concerned with in *Board of Dental Examiners*.”). Indeed, the *Rivera-Nazario* court looked closely at the risk of self-dealing, and considered relevant to the private interest determination whether there was a clearly articulated state policy to displace competition. *Id.* at *7 (“the small risk that the CFSE will pursue its own specific interests rather than ‘more overriding state goals’ is sufficiently mitigated by the clear articulation requirement.”).³³ Complaint Counsel declines to argue the clear articulation issue (CC Mem. at 1, n.1), even though Louisiana’s AMC Law requiring payment of C&R fees to residential real estate appraisers is highly relevant to whether the Board pursued public, rather than private interests.

Further, practical and structural features distinguish LREAB from state boards that courts have found require active supervision. For instance, the Supreme Court observed that dentist members of the state board in *N.C. Dental* (which made up three-quarters of the board) were “elected by other licensed dentists in North Carolina, who cast their ballots in elections conducted by the Board.” *N.C. Dental*, 135 S. Ct. at 1107–08. The only board member (the

³³ Even though the parties stipulated to clear articulation in *N.C. Dental*, the Court highlighted several related facts regarding clear articulation that likely were relevant to its analysis of state action immunity. “While North Carolina prohibits the unauthorized practice of dentistry, however, its Act is silent on whether that broad prohibition covers teeth whitening. Here, the Board did not receive active supervision by the State when it interpreted the Act as addressing teeth whitening and when it enforced that policy by issuing cease-and-desist letters to nondentist teeth whiteners.” 135 S. Ct. at 1110; *see id.* at 1107-1108 (noting that the Board’s authority to regulate “unlicensed persons” was more restricted than its broader authority to create and enforce a licensing system.).

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“consumer” member) appointed by the governor could not “participate or vote in any matters of the Board which involve the issuance, renewal or revocation of the license to practice dental hygiene in the State of North Carolina.” (N.C. Gen. Stat. Ann. § 90–22(b) (2013)). Notably, the North Carolina Dental Practice Act established no mechanism for a public official to remove an elected member of the Board. *N.C. Dental*, 135 S. Ct. at 1107–08.

Essential LREAB structural features protect against members pursuing private over public interests. LREAB represents different industry categories, with no single group controlling LREAB decisions—unlike the N.C. Dental Board which was comprised almost exclusively of dentists. LREAB’s Executive Director is not a licensed appraiser, and his employment is not under LREAB control. LREAB members are not elected by the regulated industry to serve industry interests (like the board members in *N.C. Dental*). LREAB members are appointed by the Governor and confirmed by the Louisiana Senate; and may be removed by the Governor at any time for cause. Courts interpreting *N.C. Dental* have found all these structural distinctions relevant to a determination that a board was not controlled by active market participants.³⁴ The *Rivera-Nazario* court similarly distinguished *N.C. Dental*:

In *Bd. of Dental Examiners*, six of the Board's eight members had to be licensed practicing dentists who were elected by other licensed dentists in North Carolina and there was no mechanism for a public official to remove any of the Board's elected members. 135 S. Ct. at 1108. These dentists clearly competed with nondentists in the market for teeth whitening services and had strong private interests to exclude nondentists from competition. Therefore, the need for state supervision was manifest. In

³⁴ See, *Turner*, 230 F. Supp. 3d at 506–07 (finding a state board more like a “state agency” than a private trade organization where it was “created by statute, operates under the direction of the Secretary of Health and Human Resources, and its Director is appointed by the Governor and confirmed by the General Assembly”); *Century Aluminum*, 2017 WL 4443456, at *8–9 (finding relevant to the determination that state board was not controlled by active market participants that statutes prevented board members from having private interests, members were political appointees, and members were screened by a review committee before being appointed).

contrast, the Governor of Puerto Rico appoints all seven members of the CFSE's governing Board of Directors ("BOD"). P.R. Laws Ann. tit. 11 § 1b-2.

2015 WL 9484490, at *7-8.

Thus, LREAB's structure, combined with Louisiana's clearly articulated policy to regulate customary and reasonable fees, present at a minimum material factual disputes regarding whether the Board is controlled by active market participants.³⁵

CONCLUSION

Wherefore, the Motion for Partial Summary Decision should be denied.

Date: December 12, 2017

Respectfully submitted,

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³⁵ As noted above, additional genuine disputes of material fact that preclude partial summary decision are set forth in LREAB's Response to Complaint Counsel's Statement of Undisputed Facts.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

**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 off additional facts from the Board’s Executive Director.

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 on LREAB’s Third and Ninth Affirmative Defenses which pertain only to “active participants in the relevant residential appraisal market” and “federal antitrust liability under *Parker v. Brown*, 317 U.S. 341 (1943).” A state action defense is based on clear articulation¹ and active supervision by the state. CCSUF proffers numerous facts that are irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.² See CCSUF ¶¶ 46-52; 54-56; 67-71; 74-114.

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

¹ Complaint Counsel does not address clear articulation in its motion. Motion for Partial Summary Decision at 1, n.1.

² Prior Rule 31101 is defined as the customary and reasonable fee rule that was promulgated on November 20, 2013 and repealed and replaced on November 20, 2017. See Kennedy Decl. Tab 22, 39 LR 3072 (November 20, 2013).

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.

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 3, 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 3, La. R.S. 37: 3393, La. R.S. 37: 3395 (A) (1); Tab 4, La. R.S. 37: 3415.3.

Response: Not disputed.

3. Respondent issues licenses to three classes of appraisers:
 - a. A person licensed as a general appraiser may appraise “all types of real estate regardless of complexity or transaction value.” Kennedy Decl. Tab 3, La. R.S. 37: 3392 (7).
 - b. A person licensed as a residential appraiser may appraise all residential properties having four or fewer residential units (for example, a single family home), and other types of real estate having a transaction value of \$250,000 or less. Kennedy Decl. Tab 3, La. R.S. 37: 3392 (13).
 - c. A person licensed as an appraiser trainee may act under the supervision of a general appraiser or a residential appraiser. Kennedy Decl. Tab 3, La. R.S. 37: 3397 (B) (1) (a).

Response: Not disputed.

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

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 6, 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.*

5. In 2013 and until August 1, 2014, the Appraisers Law provided that each appraiser member of Respondent’s board shall be a Louisiana resident, hold an appraiser’s license and be “engaged in the general practice of real estate appraising in the state of Louisiana for not less than five years immediately preceding their appointment.” Kennedy Decl. Tab 6, La. R.S. 37: 3394 (B) (2013).

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 engaged in the general practice of real estate appraising in the state of Louisiana for not less than five years immediately preceding their appointment.” Kennedy Decl. Tab 6, La. R.S. 37: 3394 (B) (2013).

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

Response: Not disputed.

7. The Appraisers Law was modified in 2014. Kennedy Decl. Tab 6, 2014 Acts No. 347. Kennedy Decl. Tab 3, La. R.S. 37: 3394.

Response: Not disputed.

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

Response: Complaint Counsel’s statement is disputed as incomplete. Each of the ten Board members is appointed by the governor, but “shall be submitted to the Senate for confirmation.” Kennedy Decl. Tab 3, La. R.S. 37:3394.

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

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.” La. R.S. 37: 3394 (B)(2).

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

Response: Not disputed.

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

Response: Not disputed.

12. As of August 1, 2014, the Appraisers Law provides that Respondent's board shall include two members from a list of five names submitted by a local bankers' association. Kennedy Decl. Tab 3, La. R.S. 37: 3394.

Response: Not disputed.

13. The members of Respondent's board select a Chairman and other officers. Kennedy Decl. Tab 3, La. R.S. 37: 3394 (G).

Response: Not disputed.

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

[REDACTED]

Response: Complaint Counsel's statement is disputed as incorrect. [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED] Kennedy Decl. Tab 47, [REDACTED] Kennedy Decl. Tab 3, La. R.S. 37:3394.

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

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

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

c. From 2013 through 2016, Roland Hall was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, [REDACTED] Tab 47, [REDACTED]

d. From 2013 through 2016, Butch Landry was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, [REDACTED]; CX0313 (screenshot of a LinkedIn page for "NEWTON LANDRY").

e. From 2013 through 2016, Craig Lipscomb was a member of Respondent's board and a licensed appraiser, and authorized to perform residential appraisals. Kennedy Decl. Tab 10, [REDACTED]

f. From 2013 through 2016, Tommie McMorris was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, [REDACTED]; CX0312 (screenshot of a LinkedIn page for "Tommie McMorris").

g. From 2013 until sometime in 2015, Pete Pauley was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, [REDACTED]; CX0311 (screenshot of a webpage for "The Pauley Corporation").

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

- i. From sometime in 2015 through 2016, Cheryl Bella was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, [REDACTED]; [REDACTED]; CX0331 (screenshot of a webpage for "Cheryl B. Bella, MAI, AI-GRS").
- j. From sometime in 2015 through 2016, Janis Bonura was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, [REDACTED]; [REDACTED]; CX0332 (screenshot of a LinkedIn page for "Janis M. Bonura, SRA").
- k. From 2015 through 2016, Tim Hammett was a member of Respondent's board and a licensed appraiser, authorized to perform residential appraisals, and engaged in the practice of real estate appraising. Kennedy Decl. Tab 10, [REDACTED]; [REDACTED]; CX0333 (screenshot of a LinkedIn page for "Appraisals Plus, LLC"); Tab 48, [REDACTED].

Response: LREAB does not dispute that each of the eleven individuals listed were Board members, although LREAB disputes that Mr. Kipf ever served on the Board; and does not dispute that each identified 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 they meet 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 15(a)-(k) as incorrect, vague, and misleading because, as seen in Board member affidavits attached to Respondent's Opposition, ten Board members, including some listed in Complaint Counsel's statements, did not do any residential appraisals, mainly did commercial appraisals, or only did reviews on behalf of lenders, not AMCs. *See* Affidavits of Cheryl Bella (no residential appraisals); Gayle Boudousquie (no residential appraisals); Michael Graham (95% commercial appraisals); Heidi Lee (no appraisals); Clayton Lipscomb (no appraisals); Kara Ann Platt (no residential appraisals); R. Wayne Pugh (no residential appraisals); Rebecca Rothschild (no residential appraisals). The affidavits further show that several members only perform reviews of submitted appraisals on behalf of lenders, which is not performing an appraisal. Occasional

United States Department of Veterans Affairs (“VA”) loan appraisals performed by another board member (Aff. of Leonard Pauley) are assigned by the VA, and do not involve payments by an AMC. *See, Lenders Handbook*, VA Pamphlet 26-7, Ch. 15 “Lender Appraisal Processing Program,” available at https://www.benefits.va.gov/WARMS/pam26_7.asp. In addition, it is unclear what “[a]t all times relevant to the allegation in this case” means or what time-frame it would include. While ten of the individuals served as Board members between 2013 and 2016, the statements fail to identify the Board’s specific composition at time of the passage of any rule or engagement in any enforcement proceeding. In addition, Complaint Counsel fails to note the positions and licenses of the other 11 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.

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

17. 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 4, 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 an independent licensed appraiser.

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

Response: Not disputed.

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

Response: Not disputed.

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

Response: Not disputed.

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

Response: Not disputed.

22. As initially enacted, the AMC Act provided that any rule proposed by Respondent shall require the affirmative approval of the House of Representatives Committee on Commerce and the Senate Committee on Commerce, Consumer Protection and International Affairs. Kennedy Decl. Tab 7, La. R.S. 37: 3415.21 (B) (2009).

Response: Not disputed.

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

Response: Not disputed.

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

Response: Not disputed.

25. In 2012, the Louisiana legislature amended the 2009 AMC Act to require that AMCs pay appraisers fees that are "customary and reasonable." The statute stated: § 3415.15. Fees; customary and reasonable; disclosure

A. An appraisal management company shall compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the presumptions of compliance under federal law.

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

Response: LREAB does not dispute that the AMC Act was amended in 2012 to include § 3415.15, but notes that the AMC Act was amended in direct response to the U.S. Congress' passage of the Dodd-Frank Act, which established the customary and reasonable appraisal fee requirement. Kennedy Decl. Tab 8, La. R.S. 37: 3415.15 (A) (2012). The customary and reasonable requirement is to be applied "consistent with the presumptions of compliance under federal law." *Id.*

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

A. An appraisal management company shall compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the requirements of 15 U.S.C. 1639(e) and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222.

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

Response: While LREAB does not dispute that the AMC Act was again amended on August 1, 2016, the Board notes that the cited provisions of the Code of Federal Regulations contain the Interim Final Rules adopted by the Federal Reserve Board addressing the appraisal independence provisions of the Dodd-Frank Act, and the Final Rules of the federal financial regulatory agencies addressing the minimum state requirements for state appraiser agencies to regulate AMC's compliance with appraisal independence, including the customary and reasonable appraisal fee requirement. Kennedy Decl. Tab 4, La. R.S. 37: 3415.15 (A).

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

Response: Not disputed.

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

Response: Complaint Counsel’s statement is disputed as incomplete. The judicial review standards of the Louisiana Administrative Procedure Act (“LAPA”) also applies. In the only adjudicated customary and reasonable appraisal fee enforcement action to date, the AMC contended that the appropriate standard for judicial review was that contained in the LAPA and LREAB agreed with that contention. *Unangst Aff.* ¶¶ 115-116. Under the LAPA standard, the reviewing court may affirm, remand, or reverse a LREAB decision due to errors of law, abuse of discretion, or if LREAB’s decision is

[n]ot supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

Kennedy Decl. Tab 5, La. R.S. 49:964(G)(1)-(6).

29. Louisiana Administrative Procedure Act (“LAPA”) establishes a procedure whereby the legislature may review the exercise of rule-making authority by a state agency.

Kennedy Decl. Tab 5, La. R.S. 49: 953 *et seq.*

Response: The statement is disputed as incorrect. The Louisiana legislature *does* review a proposed rule offered by any state agency. The agency or board must prepare a “preamble” and provide a “basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions” for review to “the respective legislative oversight committees.” Kennedy Decl. Tab 5, La. R.S. 49:953(A)(2)(a)(ii). In addition, the Legislative Fiscal Office, a part of the Louisiana legislature, reviews and *approves* “the statement of fiscal impact” prepared by any agency in promulgation of its proposed rule. *Id.* at

49:953(A)(3)(a). Moreover, Complaint Counsel's statement is unclear as to what Complaint Counsel's definition of "the exercise of rule-making authority" means.

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

Response: Complaint Counsel's statement is disputed as incomplete. The statement omits that the Fiscal and Economic Impact Statement must be agreed to and signed by the Legislative Fiscal Office. Kennedy Decl. Tab 5, La. R.S. 49:953(A)(3)(a).

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

Response: Not disputed.

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

Response: Complaint Counsel's statement is disputed as incomplete. The report must also contain a copy of the rule as it is proposed for adoption; a statement of the proposed action, that is, whether the rule is proposed for adoption, amendment, or repeal; a brief summary of the content of the rule proposed for adoption; specific citation of the enabling legislation purporting

to authorize the adoption of the rule; and a statement of the circumstances which require adoption of the rule. Kennedy Decl. Tab 5, La. R.S. 49:968(B-C).

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

Response: Complaint Counsel's statement is disputed as incomplete. The oversight subcommittee may consist of the entire committee. Kennedy Decl. Tab 5, La. R.S. 49:968(D)(1).

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

Response: Not disputed.

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

Response: Not disputed.

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

Response: Not disputed.

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

Response: Complaint Counsel’s statement is disputed as incorrect. La. R.S. 49:968(H)(1) does not state anything about the “validity of a rule.” La. R.S. 49:968(E)(2), however, states that “[f]ailure of a subcommittee to conduct a hearing or to make a determination regarding any rule proposed for adoption, amendment, or repeal shall not affect the validity of a rule otherwise adopted in compliance with this chapter.” Kennedy Decl. Tab 5, La. R.S. 49:968.

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

Response: Complaint Counsel’s statement is disputed as incorrect and misleading. Any proposed rule must be approved by the Louisiana Register. As part of its review of a proposed rule, the Louisiana Register ensures that the board provided all the necessary documentation and went through the proper processes. Unangst Aff. ¶¶ 28-30. In addition the statement is misleading, because any rule published in the Louisiana Register may still be vetoed by the Governor within 30 days thereafter. Kennedy Decl. Tab 5, La. R.S. 49:970.

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

Response: Complaint Counsel’s statement is disputed as misleading. First, the cited provisions relate solely to the appraisal of residential real estate properties under covered transactions. Second, Dodd-Frank Section 1473, codified at 12 U.S.C. 3353(a), further established minimum regulatory requirements for states choosing to register AMCs, including ensuring AMCs comply with the requirements of 15 U.S.C. 1639e, with 12 U.S.C. 3353(b) providing that “[n]othing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a).”

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

Response: Disputed to the extent that the cited Minutes do not reflect whether the Chairman voted. Kennedy Decl. Tab 11, CX0306.

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

Response: Not disputed.

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

The purpose of the proposed action is to: (1) establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Session consistent with the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act; (2) establish grievance or complaint procedures; and (3) further clarify investigative procedures.

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

Response: Not disputed.

43. The Notice of Intent included the text of proposed Rule 31101, which stated that AMCs must pay appraisers “customary and reasonable” fees. The appraisal fees must be determined by either (1) reference to third-party information such as government fee schedules, academic studies, or independent private sector surveys (“Survey Method”); (2) a fee schedule established by Respondent; or (3) consideration of six factors (“Six Factor Method”). Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013).

Response: Complaint Counsel’s statement is disputed as incomplete. The obligation for AMCs to pay customary and reasonable fees originates from Dodd-Frank and the AMC Act, not Prior Rule 31101. Kennedy Decl. Tab 9, 111 P.L. 203, Section 1472, codified at 15 U.S.C. 1639e.

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

Response: Complaint Counsel’s statement is disputed as misleading. The Fiscal Impact Statement provides analysis of (1) Estimated Implementation Costs (Savings) to State or Local Government Units; (2) Estimated Effect on Revenue Collections of State or Local Governmental Units; (3) Estimated Costs and/or Economic Benefits to Directly Affected Persons or Nongovernmental Groups; (4) Estimated Effect on Competition and Employment. In particular, Complaint Counsel fails to acknowledge that the Fiscal Impact Statement, approved by the

Louisiana Legislative Fiscal Office, indicated that passage of the proposed rule would have “no estimated impact on competition.” Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013).

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

Response: Not disputed.

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

Response: LREAB does not dispute that five entities, four AMCs and a coalition of AMCs, that are required to pay customary and reasonable fees as mandated by federal and state law, submitted public comments on Prior Rule 31101; however, the statement is disputed as irrelevant and immaterial to the State of Louisiana’s active supervision over promulgation and enforcement of the Prior Rule 31101. In addition the statement is disputed as misleading because all public comments, including those submitted by AMCs and AMC associations, were reviewed by the Board and then summarized for the Louisiana House and Senate oversight committees in

accordance with LAPA requirements. Kennedy Decl. Tab 20, CX0021 (Summary Report Part One); CX0022 (Summary Report Part Two).

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

Response: Complaint Counsel’s statement is incorrect. The written public comments concerned the February 20, 2013 notice of intent for the Board’s first proposed version of Rule 31101. Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013). The first proposed rule indicated that an AMC “may use the elements found in the presumptions of compliance.” Due to public comments, including those from AMCs, this language was changed in the final, Prior Rule 31101 to AMCs “shall compensate fee appraisers at a rate that is customary and reasonable.” Kennedy Decl. Tab 22, 39 LR 3072 (November 20, 2013). Moreover, LREAB does not dispute that an AMC and an AMC association, that are required to pay customary and reasonable fees as mandated by federal and state law, stated that the first draft of Prior Rule 31101 would have required “AMCs to use one of two methods to calculate appraisal fees.” However, that fact alone is irrelevant and not material. To the extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible. Nothing in Dodd-Frank suggests that “any method to determine compliance with ‘customary and reasonable’ fee mandate” is acceptable. As just one example, Dodd-Frank prohibits AMCs from

deriving a customary and reasonable fee “method” that involves an AMC’s usage of an independent third-party studies that relies on AMC pricing data. 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”). It remains a disputed fact that Prior Rule 31101’s methods of compliance were in conflict with federal law. To the contrary, the approval of Prior Rule 31101 reflects the judgment of the legislative oversight committees and the governor that the Rule was consistent with federal law, as required by the AMC Act. The statement is also irrelevant and immaterial to the State of Louisiana’s active supervision over promulgation and enforcement of the Prior Rule 31101.

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

Response: Complaint Counsel fails to provide any citation other than the Rels Valuation comment that there were multiple “written public comments” that made a similar statement, including those from independent third parties. LREAB does not dispute that Rels Valuation made that statement. However, the statement alone is disputed as irrelevant and not material. To the extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible; specifically, that the Prior Rule 31101 had any fiscal or economic effects. The Louisiana Legislative Fiscal Office indicated that passage of the proposed rule would have “no estimated impact on competition.” Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013). The statement is also irrelevant and immaterial to the

State of Louisiana's active supervision over promulgation and enforcement of the Prior Rule 31101.

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

[REDACTED].

Response: LREAB does not dispute that written public comments from two AMC's and an AMC association required by federal and state law to pay customary and reasonable fees made these public comments. However, that statement alone is disputed as irrelevant and not material. To the extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible, because Dodd-Frank, passed in 2010, and the amended AMC Act, passed in 2012, imposed the customary and reasonable appraisal fee requirement on Louisiana lenders and their independent agents, not Prior Rule 31101, promulgated in the end of 2013. Kennedy Decl. Tab 9, 111 P.L. 203, Section 1472, codified at 15 U.S.C. 1639e. Moreover, the comments only opine that there could be a price effect. It remains a disputed fact that Prior Rule 31101 had any impact on price or competition. Kennedy Decl. 12, Tab 12, 39 LR 376 (February 20, 2013). In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over promulgation and enforcement of the Prior Rule 31101.

50. The written public comments noted, *inter alia*, that recordkeeping requirements for AMC's that use the Six Factor Method would be so burdensome as to effectively require AMC's to pay according to the Survey Method. Kennedy Decl. Tab 17, CX0032 (comment from

Facilitate Appraisal Integrity Reform); Tab 14, CX0319 (comment from National Association of Appraisal Management Companies); Tab 16, [REDACTED]

[REDACTED]

Response: LREAB does not dispute that three AMC's required by federal and state law to pay customary and reasonable fees made these public comments. However, the statement alone is disputed as irrelevant and not material. To the extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible. Complaint Counsel has failed to provide any factual evidence of the assertions. Moreover, the statement is disputed as factually inaccurate. AMC's did use the Six Factor method. Unangst Aff. ¶¶ 37, 44, 70-72, 73-75, 117. In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over promulgation and enforcement of the Prior Rule 31101.

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

Response: LREAB does not dispute that a single AMC and an AMC association required by federal and state law to pay customary and reasonable fees made these public comments. However, the statement alone is disputed as irrelevant and not material. To the extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible. Complaint Counsel has failed to provide any factual evidence of the assertions. Moreover, the statement is disputed as factually inaccurate. The Board did not "set fees," it ensured that AMC's complied with the Dodd-Frank and AMC Act

requirements that lenders and their independent agents paid customary and reasonable appraisal fees. Unangst Aff. ¶¶ 29, 41, 97. In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over promulgation and enforcement of the Prior Rule 31101.

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

Response: LREAB does not dispute the statement from two AMCs required by federal and state law to pay customary and reasonable fees made these public comments. However, the statement alone is disputed as irrelevant and not material. To the extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible, because the Louisiana Legislative Fiscal Office indicated that passage of the proposed rule would have “no estimated impact on competition.” Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013). In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over promulgation and enforcement of the Prior Rule 31101.

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

Response: Complaint Counsel's statement is disputed as misleading. The July 22, 2013 public meeting was to institute “substantive change[s]” to the proposed Prior Rule 31101.

Kennedy Decl. Tab 18, CX0320. [REDACTED]

[REDACTED] Kennedy Decl. Tab 20, [REDACTED]

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

Response: LREAB does not dispute that Mr. Cherner made statements on behalf of the association of AMCs that are required by federal and state law to pay customary and reasonable fees. However, the fact alone is irrelevant and not material. To the extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible, because the amended AMC Act required the Board to pass a rule that is consistent with the customary and reasonable appraisal fee mandates specified in the Code of Federal Regulations that contain the Interim Final Rules adopted by the Federal Reserve Board addressing the appraisal independence provisions of the Dodd-Frank Act and the Final Rules of the federal financial regulatory agencies addressing the minimum state requirements for state appraiser agencies to regulate AMCs compliance with appraisal independence. Kennedy Decl. Tab 9, 111 P.L. 203, Section 1472, codified at 15 U.S.C. 1639e; Section 1473, codified at 12 U.S.C. § 3353. In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over promulgation and enforcement of Prior Rule 31101.

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

Response: LREAB does not dispute that Mr. Cherner made statements on behalf of the association of AMCs that are required by federal and state law to pay customary and reasonable fees. However, the statement alone is disputed as irrelevant and not material. To the extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible, because the amended AMC Act required the Board passed a rule that are consistent with the customary and reasonable appraisal fee mandates specified in the Code of Federal Regulations that contain the Interim Final Rules adopted by the Federal Reserve Board addressing the appraisal independence provisions of the Dodd-Frank Act and the Final Rules of the federal financial regulatory agencies addressing the minimum state requirements for state appraiser agencies to regulate AMCs compliance with appraisal independence. Kennedy Decl. Tab 9, 111 P.L. 203, Section 1472, codified at 15 U.S.C. 1639e; Section 1473, codified at 12 U.S.C. § 3353. In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over promulgation and enforcement of Prior Rule 31101.

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

Response: Complaint Counsel’s statement is disputed as misleading. [REDACTED]

[REDACTED]
[REDACTED] Kennedy Decl. Tab 19, {CX0179 (Substantive Change Hearing Transcript) at 19}. LREAB does not dispute that Mr. Cherner made statements on behalf of the association of AMCs that are required by federal and state law to pay customary and reasonable fees. However, the statement alone is disputed irrelevant and not material. To the

extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible. Neither Complaint Counsel, Mr. Cherner, nor any AMC public comments, provided any data or information demonstrating any fiscal impact or harm to competition from Prior Rule 31101. Prior Rule 31101 had “no estimated impact on competition.” Kennedy Decl. 12, Tab 12, 39 LR 376 (February 20, 2013). In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over promulgation and enforcement of Prior Rule 31101.

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

Response: Not disputed.

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

Response: Complaint Counsel’s statement is disputed as misleading and incomplete.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 20, [REDACTED] In addition, the summaries of Prior Rule 31101 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 20, [REDACTED]

[REDACTED]. Moreover, the Board provided a list of all commenters to the House and Senate subcommittees, providing summaries of both the supportive and non-supportive comments. Kennedy Decl. Tab 20, CX0022.

59. Respondent’s reports on proposed Rule 31101 did not address the possibility that AMCs would be effectively required to use a survey to set appraisal fees. Kennedy Decl. Tab 20,

[REDACTED]

[REDACTED] CX0021 (Summary Report Part One); CX0022 (Summary Report Part Two).

Response: Complaint Counsel’s statement is disputed as misleading and incorrect, because it is entirely unclear what “surveys” means in this statement. By its own definition, the “Survey Method” includes “fee schedules” and “academic studies” in addition to “surveys.” CCSUF ¶ 43. The three public comments from AMCs required by federal and state law to pay customary and reasonable fees indicated that they would have to “pay according to the Survey Method.” *Id.* at ¶ 50. Therefore, it is incorrect for Complaint Counsel to assert that the LREAB’s reports did not address that “AMCs would be effectively required to use a survey to set appraisals fees,” because neither the comments cited in CCSUF ¶ 50 nor in any other CCSUF make that assertion, and to the extent Complaint Counsel is referencing the “Survey Method,” it

would also include “fee schedules and “academic studies.” Moreover, whether any particular AMC chooses to use a particular method of compliance provided under Rule 31101 and Dodd-Frank is irrelevant. Any AMC remained free to use the two other methods provided under Rule 31101, and other AMCs did so. Unangst Aff. ¶¶ 29, 37, 53, 134.

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

Response: Complaint Counsel’s statement is disputed as incorrect and misleading. Prior Rule 31101 does not “set fees,” so therefore addressing it in the “reports on proposed Rule 31101” would serve no purpose. Kennedy Decl. Tab 22, 39 LR 3072 (November 20, 2013). To the extent that the statement is proffered for the truth of the matter asserted, it is hearsay, opinion, and advocacy and therefore neither factual nor credible. Complaint Counsel has failed to provide any factual evidence of the assertions. Moreover, the statement is disputed as factually inaccurate. The Board did not “set fees,” it ensured that AMCs complied with the Dodd-Frank and AMC Act requirements that lenders and their independent agents paid customary and reasonable appraisal fees. Unangst Aff. ¶¶ 29, 41, 97.

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

Response: Complaint Counsel’s statement is disputed as incorrect. The Legislative Fiscal Office, a part of the Louisiana legislature, reviewed and approved the Fiscal and Economic Impact Statement that indicated that the Prior Rule 31101 had “no estimated impact on competition.” Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013). Therefore, the State of Louisiana did review and address the possible “fiscal or economic effects” of the rule. It is a disputed fact that Prior Rule 31101 had any impact on competition. In addition, the statement is incorrect that Prior Rule 31101 “set fees.” [REDACTED]

[REDACTED] Kennedy Decl. Tab 20, CX0021. It is a disputed fact that Prior Rule 31101 effectively allowed the Board to “set fees.” Unangst Aff. ¶¶ 29, 41, 97.

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

Response: Complaint Counsel’s statement is disputed as misleading. The Legislative Fiscal Office, a part of the Louisiana legislature, reviewed and approved the Fiscal and Economic Impact Statement that indicated that the Prior Rule 31101 had “no estimated impact on competition.” Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013). Therefore, the Board did not need to address “possible conflicts” with the antitrust laws. It is a disputed fact whether Prior Rule 31101 violates the antitrust laws.

63. In September 2013, Respondent submitted its reports of comments on proposed Rule 31101 to the House and Senate, as required by Louisiana law. Kennedy Decl. Tab 5, La.

R.S. 49: 968 (B and D); Tab 46 [REDACTED] Tab 20, [REDACTED]

[REDACTED]

[REDACTED].

Response: Not disputed.

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

http://www.legis.state.la.us/Legis/SessionInfo/SessionInfo_13RS.aspx.

Response: Not disputed.

65. No legislative committee or oversight subcommittee collected business data including revenues, expenses or profits, developed standards or measures such as operating ratios, approved any rates, held a hearing, or issued an opinion on Rule 31101 before the Rule became effective. Kennedy Decl. Tab 46, [REDACTED] Tab 21, CX0318 (Board Minutes, November 18, 2013).

Response: Complaint Counsel’s statement is disputed as irrelevant, immaterial, and incorrect. It is irrelevant and immaterial that no legislative committee or oversight committee “collected business data, including revenues, expenses or profits, developed standards or measures such as operating ratios, approved any rates.” Louisiana law does not require submission of such information, and there was no need to do so inasmuch as Prior Rule 31101 simply implements the policy determinations made by Congress, the federal financial agencies, and the State of Louisiana, and any impact on competition or market economics was the mandated result of Dodd-Frank and the AMC Law, not Prior Rule 31101. Kennedy Decl. Tab 9, 111 P.L. 203, Section 1472, codified at 15 U.S.C. 1639e. In addition, as previously indicated, the Legislative Fiscal Office, a part of the Louisiana legislature, reviewed and approved the Fiscal

and Economic Impact Statement that indicated that the Prior Rule 31101 had “no estimated impact on competition.” Kennedy Decl. Tab 12, 39 LR 376 (February 20, 2013). Complaint Counsel is incorrect in its statement that no hearing was held or that Louisiana Legislature never “issued an opinion on” Prior Rule 31101. On November 13, 2013 the Senate Commerce oversight subcommittee convened a session at which the issue was whether or not to hold a hearing on Rule 31101. Unangst Aff. ¶ 34. The chairman stated that the wording of the AMC review statute was such that there was a significant risk that if the subcommittee held an oversight hearing on Rule 31101 and approved it, the Rule would be still not come into effect if the House Commerce Committee did not hold a hearing. *Id.* The chairman thus stated that he would put the issue of whether to hold an oversight hearing to a vote, with a vote in favor of not holding a hearing representing a vote to approve the rule, and a vote in favor of holding a hearing was a vote to reject Rule 31101. *Id.* On this basis, the vote was not to hold a hearing and allow the rule to go into effect by a vote of 6-3. *Id.* In making that determination, the Senate and House oversight subcommittees were aware that in enacting La. R.S. 37:3415.15(A), the Louisiana Legislature had made the policy determination that AMCs ordering Louisiana residential appraisals should pay appraisers at customary and reasonable rates “consistent with the presumptions of compliance under federal law.” *Id.*

66. Rule 31101 took effect upon publication in the Louisiana Register on November 20, 2013. The Rule states (text of Prior Rule 31101 omitted).

Response: Not disputed.

67. In January 2013, Respondent contracted with the Southeastern Louisiana University Business Research Center (“SLU”) to conduct a survey of typical fees paid by lenders

to appraisers in 2012. Kennedy Decl. Tab 23, [REDACTED]
[REDACTED]

Response: While LREAB does not dispute Complaint Counsel’s statement, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over promulgation and enforcement of the Prior Rule 31101.

68. SLU surveyed lenders, licensed general appraisers, and licensed residential appraisers. Kennedy Decl. Tab 24, 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 State of Louisiana’s active supervision over promulgation and enforcement of Prior Rule 31101.

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

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.” *See* Kennedy Decl. Tab 2, Answer ¶ 4. In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the Board's promulgation and enforcement of Prior Rule 31101.

71. The SLU reports present the median fees submitted by lenders and appraisers in response to each survey for five kinds of appraisals in nine geographic regions. Kennedy Decl. Tab 24, CX3010 (SLU survey report) at 17-26; <http://www.reab.state.la.us/AMC.html> (links to other surveys).

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the Board's promulgation and enforcement of Prior Rule 31101.

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

[REDACTED].

Response: Not disputed.

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

Response: Not disputed.

74. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Kennedy Decl. Tab 25, [REDACTED]
[REDACTED] Tab 46, [REDACTED]
[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 the Rule. Where the AMC demonstrated use of a compliant method, the investigation ended. The amount of any fee paid by the AMC was irrelevant to compliance. Unangst Aff. ¶¶ 39, 64-68, 70-81, 84-91, 100-105. Nothing in either cited exhibit indicates that the “AMC had offered a fee that was lower than the median fee identified in then-current SLU survey report.” Kennedy Decl. Tab 25, [REDACTED] Tab 46, [REDACTED] In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the Board’s promulgation and enforcement of Prior Rule 31101.

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

Response: Complaint Counsel’s statement is disputed as incorrect, irrelevant, and immaterial. [REDACTED] Kennedy Decl. Tab 26, [REDACTED]
[REDACTED]
[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.*

Those statements are factually correct, in that any objective third party information could be used as a basis for compliance under Rule 31101(A)(1). Moreover, the statement omits that the letter continues, [REDACTED]

[REDACTED]

Id. In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the Board’s promulgation and enforcement of Prior Rule 31101.

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

Response: Complaint Counsel’s statement is disputed as misleading, irrelevant, and immaterial. The Executive Director stated that the Board never considered posting an example of how to comply with the six factors because, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 46, [REDACTED] In addition, Prior Rule 31101, on its face, provides details of each of the six factors necessary. In addition, the statement is disputed as misleading, because the federal government has provided public guidance on how an AMC can “determine appraisal fees” using the six factor method. 75 Fed. Reg. 66554, 66572-73 (public guidance on complying with the six factors includes an AMC gathering “information about recent rates by using a reasonable method that provides information about rates for appraisal services in the geographic market of the relevant property”).

Moreover, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

77. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 27,

[REDACTED]

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

78. [REDACTED]

[REDACTED] Kennedy Decl.

Tab 27, [REDACTED]

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

79. [REDACTED]

[REDACTED] Kennedy Decl. Tab

27, [REDACTED]

Response: Complaint Counsel's statement is disputed as incomplete. [REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED] *Id.* In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

80. [REDACTED]

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

[REDACTED]

Response: Complaint Counsel's statement is disputed as incomplete. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Unangst Aff. ¶¶ 89-90. Moreover, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

81. [REDACTED]

[REDACTED] Kennedy

Decl. Tab 27, [REDACTED]

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

82. [REDACTED]

[REDACTED]

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

[REDACTED]

Response: Complaint Counsel's statement is disputed as incomplete. [REDACTED]

[REDACTED]

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

[REDACTED] *Id.* In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

83. [REDACTED]

[REDACTED] Kennedy Decl. Tab 29, [REDACTED]

[REDACTED].

Response: Complaint Counsel's statement is disputed as incomplete. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 29, [REDACTED]. In addition,

the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

84. [REDACTED]

[REDACTED] Kennedy Decl. Tab 29, [REDACTED]

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

[REDACTED]

[REDACTED] Kennedy Decl. Tab 29, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Unangst Aff. ¶ 96. In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

85. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 30, [REDACTED].

Response: Complaint Counsel’s statement is disputed as misleading, irrelevant, and immaterial. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 30, [REDACTED]. In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

[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. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl.

Tab 29, [REDACTED] The Board did not set a “fee schedule” at that meeting, nor did it set a fee schedule at any prior or subsequent meeting. In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

87. On October 27, 2015, a Louisiana licensed appraiser sent an email to the Executive Director that stated, [REDACTED]

[REDACTED] Kennedy Decl. Tab 32, [REDACTED]
[REDACTED].

Response: Complaint Counsel’s statement is disputed as misleading. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 32, [REDACTED] (emphasis added). Moreover, the Board’s regulation of customary and reasonable fees in accordance with the federal and state mandates of Dodd-Frank and the AMC Act did not set fees to any specific dollar amount. Kennedy Decl. Tab 22, 39 LR 3072 (November 20, 2013). In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

[REDACTED]

Response: While LREAB does not dispute that the document contains this statement, the statement as used in CCSUF paragraph 88 is disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 29, [REDACTED] (emphasis added). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Unangst Aff. ¶ 98. [REDACTED] could adjust any fee results shown in the survey based on factors such as those stated in Rule 31101. *Id.* at ¶ 96. In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

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 33, CX0080. In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

90. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 34, {CX0327 [REDACTED]
[REDACTED]

Response: Complaint Counsel's statement is disputed as incorrect and incomplete. [REDACTED]
[REDACTED]

[REDACTED] Unangst Aff. ¶¶ 101-105. In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

91. [REDACTED]

[REDACTED] Kennedy Decl. Tab 34, [REDACTED] [REDACTED]
[REDACTED]

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

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

[REDACTED] Kennedy Decl.

Tab 35, [REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Unangst Aff. ¶¶ 101-105,
108. [REDACTED]
[REDACTED]

Kennedy Decl. Tab 22, 39 LR 3072 (November 20, 2013). In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel’s statement, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: Complaint Counsel’s statement is disputed as incomplete. The Complaint specifically cites the failure of iMortgage to use any of the lawful methods for compliance with the customary and reasonable fee requirement. Kennedy Decl. Tab 36, CX0316. There is no

reference in the Complaint to any fee amount paid by iMortgage. *Id.* In addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: Complaint Counsel’s statement is disputed as incomplete. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 38, CX0329.

[REDACTED] *Id.* In

addition, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel’s statement, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: Complaint Counsel's statement is disputed as incorrect and incomplete. LREAB and iMortgage, through a joint pre-hearing stipulation, agreed to limit the hearing to nine transactions on the basis that certain transactions fell outside the time period identified in the complaint and, as proposed by iMortgage, certain transactions were entitled to a presumption of compliance because the fees paid were consistent with the independent SLU Survey. Unangst Aff. ¶ 107. Moreover, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

100. In four of the six transactions eliminated from consideration, Respondent eliminated the transaction because it occurred outside the time period alleged in the Complaint. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real*

[sic] v. *iMortgage Services, LLC*, December 8, 2015) at 15-16; Tab 39, [REDACTED]

Response: Complaint Counsel's statement is disputed as incorrect, irrelevant, and immaterial. Three, not four, of the six transactions were eliminated from consideration because they occurred outside the time period alleged in the Complaint. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015) at 15-16; Tab 39, [REDACTED]. In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: Complaint Counsel's statement is disputed as misleading. In the above-referenced transaction, iMortgage was entitled to a presumption of compliance where it substantiated its fee determination using the SLU study. Kennedy Decl. Tab 36, CX0330-019; Unangst Aff. ¶ 107. Additionally, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

102. In each of the nine remaining transactions that formed the basis for the allegations in the revised Complaint, iMortgage paid an appraiser a fee that was below the median fee reported in the SLU survey report. Kennedy Decl. Tab 36, CX0330 (excerpts from hearing

transcript in *State of Louisiana ex real [sic] v. iMortgage Services, LLC*, December 8, 2015) at 15- 16; Tab 39, [REDACTED]

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

[REDACTED] Kennedy Decl. Tab 38, CX0329. [REDACTED]

[REDACTED] *Id.* In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: Complaint Counsel's statement is disputed as incomplete. In addition to violations of Rule 31101, the Board determined that iMortgage had violated La. R.S. 37:3415.19 and 37:3415.15. Unangst Aff. ¶ 109. Moreover, the statement is irrelevant and immaterial to the

State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel’s statement, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel’s statement, the statement is irrelevant and immaterial to the State of Louisiana’s active supervision over the promulgation and enforcement of Prior Rule 31101.

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

[REDACTED].

Response: Complaint Counsel’s statement is disputed as misleading, irrelevant, and immaterial. [REDACTED]

[REDACTED] Kennedy Decl. Tab 42, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at ¶¶ 1-2. [REDACTED]

[REDACTED] *Id.*; Unagnt Aff. ¶ 112.

Therefore, iMortgage “provided no data” necessary to demonstrate payment of customary and reasonable fees. Kennedy Decl. Tab 43, CX0266. In addition, the statement is irrelevant and

immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

110. By letter dated March 10, 2016, the Executive Director rejected iMortgage's proposed compliance plan dated February 26, 2016. Kennedy Decl. Tab 43, {CX0266 (Respondent's rejection of first compliance plan)}.

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

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

[REDACTED]
Kennedy Decl. Tab 44, [REDACTED]

[REDACTED] *Id.* Moreover, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

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 44, CX0308.

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. ¶ 113. 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 44, CX0308. In addition, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

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

Response: While LREAB does not dispute Complaint Counsel's statement, the statement is irrelevant and immaterial to the State of Louisiana's active supervision over the promulgation and enforcement of Prior Rule 31101.

Respectfully submitted,

/s/ W. Stephen Cannon

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Louisiana Real Estate Appraisers Board

Dated: December 12, 2017

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

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374

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 by my employment with the State of Louisiana.
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.

PUBLIC

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. Similarly, only 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. 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 the Louisiana Real Estate Appraisers Law ("Appraisers Law") and the Appraisal Management Company Licensing and Regulation Act ("AMC Act"), and the rules and regulations of the Board to ensure compliance with the obligations imposed by those laws.

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

8. LREAB is comprised of members representing different geographic regions of the State and distinct professional interests relevant to the appraisal of real property. In 2012-2013 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.

PUBLIC

9. 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.

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

11. To my knowledge, from 2012 to the present, the Board members who are licensed as general appraisers 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 appraisal. Unlike commercial appraisals, appraisal of residential property requires knowledge and competence of the area's characteristics, including nearby rivers, bridges, railroad tracks, and utility lines. As a result, many general appraisers as a rule may not possess the level of 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. Both the prior and replacement rules were, and can be found at La. Admin. Code tit. 46, pt. LXVII, Chapter 311 “Compensation of Fee Appraisers,” § 31101, “General Provisions; Customary and Reasonable Fees; Presumptions of Compliance.”

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12. Moreover, fees for general appraisals I am aware of are not susceptible to considerations of “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.

13. 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.

14. 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. Moreover, any economic interests applicable to residential appraisers in Rule 31101 would not apply to general appraisers.

15. 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.

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16. At no time from 2012 to the present did residential appraisers comprise a majority of the Board. Indeed, the Board membership is constructed so that no single group ever comprises a majority of the Board.

17. Regardless, my experience with the Board is that the members take seriously their duty to act in the public interest, rather than in the interests of 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 category, and cannot recall any occasion where I believed the member voted in their or their group's economic interest over the best interests of the public.

18. 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 ("LAPA"). I also communicate with representatives of entities regulated by the Board and affected by LREAB regulations, including appraisers, lenders, builders, and AMCs.

19. An important part of my duties relates to promoting compliance by licensees with Board rules and regulations in accordance with state laws, including the Appraisers Law and the AMC Act. I also am involved in efforts to enforce LREAB regulations promulgated pursuant to these laws.

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20. I personally was involved in the promulgation of Rule 31101, both in 2012-2013 and in 2017. In my capacity as Executive Director, I have assisted LREAB in developing these regulations, and in explaining the meaning of these regulations to the affected industry segments in order to help promote compliance with the Rule's requirements. I also oversaw and participated in every enforcement action taken by the Board with respect to AMCs under Rule 31101 from November 2013 through the present.

21. Louisiana passed a law to license and regulate AMCs in 2009, in response to the collapse of the residential housing market nationwide and in Louisiana. One major factor contributing to the housing crisis was the overvaluation of residential homes.

22. The AMC Act was viewed as an important first step to help ensure independent appraisals by appraisers competent to appraise specific types of property in the geographic market area.

23. In response to the Dodd-Frank Act, Louisiana amended the AMC Act in 2012 to require 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. La. R.S. 37:3415.15(A). The amendment was broadly supported by affected industry groups, including the national trade association representing major AMCs doing business in Louisiana, named REVAA. I testified at a hearing on the bill before the House Commerce Committee on May 1, 2012. A video of that hearing is available at

http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house%2F2012%2FMay_2012%2F0501_12_CO

24. After the legislature passed the AMC Act in 2012, LREAB was tasked to develop rules to implement the customary and reasonable fee requirement.

25. 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.

26. The proposed rule went through three rounds of public comments. Each public comment period was initiated by publication in the Louisiana Register. The first draft was published in a Notice of Intent on November 20, 2012. Ex. 2. After the first round of public comments and a public hearing on the draft, we published a revised 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. 3.

27. Following the first and second rounds of comments and hearings, the Board amended the draft rule to take into account comments received that the Board considered in the public interest and consistent with the purposes of the C&R fee requirement in the AMC Act.

28. Each of the three publications of the proposed rule in the Louisiana Register was accompanied by a Fiscal and Economic Impact Statement (“FEIS”) reviewed and approved for publication by the Louisiana Legislative Fiscal Office. Each FEIS statement reflected the

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judgment of the Board and the Legislative Fiscal Office that the proposed rule would have no impact on competition or employment.

29. My understanding of why there would be no impact on competition or employment was, first, that Dodd-Frank and the AMC Law required the payment by all AMCs of C&R fees for all covered transactions involving residential mortgage appraisals. The federal government and the Louisiana Legislature already would have anticipated and intended those impacts when determining, respectively, to enact Dodd-Frank and the Interim Final Rules, and the AMC Act. Therefore, any impact on competition would be attributed to those legislative mandates and not from any rule promulgated by the Board. Second, all fees were set by AMCs and residential appraisers in the market. LREAB's enforcement of Rule 31101 did not involve the imposition of particular fees on AMCs or on the market. LREAB's task, in response to complaints from appraisers, was to assure that AMCs used one of the prescribed three methods when calculating C&R fees, regardless of what the actual fee was.

30. The Louisiana Register had to approve each of LREAB's Notices of Intent to promulgate Rule 31101 (and the notice of the final Rule) before publication could occur. This approval included verification by the Louisiana Register that the FEIS had received proper approval by the Legislative Fiscal Office, that public comments were properly solicited, that any required hearings were held, and that all approvals properly and timely were received from the Senate and House legislative oversight committees.

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31. Following the third round of written comments, LREAB held a public hearing on the third iteration of draft Rule 31101 on July 22, 2013, at which REVAA and two of its members testified. Kennedy Decl. Tab 19.

32. The Board considered the written comments and oral comments of all witnesses, and determined that the proposed rule should proceed.

33. On September 26, 2013, as prescribed by the Louisiana APA, the Board submitted a summary report describing the Board's decision to approve Rule 1101 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. [REDACTED]

[REDACTED]
Kennedy Decl. Tab 20.

34. At the time the report was submitted, the Legislature was not in session. Under Louisiana law at that time, decisions by the oversight subcommittees 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. The Senate Commerce Committee considered its decision 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 by a two-thirds majority 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>.

35. Rule 31101 was published in the Louisiana Register on November 20, 2013, and became final and adopted. Kennedy Decl. Tab 22.

36. Then-Governor Bobby Jindal had the authority to disapprove the rule within 30 days thereafter, and issued no order to disapprove.

37. Rule 31101 relies 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. 1026.42(f). The Rule also permits a third method where AMCs can rely on other 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.

38. 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.

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39. LREAB's duty under Rule 31101 is to enforce the requirement that the fee paid for a residential appraisal by an AMC is derived by the AMC in compliance with one of the three methods provided in the Rule.

40. The C&R mandate is only one of many rules and regulations that LREAB has the authority to promulgate and enforce under the Appraisers Law and the AMC Act.

41. LREAB does not set rates for residential appraisal services.

42. LREAB does not require AMCs to pay a particular fee for a particular appraisal.

43. LREAB does not find an AMC in violation of Rule 31101 based on payment of a particular fee.

44. When, in response to appraiser complaints, LREAB has investigated AMC compliance with Rule 31101, LREAB has found compliance where the AMC used the Rule 31101 six factors and/or other circumstances to adjust the fee paid to the appraiser.

45. Rule 31101(A)(2) permits the Board, at its discretion, to establish a customary and reasonable rate of compensation schedule for use by any licensees electing to do so. LREAB included this option because, at that time, Louisiana was among the first states to adopt a C&R fee rule, and the requirement was new. The United States Department of Veterans Affairs, a federal governmental entity, published such a compensation schedule for fees to be paid to appraisers for certain home mortgage appraisals. In light of the newness of the C&R fee obligation nationwide and in Louisiana, the Board gave itself sufficient flexibility to establish such a fee schedule as a fourth optional method of compliance. LREAB had not established such

schedule under Prior Rule 31101, and has no present intention to do so under Replacement Rule 31101. Ex. 4.

46. Rule 31101(B) and (C) require each AMC to maintain documentation substantiating which method provided in the Rule was used, and showing the factors, variations, and differences that resulted in a particular C&R fee payment in the geographic area of the appraisal. Such detailed documentation is required to be kept by the AMC Act and by the Interim Federal Rules. La. R.S. 37:3415.3(B)(9); La. R.S. 3415.14; 12 C.F.R. 34.213(a) and (b). The Board has authority to require production of such records under the AMC Act. La. R.S. 37:3415.20(A)(3).

47. Although appraisers, AMCs, and lenders had public notice of the C&R mandate through the AMC Act and the adoption process for Rule 31101, LREAB was concerned that some of the 141 AMCs, and particularly smaller AMCs, might need some initial assistance with compliance with the Rule. I conducted workshops around the State to explain the Rule to appraisers and AMCs.

48. I was aware that, during the process leading to the federal government's promulgation of the Interim Final Rules under Dodd-Frank, various interests expressed concern that no objective independent third-party studies or surveys existed to support that method of presumptive compliance. LREAB heard similar concerns. LREAB decided it would promote compliance and be economically efficient for the Board to hire an objective independent academic institution to conduct a survey, and to make the survey available to the public on the LREAB website.

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49. LREAB was aware that the United States Department of Veterans Affairs published a schedule of fees could be used by AMCs pursuant to Rule 31101(A)(1). However, the VA schedule did not differentiate among rates in the several state geographic regions, and rates in those regions likely were subject to some meaningful variation. The Board also believed the VA schedule reflected rates higher than what would have been actual customary and reasonable rates for typical residential appraisals in Louisiana. AMC reliance on the VA schedule would have likely caused an increase in consumer prices, which the Board opposed. While adoption of the VA schedule might have personally benefitted some of the residential appraiser Board members, to their credit they agreed it would be contrary to the public interest. *See* https://www.benefits.va.gov/HOMELOANS/documents/docs/houston_fee.pdf.

50. 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.

51. The initial SLU Survey was completed in 2013, and reflected rates for the prior 12 months. SLU produced additional annual surveys covering rates paid in 2013, 2014, and 2016. LREAB exercised no influence over any of these surveys, other than encouraging lenders and appraisers to respond to SLU's inquiries so as to obtain sufficient data. It is my understanding that federal rules prohibit the use of rates paid by AMCs in such objective surveys.

52. LREAB paid approximately \$7,000 for each survey. No private entities contributed funding for the survey.

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53. When LREAB first published the SLU Survey, LREAB also published a “Notice to Appraisal Management Companies” which advised AMC’s that the SLU Survey “is provided as a courtesy to all licensees; however its use is not mandatory.” Ex. 5. That statement was a true and correct statement of the Board’s policy when the SLU Survey was first published.

54. In accordance with that policy, LREAB has never required any AMC to use the SLU Survey.

55. My understanding is that many AMC’s complied using the SLU Survey as a rational business decision. Any AMC could have used the fees on the VA schedule, but those fees generally were higher than the recent rates shown in the SLU Study.

56. Any AMC that elected to use the SLU Survey as a basis for negotiating C&R fee payments, either in the ordinary course of compliance with Prior Rule 31101 or in compliance with a settlement with LREAB pursuant to an enforcement action, did so of its own volition and not because of any requirement by LREAB.

57. Any AMC that agreed in such an informal or formal settlement to rely upon the SLU Survey for presumptive compliance was expected by the Board to abide by its promise.

58. Every informal or formal settlement agreement using the SLU Survey as the basis of presumptive compliance had a term of no more than one year.

59. None of these settlements precluded an AMC from complying with Prior Rule 31101 by any other method provided in the Rule. So long as the AMC could demonstrate compliance using another method, the AMC would not be found in violation, and reliance on an alternate method would have been approved.

60. 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.

See Kennedy Decl. Tab 4.

61. Therefore, 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 customary and reasonable statute, or the Board’s Rule 31101, that was “adopted by the [LREAB] in the interest of the public and consistent with the provisions of this Chapter.” Kennedy Decl. Tab 22.

62. Pursuant to its mandate under La. R.S. 37:3415.19, and through its empowering rule of La. Admin. Code tit. 46, pt. LXVII, § 30900 (“LAC”), the Board received and investigated [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Confidential Ex. 6 [REDACTED]

[REDACTED] Confidential Ex. 7 [REDACTED]

[REDACTED]

[REDACTED] Confidential Ex. 8 [REDACTED]

[REDACTED]

[REDACTED] Confidential Ex. 9 [REDACTED]

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED] Confidential Ex. 10 [REDACTED]

[REDACTED]

[REDACTED]

64. [REDACTED]

[REDACTED]

[REDACTED]

65. All other matters were resolved by: (1) the AMC providing sufficient evidence demonstrating compliance with the mandates of Dodd-Frank and La. R.S. 37:3415.15; (2) the AMC's submittal of a compliance plan that was acceptable to the Board; (3) the withdrawal of the formal investigation; or (4) [REDACTED]

[REDACTED]

66. [REDACTED]

[REDACTED]

[REDACTED]

67. [REDACTED]

[REDACTED]

[REDACTED] Confidential Exs. 9, 11. [REDACTED]

[REDACTED]

68. [REDACTED]

[REDACTED] Confidential Exs. 12, 13.

69. The Board’s enforcement of Prior Rule 31101 was a “complaint-driven” process. In addition to the empowering statute and Prior Rule 31101, 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 22. Under §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.*

70. [REDACTED]

[REDACTED]

Confidential Ex. 14.

71. [REDACTED]

[REDACTED]

[REDACTED] Confidential Ex. 15.

72. [REDACTED]

[REDACTED] Confidential Ex. 16.

73. [REDACTED]

[REDACTED]

Confidential Ex. 17.

74. [REDACTED]

[REDACTED] Confidential Ex. 18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

75. [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

76. 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.

77. [REDACTED]

[REDACTED] Confidential

Ex. 19. [REDACTED]

[REDACTED] *Id.*

78. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Confidential Ex. 20.

79. [REDACTED]

[REDACTED]

[REDACTED]

Confidential Ex. 21. [REDACTED]

[REDACTED]

[REDACTED] *Id.*

80. [REDACTED]

[REDACTED] Confidential Ex. 22.

[REDACTED]

[REDACTED]

Id. at 1.

81. [REDACTED]

[REDACTED] Confidential Ex. 23.

82. [REDACTED]

[REDACTED]

83. [REDACTED]

[REDACTED] Confidential Ex. 24

[REDACTED] Confidential Ex. 25 [REDACTED]

[REDACTED] Confidential Ex. 26 (closure of first formal

investigation of Clear Capital.com, Inc.); Confidential Ex. 27 [REDACTED]

[REDACTED] Confidential Ex. 28 [REDACTED]

[REDACTED].

84. [REDACTED]

[REDACTED] Kennedy Decl. Tab 27.

85. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kennedy Decl. Tab 27.

86. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl.

Tab 27.

87. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 27.

88. [REDACTED]

[REDACTED]

[REDACTED]

89. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy

Decl. Tab 27.

90. [REDACTED] Kennedy Decl.

Tab 27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

91. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab

28.

92. [REDACTED]

[REDACTED]

93. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

94. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 29.

95. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kennedy Decl. Tab. 29.

96. [REDACTED]

[REDACTED]

97. On June 5, 2015, the Board approved the Coester Stipulation and Order. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 31. The Board did not set a “fee schedule”

at that meeting or at any prior or subsequent meeting.

98. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

99. The Coester Stipulation and Order expired by its terms on June 5, 2016. Kennedy Decl. Tab 29.

100. [REDACTED]

[REDACTED] Kennedy Decl. Tab 33.

101. [REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 34.

102. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 34.

103. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 34; 35.

104. The Board would have been satisfied with any legally-recognized method of compliance, including (1) reliance on recent rates established by objective third-party information, such as government fee schedules, academic studies, or independent private sector surveys; (2) application of the six factors in Rule 31101(B) and the Federal Reserve's Interim Final Rules implementing the Dodd-Frank Act; or (3) facts and circumstances that otherwise demonstrated [REDACTED]

105. [REDACTED]

106. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Kennedy Decl. Tab 37.

107. On December 8, 2015, LREAB and iMortgage, through a joint pre-hearing stipulation, limited the hearing to nine transactions. Kennedy Decl. Tab 39. As part of the joint pre-hearing stipulation, iMortgage proposed, and the Board agreed, that certain transactions were entitled to a presumption of compliance with La. R.S. 37:3415.15 because the fee paid were consistent with the SLU Survey.

108. At a hearing, conducted over some 14 hours, iMortgage did not submit any evidence that it had complied with federal and state law in determining the fees paid to residential real estate appraisers for those nine transactions.

109. At the end of the hearing, the Board found iMortgage violated Rule 31101 and the AMC Act. 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 40.

110. 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.

111. [REDACTED]

[REDACTED] Kennedy Decl. Tab 42.

112. On March 10, 2016, the Board determined iMortgage's plan insufficient to comply with federal and state law. The proffered plan referred to a study created by a lender that was not independent of iMortgage, and therefore did not meet federal and state requirements for objectivity and independence; and gave no indicia of compliance with the requirements of Rule 31101, including geographic relevance. iMortgage refused to provide the study to the Board. Further, iMortgage declined to provide any data that could serve as the basis for the six-factor analysis. Kennedy Decl. Tab 43.

113. [REDACTED]

[REDACTED] Kennedy Decl. Tab 44. [REDACTED]

[REDACTED]

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

115. 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. 29. Under the LAPA, 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).

116. In that petition, iMortgage stated that the appropriate standard for judicial review was that contained in the Louisiana Administrative Procedures Act. Ex. 29 at 15, ¶ 72. In its Answer to the Petition, LREAB agreed the APA standard applied. Ex. 30 at ¶ 72; *see also* Kennedy Decl. Tab 5, La. R.S. 49:964(G)(1)-(6).

117. After LREAB received the Civil Investigation Demand from the Commission, and understood that the Commission contended that LREAB's enforcement of Rule 31101 could violate federal antitrust law, LREAB put all pending enforcement of Rule 31101 on hold. At that time, four pending matters were under review. LREAB had obtained initial documentation from each of these AMCs that showed presumptive compliance with the C&R fee requirements. [REDACTED]

[REDACTED]

118. 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*

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Appraisal Management Companies. Ex. 31. The Executive Order references the federal policy to assure that “lenders and their agents pay ‘customary and reasonable’ fees for residential mortgage appraisals,” and the State of 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.” Ex. 31 at Section 1. The Executive Order further observes that “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.)” Ex. 31 at 1.

119. The Executive Order assigns the Louisiana Commissioner of Administration or his designee (“COA”) the duty to review, and the authority to adopt, modify, or reject, any C&R fee regulation promulgated by the Board. *Id.* at Section 2. Further, the Executive Order requires all Board enforcement of its C&R rule, including initiation, settlement, or determinations of complaints against AMCs, to be reviewed and approved, modified, or rejected, by an independent Administrative Law Judge (“ALJ”) from the Louisiana Division of Administrative Law (“DAL”). *Id.* at Section 1.

120. 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 the following actions: (1) to present the Board with a proposed C&R fee rule for submission to the COA, resulting in the repeal and replacement of Prior Rule 31101; (2) to

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negotiate a contract with the DAL for ALJ oversight over enforcement efforts of the Board; (3) to terminate all pending investigations, upon a finding by the Board that the AMCs were complying with the C&R fee requirement; (4) to not initiate any additional enforcement actions under the C&R fee requirement until the replacement rule was in effect; and (5) to seek settlement or resolution of any decrees, orders, or compliance plans, relating to alleged or adjudicated violations of the C&R fee requirements, that had not expired by their terms. Ex. 32. The Board made the Resolution available on its public website, <http://www.reab.state.la.us/forms/Board%20Resolution%20to%20Readopt%203111.pdf>.

121. I did as the Board Resolution required. I notified the AMCs whose investigations were pending that the inquiries were terminated. I negotiated and executed the contract with the DAL. Ex. 33.

122. I proposed to the Board that the text of Prior Rule 31101 be re-promulgated. Following approval by the Board, I took steps to repromulgate the rule following the requirements of the Louisiana APA and the Governor's Executive Order, including obtaining approval of the draft Notice of Intent from the COA and the Louisiana Legislative Fiscal Office; publication of the Notice of Intent in the Louisiana Register on August 20, 2017; receiving and reviewing written public comments; holding a public hearing; sending the APA-required report to the Speaker of the House and the President of the Senate; obtaining confirmation from the Chairmen of the House and Senate Commerce Committees that no Committee members considered an oversight hearing to be necessary; and, receiving the analysis and opinion from the COA that the rule promoted State policies "by ensuring that real estate appraisers will be paid a

C&R 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.” Exs. 34-42.

123. Based on these actions and supervision of the COA and the Legislature, I initiated publication of the Rule in the Louisiana Register. Ex. 43.

124. I also resolved the only decree, settlement, or compliance plan had not expired by its terms, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 44.

125. The publication of Replacement Rule 31101 in the Louisiana Register on November 20, 2017, adopted Replacement Rule 31101 and repealed Prior Rule 31101. Ex. 43.

126. On November 20, 2017, LREAB held a public meeting to explain its actions and provide guidance to licensees. LREAB presented at the meeting its “Statement of Policy upon Adoption of Replacement Rule 31101,” and posted it to LREAB’s website at <http://www.reab.state.la.us/forms/11-20-17LREABPolicyStatement.pdf>; Ex. 4.

127. The Statement of Policy describes the process for the repeal of Prior Rule 31101 and the promulgation of Replacement Rule 31101. *Id.*

128. The Statement of Policy provides the Board's guidance for enforcement of Replacement Rule 31101. *Id.* at 1-2.

129. The Statement explains the role of an administrative law judge from the Division of Administrative Law on future enforcement actions to be taken by the Board, in accordance with the requirements of Executive Order 17-16. The scope of ALJ supervision and review over enforcement by LREAB is detailed in a contract between the Board and the DAL. *Id.*

130. The Statement explains that the ALJ will exercise its review authority prior to the Board initiating any enforcement action, and over any proposed informal resolution, settlement, or dismissal of an enforcement action. The purpose of these reviews is to assure that each proposed action would serve Louisiana state policies to protect the integrity of mortgage appraisals. *Id.*

131. The Statement of Policy provides further that the ALJ will review the record of any hearing and proposed relief in an enforcement action conducted by the Board, consistent with the standards of review in the LAPA and the policies stated above. *Id.*

132. The Statement of Policy explains that LREAB interprets Replacement Rule 31101 in the same way as it interpreted Prior Rule 31101. *Id.*

133. The Statement of Policy states, with respect to Prior Rule 31101:

- A. 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.

PUBLIC

- 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.

Id.

134. Finally, the Statement informs the public that the Board determined not to fund further the SLU Survey, and that it would take the survey down from its website. *Id.* at 5-6. The Statement recounts the reasons why the Board had funded the SLU Survey in the past, so as to assist AMCs in complying with Rule 31101, and repeats the language of the Board’s notice accompanying the survey: “This study is provided as a courtesy to all licensees; however, its use is not mandatory.” *Id.* at 6.

135. The Board’s reason for this decision was that the Complaint in this proceeding asserts that the Board’s acceptance of AMC-proposed settlements to comply with Rule 31101(A) based on the SLU Survey was intended to fix, maintain, or stabilize prices for AMC payments for residential appraisal services. *Id.* The Board categorically rejected that characterization, but – consistent with the Governor’s intent for LREAB to resume its statutorily-mandated regulatory duties – preferred to eliminate the source of such continuing accusations with respect to the Replacement Rule 31101. *Id.*

136. Notwithstanding, because use of the SLU Survey may presumptively comply with the C&R mandate under Replacement Rule 31101 and the federal Interim Final Rules under Dodd-Frank, the Statement informed AMCs that their use of the SLU Survey, or any survey,

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would be subject to the conditions under the federal rules and Rule 31101 for presumptive compliance. *Id.* 6-7. The Statement noted this would apply through the end of 2017, at which time the survey data would no longer reflect recent rates. *Id.*

137. The Statement concluded by reminding AMCs that in any enforcement action, their use of the SLU Survey or other third-party information would be subject to review by an ALJ.

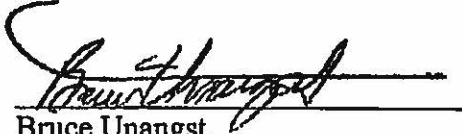
138. As of the date of this Affidavit, LREAB has neither initiated nor brought enforcement actions under Replacement Rule 31101.

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

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VERIFICATION OF AFFIDAVIT OF BRUCE UNANGST

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

A handwritten signature in black ink, appearing to read "Bruce Unangst", is written over a horizontal line.

Bruce Unangst
Executive Director
Louisiana Real Estate Appraisers Board

December 12, 2017

EXHIBIT 1



LOUISIANA

REAL ESTATE APPRAISERS BOARD

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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.

Louisiana Real Estate Appraisers Board

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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.

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

C. All records shall be kept properly indexed and readily available to the board for review upon request 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

NOTICE OF INTENT

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

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 GOVERNMENTAL 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

**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;

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

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

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

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

Chapter 305. Responsibilities and Duties

§30501. Record Keeping

A. - A.4. ...

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

1. name, license status, and qualifications;
2. errors and omission insurance status, including the carrier, the policy number, the dollar limits of the coverage and the dates covered in the policy, if such insurance is required by the licensee;
3. experience and professional record;
4. the areas in which each fee appraiser considers him/herself geographically competent broken down by parish and/or zip code;
5. the type of property for each appraisal performed;
6. the scope of work for each appraisal performed;
7. the time frame in which the appraisal services are required to be performed;
8. fee appraiser work quality;
9. the number and type of assignments completed per year; and
10. the fee or remuneration or monetary compensation for each report or assignment.

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

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

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

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

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

Chapter 309. Investigations; Disciplinary Authority; Enforcement and Hearing

§30900. Investigations

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

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

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

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

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

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

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

Chapter 311. Compensation of Fee Appraisers

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

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

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

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

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

PUBLIC

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Real Estate—Appraisal
Management Companies**

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

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

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

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

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

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

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

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

Family Impact Statement

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

Poverty Impact Statement

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

Public Comments

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

Bruce Unangst
Executive Director

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Bruce Unangst
Executive Director
1302#006

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Dentistry**

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

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

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

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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.

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**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 appraiser 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 maintained. 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

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**Department of Natural Resources
Office of Conservation**

Legal Notice—Docket No. ENV 2013-L02

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

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 4



JOHN BEL EDWARDS
GOVERNOR

PUBLIC

State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

**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



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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.



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LOUISIANA REAL ESTATE APPRAISERS BOARD

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 31101 with 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.



JOHN BEL EDWARDS
GOVERNOR

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LOUISIANA REAL ESTATE APPRAISERS BOARD

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



JOHN BEL EDWARDS
GOVERNOR

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LOUISIANA REAL ESTATE APPRAISERS BOARD

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



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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



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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.

EXHIBIT 5

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

EXHIBITS 6 - 28

REDACTED IN THEIR ENTIRETY

EXHIBIT 29

iMORTGAGE SERVICES, LLC

SUIT NO. ~~04/070~~ SEC.

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.

FILED
EAST BATON ROUGE PARISH, LA
2016 MAR 14 PM 4:09
DEPUTY CLERK OF COURT

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 Act² (“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

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.

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.

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 products¹⁰, 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.

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

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

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 circumstances²⁹; "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.

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

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) is not 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

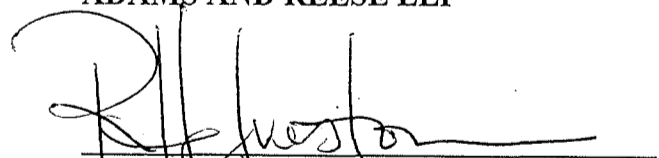
WHEREFORE, Petitioner, iMortgage Services, LLC prays that after all due proceedings, this Honorable Court grant its Petition for Judicial Review and render judgment in its favor and against the Defendant:

- (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 as 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



ROBERT L. RIEGER (#18404)
KELLEN J. MATHEWS (#31860)
REBECCA S. HELVESTON (#35331)
450 Laurel Street, Suite 1900
Baton Rouge, Louisiana 70801
Telephone: (225) 336-5200
Facsimile: (225) 336-5220

Attorneys for Petitioner,
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 30

IMORTGAGE SERVICES, LLC

NUMBER: 646,670; SECTION: "27"

VERSUS

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

LOUISIANA REAL ESTATE
APPRAISERS BOARD

STATE OF LOUISIANA

ANSWER TO PETITION FOR JUDICIAL REVIEW

NOW INTO COURT, through undersigned counsel, comes the LOUISIANA REAL ESTATE APPRAISERS BOARD, who for answer to the petition of IMORTGAGE SERVICES, LLC responds as follows:

1.

Paragraph 1 requires no answer by this defendant.

2.

Paragraph 2 is admitted.

3.

Paragraph 3 is admitted.

4.

Paragraph 4 requires no answer by this defendant.

5.

Paragraph 5 requires no answer by this defendant.

6.

Paragraph 6 is admitted.

7.

Paragraph 7 is admitted insofar as it states that the LREAB is a state agency that regulates appraisal management companies and appraisers.

8.

Paragraph 8 is denied for lack of sufficient information upon which to justify a belief therein and is irrelevant to the proceedings before this court.

FILED
EAST BATON ROUGE PARISH, LA
2016 APR -8 PM 1:32
DEPUTY CLERK OF COURT

9.

Paragraph 9 is denied for lack of sufficient information upon which to justify a belief therein and is irrelevant to the proceedings before this court.

10.

Paragraph 10 is denied for lack of sufficient information upon which to justify a belief therein and is irrelevant to the proceedings before this court.

11.

Paragraph 11 requires no answer by this defendant, however, the “Dodd-Frank” acts speaks for itself and is the best evidence.

12.

Paragraph 12 requires no answer by this defendant and is irrelevant to the proceedings before this court.

13.

Paragraph 13 requires no answer by this defendant and is irrelevant to the proceedings before this court.

14.

Paragraph 14 requires no answer by this defendant and is irrelevant to the proceedings before this court.

15.

Paragraph 15 requires no answer by this defendant and is irrelevant to the proceedings before this court.

16.

Paragraph 16 requires no answer by this defendant and the federal regulations speak for themselves and is the best evidence.

17.

Paragraph 17 requires no answer by this defendant.

18.

Paragraph 18 requires no answer by this defendant.

19.

Paragraph 19 requires no answer by this defendant.

20.

Paragraph 20 is denied.

21.

Paragraph 21 is denied for lack of sufficient information upon which to justify a belief therein.

22.

Paragraph 22 is denied. There was an email sent to the Executive Director of the LREAB in January, 2014.

23.

Paragraph 23 is denied.

24.

Paragraph 24 is denied.

25.

Paragraph 25 is denied in that the letter sent to iMortgage was an investigative letter seeking information.

26.

Paragraph 26 is admitted in that it did not list details of the allegation because it was an investigative letter, however, it listed the specific statute that may have been violated and was requesting information to determine if a violation occurred.

27.

Paragraph 27 is admitted.

28.

Paragraph 28 is admitted that documentation was submitted but it is unknown as to the exact number of appraisal transactions that were included.

29.

Paragraph 29 is denied.

30.

Paragraph 30 is admitted.

31.

Paragraph 31 is denied for lack of sufficient information as to when the Notice was received by iMortgage, however, the letter is dated November 21, 2014.

32.

Paragraph 32 is admitted.

33.

Paragraph 33 is denied for lack of sufficient information upon which to justify a belief therein.

34.

Paragraph 34 is denied in that the original letter to iMortgage of July, 2014 provided information as to what was being investigated and provided the specific statute.

35.

Paragraph 35 is admitted.

36.

Paragraph 36 is admitted.

37.

Paragraph 37 is admitted.

38.

Paragraph 38 is admitted.

39.

Paragraph 39 is admitted.

40.

Paragraph 40 is admitted that iMortgage sent additional information, however, it was determined right before the hearing that the Board would proceed against only nine (9) transactions.

41.

Paragraph 41 is admitted.

42.

Paragraph 42 is admitted.

43.

Paragraph 43 is denied.

44.

Paragraph 44 is admitted.

45.

Paragraph 45 is admitted.

46.

Paragraph 46 is admitted.

47.

Paragraph 47 is admitted.

48.

Paragraph 48 is denied.

49.

Paragraph 49 is denied.

50.

Paragraph 50 is admitted.

51.

Paragraph 51 is denied.

52.

Paragraph 52 is denied.

53.

Paragraph 53 is denied.

54.

Paragraph 54 requires no answer by this defendant and is irrelevant to the proceedings before this court.

55.

Paragraph 55 is denied.

56.

Paragraph 56 is denied.

57.

Paragraph 57 is denied.

58.

Paragraph 58 is denied.

59.

Paragraph 59 is denied.

60.

Paragraph 60 is denied.

61.

Paragraph 61 is denied.

62.

Paragraph 62 is denied.

63.

Paragraph 63 is denied.

64.

Paragraph 64 is denied.

65.

Paragraph 65 is denied.

66.

Paragraph 66 is denied.

67.

Paragraph 67 is denied.

68.

Paragraph 68 is denied.

69.

Paragraph 69 is denied.

70.

Paragraph 70 requires no answer by this defendant, however, the law requires that 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 and these findings of fact are not to "be set aside unless they are manifestly erroneous in view of the entire record."

71.

Paragraph 71 is denied. LSA-R.S. 37:3409 clearly requires that any final decision or determination of the Board in an adjudicatory proceeding shall be reviewable as to questions of law by the Nineteenth Judicial District Court.

72.

Paragraph 72 requires no answer by this defendant as the statute speaks for itself.

73.

Paragraph 73 is denied.

74.

Paragraph 74 requires no answer by this defendant, however, the defendant denies any alleged irregularities in the procedure before the agency and the hearing was conducted properly with Judge Darrell White presiding over the procedural aspect and all evidentiary matters of the hearing.

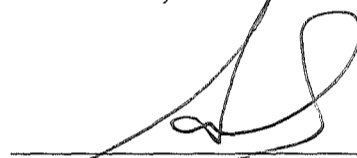
75.

Paragraph 75 requires no answer by this defendant.

WHEREFORE, the above premises considered, the **LOUISIANA REAL ESTATE APPRAISERS BOARD** respectfully prays that this Answer to Petition for Judicial Review of **iMORTGAGE SERVICES, LLC** be deemed good and sufficient, and after all legal delays and due proceedings, there be Judgment in favor of the defendant and against iMortgage Services, LLC.

By Attorneys:

DELATTE, EDWARDS & MARCANTEL

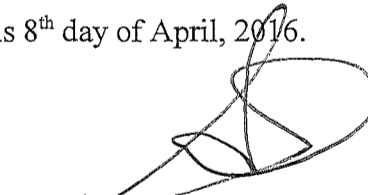


ARLENE C. EDWARDS
Bar Roll No. 05280
9247 Bluebonnet Boulevard
Suite C
Baton Rouge, Louisiana 70825
Telephone: (225) 709-9000
Facsimile: (225) 709-9001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Answer to Petition for Judicial Review was this day mailed to Mr. Robert L. Rieger and Rebecca S. Helveston, 450 Laurel Street, Suite 1900, Baton Rouge, Louisiana 70801.

BATON ROUGE, LOUISIANA this 8th day of April, 2016.



ARLENE C. EDWARDS

EXHIBIT 31



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 32



JOHN BEL EDWARDS
GOVERNOR

State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

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.

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.

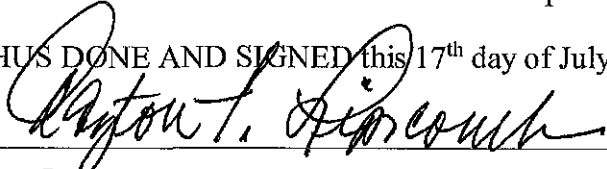
c. The LREAB must submit to the Commissioner of Administration or the Commissioner's designee for approval, rejection, or modification any proposed regulation relating to AMC compliance with the customary and reasonable fee requirement.

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:

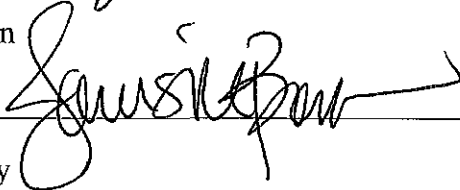
THEREFORE, it is resolved:

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 33

**MEMORANDUM OF UNDERSTANDING
LOUISIANA REAL ESTATE APPRAISERS BOARD AND
DIVISION OF ADMINISTRATIVE LAW**

1. PURPOSE

This Memorandum of Understanding (MOU) between the Louisiana Real Estate Appraisers Board (LREAB), and the Division of Administrative Law (DAL) sets forth the agreement of the parties with respect to conducting reviews of settlements with Appraisal Management Companies (AMC), and reviews of proposed actions, administrative complaints, and enforcement actions, against AMCs.

2. AUTHORITY

The DAL is authorized to provide administrative law judges on a contractual basis to any governmental entity not covered by the DAL Act, and to conduct administrative hearings for such entity. LSA-R.S. 49:999.1. This MOU is further authorized by Executive Order JB 17-16.

3. CONTACTS

The contact for the LREAB is:
Arlene C. Edwards
Attorney for the Real Estate Appraisal Board
9247 Bluebonnet Blvd. Ste. C
Baton Rouge, Louisiana 70810-2972
Voice 225-709-9000
edwards@demlawoffice.com

The contact for the DAL is:
Lindsey K. Hunter
General Counsel
Division of Administrative Law
P.O. Box 44033
Baton Rouge, Louisiana 70802
Voice 225-219-9984
lhunter@adminlaw.state.la.us

4. DUTIES AND RESPONSIBILITIES OF THE LREAB

Prior to finalization of a settlement agreement with, or the filing of an administrative complaint against, an AMC, regarding compliance with the customary and reasonable requirements of La. R.S. 37:3415.15(A), the LREAB will transmit its proposed action and the record thereof to the DAL. The record shall include a written statement by the LREAB supporting its decision, and any material information or records obtained by the LREAB, for the DAL to consider when determining whether to approve, reject, or modify the action proposed by LREAB.

5. DUTIES AND RESPONSIBILITIES OF THE DAL

Within thirty (30) days of submission of LREAB's proposed action and the record thereof, the DAL will electronically submit its written decision to LREAB. The date of the submission shall be the date it is received at the DAL through electronic submission. The DAL'S written determination will approve, reject or modify the LREAB's proposed action, and may remand the proceeding to the LREAB with instructions or to obtain additional evidence for the record on review.

- (a) The DAL shall review each request by the LREAB to initiate an administrative complaint against an AMC, and shall determine (i) whether the evidence presented is sufficient to show a likelihood that the AMC has not complied with the customary and reasonable requirements of La. R.S. 37:3415.15(A), and (ii) whether the proposed enforcement action serves Louisiana's policy of protecting the integrity of residential mortgage appraisals.
- (b) The DAL shall review each proposed settlement agreement, dismissal, or informal resolution of any DAL-approved enforcement action and determine whether the proposed enforcement action serves Louisiana's policy of protecting the integrity of residential mortgage appraisals by requiring that fees paid by AMCs for such appraisals are customary and reasonable in accordance with La. R.S. 37:3415.15(A).
- (c) The DAL shall review the entirety of the hearing record and evidence of each enforcement proceeding conducted by the LREAB, the written proposed determination by the LREAB as to whether one or more violations by an AMC of La. R.S. 37:3415.15(A) and rules promulgated thereunder have occurred, and any proposed remedy with respect to any such violation. The DAL shall conduct this review according to the standards set forth in La. R.S. 49:964(G) whereby:
 - (i) all questions of law and statutory and regulatory interpretations shall be determined by the DAL in accordance with Section 964(G)(1)-(4) without deference to the LREAB determinations;
 - (ii) the proposed remedy should be reviewed by the DAL in accordance with Section 964(G)(5), in light of the underlying policies of the State of Louisiana and the determination by the DAL of the findings of fact; and,
 - (iii) all findings of fact shall be determined by the DAL in accordance with Section 964(G)(6), giving deference to the LREAB's determination of credibility issues.

6. **ELECTRONIC FILE TRANSFER**

The LREAB and the DAL will transmit documents via the DAL's electronic file transfer system. The DAL will provide, implement, and maintain the electronic file transfer system for the receipt and docketing of the LREAB review matters, and for transmitting case files, determinations, and other related documents.

7. **RECORDS**

The LREAB shall retain records in accordance with its records retention policy, and acknowledges that the DAL will retain records in accordance with its records retention policy.

8. **PAYMENT**

The LREAB will pay the DAL for providing the services specified in this MOU according to the DAL's Billed Services Methodology and the Statewide Cost Allocation Program, or SWCAP. The DAL will bill LREAB for its allocated annual costs at the beginning of the first quarter of each fiscal year. Service invoices will be sent quarterly and are payable upon receipt.

In the event there is an agreement to withdraw a proposed LREAB action from the DAL's consideration prior to issuing and transmitting the determination, LREAB will be responsible for payment of any services provided from the time of submission until the completion of the withdrawal.

The billing address and contact is:

**Louisiana Board of Real Estate Appraisers
Bruce Unangst, Executive Director
Post Office Box 14785
Baton Rouge, Louisiana 70890-4785**

9. EFFECTIVE DATE, TERMINATION, AND AMENDMENT OF MOU:

Effective Date - The term of this agreement shall be from July 1, 2017 through June 30, 2019. This agreement shall renew automatically for an additional two (2) year term, and shall continue to renew thereafter on each successive two-year anniversary of that date for an additional two-year term. Upon written request of either party within six (6) months prior to the expiration of the then-current term of the agreement, the parties shall negotiate revised terms for the renewed agreement term.


Termination – This agreement may be terminated by either party upon (thirty) days written notice by one party to another, or as provided by applicable state or federal law.

Amendments - This agreement may be modified, in writing, as agreed upon by the parties, at any time.

APPROVALS:



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



**Emalie A. Boyce, Director
Division of Administrative Law**

EXHIBIT 34

Office of the Commissioner
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

RECEIVED

AUG 16 2017

LA Real Estate Commission

August 14, 2017

Bruce Unangst
Louisiana Real Estate Appraisers Board
9071 Interline Ave
Baton Rouge, LA 70809

Re: Approval of LREAB Rulemaking Pursuant to Executive Order No. 17-16

Dear Mr. Unangst:

This letter serves as my approval of the Louisiana Real Estate Appraisers Board (LREAB) request to proceed with proposed rules, which were submitted to my office for review pursuant to the Governor's Executive Order No. 17-16, issued on July 11, 2017.

After careful consideration of LREAB's regulatory role, the circumstances leading to these proposed rules, and the goals sought by their promulgation, I am of the opinion that these rules will further the public policy of the State of Louisiana 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.

If you have any additional questions or need anything further from my office, do not hesitate to ask.

Sincerely,

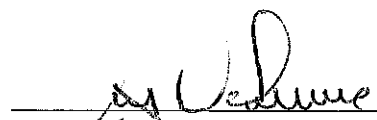

Jay Dardenne
Commissioner of Administration

EXHIBIT 35

NOTICE OF INTENT

Office of the Governor
Real Estate Appraisers Board

LAC 46:LXVII.Part 3. Chapter 311

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Appraisers Board has initiated procedures to readopt Chapter 311 (Compensation of Fee Appraisers) to include additional oversight.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXVII. Real Estate

Subpart 3. Appraisal Management Companies

Chapter 311. Compensation of Fee Appraisers

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013), amended LR 42:872 (June 2016).

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the August 20, 2017 *Louisiana Register*: The proposed rule readoption has no known impact on family, formation, stability, or autonomy.

Poverty Impact Statement

The proposed rule readoption has no known impact on poverty as described in R.S. 49:973.

Provider Statement

The proposed rule readoption has no known impact on providers of services for individuals with developmental disabilities.

Public Comments

Interested parties may submit written comments on the proposed regulations to Ryan Shaw, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809 or rshaw@lrec.state.la.us, through September 8, 2017 at 4:30 p.m.

Public Hearing

If it becomes a necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedures Act, a hearing will be held on September 28, 2017 at 9:00 a.m. at the office of the Louisiana Real Estate Commission, 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: LAC 46:LXVII. Part 2 Chapters 307, 309, and 311

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no estimated implementation costs (savings) to state or local governmental units as the result of the proposed rule readoption.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule readoption will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
There are no estimated costs associated with the proposed rule readoption.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule readoption will have no effect on competition and employment.

Bruce Unangst
Executive Director

Evan Brasseaux
Staff Director
Legislative Fiscal Office

EXHIBIT 36

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9. [REEVA's Comments in Opposition of 3111 Readoption](#)
10. [LREAB Response to REEVA's Opposition Comments](#)
11. [Public Hearing Notice on Readoption of 31101](#)
12. [Public Hearing Transcript](#)
13. [LREAB Second Report for Oversight](#)

Mr. Jay Dardenne
Commissioner of Administration
P.O. Box 94095
Baton Rouge, La., 70804-9095

October 3, 2017

Re: Approval of LREAB Rulemaking Pursuant to Executive Order 17-16

Dear Mr. Dardenne:

We respectfully submit the enclosed information pursuant to Section 2 of Governor Edward's Executive Order 17-16 requiring your supervisory review of the Rulemaking record of all new regulations proposed by the LREAB regarding the customary and reasonable fee provisions of La. R.S. 37.3415.15A.

Per your letter of August 14, 2017 which approved of our proceeding with the promulgation of a replacement for Rule 31101, we have completed all requirements of advertising and solicitation of comments following Administrative Procedures Act requirements. All written comments received, as well as a transcript of our final public hearing held on September 27, 2017 are included herein.

From a public policy perspective, please note the leaders in job creation in our construction and real estate industry have all joined in support of the proposed re-adoption of Rule 31101, including the Homebuilders Association, Realtors Association, and the Louisiana Bankers Association. REVAA, the trade organization based in Washington D. C. representing 25 of the 141 licensed AMC's doing business in Louisiana, expressed concerns regarding the proposed re-adoption for which detailed responses have been provided.

We stand ready to provide any additional information you may need in your substantive review of this rulemaking record.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Unangst", with a long horizontal line extending to the right.

Bruce Unangst
Executive Director



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

PUBLIC

Office of the Commissioner
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

RECEIVED

AUG 16 2017

August 14, 2017

LA Real Estate Commission

Bruce Unangst
Louisiana Real Estate Appraisers Board
9071 Interline Ave
Baton Rouge, LA 70809

Re: Approval of LREAB Rulemaking Pursuant to Executive Order No. 17-16

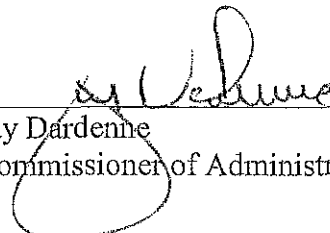
Dear Mr. Unangst:

This letter serves as my approval of the Louisiana Real Estate Appraisers Board (LREAB) request to proceed with proposed rules, which were submitted to my office for review pursuant to the Governor's Executive Order No. 17-16, issued on July 11, 2017.

After careful consideration of LREAB's regulatory role, the circumstances leading to these proposed rules, and the goals sought by their promulgation, I am of the opinion that these rules will further the public policy of the State of Louisiana 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.

If you have any additional questions or need anything further from my office, do not hesitate to ask.

Sincerely,


Jay Dardenne
Commissioner of Administration



JOHN BEL EDWARDS
GOVERNOR

State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

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.

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:

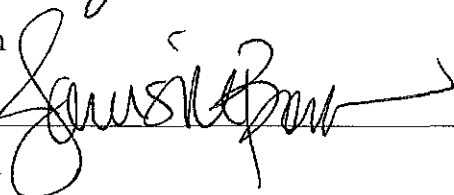
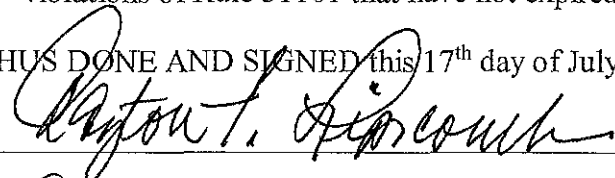
THEREFORE, it is resolved:

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



NOTICE OF INTENT

Office of the Governor
Real Estate Appraisers Board

LAC 46:LXVII.Part 3. Chapter 311

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Appraisers Board has initiated procedures to readopt Chapter 311 (Compensation of Fee Appraisers) to include additional oversight.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXVII. Real Estate

Subpart 3. Appraisal Management Companies

Chapter 311. Compensation of Fee Appraisers

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013), amended LR 42:872 (June 2016).

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the August 20, 2017 *Louisiana Register*: The proposed rule readoption has no known impact on family, formation, stability, or autonomy.

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The proposed rule readoption has no known impact on poverty as described in R.S. 49:973.

Provider Statement

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Public Comments

Interested parties may submit written comments on the proposed regulations to Ryan Shaw, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809 or rshaw@lrec.state.la.us, through September 8, 2017 at 4:30 p.m.

Public Hearing

If it becomes a necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedures Act, a hearing will be held on September 28, 2017 at 9:00 a.m. at the office of the Louisiana Real Estate Commission, 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: LAC 46:LXVII. Part 2 Chapters 307, 309, and 311**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no estimated implementation costs (savings) to state or local governmental units as the result of the proposed rule readoption.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule readoption will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
There are no estimated costs associated with the proposed rule readoption.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule readoption will have no effect on competition and employment.

Bruce Unangst
Executive Director

Evan Brasseaux
Staff Director
Legislative Fiscal Office

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: Ryan Shaw Dept.: Office of the Governor

Phone: 225-925-1923 Office: LA Real Estate Appraisers Board

Return
Address: P.O. Box 14785 Rule
Baton Rouge, LA Title: LAC 46:LXVII. Part 2 Chapter 311
70890-4785
Date Rule Takes Effect: Upon publication in the Register

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

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

There are no implementation costs or savings to state or local governmental units associated with the proposed rule re adoption.

The proposed rule re adoption is for continued oversight only.

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

The proposed rule re adoption is for continued oversight only and will have no effect on revenue collections of state or local governmental units.

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

The proposed rule re adoption is for continued oversight only and will have no estimated costs associated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Signature of Agency Head or Designee

Bruce Unangst, Executive Director

Typed Name & Title of Agency Head or Designee

Date of Signature

Legislative Fiscal Officer or Designee

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

There are no implementation costs (savings) to state or local governmental units associated with the proposed rule readoption. The proposed rule readoption is for continued oversight only.

- B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This action is taken at the discretion of the board.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule readoption will not result in any increase in the expenditure of funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ Yes. If yes, attach documentation.

(b) _____ NO. If no, provide justification as to why this rule change should be published at this time

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 18	FY 19	FY 20
Personal Services			
Operating Expenses			
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	-0-	-0-	-0-
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The proposed rule readoption will not impact costs (savings) to state or local governmental units.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 18	FY 19	FY 20
State General Fund	-0-	-0-	-0-
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

There are no funds required to implement the proposed rule readoption.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed rule readoption will have no impact on local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

The agency operates from self-generated funds that will not be affected by the proposed rule readoption.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 18	FY 19	FY 20
State General Fund			
Agency Self-Generated	-0-	-0-	-0-
Dedicated Funds*			
Federal Funds			
Local Funds			
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The proposed rule readoption will have no effect on revenue collections of state and local governmental units.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

The proposed rule readoption is for continued oversight only and will have no estimated costs associated.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

The proposed rule readoption is for continued oversight only and will have no estimated impact on receipts and/or income.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed rule readoption will not impact competition and employment in the public and private sectors.

September 6, 2017

Mr. Ryan Shaw
Louisiana Real Estate Commission
P.O. Box 14785
Baton Rouge, LA 70898-4785

Dear Mr. Shaw:

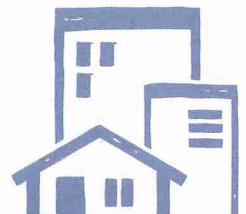
On behalf of the Louisiana REALTORS®, I am writing to express our full support for the Louisiana Real Estate Appraisal Board's proposed regulation found in the August 20, 2017 edition of the Louisiana Register. This proposed rule would readopt LAC 46:LXVII.31101 relative to compensation of fee appraisers by Appraisal Management Companies.

We certainly appreciate your consideration of our support and if you need any additional information, please do not hesitate to contact me at (225) 923-2210 or by email – norman@larealtors.org.

Sincerely,



Norman R. Morris
CEO, Louisiana REALTORS®





September 5, 2017

Mr. Ryan Shaw
Louisiana Real Estate Commission
P.O. Box 14785
Baton Rouge, LA 70898-4785

Dear Mr. Shaw:

On behalf of the Louisiana Bankers Association, I am writing to express our support for the proposed regulation of the Louisiana Real Estate Appraisers Board contained in the August 20, 2017 edition of the Louisiana Register, which would readopt LAC 46:LXVII.31101 related to compensation of fee appraisers by Appraisal Management Companies.

Thank you for your consideration of our opinion. If you need additional information or have any questions, please call me at (225) 214-4837.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Gendron'.

Joe Gendron
Director of Government Relations



LOUISIANA
HOME BUILDERS
ASSOCIATION

660 Laurel Street, Suite A
Baton Rouge, LA 70802
Telephone: 225-387-2714
Toll Free: 800-272-9912
Email: info@LHBA.org

Conrad Blanchard
President

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Ph: 318-614-1458
casualconcepts@bellsouth.net

Nick Castjohn
1st Vice President

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ncastjohn@renovateinc.com

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Ph: 318-464-9192
curtismloftinbuilder@msn.com

Dodie Adams
3rd Vice President

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Mandeville, LA 70448
Ph: 985-626-3479
dodie.a@att.net

Brandon Barton

Associate Vice President
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Denham Springs, LA 70706
Ph: 225-241-5856
ktozwindowcoverings@gmail.com

Jeannie A Dodd

Executive Vice President
660 Laurel Street, Suite A
Baton Rouge, LA 70802
Ph: 225-387-2714
jeannie@LHBA.org



September 5, 2017

Louisiana Real Estate Commission
Post Office Box 14785-4785
Baton Rouge, LA 70898-4785

Dear Ms. Shaw,

The Louisiana Home Builders Association (LHBA) is in favor of the re-adoption of the Proposed Rule 31101 (Louisiana Administrative Code Title 46, § 31101.) Customary and reasonable rules for appraisers are necessary to ensure the accuracy, integrity and quality for residential mortgage appraisals. Without these critical rules, consumer and lenders are at risk.

The proposed rule follows the guidance and requirements dictated by Congress and the federal regulatory agencies, including offering Appraisal Management Companies (AMC's) multiple methods of compliance with the customary and reasonable residential appraisal fee requirement.

It is for these significant reasons LHBA strongly supports the adoption and implementation of the Proposed Rule 31101.

Sincerely,

Conrad Blanchard
President

September 8, 2017

Mr. Ryan Shaw
Louisiana Real Estate Commission
P.O. Box 14785
Baton Rouge, LA 70898-4785

Via e-mail to rshaw@lrec.state.la.us

Dear Mr. Shaw:

The Appraisal Institute (AI) appreciates the opportunity to offer its comments regarding the Louisiana Real Estate Appraisers Board's (LREAB) Notice of Intent to readopt Proposed Rule 31101 (LAC 46:LXVII.31101), which was published in the Louisiana Register on August 20, 2017.

AI supports the enhanced appraiser independence requirements found in the Dodd-Frank Act, including requirements for the payment of customary and reasonable fees to appraisers (15 U.S.C. §1639e) and AMC registration (12 U.S.C §3353).

In reviewing the Proposed Rule, the language appears to be consistent with the language of the enabling statute (LSA-R.S. 37:3415.15) as enacted in 2012, and subsequently amended in 2016, which states 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. 1639\(e\)](#) and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222.”

AI believes the Louisiana statute is consistent with the Dodd-Frank Act in that it requires lenders and their agents, including appraisal management companies (AMC), to “compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.” The Louisiana requirement for the payment of customary and reasonable fees to appraisers is specific to AMCs and does not apply to lenders and other agents.

In 2010, the Federal Reserve adopted rules that established two presumptions of compliance for use by lenders and their agents¹. A lender or agent that utilizes the methodologies in the rules is presumed to be compliant with the requirements for the payment of a customary and reasonable fee. AI has expressed concern with these regulations as to whether they accurately reflect the intent of Congress when it enacted 15 U.S.C § 1639e. However, paragraphs B through D of Proposed Rule 31101 are a near verbatim replication of what is currently within the federal rules regarding the payment of customary and reasonable compensation to appraisers.

¹ 12 C.F.R. §226.42, later moved to 12 C.F.R. §1046.42

Further, under federal rules² adopted in 2015, a state that elects to register and oversee AMCs must impose requirements to establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the federal law regarding the payment of customary and reasonable fees. Louisiana enacted the Appraisal Management Company Licensing and Regulation Act (LSA-R.S. 37:3415.1 *et. seq.*) requiring the licensing and oversight of AMCs in 2010. As such, it appears that the Proposed Rule attempts to ensure that the federal minimum requirements for registration and oversight of AMC's are fulfilled by requiring AMC's operating in Louisiana to pay customary and reasonable compensation to appraisers.

The Dodd-Frank Act does not appear to prevent a state from enacting its own provisions regarding the payment of customary and reasonable fees to appraisers. In fact, the federal law³ providing for the state registration and oversight of AMCs states that, "Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules" specifically mentioned in the statute.

Of course, under the laws of federal preemption, a state that chooses to enact its own law requiring the payment of reasonable and customary fees to appraisers cannot enact anything that would conflict with, the federal law. We do not believe that there is anything in LSA-R.S. 37:3415.15 that creates a conflict with federal law or a situation in which an AMC operating in the state cannot be compliant with both federal and state law. The Louisiana law and Proposed Rule 31101 appear to simply make it a violation of state law for an AMC to not be compliant with the federal requirements for the payment of customary and reasonable compensation.

Further, we believe the language of Proposed Rule 31101 is consistent with, and does not differ noticeably, from the language regarding the payment of customary and reasonable compensation to appraisers contained in 15 U.S.C. 1639e and the "final federal rules" contained in 12 C.F.R. § 226.42 and 12 C.F.R. § 1046.42. In our opinion, Proposed Rule 31101 requires the AMCs operating in Louisiana to utilize the same methods that they are required to utilize under federal law to determine what constitutes customary and reasonable compensation to an appraiser for a specific appraisal assignment.

For all the above reasons, the AI supports the adoption of Proposed Rule 31101.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Amorin".

Jim Amorin, MAI, SRA, AI-GRS
2017 President/Acting Chief Executive Officer

² 12 C.F.R. § 34.210 *et. seq.*, 12 C.F.R. § 323.8 *et. seq.*, and 12 C.F.R. § 1222.20 *et. seq.*

³ 12 U.S.C. § 3353(b)

From: Phillip Burnett
To: [Ryan Shaw](#)
Subject: 31101
Date: Tuesday, September 05, 2017 9:57:54 AM

Hi Ryan,

I love, love, love la 31101 and I hope you kick the FTC's arse! I'm so glad we have people standing up for our rights. That I'm willing to run for counsel or serve as an appraisal board member. All in hopes of furthering the cause!

I'd also love to know what amc it is that instigated this action. So, that I can be sure to avoid them. As I don't want to do business with people who are attempting to defraud appraisers.

Please let me know how I can help!

Thanks,
Phillip Burnett

Sent from my iPhone

From: Don
To: [Ryan Shaw](#)
Subject: 31101 readoption
Date: Tuesday, September 05, 2017 9:54:49 AM

I agree with this rule.

Sent from my iPhone

From: fdtappraisal
To: [Ryan Shaw](#)
Cc: [Shane Tournier](#)
Subject: 31101 readoption
Date: Monday, August 28, 2017 10:10:21 AM

Mr. Shaw,

I fully support the readoption of 31101. Furthermore, please feel free to share my email with any governmental official. By any and all means let them know, I will be watching active with comments and for whom I vote!

Thank you and all involved in this effort which protects the publics best interest!

Sincerely,
Frank Tournier

From: Gabe Lanoux
To: [Ryan Shaw](#)
Subject: 31101 readoption
Date: Monday, August 28, 2017 9:58:16 AM

We support the readoption act. Appraisers need all the help we can get to assist in collecting appraisal fees. Thanks in advance gabe

Sent from my iPhone

From: Sal Petitto
To: [Ryan Shaw](#)
Subject: 31101 readoption
Date: Monday, August 28, 2017 9:57:38 AM

I support the rule. Instances in the past reflect payment beyond 3 months. This was and still is unacceptable. However, it has been noticed that AMC's are becoming more compliant.

Salvadore Petitto
Appraise Dat Appraisal Service, LLC

Sent from my iPhone

From: Bill Cobb - Baton Rouge Home Appraiser 225-293-1500
To: [Ryan Shaw](#)
Subject: 31101 readoption
Date: Monday, August 28, 2017 9:57:23 AM

I support readoption because I like to get paid within 30 days and LOVE the annual SE La University fee study.

Thank You for ALL LREC does on our behalf!

Bill Cobb, Baton Rouge Home Appraiser
Accurate Valuations Group, LLC
Business Phone: [225-293-1500](tel:225-293-1500)
Mobile Phone: 225-953-0638
<http://www.batonrougeappraisers.com>

Sent from my iPad

From: Cheryl
To: [Ryan Shaw](#)
Subject: 31101 readoption
Date: Tuesday, September 05, 2017 9:55:49 AM

The readoption of this rule provides compliance with federal mandates and protects the public. I support this rule and appreciate the efforts of the Ireab and Governor Edwards.

Cheryl

Cheryl Bella, FICAP Chief Compliance Officer

From: Roger Carter
To: [Ryan Shaw](#)
Subject: 31101 Readoption
Date: Monday, August 28, 2017 2:30:53 PM

Mr. Shaw,

I support the readoption on 31101. As an appraiser, we need reasonable fee studies by our state board.

Sincerely,

Roger Carter
La Certified real estate appraiser
#R1283

From: Todd Fitzmorris
To: [Ryan Shaw](#)
Subject: 31101 rule
Date: Monday, August 28, 2017 9:58:51 AM

I'm all for readopting this rule and it's beneficial to appraisers.

Todd Fitzmorris

Sent from my iPhone

From: qas1
To: [Ryan Shaw](#)
Subject: 31101
Date: Monday, August 28, 2017 10:01:48 AM

I support the readoption of rule 31101. Alan Balladares

G0697

Sent from my Sprint Phone.

From: Todd Green
To: [Ryan Shaw](#)
Subject: 31101
Date: Monday, August 28, 2017 9:59:16 AM

I support the readoption of rule 31101. It protects the public and the appraisal profession.

From: Lawayne Sieferman
To: [Ryan Shaw](#)
Subject: 31101
Date: Thursday, September 07, 2017 10:36:57 AM

Mr Shaw

I am an appraiser in Lafayette.

I support the readoption of rule 31101.

Lawayne Sieferman, MAI
119 Ridgeway Dr. B-2
Laf. La. 70503
337-981-0710

Sent from my iPhone

From: Nicholas Moreau
To: [Ryan Shaw](#)
Subject: Appraiser
Date: Thursday, September 07, 2017 10:37:50 AM

Yes I do like this law

Sent from my iPhone

From: Frank Pennebaker Jr
To: [Ryan Shaw](#)
Subject: comment on rule 31101
Date: Monday, August 28, 2017 10:01:49 AM

Ryan Shaw:

I support rule 31101 because I feel it protects both the the appraiser and the public.

Frank M Pennebaker Jr

FMP & Associates

CRA0623

From: Lee Eaton
To: [Ryan Shaw](#)
Subject: Fwd: Public Comment on Rule 31101
Date: Monday, August 28, 2017 3:00:03 PM

I sent this message earlier from my phone & have just realized my name did not appear. Please access this revised version.

I support Rule 31101 for the following reasons:

It supports the preservation of the integrity of our appraisal profession.

I - as an appraiser - want & need to be paid for my services in a timely manner.

I want to part of fair competition that values competency, experience & integrity.

I support the transparency of the independent fee study as a means of communicating customary & reasonable fees affecting all stakeholders - especially consumers who benefit AND appraisers who perform this valuable contribution to the US financial industry.

In a nutshell:

This rule is FAIR.

--

[Lee Eaton](#)

Lee Eaton Enterprises, LLC
LA Real Estate Appraiser - Residential Certification No. 856
FHA / HUD Approved
(985) 966-1422

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From: Courtney Petit
To: [Ryan Shaw](#)
Subject: Fwd: R&C fees
Date: Monday, August 28, 2017 10:26:52 AM

> I support this rule. I really appreciate all of yall's hard work helping us small appraiser shops to regulate the fees. There is still 1 AMC that does blast emails to get lower fees but for the majority I get paid very well thanks to you. Thanks again!

>

> Courtney Petit

>

> Sent from my iPhone

From: Brent Hodges
To: [Ryan Shaw](#)
Subject: I am in favor of the initiative
Date: Thursday, September 07, 2017 10:37:50 AM

Sent from my iPhone

From: Terry Myers
To: [Ryan Shaw](#)
Subject: I support
Date: Thursday, September 07, 2017 10:36:11 AM

I support re adoption of rule 31101

Sent from my iPhone

From: Randal.Garrett@gmail.com
To: [Ryan Shaw](#)
Date: Tuesday, September 05, 2017 9:59:05 AM

Mr. Shaw,

Please take note that I support the readoption of rule 31101. I am certified as an appraiser in the State of Louisiana and hope that the continuation of this rule will further advance the integrity of the appraiser industry.

PUBLIC

From: 3376549644@mms.att.net
To: [Ryan Shaw](#)
Date: Tuesday, September 05, 2017 9:57:56 AM
Attachments: [text_0.txt](#)

PUBLIC

From: 9853200778@mms.att.net
To: [Ryan Shaw](#)
Date: Monday, August 28, 2017 9:59:02 AM
Attachments: [text_0.txt](#)

From: jackreadeau
To: [Ryan Shaw](#)
Date: Monday, August 28, 2017 9:57:09 AM

I support readoption of rule 31101. It supports appraisers in our industry.

Thanks,
Jack Readeau, R233
Appraiser

Sent via the Samsung Galaxy S7 edge, an AT&T 4G LTE smartphone

From: TONY
To: [Ryan Shaw](#)
Date: Thursday, September 07, 2017 10:34:37 AM

For 31101 readoption

From: Kendrick Talbot
To: [Ryan Shaw](#)
Subject: My opinion on 31101 readoption
Date: Tuesday, September 05, 2017 9:56:56 AM

I like having a say that I can determine my fees. Please regulate AMCs to have customary and reasonable fees. I like the state having the autonomy to protect the appraiser and real estate business.

Thank you.

Kendrick Talbot
Appraiser LA #R0867

Sent from my iPhone

From: Gregg
To: [Ryan Shaw](#)
Subject: Public comment of rule 31101
Date: Tuesday, September 05, 2017 9:57:27 AM

I would like to offer my input in FAVOR OF READOPTING of rule 31101. I am of the professional opinion that continued regulation of the AMC industry is beneficial for the the overall protection of the public.

Thank You
Gregg Garrett,SRA
Baton Rouge, La

Sent from my iPhone

From: Alex Trager
To: [Ryan Shaw](#)
Subject: Public comment on 31101
Date: Monday, August 28, 2017 9:56:46 AM

I support 31101 in order to protect the quality of the industry as well as the consumer.

Alex Trager

From: Lee Eaton
To: [Ryan Shaw](#)
Subject: Public Comment on Rule 31101
Date: Monday, August 28, 2017 10:03:50 AM

I support Rule 31101 for the following reasons:

It supports the preservation of the integrity of our appraisal profession.

I - as an appraiser - want & need to be paid for my services in a timely manner.

I want to part of fair competition that values competency, experience & integrity.

I support the transparency of the independent fee study as a means of communicating customary & reasonable fees affecting all stakeholders - especially consumers who benefit AND appraisers who perform this valuable contribution to the US financial industry.

In a nutshell:

This rule is FAIR.

From: johnny@jddappraisals.com
To: [Ryan Shaw](#)
Subject: Read option of 31.101
Date: Tuesday, September 05, 2017 10:00:03 AM

Thank you for all your efforts regarding these important appraisal issues
I am certainly in favor of all efforts on maintaining the integrity of the industry appraisal profession standards and achieving higher standards

Sent from my iPhone

From: Jared Landry
To: [Ryan Shaw](#)
Subject: Readoption of rule 31101
Date: Tuesday, September 05, 2017 9:56:27 AM

Dear Ryan,

I am in serious favor of the Readoption of rule 31101!!!

Jared J. Landry, CRA
Cajun Land Realty
Pierre Part, LA 70339
P: 985.252.9346
F: 985.252.6681
C: 225.266.4030
jaredjlandry@yahoo.com
www.cajunlandrealty.com

CAJUN LAND REALTY
"The Clear Choice For All Of Your Real Estate and Valuation Needs"

From: BAS
To: [Ryan Shaw](#)
Subject: Readoption of rule 31101
Date: Tuesday, September 05, 2017 9:54:39 AM

Mr. Shaw,

I support this rule which to me has seemed to protect public consumers over the past 4 years and is good public policy. Please consider supporting this again on behalf of appraisers and the consumers they service.

Stephen Barnett
B-a-s@barnettappraisalsvcs.com
225-937-7506

From: NEWTON LANDRY
To: [Ryan Shaw](#)
Subject: Readoption of rule 31101
Date: Tuesday, September 05, 2017 10:01:31 AM

Dear Ryan,

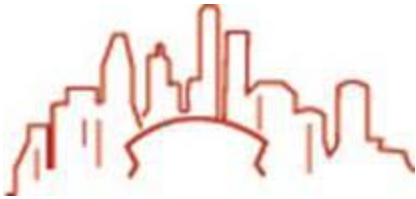
I am in favor of the Readoption of rule 31101.

Thank you,

Newton J Landry
Cajun Land Realty
985-252-9346 (phone)
985-252-6681 (fax)

From: Rick Hartenstein
To: [Ryan Shaw](#)
Subject: readoption of rule 31101
Date: Tuesday, August 29, 2017 2:54:03 PM

Please readopt this rule



Rick Hartenstein
LA Certified Residential Real Estate Appraiser #R1794
Southeast Appraisal Group, LLC
Louisiana Licensed Real Estate Broker
LA Realty Group, LLC
C: 504-251-3084
F: 504-754-7586

there is no affiliated business agreement between Southeast Appraisal Group, LLC and LA Realty Group, LLC. This contact is an individual agent of both companies

From: Haley Hernandez
To: [Ryan Shaw](#)
Subject: Re-adoption of Rule 31101
Date: Monday, August 28, 2017 10:03:28 AM

Good Morning, Mr. Shaw,

I wanted to take a moment to send you an email in regards to the readopting of Rule 31101. I fully support this Rule and stand firmly behind the States decision to move forward. It is imperative to the good standing reputation of quality appraisers here in Louisiana to have an established baseline of customary and reasonable fees. If there is anything I can do to further assist the Board in their endeavors, feel free to call on me.

Kindest Regards,

Haley D. Hernandez
Residential Real Estate Appraiser

Murphy Appraisal Services
1250 SW Railroad Ave
Suite 200
Hammond, LA 70403
(985)310-4991 Office
(985)969-3624 Cell

Sent from my iPhone

From: Jhdewitt117
To: [Ryan Shaw](#)
Subject: Rule 3101 readoption
Date: Thursday, September 07, 2017 2:43:21 PM

Good Thursday afternoon (09/07/2017) Ryan,

I strongly support the re-adoption of Rule 3101.

John DeWitt
Louisiana Certified Residential Appraiser
License Number: R416

From: Steve Alvarez
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 10:04:37 AM

Mr Ryan Shaw, I am an appraiser in the St Tammany area of our state and I am in support of Rule 31101 because we need to maintain "reasonable and customary" fees and we must keep control of this and not let the AMC's run afoul and ruin the appraisal business. They don't care about quality work but rather volume and quick turn time and how much money they make not what the appraiser should make or how his or her quality of work will be. Thanks and please support us the Louisiana Appraiser.

Thanks,

Steve

From: Torri Curole
To: [Ryan Shaw](#)
Subject: Rule 31101 comment
Date: Tuesday, September 05, 2017 9:56:54 AM

The placement of Rule 31101 is good for all participants in the mortgage industry.

From: Tracey Dietz
To: [Ryan Shaw](#)
Subject: Rule 31101 comments
Date: Monday, August 28, 2017 9:56:27 AM

I support the rule 31101.

[Sent from Yahoo Mail on Android](#)

From: William Cobb
To: [Ryan Shaw](#)
Subject: Rule 31101 read option
Date: Tuesday, September 05, 2017 9:56:08 AM

I am in favor or the read option of this rule. William F. Cobb

Sent from my iPhone

From: Brad Core
To: [Ryan Shaw](#)
Subject: Rule 31101 re-adoption
Date: Thursday, September 07, 2017 10:35:18 AM

Ryan,
I am in support of rule 31101 re-adoption.

Brad Core

Thompson Bradford Core, ASA
Appraiser-Broker-Consultant
Right of Way Services, Inc.
Cell: 337.278.4937
Office: 337.783.4515 ext. 103
www.RightofWayServices.com

From: TimmreckAppraisals
To: [Ryan Shaw](#)
Subject: Rule 31101 Readoption
Date: Monday, August 28, 2017 10:01:06 AM

I support this rule 100%.

Sent from my iPhone

From: Allison Burnett
To: [Ryan Shaw](#)
Subject: Rule 31101 Readoption
Date: Tuesday, September 05, 2017 9:55:17 AM

I think this rule is protecting our appraisers. I find it necessary in order for the Appraiser to continue to do business.

Sent from my iPhone

From: Steven Branch
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Thursday, September 07, 2017 10:39:33 AM

As a certified residential real estate appraiser for 25 years I voice my support for the readoption of Rule 31101. It is a strong protection of all stakeholders in Louisiana: lenders, consumers, appraisers.

Robert Steven Branch
Louisiana Certified Residential Real Estate Appraiser 948

From: Raymond Aguillard
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Thursday, September 07, 2017 10:36:14 AM

I support rule 31101.

Thank you,

Raymond Aguillard, Appraiser
Ph. 337-457-9385

From: allen@spectrumre.net
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Thursday, September 07, 2017 10:35:29 AM

I support the rule and think it is good policy

Sent from my iPhone

From: Ryan Hollard
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 11:49:30 AM

As a Certified Residential Appraiser in Louisiana, I would like to express my support for Rule 31101.

Ryan Hollard
Royal Appraisal Services, LLC
LA#CRA1385
(504)251-9914

From: bobgraham5
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 10:02:13 AM

I do like the rule mandating customary & reasonable fees. I would like it to be mandatory that every appraiser in LA be required to have CE understanding this. Unfortunately too many appraisers are selling out their profession by not knowing the value of the service provided. The public is ignorant of the regulatory practices an appraiser must adhere to continue to practice in the profession.

Sincerely,
Bob Graham, Jr.
CRA # 1746

Sent from my T-Mobile 4G LTE Device

From: mikemoosa
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:58:27 AM

As an appraiser, I believe rule 31101 is beneficial to the appraisal industry.

Sent from my Samsung Galaxy smartphone.

From: Mal Corcoran
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:58:23 AM

I support rule 31101

Sent from my iPhone

From: Gordon James
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:57:57 AM

I am in favor of 31101. Keep up the good work.
A Gordon James III

Sent from my iPhone

From: David Miles
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:57:46 AM

Please enter my support for Rule 31101. I believe this rule will protect the public and support quality appraisal performance.

Sent from my iPhone

From: Roger Smith
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:57:25 AM

This rule should be enforced

PUBLIC

From: Greg Allen
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:57:16 AM

Good basic rule

Sent from my iPhone

From: Hunter Garrett
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:56:59 AM

I am FOR renewal / readopting of Rule 31101.

From: Cindy Neal
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:55:55 AM

Mr. Shaw,
I am writing in support of re adopting the rule 31101. I think it works well and we would be much worse off without the rule in place.

Kindest regards,
Cindy Neal, CRA

Sent from my iPhone

From: Bill Pousson
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:55:34 AM

I like the actions taken by the Appraisal Board to regulate the AMCs.

Sent from my iPhone

From: lisa Bonnet
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:54:22 AM

I believe the re adoption of rule 31101 is good and is in the best interest to be fair to appraisers and lenders.

Sent from my iPhone

From: jeduggan
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Tuesday, September 05, 2017 9:54:19 AM

I support rule 31101.

Very truly yours,

Joseph Duggan

Sent via the Samsung Galaxy S7 edge, an AT&T 4G LTE smartphone

From: Melissa Bernard
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 10:17:49 AM

I support rule 31101 I fell that it compromises the integrity of the appraisal business to assign appraisals based on fee alone. Appraisers with the experience and knowledge of the business should not have to compromise their fees to compete with appraisers willing to reduced fees just to get work. Work should be not assigned to the lowest fee but to appraisers qualified to do the work. It will keep the integrity of the appraisal business in Louisiana.

Thank You,

Melissa C. Bernard

Sent from my iPhone

From: Smith Real Estate & Appraisal Services 2
To: [Ryan Shaw](#)
Cc: [Skip Smith](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 10:03:36 AM

Rule 31101, if AMC's actually follow it, is great for both the consumer (mortgage applicant), and the appraiser. Low fees encourage sloppy and bad appraisals. Customary & reasonable fees encourage quality appraisals. The amount of work that goes into a quality appraisal today takes far more time than it used to before the financial crisis in 2007 & 2008. Appraisers are not likely to spend the proper amount of time doing a quality appraisal if he/she is not being paid a customary and reasonable fee.

Sincerely,

Clyde "Skip" Smith

CRA:# 2196

Smith Appraisal Services

(985) 502-6240

Sent from my Verizon 4G LTE Droid

From: Chris Jourdan
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 10:01:14 AM

I am in support of the readoptionn of Rule 31101.
Enforcement of Reasonable & Customary Fee is integral to insuring the public trust in the appraisal process can be maintained. Without it the quality of the appraisals produced will suffer.

Chris Jourdan
Jourdan Appraisals

[Sent from Yahoo Mail on Android](#)

From: Joseph Mier
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 10:00:28 AM

I am contacting the LREAB to SUPPORT the adoption of this rule as it protects the public trust and the integrity of the appraisal process.

Without this rule it puts consumers at risk of having a less than credible appraisal completed on possibly their largest investment of their lives.

Without this rule it allows AMCs to abuse the federal law of Dodd/Frank in treating appraisers fair and reasonable.

Sincerely,
Joseph Mier, SRA
Louisiana Real Estate Appraiser 1016
985-230-0730
Cell 985-634-2910
Joe@jmappraisers.com
Sent from my apple product

From: mimamas
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:59:30 AM

I support Rule 31101. I feel that the rule protects the consumers in the mortgage loan process as well as the appraisers of Louisiana that have undergone extensive training and education in order to deliver the highest quality of work.

Thank you,

Michelle Soyez
Louisiana State Certified Residential Appraiser #916

Sent from my Sprint Samsung Galaxy S® 6.

From: Gregory Miller
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:58:34 AM

I support the rule 31101 as it bases Appraiser acceptance on quality as opposed to price only for appraisals and provides some protection for experienced, qualified appraisers to compete for a fair wage for competent work.

Sent from my iPhone

From: Seth Brown
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:58:06 AM

I support the rule 31101 as I am an appraiser who sees that we need some protection to guarantee our financial well being as appraisers and businesses owners. My family lives and survives off my income and with so many unknowns in this industry an appraiser needs to know his/her fees are safe.

From: Albert S. Pappalardo
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:57:54 AM

I support rule 31101 because of the fairness aspect of this regulation.

Thanks,

*ALBERT S. PAPPALARDO, G251
PRESIDENT
PAPPALARDO CONSULTANTS, INC.
145 ROBERT E. LEE BLVD., Suite 202
NEW ORLEANS, LA 70124
(504)486-7441, ext. 201
LICENSED in LOUISIANA*

Sent from my Verizon Wireless 4G LTE DROID

From: aprete@bellsouth.net
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:57:52 AM

I support Rule 31101.
Alix Prete, LA R0818

From: Richard Haffner
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:57:46 AM

I support this rule because it matters to upstanding honest law abiding appraisers that we get paid fairly and promptly.

Richard J. Haffner
Olde Metairie Road Realty, LLC
Richard Haffner Appraisal Services. LLC
5201 Haring Court, Metairie, LA 70006
Licensed in Louisiana
Realtor - #37343 / Appraiser - R475
Past-President Nat'l Assoc. of Independent Fee Appraisers - Jefferson Chapter 1988-89
504-455-4377 Ofc. 504-583-4349 Cell.
rjhaffner@yahoo.com

From: John Puglia
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:57:30 AM

I support the rule for all the reasons that were discussed in this CE class.

John Puglia

Sent from my iPhone

From: Jerry
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:57:11 AM

I urge you to support the readoption of rule 31101. I believe it helps to support the integrity of real estate transactions in our state.

Thanks for your consideration.

Sent from my iPhone

From: Rosalyn Bryant
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:57:03 AM

I support this fantastic and fair rule! Quality above price, ethics before speed.

~Rosalyn~
Bryant Appraisal Services LLC
(504) 828-2779
We appreciate your business!

Sent from my iPhone

From: Hank Babin
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Monday, August 28, 2017 9:56:44 AM

Ryan,

I support Rule 31101 to protect the integrity of the mortgage industry in LA.

Logan "Hank" Babin, III

Sent from my iPad

From: Richelle Spears
To: [Ryan Shaw](#)
Subject: Rule 31101
Date: Thursday, September 07, 2017 10:41:09 AM

I support rule 31101. I am in favor of customary and reasonable fees and 30 day mandatory payment of appraisal fees. Without this rule the appraiser industry will crumble.

Sent via the Samsung Galaxy S®6 active, an AT&T 4G LTE smartphone

September 8, 2017

Ms. Ryan Shaw
Louisiana Real Estate Commission
9071 Interline Avenue
Baton Rouge, LA 70809



RE: Comments on Re-adoption of Chapter 311 (Compensation of Fee Appraisers)

Dear Ms. Shaw:

On behalf of the Real Estate Valuation Advocacy Association ([REVA](#)) and the Louisiana registered appraisal management companies (AMCs) it represents, please accept the following comments regarding the re-adoption of Chapter 311 (Compensation of Fee Appraisers).

REVAAs specific comments are on the following page; however, we are compelled to share our concern regarding a potential conflict between federal law and Chapter 311 of Louisiana's AMC rules. This is an issue that REVA has repeatedly advocated to the Louisiana Real Estate Appraiser Board (LREAB) since the inception of its AMC regulations.

Louisiana Chapter 311 seems to indicate that AMCs and lenders must follow one of two presumptions of compliance. If indeed true, Louisiana's rules are more restrictive than what is provided under federal guidance and the intent of the Louisiana Legislature when it passed Louisiana's AMC statute in 2012. According to Louisiana CHAPTER 51-A. Appraisal Management Company Licensing and Regulation Act, §3415.15. Fees; customary and reasonable; disclosure, "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."

In October 2010, the Federal Reserve Board (FRB) issued the [Interim Final Rule](#) that amended Regulation Z in the Truth in Lending Act (TILA) to implement Section 129E. In its commentary, FRB clarified that the two presumptions of compliance identified within the rules are examples and not the only permissible ways for lenders and their agents to comply with the customary and reasonable fee provisions under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Specifically, the FRB comments stipulate that *"if a creditor or its agent does not meet one of the [identified presumptions of compliance], the creditor's and its agent's compliance with the requirement to pay a fee appraiser at a customary and reasonable rate is determined based upon all of the facts and circumstances without a presumption of either compliance or violation."*

Further, the FRB explained that the reason this commentary was included in the Interim Final Rule was to clarify that various other market-based approaches to appraiser compensation exist, beyond the two identified, that could be valid and compliant approaches. For instance, the FRB explicitly defined options such as negotiating fees in good faith for assignments with appraisers by communicating bids submitted by other appraisers qualified for the same assignment and/or the negotiation of volume discounts.

Thus, restricting an AMC's or lender's ability to utilize more than the two identified presumptions of compliance is anti-competitive and prohibits their ability to use other market-based approaches to compensate appraisers in full compliance with their Dodd-Frank obligations.

We appreciate LREAB's consideration of our comments.

A handwritten signature in blue ink that reads "Mark Schiffman". The signature is written in a cursive style.

Mark Schiffman
Executive Director

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 may be identified by state, zip code, parish, ~~or metropolitan statistical area (MSA), area outside of an MSA, county or other geographic 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. **When determining a customary and reasonable rate of compensation for a current appraisal assignment, a** licensees electing to compensate fee appraisers on any basis other than an established fee schedule as described in Paragraphs 1 or 2 above shall, at a minimum, review the factors listed in §31101.B.1-6 on each assignment made, and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

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

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

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

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

1. within ~~45~~ 30 days after the appraiser provides the completed appraisal report to the appraisal management company.

Comment 1: Use of the term "shall" would restrict AMC's to using only the specific market areas set out in the proposed rule rather than providing AMC's the flexibility to define market areas per federal guidance. Therefore, to be consistent with federal guidance "may" has been substituted for "shall."

Comment 2: Limiting the market area to the three factors set out in the proposed rule is overly restrictive and inconsistent with federal guidance. Please see [1042\(f\)\(1\), Official Interpretation No.2](#), which provides that the market area may "be a state, metropolitan statistical area (MSA), metropolitan division, area outside of an MSA, county, or other geographic area."

Comment 3: Without the proposed addition this section is arguably inconsistent with federal guidance because it could potentially be interpreted to require the retroactive adjustment of fees on previously completed assignments based upon subsequent market changes. The recommended edits bring the language into closer alignment with federal guidance and make it clear that the evaluation of whether the fee for an assignment was customary and reasonable is based upon the factors known at the time of the assignment.

Comment 4: Suggested deletion of unnecessarily redundant phrases.

Comment 5: REVAA requests consideration of a 45-day pay requirement. In 2013, in response to a REVAA question about the 30-day requirement, LREAB indicated that 30-days was a necessity because of bad AMC actors. We believe concerns over this have subsided and ask for LREAB to reconsider this provision in the rules.

LREAB Response to REEVA's Opposition Comments

Real Estate Valuation Association – One commenter responding to our request for written comments expressed concerns about re-adoption of Rule 31101. In their letter dated September 8, 2017, REVA, the trade organization representing twenty-five of the 141 AMC's licensed in Louisiana, commented that Chapter 311 is potentially more restrictive than federal law. A REVA representative elaborated on these concerns in testimony at the September 27, 2017 Public Hearing. Both the REVA September 8 letter and the transcript of the September 27 hearing are submitted herewith; the relevant portion of the transcript begins at page 16. The discussion that follows addresses REVA's comments in turn.

Scope of the Dodd-Frank Act's Requirements

The 2010 Dodd-Frank Act amended federal law relating to appraisals in two key ways. First, it amended the Truth-in-Lending Act ("TILA") by adding a new section on "Appraisal Independence." 15 U.S.C 1639e, the "customary and reasonable fee" requirement is contained in subsection 1639e(i). The Federal Reserve Board promulgated Interim Final Regulations ("IFR") for this section.

Second, the Dodd-Frank Act required the federal financial regulatory agencies to establish minimum requirements for state registration and regulation of AMCs. The agencies published the Final Rules for this statutory requirement in 2015.

In this regard, the REVA letter quoted the Louisiana statute as it was enacted in 2012, which stated:

"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".

However, in response to the clarified federal mandates in the Final Federal Rules promulgated in 2015, in 2016 the Louisiana legislature amended the 2012 statute quoted above to read:

"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 and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222."

The final federal rules referenced in the 2016 Louisiana legislative amendments reinforced and clarified two key points for state regulatory bodies in fulfilling their federal mandate for regulating customary and reasonable fees with specific language:

"Nothing in this [these rules] shall be construed to prevent states from establishing requirements in addition to those in [these rules].

States must "Impose requirements on AMCs ... to establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of sections 129E(a) through (i) of TILA."

Therefore, it is not an option on the part of Louisiana or any other state licensing AMCs as to whether the customary and reasonable fee provisions of federal law are enforced, and federal rules made clear that their rules were "minimum" standards with the expectation that individual states may well enact more restrictive requirements.

Limitation on the Use of Presumptions of Compliance

The commenter also suggested that the proposed rule restricted an AMC to utilize only the two identified presumptions of compliance published in the 2010 Interim Rules. As pointed out by the Appraisal Institute in their comments:

“Further, we believe the language of Proposed rule 31101 is consistent with, and does not differ noticeably, from the language regarding the payment of customary and reasonable compensation to appraisers contained in 15 U.S.C. 1639€ and the “final federal rules” contained in C.F.R 226.42 and 12 C.F.R. 1046.42. In our opinion, Proposed Rule 31101 requires the AMC’s operating in Louisiana to utilize the same methods that they are required to utilize under federal law to determine what constitutes customary and reasonable compensation to an appraiser for a specific appraisal assignment”.

More specifically, Subsection 31101(A)(3) provides:

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. (Emphasis added).

Thus, AMCs *not* wishing to rely on the presumptions of compliance set out in the Rule or in the IFR and wishing the Board to take other factors into consideration are expressly free to do so. This alternative route may place an AMC under a higher burden, because they are obligated to articulate “all” facts and “all” circumstances relative to the fee, as the REVAA letter notes. However, it is the Board’s obligation to ensure that all such facts and circumstances are disclosed by the AMC. In this context, subsection 31101(A)(3) simply provides guidance that, as to the facts and circumstances that must be discussed, at a minimum, those facts and circumstances must include the application of the “six factors” to recent rates paid in the relevant geographic market in accordance with the federal rules. Consequently, the current language is fully consistent with the applicable federal regulations.

Definition of Geographic Markets

Additional comment was provided that the word “shall” be replaced by the word “may” in identifying the market area of the property being appraised. Specific language in the federal rules suggest that a “county” could be the best geographic area on which to base customary and reasonable fee compensation. Proposed rule 31101 expands the flexibility provided AMC’s in selection of market area beyond “county” to include: zip code, parish, or metropolitan area.

Retroactive Review of Fees Paid

The commenter further suggested that language in proposed 31101 (3) could be potentially stretched to allow retroactive adjustments to customary and reasonable fee compensation based on future market conditions. The clear language proposed is as follows:

“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 adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.”

The verb “electing” in the above language makes clear that this is an act by the AMC at the time of appraiser selection. Further, “recent rates paid” is defined in federal rules as fees paid on similar assignments within the past twelve (12) months, not on some future market condition that in some unknown way could be retroactively applied.

Comment was also provided that the language “for each appraisal performed” contained in 31101 B.1 and 2 was redundant and suggested deletion. Consistent with USPAP and federal law, each appraisal assignment is unique as to the type of property and scope of work required. Absent this specific language, a generic “one size fits all” approach to appraiser selection would be contrary to the factors mandated in federal law.

Modification of 30-day Payment Period

Next, REVAA requested consideration of extending the thirty (30) day payment period to a forty-five (45) day requirement. The commenter acknowledged the LREAB had enacted this requirement based on “bad AMC actors” abuse of consumers and other stakeholders, but that these concerns had subsided. The concern has not abated as most recently a licensed AMC defaulted on monies due and is now offering \$.25 on the dollar in compensation due. Current lending practices in most cases require the consumer to pay the appraisal fee “up front” during the loan approval process. There appears to be no consumer benefit to changing this requirement and no negative impacts have been reported to the LREAB regarding this provision since inception of this requirement.

Additionally, at the public hearing, REVAA’s representative challenged the Board’s legal authority to set a window for AMC payment of appraisal fees. Notwithstanding this contention, AMC Act §3415.16(A)(1) provides that an AMC shall not engage in specified conduct that influences or coerces an appraiser, including “Withholding or threatening to withhold timely payment for an appraisal.” (A similar requirement is provided in federal regulations, 12 C.F.R. §1026.42(c)(1)(B).)

This statutory prohibition could be considered vague if the Board’s regulations did not define the interval that would constitute “timely payment.” Subsection 31101(D)(1)’s prescription of a 30-day payment window thus fulfills the Board’s authorization to adopt regulations “necessary for the enforcement of” the AMC Act, §3415.21.

Clarity Regarding “Covered Transactions”

[Finally, REVAA’s representative sought clarification as to whether the customary and reasonable fee requirement would be enforced only against appraisals involving “covered transaction under TILA. By its terms, the appraisal independence section of TILA applies to “a consumer credit transaction secured by the principle dwelling of the consumer.” 15 U.S.C. § 1639e(a). The IFR refers to such a transaction as a “covered transaction.” Thus, appraisals that are not undertaken with respect to a transaction in which consumer credit is extended and secured by a primary residence, e.g., a second home or investment single-home property for rentals, may not fall within scope of a “covered” transaction.

A broader scope to cover other types of appraisals would be consistent with the Dodd-Frank Act’s requirements for “minimum” state regulation of AMC’s which provide that nothing in the requirement for federal financial regulatory agencies to establish rules implementing those minimum requirements “shall be construed to prevent States from establishing requirements in addition to” any rules promulgated by those agencies. Other provisions of the AMC Act, such as §3415.16, dealing with prohibited AMC, conduct are applicable to all AMC-ordered appraisal transactions. Nevertheless, given the express language in AMC Act that the requirement for customary and reasonable fees §3415.15(A) be enforced consistent with the cited federal requirements, the Board, in its most recent adjudicated enforcement action, has limited enforcement of the customary and reasonable requirement to transactions that are covered transactions under the IFR. The Board is considering issuance of a policy statement setting out this enforcement limitation, and would issue such a statement if required by the Commissioner. In either case, no modification of the language of Rule 31101 would be necessary to achieve the clarity that REVAA has requested.}



PUBLIC HEARING NOTICE ON PROPOSED READOPTION OF RULE 31101

LOUISIANA REAL ESTATE APPRAISERS BOARD
9071 Interline Avenue
Baton Rouge, LA 70809

Wednesday, September 27, 2017
9:00 A.M.

LOUISIANA REAL ESTATE APPRAISERS BOARD

PUBLIC HEARING ON PROPOSED READOPTION OF RULE 31101

Public Hearing held in reference to the above matter at the offices of the Louisiana Real Estate Appraisers Board at 9701 Interline Avenue, Baton Rouge, Louisiana, 70809, on Wednesday, the 27th day of September, 2017, commencing at 9:00 a.m.

REPORTED BY: Ellen Jolly Tanner, CCR #82014
Registered Professional Reporter

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1 APPEARANCES:

2

LOUISIANA REAL ESTATE APPRAISERS BOARD:

3

Clayton F. Lipscomb, Chairman

4 Janis M. Bonura, Vice-Chairman

Cheryl B. Bella, Secretary

5 Robert E. McKinnon, Jr.

Kara A. Platt

6 James R. Purgerson, Jr.

Rebecca A. Rothschild

7 Margaret K. Young

8

BRUCE UNANGST, Executive Director

9

10 APPEARANCES:

11 FRANK TRAPANI

Louisiana Realtors Association

12

NICK CASTJOHN

13 Louisiana Home Builders Association

14 JOSEPH A. MIER

Louisiana Real Estate Appraiser Coalition

15

ROBERT L. RIEGER, JR., ESQUIRE

16 Louisiana Real Estate Valuation Advocacy Association

17

18

19

20

21

22

23

24

25

1 P-R-O-C-E-E-D-I-N-G-S

2 MR. LIPSCOMB:

3 The first thing we're going to do today is we're
4 going to have the public hearing on the proposed
5 readoption of Rule 31101. And I believe our executive
6 director has some background information that he's
7 going to impart to us. Bruce?

8 MR. UNANGST:

9 Yes. Do we need to have a roll call?

10 MR. LIPSCOMB:

11 Oh, I'm sorry. We do. Cheryl, will you call
12 the roll?

13 MS. BELLA:

14 Clay Lipscomb?

15 MR. LIPSCOMB:

16 Here.

17 MS. BELLA:

18 Janis Bonura?

19 MS. BONURA:

20 Here.

21 MS. BELLA:

22 Cheryl Bella? Here.

23 Seymon Hartzog?

24 Robert McKinnon?

25 MR. MCKINNON:

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1 Here.

2 MS. BELLA:

3 Terry Myers?

4 Kara Platt?

5 MS. PLATT:

6 Here.

7 MS. BELLA:

8 James Purgerson?

9 MR. PURGERSON:

10 Here.

11 MS. BELLA:

12 Rebecca Rothschild?

13 MS. ROTHSCHILD:

14 Here.

15 MS. BELLA:

16 Margaret Young?

17 MS. YOUNG:

18 Here.

19 MR. LIPSCOMB:

20 So we have a quorum. Great.

21 Okay. Now, we can get started with the

22 background on the readoption of Rule 31101.

23 MR. UNANGST:

24 Thank you, Mr. Chairman. The reason we are all

25 here today is there is some confusion, so I thought I

1 would, if you will grant me a couple of minutes here,
2 I'm just going to go through a little history of what
3 brought us to this point, what we're doing here today
4 to make certain everybody understands the process here.

5 As you all know, the FTC filed a complaint
6 against this board based on their retroactively
7 applying a 2015 North Carolina Dental Board decision to
8 a 2013 rule governing customary and reasonable fees.
9 That's Rule 31101. In looking at the entirety of the
10 issues regarding the FTC complaint, we have engaged an
11 attorney, and we have taken and denied all of the
12 allegations made in that complaint based on our good
13 faith compliance, but determined that in the interest
14 of ending this litigation and the tyranny coming from
15 above that we would go above and beyond and make
16 certain that we complied fully with the language and
17 intent of that North Carolina Dental Board decision.

18 So we were successful, and Governor Edwards
19 issued an executive order back on July 11th which did a
20 couple of things. One, it directed our board to submit
21 any proposed customary reasonable fee rule along with
22 the whole rule making record to the Commissioner of
23 Administration for approval, rejection, or
24 modification.

25 Now, under our Administrative Procedures Act,

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1 our oversight committees, the House Commerce Committee,
2 the Senate Commerce Committee as well as the Governor,
3 they have always had, and continue to have the power to
4 veto, amend, modify any proposed rule making of this
5 board; however, this additional step based on the
6 Governor's executive order goes above and beyond that.
7 It adds another layer of oversight to the process to
8 comply with what the FTC's interpretation of what the
9 North Carolina Dental Board decision has said. So this
10 review by the Division of Administration, this
11 additional review ensures that the proposed rule serves
12 Louisiana's public policy of protecting the integrity
13 of residential mortgage appraisals by requiring that
14 fees paid by appraisal management companies for an
15 appraisal are customary and reasonable.

16 Toward that end, back on July 17th, pursuant to
17 the Governor's executive order, this board adopted a
18 resolution which did a couple of things. One, it
19 directed us to prepare a replacement rule for the 2013
20 rule that was adopted that's 31101, and directed us,
21 the board authorized us to prepare that rule, advertise
22 it, et cetera. We submitted, by the way, the entire
23 rule making record from the 2013 rule in an abundance
24 of caution to the Commissioner of Administration, and
25 he has reviewed the entire rule making record, and

1 approved us going forward and advertising this notice
2 of intent in the Louisiana Register.

3 That notice was actually published on August
4 20th, which also set a date for written comments, and
5 that comment period ended September 8th. I might add
6 that I believe the number was 77 written comments that
7 were received during that written comment period.
8 About 70 of those were received via E-mail from
9 appraisers, consumers, et cetera, and all of those were
10 supportive of the readoption of the language proposed
11 as this replacement rule. In addition to that, we
12 received written comments of support and letters of
13 support from the Louisiana Home Builders Association,
14 the Louisiana Realtors Association, the Louisiana
15 Bankers Association, and a letter of -- a very detailed
16 letter of support from the Appraisal Institute based in
17 Chicago. We received one letter opposing our rule with
18 some comments from REVAA who is the trade organization
19 representing 20 some odd appraisal management companies
20 of the 141 appraisal management companies we have now
21 licensed and doing business in Louisiana.

22 The board has also posted the Governor's
23 executive order, the board resolution authorizing the
24 process we are under, and a notice of intent has been
25 posted on our website home page.

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1 In an abundance of caution, there are some
2 additional points and actions that we have taken. The
3 board determined that all pending investigations under
4 the old rule that was adopted in 2013 should be closed
5 upon finding that the subject payments were customary
6 and reasonable, and that was done. The board has
7 notified those few AMCs that those investigations were
8 closed. And we have further decided that the board
9 would only initiate future investigations after
10 adoption of a replacement customary and reasonable rule
11 which we are going to be soliciting and receiving
12 public comment on today. The board also, which has
13 nothing to do specifically with this hearing, but the
14 board also authorized the executive director to seek
15 settlement or resolution of any prior enforcement
16 actions that had not expired by their terms.

17 So the additional actions and statements we have
18 made is that I want to confirm that there has been no
19 enforcement of our current rule during this rule
20 promulgation process, and once the new rule is in
21 place, the board will not enforce the prior Rule 31101.
22 Conduct that occurred by the AMCs prior to adoption of
23 this replacement rule will not be subject to
24 enforcement actions by the board. Evidence of an AMC's
25 conduct prior to the adoption of the replacement rule

1 or the fact that a particular AMC had been subject to
2 an enforcement action under the prior rule cannot be
3 introduced as evidence in an enforcement action under
4 the replacement rule. In other words, prior actions
5 that an AMC may have engaged in that may have been
6 subject to some enforcement action under the prior rule
7 is not going to happen. We're going forward with
8 whatever comes out of this hearing, whatever oversight,
9 recommendations, et cetera, decisions that are made by
10 our oversight committees, by the Division of
11 Administration, et cetera.

12 One other thing, the board previously had posted
13 an independent survey relating to customary and
14 reasonable fees which was conducted at our board's
15 expense by Southeastern Louisiana University. This
16 survey was originally authorized based on comments
17 received by the federal government as well as by our
18 state. AMCs were concerned that even though the
19 customary and reasonable fee provisions and mandates of
20 Dodd-Frank said that they might use a local academic or
21 published survey in establishing customary and
22 reasonable fees, the appraisal management companies'
23 concern was that that information did not exist, how
24 could they comply with it if there was no such study
25 existing, so as a courtesy to all stakeholders,

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1 including appraisal management companies, the board
2 sponsored and has updated an independent academic
3 survey conducted by Southeastern Louisiana University
4 and has posted it on our website and has so notified
5 all appraisal management companies that this is
6 provided as a courtesy. The record will show this
7 survey was never used, never mandated to be used in any
8 way. It was an effort at transparency to provide
9 information, and we will continue to do so.

10 We are also looking at -- and by the way, the
11 use of that fee study that we have published, again, I
12 just want to reiterate, there is no presumption of
13 guilt or innocence based on whether an AMC may use that
14 study, et cetera, and there are other studies available
15 now that AMCs might avail themselves of, and quite
16 frankly, we are looking at the possibility of perhaps
17 posting other surveys that meet the requirements set
18 forth in Dodd-Frank in the federal legislation, and
19 those may well be further posted on our website. And
20 these would be subject to the same conditions, not
21 mandatory, and we would not presume that failure to use
22 such a survey would constitute any violation or
23 nonviolation.

24 So that said, we have the proposed rule or
25 replacement rule before us today, and this is the final

1 step in trying to solicit public input on those who
2 might favor or oppose readoption of the language in our
3 rule. So that said, I would be happy to answer any
4 procedural questions. I will say there will be no
5 decision made by this board today.

6 Based on the public comments we receive today, I
7 will be compiling both a summary and a detailed report
8 of all written comments and public comments made today,
9 and will be furnishing that entire record to the
10 Division of Administration for their review. It will
11 also be sent to the respective oversight committees,
12 the House Commerce Committee -- and we would like to
13 recognize that Mr. Tom DeVillier is present
14 representing the House Commerce Committee today. I
15 spoke with the Senate Commerce folks yesterday, and
16 advised them of the hearing today. They too will be
17 getting the entire written record. Both the oversight
18 committees again as well as the Division of
19 Administration will review this record. They will make
20 a determination of whether what we are proposing as a
21 replacement rule is appropriate, and they will have the
22 power to amend, modify, veto, approve. This is in
23 keeping not only with our Administrative Procedures
24 Act, but also with the terms of the Governor's
25 executive order.

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1 Once all of that is done, then decisions moving
2 forward will be made by this board in terms of either a
3 final notice of intent to proceed with making this rule
4 effective, or incorporating whatever recommendations,
5 decisions that our oversight committees, or the
6 Division of Administration might make.

7 So that said, I'll be happy to answer any
8 questions, but that's why we're here, to get additional
9 public comment. This hearing is not about arguing
10 policy, points of law, or mediating disputes. This is
11 simply to receive additional public input from anyone
12 wishing to do so.

13 Thank you, Mr. Chairman.

14 MR. LIPSCOMB:

15 Well, thank you, Executive Director Unangst. I
16 think that was very comprehensive background
17 information, and very accurate of how we got to the
18 point of where we are today.

19 At this point, I see where we have several
20 members of the public here, and we would like to open
21 this up to public comment. I would like to remind you
22 if you haven't signed in to please sign in. And I
23 believe the procedures are the green card is for rule
24 support, the red card for opposition, and the yellow
25 card for facts pertaining to the rule. We are going to

1 try to limit it to three minutes per person in the
2 interest of time. And please turn in all comment cards
3 even if you choose not to speak.

4 So we can go ahead and get started with anyone
5 who would like to comment either pro or con. Just
6 state your name.

7 MR. TRAPANI:

8 Good morning. My name is Frank Trapani. I am a
9 licensed Louisiana real estate broker for approximately
10 -- a little over 40 years, and currently am president
11 of the Louisiana Realtors Association.

12 I would like to say that the quality and
13 integrity of a real estate appraisal is extremely
14 important to our industry. As a practicing real estate
15 broker, and as president of the Louisiana Realtors
16 Association, I applaud this board for its effort at
17 consumer protection, and fighting to ensure the
18 integrity of our mortgage process. Louisiana Realtors
19 strongly supports the readoption of the rule
20 implementing the Dodd-Frank.

21 And that's all I have to say, that we are in
22 favor of it and support your effort. Thank you.

23 MR. LIPSCOMB:

24 Thank you, Mr. Trapani.

25 MR. CASTJOHN:

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1 Good morning. My name is Nick Castjohn, 1st
2 vice-president of the Louisiana Home Builders
3 Association. On behalf of the Louisiana Home Builders
4 Association, we are strongly in favor of the adoption
5 and implementation of the proposed rule. Customary and
6 reasonable rules protecting consumers and lenders are
7 necessary to ensure accuracy, integrity, and quality of
8 residential appraisals. The proposed rule follows the
9 guidance and requirements set by Congress and other
10 federal agencies. This includes offering appraisal
11 management companies multiple methods of compliance
12 in relation to customary and reasonable fees for
13 residential appraisals, and, you know, we're not
14 looking for anything that will slow the process of our
15 closings.

16 We appreciate you hearing us this morning.

17 MR. LIPSCOMB:

18 Thank you.

19 MR. CASTJOHN:

20 Thank you for your time.

21 MR. LIPSCOMB:

22 In the interest of fairness, do we have anybody
23 that wants to represent opposition? Mr. Rieger, would
24 you like to --

25 MR. RIEGER:

1 Mr. Chair, if there is anyone else in support,
2 let them go first, and I will be happy to finish up.

3 MR. LIPSCOMB:

4 Is there anyone else?

5 MR. MIER:

6 Yes.

7 MR. LIPSCOMB:

8 Okay.

9 MR. MIER:

10 Good morning. My name is Joe Mier. I am a fee
11 appraiser in Louisiana. I'm also president of the
12 Louisiana Real Estate Appraisers Coalition, and we are
13 in support of this measure that the board has been
14 working on. We are in support of this as it is
15 following the Dodd-Frank federal law in transparency of
16 the process. So I just wanted to show support. This
17 is more important to the consumers in our banking and
18 our real estate industry than you realize.

19 Presumptions of compliance are put in place for a
20 purpose, and I think this rule will keep the nature of
21 those presumptions of compliance in place.

22 Thank you.

23 MR. LIPSCOMB:

24 Thank you for your time.

25 Is there anybody else who would like to speak on

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1 behalf or opposed to the readoption of Rule 31101?

2 MR. RIEGER:

3 Mr. Chairman and Members, my name is Rob Rieger.

4 I practice law at Adams & Reese, and we proudly

5 represent the Louisiana Real Estate Valuation Advocacy

6 Association. REVAAsubmitted detailed comments on this

7 rule on September 8th. We pointed out several issues

8 that we had with the rule, so we must oppose the rule

9 in its current format for several reasons.

10 First, there is a lack of clarity in the sense

11 that it doesn't say what appraisal transactions are

12 covered. For some of those that may have been on the

13 board when we went through the iMortgage disciplinary

14 hearing a year or so ago, the board ended up dismissing

15 a number of transactions that at least the way the

16 company had been originally charged were included as

17 potential violations, but the board ended up dismissing

18 some 150 violations because they were not covered

19 transactions as contemplated under federal law. So the

20 first thing we suggest that you do is that the rule be

21 further refined to say it refers to covered

22 transactions, not all other appraisals that may be done

23 in the industry. We think that's a very important

24 reform that will tell all of the folks involved in the

25 process that we are talking about these particular

1 transactions, not every transaction that's part of the
2 world of appraisals that these folks perform in this
3 state. We think that bit of clarity is absolutely
4 essential.

5 The second thing is we believe that the rule
6 goes in excess of the board's statutory authority. The
7 board's statutory authority -- I'm sorry. Excuse me.
8 The board's ability to legislate or make rules in this
9 area is completely limited by the scope of its
10 statutory authority. The Louisiana Legislature has
11 told this board that it is authorized to deal with this
12 issue inconsistent with the presumption in federal law.
13 Respectfully, REVAA suggests that this goes a bit
14 further than that in that it does -- it says -- we
15 believe that again an opportunity for some clarity by
16 this tribunal is that it doesn't say exactly what other
17 methods can be utilized to prove if something, a fee is
18 customary and reasonable. We suggest that the TILA
19 rules, the regs that came out by the Federal Reserve
20 Board say other means may be utilized to do this. The
21 rule doesn't say that, if you will. So we think the
22 rule is necessarily or the way it is wrirtten confines
23 the types of factors that can be used to only those
24 that are entitled to presumptions of compliance. Now,
25 that's exactly opposite what you heard your executive

Page 18

1 director say in his comments which I very much or the
2 industry on the AMC side, we very much appreciate. It
3 makes some good sense in that you want to make sure
4 that the rules are clear for everyone, you're putting
5 up surveys that can be used. All of that is good, we
6 believe; however, it doesn't say clearly that there are
7 other means to show compliance. It merely says,
8 federal law that is, that there is neither a
9 presumption of compliance, or a presumption in favor of
10 a violation. So we think the rule needs to be cleaned
11 up to take care of that. Another thing, we
12 suggest that the ability to decide how many days that
13 payment must be made is something that is outside the
14 board's statutory authority. That is not completely in
15 our comments initially; however, they were part of
16 comments that we gave, I think, back in '13 when the
17 original rule making on the original rule was, that we
18 had a concern that that was not a specific statutory
19 authority that was granted to the board, and that we
20 have searched diligently through the Appraisal
21 Management Act, and we don't see where the board is
22 vested with that authority to make such a finding.

23 A couple of other matters. In looking at the
24 minutiae of what a rule making process has to show in
25 Louisiana, there's a statement in there that there is

1 no impact on competition by virtue of this rule. Well,
2 we don't know what analysis was given, if any analysis.
3 I do know that in the prior rule, there was not any
4 analysis done. I have not requested the analysis that
5 the board may or may not have done that would give
6 support to that statement because the summary is simply
7 that, a conclusory finding that the board's staff made
8 as a part of the rule making. We would like to see the
9 methodology and the analysis that went into all of
10 that, and we would submit that if there is not any
11 methodology, and it's simply a conclusory statement
12 that that does not comply with the legal requirement
13 that there be a detailed and thoughtful analysis of the
14 competitive impacts of such a rule. And again, it has
15 to do with competition and folks that may be impacted
16 by the rule. I don't see an analysis of what it does
17 to appraisers. I don't see an analysis of what it does
18 to AMCs. I don't see an analysis of what impact it has
19 to the public.

20 Now, what we do know is that after this board's
21 enforcement of the board's prior rule that the ability
22 for fees to go below the Southeastern survey was pretty
23 much the market responding into not doing that. Okay?
24 So whether intended or not, the activity that the prior
25 board took did things to basically raise prices, and

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1 allow folks, AMCs especially who are subject to this
2 rule and the sanctions by it, not to be able to have
3 clarity to know what practices that it had to be able
4 to come up with a fee that might be different, a
5 customary and reasonable fee that would be consistent
6 with federal law, but not consistent with the board's
7 prior rule or the way the board has interpreted that
8 rule. So we have some concerns there.

9 Again, if we're looking for transparency and
10 clarity, tell the folks who are charged and capable of
11 having their activities sanctioned of exactly what it
12 is that they can do in coming up with a calculation for
13 these fees. And I'm here to tell you that REVAA and
14 all of the AMC members want to comply with the law. No
15 one wants to be out of compliance with it, but you have
16 got to give the industry the tools so that it can
17 understand how it is to do the things that it needs to
18 do to stay in compliance with Louisiana law.

19 And if I could doublecheck, Mr. Chairman, my
20 notes for just a second to make sure I've covered
21 everything that I meant to.

22 MR. LIPSCOMB:

23 Okay.

24 MR. RIEGER:

25 At the close of my comments, I do have a

1 question that I'm not sure the executive director
2 responded to when he gave his very comprehensive
3 summary of why we find ourselves here today, but the
4 question is, will this board entertain changes to the
5 rule, and what procedure will the board utilize to
6 republish such changes? For instance, if there is
7 merit to any of the comments that have been submitted,
8 will the board authorize a republication of the way the
9 rule will be finally adopted, or what, I guess is the
10 question? For instance, if the board, if you all find
11 there is merit in some of the comments, what will be
12 the process to let folks know what the potential final
13 rule may be?

14 MR. UNANGST:

15 Being the astute barrister of the law that you
16 are, I would simply refer you to the Administrative
17 Procedures Act and Governor Edwards' executive order
18 which well covers the process.

19 MR. RIEGER:

20 I think with all due respect to the learned
21 executive director, that to me is not very clear, but I
22 appreciate that.

23 MR. UNANGST:

24 Read the law.

25 MR. RIEGER:

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1 Thank you. I have.

2 MR. LIPSCOMB:

3 Thank you, Mr. Rieger.

4 MR. RIEGER:

5 Thank y'all very much.

6 MS. ROTHSCHILD:

7 Wait. May I ask a question?

8 MR. LIPSCOMB:

9 We are not taking questions from the board.

10 Does anybody else have a comment that they would
11 like to make?

12 Okay. We would like to thank everybody for
13 coming down and making their comments clear to us. We
14 appreciate you taking your time, and we're going to
15 take your comments under advisement before we proceed
16 with any further action.

17 So thank you very much. At this point, I
18 believe we are going to go ahead and proceed to the
19 regular board meeting.

20 * * * * *

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REPORTER'S CERTIFICATE

This certification is valid only for a transcript accompanied by my original signature and original required seal on this page.

I, Ellen Jolly Tanner, Certified Court Reporter in and for the State of Louisiana, as the officer before whom these proceedings were taken, do hereby certify that these proceedings were reported by me in the stenotype reporting method, that the transcript was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board, and that I am informed about the complete arrangement, financial or otherwise, with the person or entity making arrangements for hearing services; that I have acted in compliance with the prohibition on contractual relationships, as defined by Louisiana Code of Civil Procedure Article 1434 and in rules and advisory opinions of the board; that I have no actual knowledge of any prohibited employment or contractual relationship, direct or indirect, between a court reporting firm and any party litigant in this matter nor is there any such relationship between myself and a party litigant in this matter; that I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

Baton Rouge, Louisiana, on _____.

ELLEN JOLLY TANNER, RPR, CCR
Certificate No. 82014



JOHN BEL EDWARDS
GOVERNOR

State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

October 4, 2017

Re: Summary Report on LAC 46:LXVII.Part 3. Chapter 311

In accordance with the Administrative Procedures Act, the Louisiana Real Estate Appraisers Board hereby submits this second report regarding the above-referenced rule, which was published for readoption in the August 20, 2017 *Louisiana Register*, page 1622.

The LREAB received the following written comments in support of readoption of rule 31101:

- **Louisiana REALTORS®** – General support of readoption
- **Louisiana Bankers Association** – General support of readoption
- **Louisiana Homebuilders Association** – stated that customary and reasonable rules are necessary to ensure accuracy, integrity, and quality for residential mortgage appraisals; protects consumer and lenders; offers Appraisal Management Companies multiple methods of compliance with requirements dictated by Congress and federal regulatory agencies.
- **The Appraisal Institute** – stated that the language is consistent with the language of the enabling statute (LSA-R.S. 37:3415.15); Louisiana statute is consistent with Dodd-Frank Act; under federal rules, a state electing to oversee AMCs must establish and comply with processes and controls reasonably designed to ensure that AMCs follow federal laws; Dodd-Frank does not prevent states from enacting their own provisions regarding the payment of customary and reasonable fees to appraisers; there are no conflicts between Louisiana law and federal laws, which protects AMCs from compliance issues.

The LREAB received the following comments via email:

- **41 industry stakeholders** – comments of general support for readoption
- **30 industry stakeholders** – comments of support for readoption focusing on consumer protection, appraiser industry protection, and the public trust in the integrity of the appraisal process.

The LREAB received the following written comments in opposition of readoption of rule 31101:

- **Real Estate Valuation Association** – One commenter responding to our request for written comments expressed concerns about re-adoption of Rule 31101. In their letter dated September 8, 2017, REVAA, the trade organization representing twenty-five of the 141 AMC's licensed in Louisiana, commented that Chapter 311 is potentially more restrictive than federal law. A REVAA representative elaborated on these concerns in testimony at the September 27, 2017 Public Hearing. Both the REVAA September 8 letter and the transcript of the September 27 hearing are submitted herewith; the relevant portion of the transcript begins at page 16. The discussion that follows addresses REVAA's comments in turn.

Scope of the Dodd-Frank Act's Requirements

The 2010 Dodd-Frank Act amended federal law relating to appraisals in two key ways. First, it amended the Truth-in-Lending Act ("TILA") by adding a new section on "Appraisal Independence." 15 U.S.C 1639e, the "customary and reasonable fee" requirement is contained in subsection 1639e(i). The Federal Reserve Board promulgated Interim Final Regulations ("IFR") for this section.

Second, the Dodd-Frank Act required the federal financial regulatory agencies to establish minimum requirements for state registration and regulation of AMCs. The agencies published the Final Rules for this statutory requirement in 2015.

In this regard, the REVAA letter quoted the Louisiana statute as it was enacted in 2012, which stated:

"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".

However, in response to the clarified federal mandates in the Final Federal Rules promulgated in 2015, in 2016 the Louisiana legislature amended the 2012 statute quoted above to read:

"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 and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222."

The final federal rules referenced in the 2016 Louisiana legislative amendments reinforced and clarified two key points for state regulatory bodies in fulfilling their federal mandate for regulating customary and reasonable fees with specific language:

"Nothing in this [these rules] shall be construed to prevent states from establishing requirements in addition to those in [these rules].

States must "impose requirements on AMCs ... to establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of sections 129E(a) through (i) of TILA."

Therefore, it is not an option on the part of Louisiana or any other state licensing AMCs as to whether the customary and reasonable fee provisions of federal law are enforced, and federal rules made clear that their rules were "minimum" standards with the expectation that individual states may well enact more restrictive requirements.

Limitation on the Use of Presumptions of Compliance

The commenter also suggested that the proposed rule restricted an AMC to utilize only the two identified presumptions of compliance published in the 2010 Interim Rules. As pointed out by the Appraisal Institute in their comments:

"Further, we believe the language of Proposed rule 31101 is consistent with, and does not differ noticeably, from the language regarding the payment of customary and reasonable compensation to appraisers contained in 15 U.S.C. 1639e and the "final federal rules" contained in C.F.R 226.42 and 12 C.F.R. 1046.42. In our opinion, Proposed Rule 31101 requires the AMC's operating in Louisiana to utilize the same methods that they are required to utilize under federal law to determine what constitutes customary and reasonable compensation to an appraiser for a specific appraisal assignment".

More specifically, Subsection 31101(A)(3) provides:

Licenses 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. (Emphasis added).

Thus, AMCs *not* wishing to rely on the presumptions of compliance set out in the Rule or in the IFR and wishing the Board to take other factors into consideration are expressly free to do so. This alternative route may place an AMC under a higher burden, because they are obligated to articulate “all” facts and “all” circumstances relative to the fee, as the REVAA letter notes. However, it is the Board’s obligation to ensure that all such facts and circumstances are disclosed by the AMC. In this context, subsection 31101(A)(3) simply provides guidance that, as to the facts and circumstances that must be discussed, at a minimum, those facts and circumstances must include the application of the “six factors” to recent rates paid in the relevant geographic market in accordance with the federal rules. Consequently, the current language is fully consistent with the applicable federal regulations.

Definition of Geographic Markets

Additional comment was provided that the word “shall” be replaced by the word “may” in identifying the market area of the property being appraised. Specific language in the federal rules suggest that a “county” could be the best geographic area on which to base customary and reasonable fee compensation. Proposed rule 31101 expands the flexibility provided AMC’s in selection of market area beyond “county” to include: zip code, parish, or metropolitan area.

Retroactive Review of Fees Paid

The commenter further suggested that language in proposed 31101 (3) could be potentially stretched to allow retroactive adjustments to customary and reasonable fee compensation based on future market conditions. The clear language proposed is as follows:

“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 adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.”

The verb “electing” in the above language makes clear that this is an act by the AMC at the time of appraiser selection. Further, “recent rates paid” is defined in federal rules as fees paid on similar assignments within the past twelve (12) months, not on some future market condition that in some unknown way could be retroactively applied.

Comment was also provided that the language “for each appraisal performed” contained in 31101 B.1 and 2 was redundant and suggested deletion. Consistent with USPAP and federal law, each appraisal assignment is unique as to the type of property and scope of work required. Absent this specific language, a generic “one size fits all” approach to appraiser selection would be contrary to the factors mandated in federal law.

Modification of 30-day Payment Period

Next, REVAA requested consideration of extending the thirty (30) day payment period to a forty-five (45) day requirement. The commenter acknowledged the LREAB had enacted this requirement based on “bad AMC

actors” abuse of consumers and other stakeholders, but that these concerns had subsided. The concern has not abated as most recently a licensed AMC defaulted on monies due and is now offering \$.25 on the dollar in compensation due. Current lending practices in most cases require the consumer to pay the appraisal fee “up front” during the loan approval process. There appears to be no consumer benefit to changing this requirement and no negative impacts have been reported to the LREAB regarding this provision since inception of this requirement.

Additionally, at the public hearing, REVAA’s representative challenged the Board’s legal authority to set a window for AMC payment of appraisal fees. Notwithstanding this contention, AMC Act §3415.16(A)(1) provides that an AMC shall not engage in specified conduct that influences or coerces an appraiser, including “Withholding or threatening to withhold timely payment for an appraisal.” (A similar requirement is provided in federal regulations, 12 C.F.R. §1026.42(c)(1)(B).)

This statutory prohibition could be considered vague if the Board’s regulations did not define the interval that would constitute “timely payment.” Subsection 31101(D)(1)’s prescription of a 30-day payment window thus fulfills the Board’s authorization to adopt regulations “necessary for the enforcement of” the AMC Act, §3415.21.

Clarity Regarding “Covered Transactions”

[Finally, REVAA’s representative sought clarification as to whether the customary and reasonable fee requirement would be enforced only against appraisals involving “covered transaction under TILA. By its terms, the appraisal independence section of TILA applies to “a consumer credit transaction secured by the principle dwelling of the consumer.” 15 U.S.C. § 1639e(a). The IFR refers to such a transaction as a “covered transaction.” Thus, appraisals that are not undertaken with respect to a transaction in which consumer credit is extended and secured by a primary residence, e.g., a second home or investment single-home property for rentals, may not fall within scope of a “covered” transaction.

A broader scope to cover other types of appraisals would be consistent with the Dodd-Frank Act’s requirements for “minimum” state regulation of AMC’s which provide that nothing in the requirement for federal financial regulatory agencies to establish rules implementing those minimum requirements “shall be construed to prevent States from establishing requirements in addition to” any rules promulgated by those agencies. Other provisions of the AMC Act, such as §3415.16, dealing with prohibited AMC, conduct are applicable to all AMC-ordered appraisal transactions. Nevertheless, given the express language in AMC Act that the requirement for customary and reasonable fees §3415.15(A) be enforced consistent with the cited federal requirements, the Board, in its most recent adjudicated enforcement action, has limited enforcement of the customary and reasonable requirement to transactions that are covered transactions under the IFR. The Board is considering issuance of a policy statement setting out this enforcement limitation, and would issue such a statement if required by the Commissioner. In either case, no modification of the language of Rule 31101 would be necessary to achieve the clarity that REVAA has requested.}

After receiving the above written comments during the prescribed comment period, the LREAB held a public hearing on September 27, 2017.

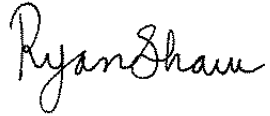
At the hearing, representatives from the Louisiana REALTORS® Association, the Louisiana Homebuilders Association, and the Louisiana Real Estate Appraisers Coalition spoke in support of the rule readoption, restating the points made in their previously-submitted written comments. An attorney representing the Real Estate Valuation Association spoke in opposition of readopting the rule as written, restating the points made in their previously-submitted written comments.

Absent a directive to proceed otherwise, the board will submit the final Rule for publication in the *Louisiana*

PUBLIC

Register. Please contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Ryan Shaw". The signature is written in a cursive style with a large, prominent 'R' and 'S'.

Ryan Shaw
Public Information Director

cc: House Commerce Committee

EXHIBIT 37



JOHN BEL EDWARDS
GOVERNOR

PUBLIC

State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

Mr. Jay Dardenne
Commissioner of Administration
P.O. Box 94095
Baton Rouge, La., 70804-9095

October 3, 2017

Re: Approval of LREAB Rulemaking Pursuant to Executive Order 17-16

Dear Mr. Dardenne:

We respectfully submit the enclosed information pursuant to Section 2 of Governor Edward's Executive Order 17-16 requiring your supervisory review of the Rulemaking record of all new regulations proposed by the LREAB regarding the customary and reasonable fee provisions of La. R.S. 37.3415.15A.

Per your letter of August 14, 2017 which approved of our proceeding with the promulgation of a replacement for Rule 31101, we have completed all requirements of advertising and solicitation of comments following Administrative Procedures Act requirements. All written comments received, as well as a transcript of our final public hearing held on September 27, 2017 are included herein.

From a public policy perspective, please note the leaders in job creation in our construction and real estate industry have all joined in support of the proposed re-adoption of Rule 31101, including the Homebuilders Association, Realtors Association, and the Louisiana Bankers Association. REVAA, the trade organization based in Washington D. C. representing 25 of the 141 licensed AMC's doing business in Louisiana, expressed concerns regarding the proposed re-adoption for which detailed responses have been provided.

We stand ready to provide any additional information you may need in your substantive review of this rulemaking record.

Sincerely,

Bruce Unangst
Executive Director

EXHIBIT 38

Office of General Counsel
State of Louisiana
Division of Administration

PUBLIC

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

November 9, 2017

Bruce Unangst
Louisiana Real Estate Appraisers Board
9071 Interline Ave
Baton Rouge, LA 70809

Re: Approval of LREAB Rulemaking

Dear Mr. Unangst:

You have requested that our office review the public comments made in response to the proposed rules promulgated by the Louisiana Real Estate Appraisers Board (LREAB) under the statutory authority granted to that body by La. R.S. 37:3415.21. In August of this year, and pursuant to Executive Order 17-16, the Commissioner undertook a review of the proposed rules and concluded that they would further the public policy of the State of Louisiana that real estate appraisers be paid a customary and reasonable fee by Appraisal Management Companies (AMCs). The purpose of this letter is to review the proposed rules in light of the public comments received during the rulemaking process and advise if DOA's original conclusion has changed.

At the outset, I should note that at this point of the rulemaking process, the legislative oversight committee and the Governor—not the DOA—have the formal authority to disapprove proposed rules. Pursuant to Executive Order No. 17-16, any action on the part of DOA to approve, reject, or modify the proposed rule was prior to its promulgation. As noted above, the Commissioner approved the adoption of the rule via letter on August 14, 2017.

Notwithstanding this caveat, our office is still of the opinion that the proposed rules will further the public policy goals of the State of Louisiana by ensuring that real estate appraisers will be paid a customary and reasonable fee by AMCs. This, in turn, will strengthen the accuracy, integrity, and quality of real estate appraisals, which, among other benefits, can prevent a recurrence of the real estate bubble from the last decade.

In reaching this conclusion, I have reviewed a set of materials you presented to our office that includes a substantive history of Rule 31101, background information on Dodd-Frank and its requirements, the pertinent state and federal laws, the rulemaking record from the past promulgation of Rule 31101, as well as all documents and public comments related to the 2017 promulgation of the rule.

The public comments were nearly all positive. While the majority of the positive comments came from individual appraisers, organizations representing other industries—including realty, banking,

Bruce Unangst
November 9, 2017
Re: Approval of LREAB Rulemaking

Page 2

and homebuilding—are also in support of the regulation. The Real Estate Valuation Advocacy Association (REVAA), which represents a number of AMCs affected by the proposed rule, was the only negative public comment. REVAA’s attorney also participated in the public hearing that took place on September 27, 2017, in which he voiced his client’s concerns and opposition to the rules.

There appears to be a significant disagreement between REVAA and LREAB about whether Rule 31101 is unlawfully more restrictive than the federal requirements set forth in Dodd-Frank and its accompanying regulations. While this may present a novel issue for a court of law to determine at some future date, it is not the role of the DOA to issue a legal opinion on the matter.

Fortunately, all sides seem to be in agreement that the payment of customary and reasonable fees is an important public policy goal. Based on my review of the rulemaking record, including the public comments, I believe that Rule 31101 achieves that public policy goal. Under the rule, AMCs can evidence their compliance with the customary and reasonable fee requirement of state and federal law in various ways. Rule 31101, therefore, reasonably codifies the more general requirements set forth in law without becoming an inflexible, “one size fits all” decree.

If you have any additional questions or need anything further from my office, do not hesitate to ask.

Sincerely,



Scott D. Johnson
General Counsel
Division of Administration

EXHIBIT 39

From: Bruce Unangst
Sent: Friday, October 6, 2017 12:41 PM
To: 'Danny Martiny' <danny@MARTINYLAW.COM>; 'Carmody, Rep. (District Office)' <carmodyt@legis.la.gov>
Cc: 'Ridge, Michelle' <ducharrmm@legis.la.gov>; 'Devillier, Thomas' <devilliart@legis.la.gov>
Subject: Rulemaking report submitted

Good afternoon,

Just a heads up that the LREAB second report was just submitted to you regarding the re-adoption of Rule 31101 for your review. All 70+ written comments received were favorable to this re-adoption including support from the La. Realtors Association, Louisiana Homebuilders Association, Louisiana Bankers Association, as well as the National Appraisal Institute. REVAA, the Washington D.C. based trade group representing 25 of the 141 appraisal management companies doing business in Louisiana, expressed their concerns which have been included in our submittal along with detailed responses addressing same. An additional public hearing was held on September 27th with no new information presented. We stand ready to answer any questions you may have. Thanks.

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

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JOHN BEL EDWARDS
GOVERNOR

State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

SENT VIA EMAIL

October 4, 2017

Representative Taylor F. Barras
Speaker of the House
Louisiana State Legislature
P.O. Box 94062
Baton Rouge, LA 70804-4486

Re: Summary Report on LAC 46:LXVII.Part 3. Chapter 311

Representative Barras,

In accordance with the Administrative Procedures Act, the Louisiana Real Estate Appraisers Board hereby submits this second report regarding the above-referenced rule, which was published for readoption in the August 20, 2017 *Louisiana Register*, page 1622.

The LREAB received the following written comments in support of readoption of rule 31101:

- **Louisiana REALTORS®** – General support of readoption
- **Louisiana Bankers Association** – General support of readoption
- **Louisiana Homebuilders Association** – stated that customary and reasonable rules are necessary to ensure accuracy, integrity, and quality for residential mortgage appraisals; protects consumer and lenders; offers Appraisal Management Companies multiple methods of compliance with requirements dictated by Congress and federal regulatory agencies.
- **The Appraisal Institute** – stated that the language is consistent with the language of the enabling statute (LSA-R.S. 37:3415.15); Louisiana statute is consistent with Dodd-Frank Act; under federal rules, a state electing to oversee AMCs must establish and comply with processes and controls reasonably designed to ensure that AMCs follow federal laws; Dodd-Frank does not prevent states from enacting their own provisions regarding the payment of customary and reasonable fees to appraisers; there are no conflicts between Louisiana law and federal laws, which protects AMCs from compliance issues.

The LREAB received the following comments via email:

- **41 industry stakeholders** – comments of general support for readoption
- **30 industry stakeholders** – comments of support for readoption focusing on consumer protection, appraiser industry protection, and the public trust in the integrity of the appraisal process.

Below is the LREAB response to the written comments received in opposition of re-adoption of rule 31101:

- **Real Estate Valuation Association** – One commenter responding to our request for written comments expressed concerns about re-adoption of Rule 31101. In their letter dated September 8, 2017, REVAA, the trade organization representing twenty-five of the 141 AMC's licensed in Louisiana, commented that Chapter 311 is potentially more restrictive than federal law. A REVAA representative elaborated on these concerns in testimony at the September 27, 2017 Public Hearing. Both the REVAA September 8 letter and the transcript of the September 27 hearing are submitted herewith; the relevant portion of the transcript begins at page 16. The discussion that follows addresses REVAA's comments in turn.

Scope of the Dodd-Frank Act's Requirements

The 2010 Dodd-Frank Act amended federal law relating to appraisals in two key ways. First, it amended the Truth-in-Lending Act ("TILA") by adding a new section on "Appraisal Independence." 15 U.S.C 1639e, the "customary and reasonable fee" requirement is contained in subsection 1639e(i). The Federal Reserve Board promulgated Interim Final Regulations ("IFR") for this section.

Second, the Dodd-Frank Act required the federal financial regulatory agencies to establish minimum requirements for state registration and regulation of AMCs. The agencies published the Final Rules for this statutory requirement in 2015.

In this regard, the REVAA letter quoted the Louisiana statute as it was enacted in 2012, which stated:

"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".

However, in response to the clarified federal mandates in the Final Federal Rules promulgated in 2015, in 2016 the Louisiana legislature amended the 2012 statute quoted above to read:

"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 and the final federal rules as provided for in the applicable provisions of 12 CFR Parts 34, 225, 226, 323, 1026, and 1222."

The final federal rules referenced in the 2016 Louisiana legislative amendments reinforced and clarified two key points for state regulatory bodies in fulfilling their federal mandate for regulating customary and reasonable fees with specific language:

"Nothing in this [these rules] shall be construed to prevent states from establishing requirements in addition to those in [these rules].

States must "Impose requirements on AMCs ... to establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of sections 129E(a) through (i) of TILA."

Therefore, it is not an option on the part of Louisiana or any other state licensing AMCs as to whether the customary and reasonable fee provisions of federal law are enforced, and federal rules made clear that their rules were "minimum" standards with the expectation that individual states may well enact more restrictive requirements.

Limitation on the Use of Presumptions of Compliance

The commenter also suggested that the proposed rule restricted an AMC to utilize only the two identified presumptions of compliance published in the 2010 Interim Rules. As pointed out by the Appraisal Institute in their comments:

“Further, we believe the language of Proposed rule 31101 is consistent with, and does not differ noticeably, from the language regarding the payment of customary and reasonable compensation to appraisers contained in 15 U.S.C. 1639€ and the “final federal rules” contained in C.F.R 226.42 and 12 C.F.R. 1046.42. In our opinion, Proposed Rule 31101 requires the AMC’s operating in Louisiana to utilize the same methods that they are required to utilize under federal law to determine what constitutes customary and reasonable compensation to an appraiser for a specific appraisal assignment”.

More specifically, Subsection 31101(A)(3) provides:

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. (Emphasis added).

Thus, AMCs *not* wishing to rely on the presumptions of compliance set out in the Rule or in the IFR and wishing the Board to take other factors into consideration are expressly free to do so. This alternative route may place an AMC under a higher burden, because they are obligated to articulate “all” facts and “all” circumstances relative to the fee, as the REVAA letter notes. However, it is the Board’s obligation to ensure that all such facts and circumstances are disclosed by the AMC. In this context, subsection 31101(A)(3) simply provides guidance that, as to the facts and circumstances that must be discussed, at a minimum, those facts and circumstances must include the application of the “six factors” to recent rates paid in the relevant geographic market in accordance with the federal rules. Consequently, the current language is fully consistent with the applicable federal regulations.

Definition of Geographic Markets

Additional comment was provided that the word “shall” be replaced by the word “may” in identifying the market area of the property being appraised. Specific language in the federal rules suggest that a “county” could be the best geographic area on which to base customary and reasonable fee compensation. Proposed rule 31101 expands the flexibility provided AMC’s in selection of market area beyond “county” to include: zip code, parish, or metropolitan area.

Retroactive Review of Fees Paid

The commenter further suggested that language in proposed 31101 (3) could be potentially stretched to allow retroactive adjustments to customary and reasonable fee compensation based on future market conditions. The clear language proposed is as follows:

“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 adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.”

The verb “electing” in the above language makes clear that this is an act by the AMC at the time of appraiser selection. Further, “recent rates paid” is defined in federal rules as fees paid on similar assignments within

the past twelve (12) months, not on some future market condition that in some unknown way could be retroactively applied.

Comment was also provided that the language “for each appraisal performed” contained in 31101 B.1 and 2 was redundant and suggested deletion. Consistent with USPAP and federal law, each appraisal assignment is unique as to the type of property and scope of work required. Absent this specific language, a generic “one size fits all” approach to appraiser selection would be contrary to the factors mandated in federal law.

Modification of 30-day Payment Period

Next, REVAA requested consideration of extending the thirty (30) day payment period to a forty-five (45) day requirement. The commenter acknowledged the LREAB had enacted this requirement based on “bad AMC actors” abuse of consumers and other stakeholders, but that these concerns had subsided. The concern has not abated as most recently a licensed AMC defaulted on monies due and is now offering \$.25 on the dollar in compensation due. Current lending practices in most cases require the consumer to pay the appraisal fee “up front” during the loan approval process. There appears to be no consumer benefit to changing this requirement and no negative impacts have been reported to the LREAB regarding this provision since inception of this requirement.

Additionally, at the public hearing, REVAA’s representative challenged the Board’s legal authority to set a window for AMC payment of appraisal fees. Notwithstanding this contention, AMC Act §3415.16(A)(1) provides that an AMC shall not engage in specified conduct that influences or coerces an appraiser, including “Withholding or threatening to withhold timely payment for an appraisal.” (A similar requirement is provided in federal regulations, 12 C.F.R. §1026.42(c)(1)(B).)

This statutory prohibition could be considered vague if the Board’s regulations did not define the interval that would constitute “timely payment.” Subsection 31101(D)(1)’s prescription of a 30-day payment window thus fulfills the Board’s authorization to adopt regulations “necessary for the enforcement of” the AMC Act, §3415.21.

Clarity Regarding “Covered Transactions”

[Finally, REVAA’s representative sought clarification as to whether the customary and reasonable fee requirement would be enforced only against appraisals involving “covered transaction under TILA. By its terms, the appraisal independence section of TILA applies to “a consumer credit transaction secured by the principle dwelling of the consumer.” 15 U.S.C. § 1639e(a). The IFR refers to such a transaction as a “covered transaction.” Thus, appraisals that are not undertaken with respect to a transaction in which consumer credit is extended and secured by a primary residence, e.g., a second home or investment single-home property for rentals, may not fall within scope of a “covered” transaction.

A broader scope to cover other types of appraisals would be consistent with the Dodd-Frank Act’s requirements for “minimum” state regulation of AMC’s which provide that nothing in the requirement for federal financial regulatory agencies to establish rules implementing those minimum requirements “shall be construed to prevent States from establishing requirements in addition to” any rules promulgated by those agencies. Other provisions of the AMC Act, such as §3415.16, dealing with prohibited AMC, conduct are applicable to all AMC-ordered appraisal transactions. Nevertheless, given the express language in AMC Act that the requirement for customary and reasonable fees §3415.15(A) be enforced consistent with the cited federal requirements, the Board, in its most recent adjudicated enforcement action, has limited enforcement of the customary and reasonable requirement to transactions that are covered transactions under the IFR. The Board is considering issuance of a policy statement setting out this enforcement limitation, and would issue such a statement if required by the Commissioner. In either case, no modification of the language of Rule

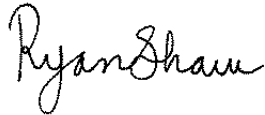
31101 would be necessary to achieve the clarity that REVAA has requested.}

After receiving the above written comments during the prescribed comment period, the LREAB held a public hearing on September 27, 2017.

At the hearing, representatives from the Louisiana REALTORS® Association, the Louisiana Homebuilders Association, and the Louisiana Real Estate Appraisers Coalition spoke in support of the rule readoption, restating the points made in their previously-submitted written comments. An attorney representing the Real Estate Valuation Association spoke in opposition of readopting the rule as written, restating the points made in their previously-submitted written comments.

The Board is submitting this record to the Commissioner of Administration for review, consistent with Executive Order 17-16, and for a determination of whether to adopt, modify, or reject the proposed Rule. The Board also anticipates the decision of the Committee whether to hold hearings on the proposed Rule, or whether to not hold a hearing and thereby enable the Rule to move forward. If the Committee decides not to hold hearings, and the Commissioner determines to adopt the Rule as proposed, the Board will submit the final Rule for publication in the Louisiana Register at which time the Rule will come into effect. Please contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Ryan Shaw".

Ryan Shaw
Public Information Director

cc: House Commerce Committee

EXHIBIT 40

From: Ryan Shaw
Sent: Tuesday, October 10, 2017 12:33 PM
To: 'ducharmm@legis.la.gov' <ducharmm@legis.la.gov>
Subject: Post Hearing Report on LREAB Rule 31101

Ms. Ridge,

Please see the attached report created for the Division of Administration following the public hearing held on the readoption of rule 31101. Please let me know if you have any questions or require any additional information.

Thank you,

Ryan Shaw

Public Information Director

Louisiana Real Estate Commission
Louisiana Real Estate Appraisers Board
9071 Interline Avenue, 70809
Post Office Box 14785-4785
Baton Rouge, LA 70898-4785
(225) 925-1923 Ext. 253
(800) 821-4529 (in state only)
rshaw@lrec.state.la.us



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From: Ryan Shaw
Sent: Tuesday, October 10, 2017 12:32 PM
To: 'devilliert@legis.la.gov' <devilliert@legis.la.gov>
Subject: Post Hearing Report on LREAB Rule 31101

Mr. Devillier,

Please see the attached report created for the Division of Administration following the public hearing held on the readoption of rule 31101. Please let me know if you have any questions or require any additional information.

Thank you,

Ryan Shaw

Public Information Director

Louisiana Real Estate Commission
Louisiana Real Estate Appraisers Board
9071 Interline Avenue, 70809
Post Office Box 14785-4785
Baton Rouge, LA 70898-4785
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EXHIBIT 41

PUBLIC

**SENATE
STATE OF LOUISIANA**



131 Airline Drive, Suite 201
Metairie, LA 70001

Email: martinyd@legis.la.gov

Phone: (504) 834-7676

Fax: (504) 834-5409

DANIEL R. "DANNY" MARTINY
State Senator ~ District 10

November 15, 2017

COMMITTEES

Commerce, Consumer Protection
& International Affairs, Chairman
Judiciary A
Local & Municipal Affairs
Senate Executive Committee
Joint Legislative Committee
on the Budget
Legislative Audit Advisory Council
Judicial Compensation
Commission, Chairman
Board of Commerce & Industry

Bruce L. Unangst
Executive Director
Louisiana Real Estate Appraisers Board

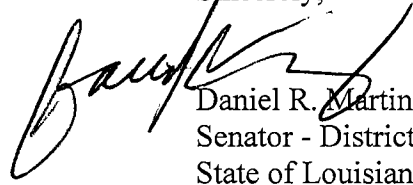
Dear Mr. Unangst:

The Senate Commerce Committee oversight subcommittee has conducted a review of the report from the Louisiana Real Estate Appraisers Board, pursuant to Section 968(D) of the Louisiana Administrative Procedures Act, concerning the proposed re-adoption of Rule 31101 in Chapter 311: Compensation of Fee Appraisers. The focus of the subcommittee is whether the proposed rule promotes the purposes of the Louisiana Appraisal Management Company Licensing and Regulation Act, and specifically La. R.S. 37:3415.15(A) which serves Louisiana's policy to protect the integrity of residential mortgage appraisals (and, thereby, the residential housing market) by requiring that AMCs pay appraisers "customary and reasonable" fees for such appraisals.

No member of the oversight subcommittee has requested to convene a hearing concerning the proposed Rule 31101. Therefore, in accordance with the Louisiana APA, it is the decision of the oversight subcommittee that no further review of the rule by the oversight subcommittee is necessary, and that the proposed Rule 31101 should become final and effective.

Should you have any questions, please feel free to give me a call.

Sincerely,


Daniel R. Martiny
Senator - District 10
State of Louisiana

DRM/jb

EXHIBIT 42

From: Bruce Unangst
Sent: Monday, November 20, 2017 4:05 PM
To: 'Carmody, Rep. (District Office)' <carmodyt@legis.la.gov>
Subject: Rule 31101 Re-Adoption

Chairman Carmody,

Thanks for taking the time last week to discuss the status of the proposed re-adoption of Rule 31101. I wanted to personally thank your staff on behalf of your Commerce Committee for their review, interest and dialogue with us on the rulemaking record. Your staff attorney Thomas Devillier attended our final public hearing on September 27th and was able to monitor the proceedings first hand which was sincerely appreciated. From our discussion, I understand no Committee Member voiced any concern, had additional questions, or saw the need for any additional public hearing and the proposed rule was deemed approved. I wanted to update you that in accordance with our APA, the final notice making this proposed rule effective was published in the La. Register today. Thanks again for your assistance and oversight in this process!

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. 1236
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EXHIBIT 43

	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: <ul style="list-style-type: none"> • 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

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."

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.

EXHIBIT 44

REDACTED IN ITS ENTIRETY

PUBLIC

Affidavit of Cheryl B. Bella

PUBLIC

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

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374

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, as a general appraiser, from 2015 to present.
4. During that period when I have served on the Board, I have not been actively performing residential appraisals, and do not consider residential appraisals to be a part of my business.
5. I estimate that in any given year while I have served on the Board, I worked on regulatory matters involving financial institutions. When I performed appraisals, I only performed commercial appraisal work.

PUBLIC

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.


Cheryl B. Bella

December 11, 2017

Affidavit of Gayle Boudousquie

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

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374

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 have served as a member of the Louisiana Real Estate Appraisers Board, as a general appraiser, from 2003 to 2017.
4. During that period when I have served on the Board, I have not been actively performing residential appraisals, and do not consider residential appraisals to be a part of my business.
5. I estimate that in any given year while I have served on the Board, I only performed commercial appraisals and served as an expert witness in matters related to commercial appraisals. When I do receive requests for residential appraisals, I refer the client to someone who does residential appraisal work.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.


Gayle Boudousquie

December 11, 2017

Affidavit of Michael A. Graham

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

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374

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 have served as a member of the Louisiana Real Estate Appraisers Board, as a general appraiser, from 2008 to 2017.
4. During that period when I have served on the Board, I have occasionally performed residential appraisals, and do not consider residential appraisals to be a significant part of my business.
5. I estimate that in any given year while I have served on the Board, I occasionally performed residential appraisals pertaining to eminent domains. When I performed appraisal work, roughly 95 percent of that work consisted of commercial appraisal work.

PUBLIC

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.



Michael A. Graham

December 11, 2017

PUBLIC

Affidavit of Heidi C. Lee

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

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374


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 have served as a member of the Louisiana Real Estate Appraisers Board, as a general appraiser, from 2003 to 2011.
4. During that period when I have served on the Board, I occasionally reviewed residential appraisals, and do not consider residential appraisals to be a significant part of my business.
5. I estimate that in any given year while I have served on the Board, I served as a Commercial Review Appraiser at Whitney Bank. When I reviewed appraisal work, I only occasionally reviewed residential appraisal work.

PUBLIC

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.



Heidi C. Lee

December 11, 2017

Affidavit of Clayton Lipscomb

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

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374

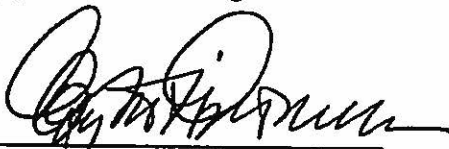
AFFIDAVIT OF CLAYTON LIPSCOMB

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, as a general appraiser, from 2016 to present.
4. During that period when I have served on the Board, I occasionally reviewed residential appraisals, and do not consider residential appraisals to be a significant part of my business.
5. I estimate that in any given year while I have served on the Board, I served as a Regional Manager of a bank and performed more managerial work per se than appraisal work. When I reviewed appraisal work, roughly 95 percent of that work consisted of commercial appraisal work.

PUBLIC

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.

A handwritten signature in black ink, appearing to read "Clayton Lipscomb", written over a horizontal line.

Clayton Lipscomb

December 11, 2017

Affidavit of Leonard E. Pauley

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF LEONARD E. PAULEY

I, Leonard E. Pauley, 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, as a general appraiser, from 2003 to 2015.
4. During that period when I have served on the Board, I have been actively performing residential appraisals, but do not consider residential appraisals to be a significant part of my business.
5. I estimate that in any given year while I have served on the Board, I occasionally performed residential appraisal work and primarily for VA loans. When I performed appraisal work, roughly 80 percent of that work consisted of commercial appraisal work.

PUBLIC

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.


Leonard E. Pauley

December 11, 2017

Affidavit of Kara Ann Platt

PUBLIC

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

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374

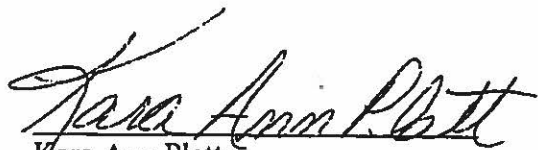
AFFIDAVIT OF KARA ANN PLATT

I, Kara Ann Platt, 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, as a general appraiser, from March 17, 2017 to present.
4. During that period when I have served on the Board, I occasionally reviewed residential appraisals, and do not consider residential appraisals to be a significant part of my business.
5. I estimate that while I have served on the Board, I served as an [REDACTED]
[REDACTED] When I reviewed appraisal work, I occasionally reviewed residential appraisal work.

PUBLIC

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.


Kara Ann Platt

December 11, 2017

Affidavit of R. Wayne Pugh

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

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374

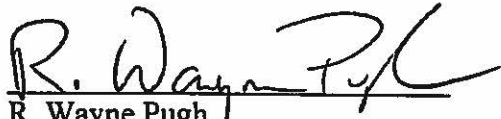
AFFIDAVIT OF R. WAYNE PUGH

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 have served as a member of the Louisiana Real Estate Appraisers Board, as a general appraiser, from July 1, 2003 to July 24, 2008 and again from September 7, 2011 to May 22, 2012.
4. During that period when I have served on the Board, I have not been actively performing residential appraisals, and do not consider residential appraisals to be a part of my business.
5. I estimate that in any given year while I have served on the Board, I only performed commercial appraisal work.

PUBLIC

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.


R. Wayne Pugh

December 11, 2017

PUBLIC

Affidavit of Rebecca Rothschild

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

AFFIDAVIT OF REBECCA ROTHSCHILD

I, Rebecca Rothschild, 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 real estate appraiser.
3. I have served as a member of the Louisiana Real Estate Appraisers Board from March 17, 2017 to present.
4. During that period which I have served on the Board, I occasionally perform appraisals of residential properties. However, these appraisals are associated with eminent domain and rights of way acquisition.
5. I estimate that while I have served on the Board, I have not performed any residential or commercial appraisals for lending purposes. My primary appraisal work is for eminent domain and infrastructure projects.

PUBLIC

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my present knowledge.



Rebecca A. Rothschild

December 11, 2017

Notice of Electronic Service

I hereby certify that on December 18, 2017, I filed an electronic copy of the foregoing Memorandum of Respondent Louisiana Real Estate Appraisers Board in Opposition to Complaint Counsel's Motion for Partial Summary Decision, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on December 18, 2017, I served via E-Service an electronic copy of the foregoing Memorandum of Respondent Louisiana Real Estate Appraisers Board in Opposition to Complaint Counsel's Motion for Partial Summary Decision, upon:

Lisa Kopchik
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Federal Trade Commission
LKopchik@ftc.gov
Complaint

Michael Turner
Attorney
Federal Trade Commission
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Complaint

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Complaint

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Respondent

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Federal Trade Commission
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Complaint

W. Stephen Cannon
Attorney