

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9372

ORIGINAL

MOTION TO DISMISS COMPLAINT

Pursuant to Rule 3.22 of the Commission Rules of Practice, Respondent Louisiana Real Estate Appraisers Board (“LREAB” or the “Board”), through undersigned counsel, hereby moves the Commission to dismiss the Part 3 Administrative Complaint, dated May 30, 2017.

Oral argument is requested.

To summarize the grounds for this Motion set forth in the accompanying Memorandum of Points and Authorities, the Board states as follows:

1. The actions of the Board are State actions that are immune from federal antitrust scrutiny under *Cal. Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105-06 (1980). Louisiana law clearly articulates the intent to displace competition in the market for residential real estate appraisal fees by requiring enforcement of the obligation of Appraisal Management Companies (“AMCs”) to compensate residential appraisers at “customary and reasonable” (“C&R”) rates, and the State of Louisiana actively supervises the Board’s regulatory activities.

2. Under an Executive Order issued by the Governor of the State of Louisiana on July 11, 2017, the Board has repromulgated its C&R fee rule under newly-required active supervision of the Commissioner of Administration—who has authority to approve, reject, or modify the

Board-proposed regulation—in addition to supervision by oversight subcommittees of the Louisiana Senate and House Commerce Committees and the Governor. Through this active supervision, the State of Louisiana reaffirmed that the Board’s C&R fee regulation serves Louisiana’s policy of protecting the integrity of residential mortgage appraisals by requiring that AMCs pay customary and reasonable fees for such appraisals. Further, all proposed actions by the Board to enforce its repromulgated C&R regulation, from initiation of an investigation through hearing, are subject to prior review and active supervision by an independent Administrative Law Judge of the Division of Administrative Law, who is empowered to approve, reject, or modify such proposed enforcement actions.

3. The Board has eliminated any ongoing or prospective effects of its prior regulation.

4. Accordingly, none of the contemplated relief sought in the Complaint can be granted under the doctrines of State action immunity and mootness.

Wherefore, the Board respectfully asks the Commission to grant this Motion and dismiss the Complaint with prejudice. A proposed Order is appended.

Dated: November 27, 2017

Respectfully submitted,

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374

**[PROPOSED] ORDER ON RESPONDENT'S MOTION TO
DISMISS THE COMPLAINT**

This matter comes before the Commission on Respondent's November 27, 2017 Motion to Dismiss the Complaint. Having considered the Motion to Dismiss, any opposition thereto, and the Commission being fully informed, it is hereby,

ORDERED that the Motion to Dismiss the Complaint is **GRANTED** and the Complaint is dismissed with prejudice.

By the Commission.

ISSUED: _____

Donald S. Clark
Secretary

PUBLIC

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

In the Matter of

**Louisiana Real Estate Appraisers Board,
Respondent**

Docket No. 9374

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION OF RESPONDENT
LOUISIANA REAL ESTATE APPRAISERS BOARD
TO DISMISS THE COMPLAINT**

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- Exhibit 2 -- Resolution of the Louisiana Real Estate Appraisers Board (July 17, 2017)
- Exhibit 3 -- Letter from Commissioner of Administration to Bruce Unangst (August 14, 2017)
- Exhibit 4 -- Notice of Intent, "Compensation of Fee Appraisers," Louisiana Register Vol. 43, No. 08 at 1622 (August 20, 2017)
- Exhibit 5 -- Letter to Commissioner of Administration from Bruce Unangst (October 3, 2017)
- Exhibit 6 -- Summary Report on Proposed Rule 31101 to Speaker of the House (October 4, 2017)
- Exhibit 7 -- Emails transmitting Summary Report to Counsel for Senate and House Commerce Committees (October 10, 2017)
- Exhibit 8 -- Record of Promulgation of Rule 31101 (attachment to Exhibits 5-7)
- Exhibit 9 -- Contract between Division of Administrative Law and Louisiana Real Estate Appraisers Board (effective July 1, 2017)
- Exhibit 10 -- "Statement of Policy by the Louisiana Real Estate Appraisers Board Upon Adoption of Replacement Rule 31101" (November 20, 2017)
- Exhibit 11 -- Letter from Division of Administration, Office of General Counsel to Bruce Unangst (November 9, 2017)
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- Exhibit 14 -- Rule, "Compensation of Fee Appraisers," Louisiana Register Vol. 43 No. 11 at 2161 (November 20, 2017)

INTRODUCTION

Respondent Louisiana Real Estate Appraisers Board (“LREAB” or “Board”) hereby moves the Commission pursuant to Rule 3.22 to dismiss the Commission’s Part 3 Administrative Complaint dated May 30, 2017 (“Complaint”). Recent sovereign actions by the State of Louisiana reinforce political accountability and active supervision over the relevant regulatory actions of the Board – thereby cloaking subsequent and future Board regulatory actions with antitrust immunity under the “state action” doctrine, and addressing and resolving all contemplated relief.

The Complaint alleged that LREAB violated Section 5 of the FTC Act by promulgating and enforcing Rule 31101, governing the obligation of appraisal management companies (“AMCs”) licensed in the State of Louisiana to pay “customary and reasonable” (“C&R”) fees to qualified residential real estate appraisers.¹ While acknowledging that LREAB adopted that Rule to implement specific mandates under the Dodd-Frank Act² and Louisiana law,³ the Complaint asserted the State’s supervision regime did not meet all requirements of active supervision.

In response, and out of concern that these “federal antitrust law challenges to state board actions affecting prices ... 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. (“Executive Order” attached

¹ La. Adm. Code tit. 46, pt. LXVII, Chapter 311 “Compensation of Fee Appraisers,” § 31101, “General Provisions; Customary and Reasonable Fees; Presumptions of Compliance.”

² Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), 15 U.S.C. § 1639e(i), 12 U.S.C. § 3353(a).

³ Louisiana Appraisal Management Company Licensing and Regulation Act (“AMC Act”), La. R.S. 37:3415.

as Exhibit 1) The Executive Order, first, 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.⁴ Ex. 1, Section 2. The Board now has repromulgated its C&R rule (“Rule 31101”) under supervision of the COA (in addition to Senate and House subcommittee oversight), and the rule became effective November 20, 2017. Second, 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”). Ex. 1, Section 1.

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. Accordingly, there is no further conduct for the Commission to prevent, or from which the Board must cease and desist, under the Complaint.

Moreover, no remedy remains for any alleged past Board conduct. The Board has eliminated potential current and prospective effects of its past promulgation and enforcement of its prior C&R rule by: terminating or vacating any pending investigative actions; precluding Board use of any past AMC conduct or complaints as evidence in any future investigative hearing; and removing and committing to no longer fund an objective third-party survey of fees that the Complaint alleges “effectively” set prices.

⁴ In addition, under Louisiana’s Administrative Procedures Act, the Legislative Oversight subcommittees of the Senate and House Commerce Committees each have supervisory authority to determine whether the Board’s proposed rule conforms to the intent and scope of the enabling legislation and State law, and otherwise is advisable and acceptable. La. R.S. 49:968(D)-(F). The Governor retains final supervisory authority to veto it. La. R.S. 49:970.

These State and Board actions “fundamentally change the factual and legal basis of this proceeding.”⁵ All Contemplated Relief requested in the Complaint is immune from further antitrust scrutiny, or is satisfied and moot. The Complaint should be dismissed.

STANDARD OF REVIEW

The Commission reviews motions to dismiss according to the same standards as Federal Rule of Civil Procedure 12. The Commission may consider any documents referenced in the Complaint, as well as official state documents and matters of judicial notice that are not subject to reasonable dispute, without converting the motion to one for summary decision. *See In the Matter of S.C. State Bd. of Dentistry*, 138 F.T.C. 229, 240 (2004).

BACKGROUND OF FEDERAL, STATE, AND BOARD REGULATION OF AMCS AND CUSTOMARY AND REASONABLE RESIDENTIAL APPRAISAL FEES

A. LREAB

Louisiana Real Estate Appraisers Board is a state governmental regulatory board that is organized, exists, and transacts business under and by virtue of the laws of the State of Louisiana. La. R.S. 37:3394. LREAB was created by Act 472 of the 1987 Louisiana Legislature. The Director of the Louisiana Real Estate Commission also serves as Executive Director of the LREAB. La. R.S. 37:1435(G); La. R.S. 37:3994(E). Members of the LREAB are appointed by the Governor. La. R.S. 37:3394. The Board is tasked with obligations to bring the state into compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 3331 *et seq.*, and to regulate and license both appraisers and AMCs, La. R.S. 37:3395 and 37:3415.

⁵ See Commission Order Continuing Stay and Postponing the Evidentiary Hearing at 1, October 26, 2017; Order Granting in Part Motion to Stay Part 3 Proceedings at 3 (July 28, 2017).

B. 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 arrange for appraisals on behalf of lenders in Louisiana. The Complaint asserts that 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 Southeastern Louisiana University Business Research Center (“SLU Survey”). Complaint ¶¶ 4-5.

LREAB answered the Complaint on June 19, 2017, denying these factual averments and allegations of any Section 5 violation.⁶ The Board asserted as an affirmative defense that “LREAB is immune from federal antitrust liability under *Parker v. Brown*, 317 U.S. 341 (1943).” Answer at 12 ¶ 9.

C. 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.

As part of a national policy to protect the integrity of the appraisal process, the federal government has long been involved in the supervision of state regulation of residential real estate appraisals. Congress passed Dodd-Frank in response to the 2008 housing crisis, and through Dodd-Frank, the federal government expanded its mandates to state appraiser boards, establishing minimum requirements concerning licensing and supervision of AMCs.

⁶ LREAB’s Answer quoted the June 11, 2013 “Notice to Appraisal Management Companies” that the SLU Survey “is provided as a courtesy to all licensees; however, its use is not mandatory.” Answer at 4 ¶ 4; http://www.reab.state.la.us/forms/REAB_FeeStudy_Notice.pdf.

Dodd-Frank requires that lenders and their agents, including 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). Dodd-Frank further mandates that the Appraisal Subcommittee of the Federal Financial Institutions Examination Council evaluate state licensing boards’ adherence to these federal mandates, and grants the Subcommittee the authority to impose sanctions on state boards that fail to do so. 12 U.S.C. § 3347(a).

In October 2010, the Federal Reserve issued Interim Final Rules implementing Dodd-Frank’s appraisal independence requirements. These rules specify that lenders or their agents presumptively comply with the statutory “customary and reasonable” appraisal fee requirement in one of two ways. First, a lender or its agent 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). Second, alternatively, a lender or its agent may pay a fee based on “objective third-party information,” including fee schedules, studies, and independent surveys of recent residential appraisal fees (excluding fees paid by AMCs). 12 C.F.R. § 226.42(f)(3).

Dodd-Frank further directs federal banking agencies to establish minimum requirements for states that choose to regulate AMCs. 12 U.S.C. § 3353(a). In 2015, federal banking agencies jointly issued rules implementing this Dodd-Frank provision. The rules provide that any state that chooses to regulate AMCs must require any AMC that is not regulated by a federal banking

agency to “[e]stablish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with” Dodd Frank’s appraisal independence requirements, including the C&R fee requirement. 12 C.F.R. § 34.213(b)(5), referring to 15 U.S.C. § 1639e(i).

Any state that chooses to regulate AMCs must maintain an AMC licensing program within the state appraiser licensing agency with mechanisms to discipline AMCs for violations of appraisal-related laws and regulations. 12 C.F.R. § 34.213(a)(6).

2. Louisiana’s AMC Act and initial promulgation of Rule 31101

Louisiana has required AMCs to be licensed and regulated by the LREAB since 2009. The AMC Act requires LREAB to (1) adjudicate complaints, including complaints by appraisers against AMCs; (2) enforce the AMC Act against AMCs that violate its provisions; and (3) adopt rules and regulations necessary for the enforcement of the act. La. R.S. 37:3415.

In 2012, in light of the passage of Dodd-Frank, 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. 3415.15(A).

To comply with the federal mandates of Dodd-Frank and the Louisiana AMC Act, and after extensive public comment and a yearlong rulemaking process, in 2013 the LREAB promulgated Rule 31101, which requires that AMCs “shall compensate fee appraisers at a rate that is customary and reasonable.” AMCs can demonstrate compliance under several methods, including the two presumptions stated in the Federal Reserve Board’s Interim Final Rule – (1) at a minimum, use six defined factors to adjust recent rates in the relevant geographical area, and

(2) geographically relevant and objective third-party information, including fee schedules and studies. *See* La. Admin. Code Title 46, § 31101(A) and subsections (1) and (3).

Pursuant to the Louisiana Administrative Procedures Act (“APA”), the respective subcommittees of the House and Senate Commerce Committee exercising oversight over the Board, having the authority to approve or disapprove a proposed Board regulation, determined that no hearing on Prior Rule 31101 was necessary, thereby enabling the rule as proposed to become final. *See* La. R.S. 49:968(D)-(H). The Governor thereafter permitted the proposed regulation to come into effect. *See* La. R.S. 49:970.

D. Executive Order 17-16 and Additional Supervision Over the Readoption and Enforcement of Replacement Rule 31101

1. Executive Order of the Governor of Louisiana

On July 11, 2017, Louisiana Governor John Bel Edwards issued Executive Order 17-16, entitled *Supervision of the Louisiana Real Estate Appraisers Board Regulation of Appraisal Management Companies*. Ex. 1. The Governor issued the Executive Order, in part, because “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) (“*N.C. Dental*”), raise the possibility of federal antitrust challenges to the state board actions affecting price, which may prevent the LREAB from faithfully executing mandates under Dodd-Frank and Louisiana law under La. R.S. 37:3415.15.” *Id.*

The Executive Order requirements supplement the existing State legislative and gubernatorial supervision over LREAB’s regulatory and enforcement activities by directing:

- a. Prior to LREAB filing or enforcing an administrative complaint against an AMC or formally or informally settling an investigation regarding compliance with a

C&R rule under the AMC Act, the proposed LREAB action must 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 appraisals are customary and reasonable. The Executive Order required the LREAB to enter into a contract with the Division of Administrative Law establishing procedures for this review. Ex. 1, Section 1.

- b. The LREAB must submit to the COA for approval, rejection, or modification any proposed regulation relating to AMC compliance with the customary and reasonable fee requirement. *Id.*, Section 2.

2. LREAB implementation of Executive Order 17-16

Following issuance of the Executive Order, the LREAB convened a public meeting on July 17, 2017. The Board unanimously adopted a Resolution to resolve prior and current enforcement actions, and to implement procedures whereby its ongoing rules and enforcement activities concerning AMC compliance with the obligation to pay appraisers customary and reasonable fees for residential mortgage appraisals would proceed pursuant to the active supervision required by the Executive Order. Ex. 2. The LREAB Resolution:

- a. Required the Executive Director, on or before July 31, 2017, to present to the Board a proposed rulemaking regarding customary and reasonable appraisal fees for review by the Board for submission to the COA pursuant to Executive Order Section 2, resulting in the repeal and

replacement of Rule 31101⁷ (Ex. 2 ¶ 1);

- b. Empowered the Executive Director to negotiate, within 90 days, the contract with the Division of Administrative Law as specified in Executive Order Section 1, for approval by the Board (*Id.* ¶ 2);
- c. Directed the Executive Director to close all pending investigations under Prior Rule 31101, upon a determination by the Board that the subject payments in such investigations were customary and reasonable; and to only initiate future investigations after a replacement rule is adopted (*Id.* ¶ 3); and
- d. Authorized the Executive Director to seek settlement or other resolution of all decrees, settlements, and compliance plans arising from alleged or adjudicated violations of Prior Rule 31101 that had not expired by their terms (*Id.* ¶ 4).

3. Initiating repeal of Prior Rule 31101 and promulgation of Replacement Rule 31101

On July 31, 2017, the LREAB unanimously approved the text of Prior Rule 31101 as the text for the Replacement Rule 31101. In accordance with APA requirements, the Executive Director prepared a Notice of Intent to repeal, and readopt with additional State political oversight, Rule 31101 of Chapter 311 (Compensation of Fee Appraisers), which would initiate a public notice and comment period for the proposed rule. In accordance with the Executive Order, the LREAB submitted the proposed Notice and replacement rule to the COA for preliminary

⁷ For clarity, the repealed rule will be referred to as Prior Rule 31101, and the rule repromulgated pursuant to Section 2 of the Executive Order will be referred to as Replacement Rule 31101.

supervisory review, along with the history of promulgation of the Prior Rule 31101. The COA notified the Board's Executive Director that the draft rule would promote the State's public policy of protecting the integrity of the residential real estate mortgage appraisals by requiring AMC payment of C&R fees, and therefore the COA approved the Board to proceed with promulgation of the rule. A letter from the COA memorializing that approval was signed on August 14, 2017. Ex. 3.

The Notice of Intent to adopt the rule was published in the Louisiana Register on August 20, 2017. Ex. 4. In accordance with the Louisiana APA, the Notice invited comments from interested parties by September 8, 2017. The Notice announced a September 27, 2017 public hearing as necessary to receive additional public comments.

By September 8, 2017, the Board received letters of support from independent stakeholders Louisiana Bankers Association, Louisiana Home Builders Association, and Louisiana REALTORS, from Appraisal Institute, and more than 70 short supportive comments from residential appraisers. Real Estate Valuation Advocacy Association ("REVAA"), a national trade association representing AMCs doing business in Louisiana that are subject to Board regulation under the Replacement Rule, submitted concerns and suggested changes to the text. Ex.8.⁸

Per the Notice of Intent and LREAB website notice, on September 27, the Board held a public hearing to "obtain additional public comments concerning the proposed text of the rule that will replace current Rule 31101." Before receiving comments, the Board's Executive

⁸ Exhibit 8 constitutes the promulgation record forwarded by LREAB to the COA and the Louisiana House and Senate Commerce Committee oversight subcommittees, *infra*, at 11, including all comments received by the Board by September 8, 2017, and the transcript of the Board's September 27 public hearing.

Director announced to the public, first, that the Board closed the few pending investigations upon a determination of no violation of Prior Rule 31101, and had so notified the parties. *See* Ex. 8 at 105; LREAB Resolution paragraph 3. Second, the Board decided not to initiate further investigations under the Prior Rule, and to initiate any future investigations following adoption of a Replacement Rule. *Id.* at 106. Third, the Board authorized the Executive Director to settle or resolve any unexpired prior enforcement actions. *Id.* at 105. At the hearing, the President of the Louisiana REALTORS and the Vice President of the Home Builders Association voiced support for the proposed Replacement Rule. *Id.* at 110-111. An attorney representing REVAA reiterated suggested changes to the Replacement Rule. *Id.* at 113.

Thereafter, the LREAB unanimously determined to proceed with promulgation of proposed Replacement Rule 31101. The Board's Executive Director submitted the proposed rule to the COA and legislative oversight subcommittees, along with the Notice of Intent, all public comments received by the LREAB pursuant to the Notice of Intent, a transcript of the public hearing, and a written response to the changes suggested by REVAA. Exhibits 5-8.

4. LREAB contracts for DAL supervision over enforcement of Replacement Rule 31101.

Pursuant to Executive Order Section 1, the Board signed the contract with the DAL “with respect to conducting reviews of settlements with Appraisal Management Companies, and reviews of proposed actions, administrative complaints, and enforcement actions, against AMCs.” Ex. 9. Hearings in an enforcement proceeding will be conducted by the LREAB in accordance with the Louisiana APA. Following conclusion of the proceeding, the ALJ reviews the entire hearing record and evidence, a written proposed determination by the LREAB as to

whether a violation of Replacement Rule 31101 occurred and, if so, a proposed remedy. The ALJ will review the LREAB proposed determination according to the following standard of review:

i. The proposed determination and remedy must serve 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.

ii. Questions of law are reviewed *de novo* under La. R.S. 49:964(G)(1)-(4), including whether –

(A) constitutional or statutory provisions were violated;

(B) the Board exceeded its statutory authority;

(C) proper procedures were observed with respect to the findings, conclusions of law, decision, and remedy; or

(D) the proceeding was affected by any other error of law, including whether the Board’s construction and interpretation of the C&R Rule was erroneous.

iii. The ALJ makes its own determination and findings of fact based on a preponderance of the evidence viewing the record in its entirety, giving due regard to any Board findings of live witness credibility.

iv. The ALJ determines whether the proposed remedy is not arbitrary or capricious or characterized by abuse of or clearly unwarranted discretion, in light of (A) its determination whether the LREAB proposed determination promotes the identified State policies, and (B) its review of the findings of fact. *Id.*

The ALJ issues a decision whether to affirm, modify, or reject the proposed determination of the LREAB, stating the reasons therefor and the reasons why the ALJ’s determination and any remedy serve 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 furtherance of that decision, the ALJ may remand the proceeding to the LREAB with instructions, or to obtain further evidence for the record on review. *Id.* The ALJ's final decision will be entered by, and be binding upon, the LREAB. A respondent may appeal the decision to the Nineteenth Judicial District Court. La. R.S. 37:3415.20(B).

5. Further LREAB acts to eliminate potential future effects under Prior Rule 31101

Pursuant to Resolution paragraph 4, the Executive Director reviewed and resolved all prior decrees, settlements, and compliance plans under Prior Rule 31101. All Board actions under Prior Rule 31101 that had not already expired by their own terms have been terminated by the Board with no finding of violation, or have been vacated by the Board (*i.e.*, the Board's order in the investigation of iMortgage Services). Ex. 2; Ex. 10 ¶ 4. 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. *Id.* No further investigations will be brought under Prior Rule 31101, and the fact of any prior investigation or enforcement action against an AMC will not be admissible as evidence in any enforcement action under Replacement Rule 31101. *Id.*

6. Final supervisory review and adoption of Replacement Rule 31101

By letter dated November 9, the Division of Administration reviewed the proposed Rule 31101 in light of the public comments received during the rulemaking process, and reaffirmed DOA's original conclusion:

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.

Ex. 11 at 1.

On November 15, 2017, the LREAB Executive Director was informed by the Louisiana Senate and House Commerce Committee oversight subcommittees that no subcommittee member had requested a hearing on Replacement Rule 31101 nor had submitted any questions concerning the proposed rule. *See* Exs. 12, 13. Under the Louisiana APA, the determination of the subcommittees to not hold a hearing allows the rule to become final, subject to final review by the Governor. La. R.S. 49:968(E).

Upon the publication of the Replacement Rule 31101 in the Louisiana Register on November 20, 2017, Replacement Rule 31101 became final and effective. La. R.S. 49:954(B). Ex. 14. At a public session on November 20, the Board announced the adoption of the Replacement Rule, and reiterated its policies for applying and enforcing the Rule. Those policies were embodied in a document adopted by the Board and published on its website. Ex. 10.

ARGUMENT

I. LREAB's Promulgation and Implementation of Replacement Rule 31101 are Immune From Antitrust Liability Under the State Action Doctrine.

LREAB's promulgation and implementation of replacement Rule 31101 are immune from antitrust liability under the state action doctrine because, pursuant to the Louisiana AMC Act and the procedures required by the Governor's Executive Order, LREAB's actions constitute official actions of the State. State board actions that constitute an "official action directed by the state" are immune from federal antitrust laws. *Parker v. Brown*, 317 U.S. at 351. To come within state action immunity, the conduct of non-sovereign state boards must meet a two-pronged test: a

clear and affirmative state policy to displace competition, and active supervision by the State.⁹ *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105-06 (1980). Clear articulation requires that “the legislature contemplated the kind of action complained of.” *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 44 (1985) (citations omitted). “Active supervision” requires that a state supervisor, which “may not itself be an active market participant,” reviews the substance of any board decision, and has the power to “veto or modify particular decisions.” *N.C. Dental*, 135 S. Ct. at 1116-17.

A. The Louisiana Legislature has Clearly Articulated its Policy to Displace Competition in the Market for Residential Real Estate Appraisal Fees.

The State of Louisiana legislature, by adopting the AMC Act to require Board registration and supervision of AMCs, and by amending the AMC Act pursuant to Dodd-Frank to specifically mandate that AMCs must pay fees at “customary and reasonable” rates, clearly articulated a policy to displace competition in the market for residential real estate appraisal fees. Thus, Louisiana has clearly articulated as state policy displacement of competition in the market for residential real estate appraisal services by requiring payment of C&R fees rather than leaving such decisions solely to the marketplace; and by delegating rulemaking and enforcement authority over the C&R fee requirement to the LREAB.

The “clear articulation” requirement is satisfied “where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the

⁹ The Complaint alleges LREAB consists of active market participants and, thus, is a non-sovereign state board. *Id.* at 3 ¶ 11. Although the Board denies these allegations, in light of the active supervision over the Board exercised by the COA, Legislative Oversight subcommittees, the DAL, and the Governor, for purposes of this Motion to Dismiss that dispute is irrelevant.

anticompetitive effects as consistent with its policy goals.” *N.C. Dental*, 135 S. Ct. at 1112, quoting *FTC v. Phoebe Putney Health System, Inc.*, 133 S. Ct. 1003, 1013 (2013); see also *Hallie*, 471 U.S. at 39 (finding clear articulation even though statutory provisions did not expressly mention anticompetitive conduct because anticompetitive conduct was a foreseeable result of the statutory regime).

“Clear articulation” does not require a specific, detailed legislative authorization. For example, the Court found clear articulation of the power to permit private collective ratemaking from a Mississippi statute giving the State Public Service Commission authority to regulate common carriers and prescribe “just and reasonable” rates for interstate transportation of goods—even though the statutes of three other co-defendant states explicitly permitted such collective ratemaking. *Southern Motor Carriers Rate Conference, Inc. v. United States*, 471 U.S. 48, 63-64 (1985).¹⁰ Similarly, in *Hallie*, the Court rejected a contention that a state legislature must have “stated explicitly that it expected the City to engage in conduct that would have anticompetitive effects.” Instead, the Court found “clear articulation” to displace competition in a Wisconsin statutory regime that “authorized the City to provide sewage services and also to determine the areas to be served. We think it is clear that anticompetitive effects logically would result from this broad authority to regulate.” 471 U.S. at 41. The *Hallie* Court underscored the absurdity of interpreting “clear articulation” to require legislatures to enumerate all intended anticompetitive effects:

This contention embodies an unrealistic view of how legislatures work and of how statutes are written. No legislature can be expected to catalog all of the

¹⁰ The Court further rejected the government’s contention that a statute must compel the anticompetitive action, finding clear articulation alone to be sufficient. *Id.* at 62.

anticipated effects of a statute of this kind. . . [and] requiring such explicit authorization by the State might have deleterious and unnecessary consequences.

Id. at 43 (internal citations omitted). As the Court observed in *Southern Motor Carriers*, legislatures create agencies “because they are able to deal with problems unforeseeable to, or outside the competence of, the legislature. Requiring express authorization for every action that an agency might find necessary to effectuate state policy would diminish, if not destroy, its usefulness.” 471 U.S. at 64.

The Louisiana AMC Act clearly articulates legislative intent to regulate the market for residential appraisal fees by requiring enforcement of the AMCs’ obligation to pay fees at C&R rates. The AMC Act, *inter alia*, grants LREAB enforcement authority over AMCs for “committing any act in violation of this Chapter” including the ability to revoke an AMC license and levy a civil monetary penalty; and grants LREAB “the power to adopt any rules and regulations in accordance with the APA necessary for the enforcement of this Chapter.” *See* La. R.S. 37:3415.3, 3415.18, 3415.19, 3415.21. The 2016 amendments to the AMC Act further require 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.” La. R.S. 37:3415.15(A). In turn, the federal regulations cited in the AMC Act contemplate precisely displacement of competition in the setting of fees for individual appraisals. They directly interfere with the ability of AMCs and appraisers to agree to appraisal fees other than a fee that meets the tests of C&R. Moreover, they impose on AMCs an obligation to

demonstrate to the LREAB that such agreed-to fees satisfy the C&R standard.¹¹ In turn, the AMC Act authorizes LREAB “to adopt any rules and regulations” necessary for enforcement of the Law’s provisions. La. R.S. 37:3415.21.

The Louisiana AMC Act delegates to the LREAB rulemaking and enforcement responsibility over the requirement that AMCs compensate appraisers at a rate that is customary and reasonable, consistent with federal law. Governor Edwards’s Executive Order references and affirms this legislative obligation and policy. Ex. 1 (second and third “Whereas” clauses, Sections 1 and 2). Any alleged anticompetitive effects of Board actions flow directly from Louisiana’s requirement that AMCs must pay appraisers C&R fees, and of the authority and responsibility granted to the Board to enforce that requirement. Accordingly, the logical, inherent, and intended result of the AMC Act is that Rule 31101 will displace competition in the residential appraisal market, and thus the “clear articulation” prong is met.

B. The State of Louisiana Actively Supervises the Board’s Activities Related to Customary and Reasonable Fees.

The crux of active supervision is whether the states have accepted “political accountability for the anticompetitive conduct they permit and control.” *N.C. Dental*, 135 S. Ct. at 1111. The Louisiana executive and legislative branches have accepted and exercised that accountability. Pursuant to the Executive Order and the Louisiana APA, the COA, the Senate and House Commerce Committee legislative oversight subcommittees, and the Governor provide

¹¹ See e.g., 12 C.F.R. Chapter II, Subchapter A, Part 226, Supplement, Official Interpretation 42(f)(1)(4), (5) (“A document signed by a fee appraiser indicating that the appraiser agrees that the fee paid to the appraiser is ‘customary and reasonable’ does not by itself create a presumption of compliance with §226.42(f) or otherwise satisfy the requirement to pay a fee appraiser at a customary and reasonable rate.”; “Section 226.42(f)(1) does not prohibit a fee appraiser and a creditor (or its agent) from agreeing to compensation based on transaction volume, so long as the compensation is customary and reasonable.”).

active supervision over the Board's promulgation of any customary and reasonable fee rule, and the DAL actively supervises all Board enforcement of the promulgated rule.

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.'" *Id.* 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).

Active supervision exists where the supervisor: (1) reviews the substance of the anticompetitive decision, not merely the procedures followed to produce it; (2) has the 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. Louisiana's supervisory regime meets all these criteria. First, the Executive Order overlays two additional stages of oversight: (1) the COA has authority to approve, reject, or modify rules promulgated by the Board affecting C&R fees; and (2) the DAL independently reviews every step of C&R rule enforcement from the initiation of an investigation to its informal or formal resolution. *Supra* at 7-13. Second, the Louisiana APA requires that every rule promulgated by the Board must be reviewed by the Senate and House Commerce Committee legislative oversight subcommittees, and then by the

Governor. Either subcommittee has the independent obligation to review the substance of the proposed rule, and the authority to approve, veto, or recommend changes to the rule; and, the Governor may veto the subcommittees' actions. La. R.S. 49:968(D)-(F); La. R.S. 49:970.

These levels of administrative, legislative, and executive review of Replacement Rule 31101 more than satisfy the requirements for active supervision under *Midcal* and *N.C. Dental*, and demonstrate that the review of Replacement Rule 31101 met the test for active supervision. The COA comprehensively reviewed the substance of Rule 31101 as well as the full promulgation record of Prior Rule 31101 and Replacement Rule 31101, and determined that Replacement Rule 31101 accorded with state policy. Exs. 3, 11. Regarding enforcement, the DAL will review any proposed action to the DAL prior to finalization of a settlement agreement with, or the filing of an administrative complaint against, an AMC regarding compliance with C&R. Whenever the LREAB undertakes enforcement of Replacement Rule 31101, an independent ALJ from the DAL will review any proposed Board action or formal or informal settlement to ensure that there is sufficient evidence to support the proposed action and that the proposed action serves Louisiana's public policy of protecting the integrity of residential mortgage appraisals. The ALJ will review the full record of any Board hearing upon a C&R fee complaint in accordance with the Louisiana APA, and will issue a written decision that is binding upon the LREAB. *Supra*, at 11-13; Ex. 9. The COA and DAL are independent government entities, not active market participants.

Louisiana's supervisory regime embodies the same fundamental procedures as those regimes courts have found sufficient under *Midcal* and *N.C. Dental*. See, e.g., *Prime Healthcare Services-Monroe, LLC v. Ind. Univ. Health Bloomington, Inc.*, 2016 U.S. Dist. LEXIS 136474,

*14-15, *24 (S.D. Ind. Sept. 30, 2016) (finding active supervision where oversight regime included procedures for ongoing review and approval of rate increases for emergency services); *Ports Auth. v. Compania Panamena de Aviacion (Copa)*, 77 F. Supp. 2d 227, 236, (D.P.R. 1999) (finding active supervision where a detailed supervisory structure governed the challenged anticompetitive conduct and procedural mechanisms existed to review reasonableness of fees).

Further, the LREAB oversight regime readily can be distinguished from those regimes the FTC has found insufficient for active supervision. The Commission found in *In the Matter of the North Carolina Board of Dental Examiners*, “the undisputed facts showed that there was no such supervision.” Dkt. No. 9343, 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 COA reviewed a full record and issued a written determination confirming that the proposed Rule 31101 promoted State policies to protect the integrity of the residential appraisal market and, thereby, the residential housing market. Exs. 3, 11. Whereas the FTC found that 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,” *Kentucky Household*, 139 F.T.C. at 426, here the Replacement Rule was submitted for and received substantial written and oral public comment, and then was subject to a second review by the COA, the legislative oversight subcommittees, and the Governor. Going forward, the DAL will exercise informed review of all Board enforcement actions against AMCs.

The State of Louisiana has exercised, and will continue to exercise, active supervision over the actions of the LREAB with respect to promulgation and enforcement of the C&R fee rule. Through its AMC Act, the legislature articulated a clear state policy that residential real estate appraisers be paid C&R fees, despite the foreseeable consequences such a policy might have on competition. The Governor of Louisiana has reaffirmed the state's commitment to this policy and has reinforced a supervisory regime that assumes political responsibility for C&R rule promulgation and enforcement. 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 therefore are immune from federal antitrust laws.

II. All Contemplated Relief Sought in the Commission's Complaint Has Been Achieved and is Moot.

A case is moot when (1) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation and (2) there is no reasonable expectation that the alleged violation will recur. *See 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").

As explained above, the Board has repealed Prior Rule 31101, terminated or vacated any pending enforcement actions conducted under Prior Rule 31101, and eliminated all potential future effects from the Prior Rule. Further, LREAB has promulgated and implemented Replacement Rule 31101 under a regime of active supervision that fundamentally changes

LREAB's ability to enforce prospectively the C&R fee requirement. These actions by the State and the Board have satisfied or rendered moot every element sought in the Notice of Contemplated Relief. Complaint at 10-11. Because 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 that an Order of the Commission could remedy. Accordingly, the Complaint should be dismissed.

A. The Board Resolution and Subsequent Events Eradicate all Potential Effects of Alleged Past Conduct.

In direct response to the Governor's Executive Order, the Board has addressed all of the Commission's Contemplated Relief for past conduct.¹² *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 the case moot where a proposed federal regulation established procedures designed to address issues raised in the complaint). Prior Rule 31101 has been rescinded and can no longer be enforced by the Board. Pursuant to the July 17, 2017 Board Resolution, on July 31, the LREAB unanimously voted to initiate the process to replace Rule 31101. After approval by the COA and the Louisiana Senate and House Commerce Committees, on November 20, the Replacement Rule went into effect, thus rescinding Prior Rule 31101.¹³

¹² Specifically, 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.

¹³ Under Louisiana law, the repeal is effective on the date the replacement rule is in place. La. R.S. 49:953.

The Board has eliminated any past order, settlement, or compliance plan between an AMC and the Board under Prior Rule 31101. As instructed by the July 17 LREAB Resolution, the Board's Executive Director closed all pending C&R fee investigations upon a determination that the subject payments were customary and reasonable. Ex. 8 at 105. The LREAB vacated its only adjudicated order (against iMortgage Services) and returned the administrative fine. *See* Ex. 10. All other orders, settlements, or compliance plans between the Board and any AMC have expired by their terms. Moreover, to ensure that no further action can be taken under Prior Rule 31101, the Board, in its November 20 Board Statement, has re-confirmed that no evidence, fees paid, or the fact that an AMC was investigated under Prior Rule 31101, can or will be the basis of any future investigation under Replacement Rule 31101. *See* Ex.10. Lastly, the Board has decided to discontinue updates of the independent SLU Survey. As indicated in the Board Statement, the Board will remove the SLU Survey from its website and will not use the SLU Survey for any purpose. Ex. 10.

Thus, all past conduct alleged by the Complaint to violate Section 5 has terminated. All relief contemplated by the Complaint as to such conduct has been obviated or achieved.

B. There is No Reasonable Expectation That the Alleged Violation Can Recur.

The Complaint seeks relief in the form of:

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

3. Requiring the Board to cease and desist from adopting, promulgating, or enforcing any regulation, rule, or policy relating to the determination of compensation levels for real estate appraisal services.

* * *

5. Such additional relief as is necessary to correct or remedy, or prevent the recurrence of, the anticompetitive acts alleged in the complaint.

Complaint, Notice of Contemplated Relief at 10-11.¹⁴

The Governor's issuance of the Executive Order, the actions of the COA, and the obligations of the DAL have established a new legal framework to reinforce active supervision over the Board's supervision of AMC 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, future LREAB conduct constitutes state action in accordance with the sovereign policies of Louisiana. Thus, the Board'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 regulatory and supervisory scheme. *See Citizens for Responsible Gov't State PAC v. Davidson*, 236 F.3d 1174, 1182 (10th Cir. 2000) (finding the

¹⁴ Paragraph 4 requires the Board to provide notices of the requested order to AMCs and Board members and on the Board's website. Complaint at 11. AMCs have received notice of Replacement Rule 31101 in accordance with the Louisiana APA, and the Board has provided notice to AMCs and the Board in public meetings and on its website of the Replacement Rule, the Executive Order, and its policies with respect to its interpretation and enforcement of Prior Rule 31101 and Replacement Rule 31101. Ex. 8, 10, 14; Louisiana Real Estate Appraisers Board website, <http://www.reab.state.la.us/>.

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”). Therefore, the Board’s promulgation and enforcement of Replacement Rule 31101 are immune from federal antitrust review, the alleged violations cannot recur, and no relief contemplated in the Complaint is available.

C. The “Voluntary Cessation” Exception to the Mootness Doctrine Does not Apply.

The Board’s conduct in complying with the Executive Order and promulgation and enforcement of Replacement Rule 31101 is not “voluntary.” Rather, it is a mandated change ordered by the Governor of Louisiana in his sovereign capacity. 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.”¹⁵ *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

¹⁵ 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).

presume the government is acting in good faith.” *Am. Cargo Transp., Inc. v. United States*, 625 F.3d 1176, 1180 (9th Cir. 2010).¹⁶

Here, Governor Edwards’s Executive Order has so fundamentally changed the structure for supervising the Board that it is not possible for the alleged past violation to recur. The Governor’s Executive Order has created a change in regulatory policy and rule implementation for the Board in promulgating or enforcing any rules concerning C&R appraisal fee payments.¹⁷ Specifically, Replacement Rule 31101 and any future C&R rule are reviewed, and accepted, modified, or vetoed by the COA in addition to the review authority exercised by the legislative oversight committees and the Governor; and any initiation, settlement, or determination of an enforcement action under any C&R rule is reviewed and accepted, modified, or vetoed by an ALJ of the DAL. The Governor’s action in issuing the Executive Order and requiring additional supervision over the Board’s conduct was motivated by the need for the State of Louisiana to remove any cloud over the State’s right and obligation to protect the integrity of residential mortgage appraisals by “faithfully execut[ing] mandates under the Dodd-Frank Act and Louisiana law.” *See* Ex. 1; *see also Rio Grande Silvery Minnow*, 601 F.3d at 1117 (indicating that in the “governmental context” there must be “clear showings of reluctant submission... and

¹⁶ *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).

¹⁷ The Board, an entity that exists within the Office of the Governor, must comply with any Governor’s executive orders.

a desire to return to the old ways.”). Since July 17, 2017, the Board has implemented the Governor’s required changes in its promulgation and enforcement of a C&R rule.¹⁸

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 the Matter of Mass. Bd. Of Registration in Optometry*, 110 F.T.C. 549 (1988), Massachusetts state agencies already had determined that board’s actions to be unlawful and required that board to undo its regulations; nevertheless, the board continued its “old ways.” Here, the LREAB has rescinded and readopted its C&R fee rule in accordance with the Governor’s Executive Order, and its actions have been and will be reviewed and approved by independent State supervisors. In *In re 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. Here, by contrast, the Governor of Louisiana has mandated, and the Board has complied with, 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. The Board cannot return to its old ways, and therefore, the voluntary exception to mootness cannot be applied.¹⁹

¹⁸ See also Ex. 10 (“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.”).

¹⁹ 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.

CONCLUSION

The Louisiana State Legislature and the Governor have determined that its policy to regulate AMCs and their payment of “customary and reasonable fees” for residential real estate appraisals remains vital to protect the integrity of Louisiana’s residential mortgage market. As the Executive Order observes, questions concerning whether the LREAB meets the requirements of *N.C. Dental* have impeded the Board’s ability to fulfill the State’s policies. The State has taken concrete steps to definitively lay those questions to rest by reinforcing active supervision over the Board’s promulgation and enforcement of the C&R fee rule. The Board’s actions in furtherance of the Executive Order meet and moot all past and prospective relief requested in the Complaint’s Notice of Contemplated Relief.

Wherefore, Respondent Louisiana Real Estate Appraisers Board respectfully submits that the Commission should grant this Motion and that the Complaint should be dismissed.

Date: November 27, 2017

Respectfully submitted,

/s/ W. Stephen Cannon

W. Stephen Cannon

Seth D. Greenstein

Richard O. Levine

James J. Kovacs

Kristen Ward Broz

Constantine Cannon LLP

1001 Pennsylvania Ave. NW, Ste. 1300N

Washington, DC 20004

Phone: 202-204-3500

scannon@constantinecannon.com

Counsel for Respondent,

Louisiana Real Estate Appraisers Board

EXHIBIT 1



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 2



State of Louisiana
LOUISIANA REAL ESTATE APPRAISERS BOARD

JOHN BEL EDWARDS
GOVERNOR

LOUISIANA REAL ESTATE APPRAISERS BOARD

P. O. Box 14785

Baton Rouge, LA 70898-4785

July 17, 2017

RESOLUTION

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

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

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

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

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

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.

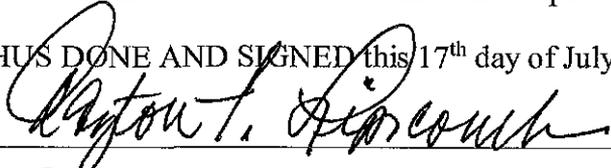
c. The LREAB must submit to the Commissioner of Administration or the Commissioner's designee for approval, rejection, or modification any proposed regulation relating to AMC compliance with the customary and reasonable fee requirement.

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:

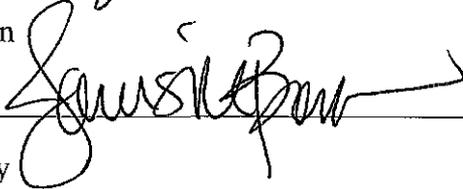
THEREFORE, it is resolved:

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 3

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 4

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 5



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 6

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' <ducharmm@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 AMC's must establish and comply with processes and controls reasonably designed to ensure that AMC's 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 AMC's 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 black ink that reads "Ryan Shaw". The signature is written in a cursive, flowing style.

Ryan Shaw
Public Information Director

cc: House Commerce Committee

EXHIBIT 7

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
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EXHIBIT 8

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2. [Governor's Executive Order 17-16](#)
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6. [Fiscal Economic Impact Statement for 31101 Readoption](#)
7. [Written Comments in Support of 31101 Readoption](#)
8. [Email comments in Support of 31101 Readoption](#)
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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

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

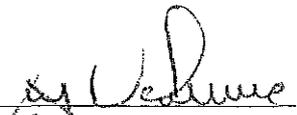
Dear Mr. Unangst:

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



State of Louisiana

LOUISIANA REAL ESTATE APPRAISERS BOARD

JOHN BEL EDWARDS
GOVERNOR

LOUISIANA REAL ESTATE APPRAISERS BOARD

P. O. Box 14785

Baton Rouge, LA 70898-4785

July 17, 2017

RESOLUTION

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

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

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

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

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

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.

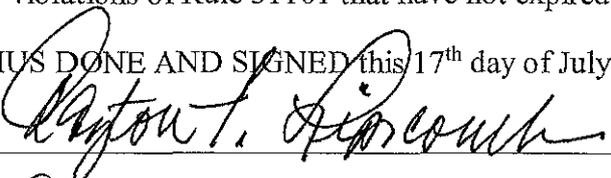
c. The LREAB must submit to the Commissioner of Administration or the Commissioner's designee for approval, rejection, or modification any proposed regulation relating to AMC compliance with the customary and reasonable fee requirement.

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:

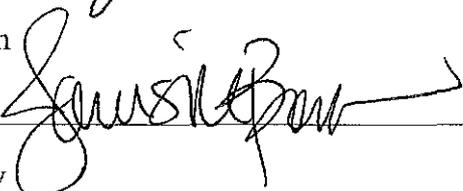
THEREFORE, it is resolved:

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.

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

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 Title: LAC 46:LXVII. Part 2 Chapter 311
Baton Rouge, LA 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,

A handwritten signature in cursive script that reads "Norman R. Morris".

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

504 Chicksaw Drive
West Monroe, LA 71291
Ph: 318-614-1458

casualconcepts@bellsouth.net

Nick Castjohn

1st Vice President

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Ph: 504-628-8989

ncastjohn@renovateinc.com

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curtismloftinbuilder@msn.com

Dodie Adams

3rd Vice President

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Ph: 985-626-3479

dodie.a@att.net

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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,



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

Sent via the Samsung Galaxy S™ III, an AT&T 4G LTE smartphone

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.

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

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,

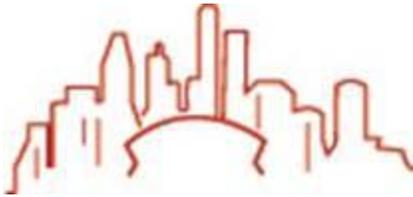
I am in favor of the Readoption of rule 31101.

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

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.

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, 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.}



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

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19

20

21

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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

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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.

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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*

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, flowing style.

Ryan Shaw
Public Information Director

cc: House Commerce Committee

EXHIBIT 9

**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**

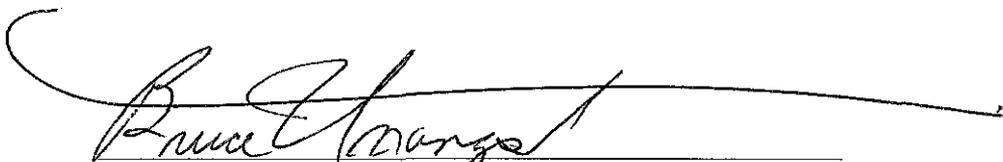
9. EFFECTIVE DATE, TERMINATION, AND AMENDMENT OF MOU:

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 10



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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GOVERNOR

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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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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.



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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



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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 11

Office of General Counsel
State of Louisiana
Division of Administration

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 12

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,

A handwritten signature in black ink, appearing to read "Daniel R. Martiny".

Daniel R. Martiny
Senator - District 10
State of Louisiana

DRM/jb

EXHIBIT 13

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
(800) 821-4529 (in state only)
bunangst@lrec.state.la.us

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EXHIBIT 14

	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

Title 46

PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LIII. Pharmacists

Chapter 25. Prescriptions, Drugs, and Devices

Subchapter B. Prescriptions

§2511. Prescriptions

A - C.6. ...

D. Oral Prescriptions

1. Upon the receipt of an oral prescription from an authorized prescriber, the pharmacist or pharmacy intern or pharmacy technician shall reduce the order to a written form prior to dispensing the medication. As an alternative to recording such prescriptions on paper forms, a pharmacist may enter the prescription information directly into the pharmacy's dispensing information system. In the event a pharmacy intern or pharmacy technician transcribes such a prescription, the supervising pharmacist shall initial or countersign the prescription form prior to processing the prescription.

E. Electronic Prescriptions

1. The prescription shall clearly indicate the authorized prescriber's name, licensure designation, address, telephone number, and if for a controlled substance, the DEA registration number.

F. Exclusion. The provisions of this Section shall not apply to medical orders written for patients in facilities licensed by the Department of Health or its successor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 29:2102 (October 2003), effective January 1, 2004, LR 41:98 (January 2015), LR 41:2147 (October 2015), amended by the Department of Health, Board of Pharmacy, LR 43:2162 (November 2017).

§2517. Prescription Dispensing

A. - A.6. ...

B. Equivalent Drug Product Interchange

1. The pharmacist shall not select an equivalent drug product when the prescriber prohibits interchange by any one of the following methods.

a. On a prescription generated in written form, the prescriber shall handwrite a mark in a check box labeled "Dispense as Written", or the abbreviation "DAW", or both, and shall manually sign the prescription form.

i. For prescriptions reimbursable by the state Medicaid program, the prescriber shall handwrite the words "Brand Necessary" or "Brand Medically Necessary" on the prescription form or on a sheet of paper attached to the prescription form.

b. On a prescription generated in oral or verbal form, the prescriber (or the prescriber's agent) shall indicate a specific brand name drug or product is ordered by the practitioner, and the pharmacist shall note such information on the file copy of the prescription.

c. On a prescription generated in electronic form, the prescriber shall indicate "Dispense as Written", "DAW", or "Brand Medically Necessary."

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 PharmacyEquivalent 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.

Notice of Electronic Service

I hereby certify that on November 27, 2017, I filed an electronic copy of the foregoing Motion to Dismiss Complaint, 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 November 27, 2017, I served via E-Service an electronic copy of the foregoing Motion to Dismiss Complaint, upon:

Lisa Kopchik
Attorney
Federal Trade Commission
LKopchik@ftc.gov
Complaint

Michael Turner
Attorney
Federal Trade Commission
mturner@ftc.gov
Complaint

Christine Kennedy
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Complaint

Geoffrey Green
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