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Appraisal Subcommittee

Federal Financial Institutions Examination Council

TO: Appraisal Subcommittee

FROM: Jim Park, Executive Director

DATE: June 28, 2017

RE: July 12, 2017 ASC Briefing Materials

The following are included in the July 12th Briefing Materials:

BRIEFING

- July 12, 2017 Briefing Agenda
- Executive Director Update (written report included in Briefing materials)
- IT Project Services Expenses

EYL- INFORMATIONAL ITEMS

- Appraisal Foundation Board of Trustees President's Report
- Federal Trade Commission Complaint against Louisiana
- May 31st, 2017, Interagency Advisory on the Availability of Appraisers
- Appraisal Foundation letter to FHFA regarding appraisal waivers
- Letter from the Northern Colorado Association of Real Estate Appraisers

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Appraisal Subcommittee
*Federal Financial Institutions Examination
Council*

Briefing Agenda

Date: July 12, 2017
Time: 10:00 a.m. – 12:00 p.m.
Location: ASC Office
1401 H Street NW, Ste 760
Washington, DC 20005

Briefing Topic(s)

Tennessee Compliance Review Appeal Update	A. Lindo
Update on Regulatory Freeze (rulemaking and Policy Statements)	A. Ritter
Executive Director Update	J. Park
IT Project Services Expenses Update	J. Park

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Appraisal Subcommittee
Federal Financial Institutions Examination Council

TO: Appraisal Subcommittee

FROM: Jim Park, Executive Director

DATE: July 12, 2017

RE: Executive Director's Update

Appraisal Subcommittee Meetings and Briefings

The July 12, 2017 public ASC Meeting is canceled. An ASC Briefing is scheduled at the same time (July 12, 2017: 10:00 a.m. -12:00 p.m.) at the ASC office, 1401 H St. NW #760 Washington, DC 20005. The Briefing agenda is included in the Briefing materials.

AMC National Registry and AMC Fee Rulemaking

We recently reached out to the Office of Management and Budget (OMB) regarding the ASC's ability to move forward with the AMC Registry fee rulemaking as well as the revised Policy Statements. The response was that as an independent agency, while we are encouraged to follow the spirit of EO 13771, we are not subject to the requirements of the Executive Order or the Priebus memo. Therefore, staff is making the necessary arrangements to seek ASC approval during the September ASC Meeting of both the final rule and the Policy Statements for publication in the Federal Register. Staff is also moving forward on the AMC Registry.

Agency Reform Plan

On April 12, 2017, the OMB issued a memorandum directing executive departments and agencies to develop a plan to achieve near-term workforce reductions and cost savings and develop a high-level draft of the Agency's Reform Plan, including how to maximize employee performance by June 30, 2017. Staff developed a draft plan and circulated it to the Board. We anticipate meeting the June 30 deadline for submission of the draft plan. The final Plan is due to the OMB in September 2017.

Appraisal Foundation Monitoring and Review

Board of Trustees

The Appraisal Foundation Board of Trustees met May 18-20 in West Palm Beach, FL. During the meeting, the Foundation reported on a number of topics, including \$168,248 in net income for the first quarter of 2017. Revenue is holding relatively stable while expenses have been significantly reduced over the past two years. A detailed report from the Foundation President, David Bunton, is included in the FYI section of the Briefing materials.

Appraiser Qualifications Board

The AQB continues to research possible changes to the AQB Criteria. The last Exposure Draft included the following:

- college-level education requirements for the Licensed Residential and Certified Residential classifications
- development of specific module guidelines for the Practical Applications of Real Estate Appraisal, including proposed changes to Guide Note 4 (GN-4) of the *Criteria* (modules would be designed for use by colleges and universities, professional organizations, proprietary schools, and appraisal firms)
- Proposed downward revisions to the current experience hours and timeframes required for the Licensed Residential, Certified Residential, and Certified General classifications, as was exposed in the Second Exposure Draft

The AQB has received close to 2,000 written and oral responses to the three exposure drafts and concept paper. The comments have been mixed in terms of support for the proposals. ASC staff is concerned that for the first time the AQB may lower the Criteria. Since States may exceed the AQB Criteria, it is possible, if not likely, that some States will choose not to change the credentialing requirements in their State, thereby undermining the general uniformity of appraiser qualifications across the country. It is also somewhat concerning that two years into exploring revisions to the AQB Criteria, the AQB does not appear to be forming a consensus on what, if any, changes need to be made.

Appraisal Standards Board

The ASB met June 15-16 in Denver, CO. The June 16 public meeting had approximately 50 observers. The Board presented and took comments regarding improvement to the 2018/19 electronic edition of USPAP, including a change in the font and reading/search enhancements. They also discussed potential USPAP changes for the 2020/21 edition.

The ASB hosted a webinar on May 18, 2017 titled *Alternatives to Evaluations: Using Restricted Appraisal Reports*. The 1-hour webinar discussed the distinctions between evaluations and restricted appraisal reports. Appraisers, regulators and users of appraisal services are frequently under the misunderstanding that developing and reporting evaluations is less burdensome than developing and reporting USPAP compliant appraisals. The webinar can be viewed on the Foundation website at:

<https://www.appraisalfoundation.org/imis/TAF/Resources/Webinars/TAF/Webinars.aspx?hkey=abedc6ee-9b07-416e-a518-58dd00b1e621>

Federal Legislation

We continue to watch for federal legislative activity related to appraisals. We are unaware of any current legislation. We have heard that appraisal regulation could be introduced later this summer or in the fall as part of a larger financial regulatory reform bill.

Unique Identification Number (UID)

States have been provided the UID algorithm to convert their appraiser data. We are planning a July 17, 2017 rollout of the new enhanced ASC National Appraiser Registry database. States will then be free to make the conversions.

Interagency Advisory on the Availability of Appraisers

On May 31, 2017, an Interagency Advisory was issued regarding the availability of appraisers. The Advisory includes a reminder that the States are required to issue Temporary Practice Permits and the ASC has the authority (subject to FFIEC approval) to issue a temporary waiver of appraiser credentialing requirements in a particular location for FRT's. The Advisory is included in the FYI section of the Briefing material.

Since the Advisory was published, we have received one inquiry from a community bank in Nebraska regarding the Temporary Waivers process. Another inquiry was received about the history of waivers granted by the ASC. Staff responded to both inquiries and have heard nothing further.

ASC Office Lease

The lease on our current office space expires in October of 2018. Staff has been working with GSA on either renewing the lease or moving to a new location. We have also considered the possibility of having no permanent office space and operating the ASC as a virtual agency. The cost savings would be substantial.

Other Meetings and Presentations

June 5, 2017 –Illinois Coalition of Appraisal Professionals

June 12, 2017 – Northern Colorado Association of Real Estate Appraisers

June 21, 2017 - Ohio Coalition of Appraisal Professionals

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Appraisal Subcommittee

Federal Financial Institutions Examination Council

TO: Appraisal Subcommittee

FROM: Girard Hull, Financial Manager

DATE: July 12, 2017

RE: Cost threshold estimation for 2017 IT Projects

During our May 10th Board Meeting, we discussed the ASC IT budget line item “**Project Services – ASC.GOV**” (Project Services). It was noted that the total amount spent to date, at \$151K, exceeded the annual FY17 budgeted amount of \$125K. Board members requested that ASC staff project the total cost for this line item to establish a spending threshold.

The Project Services line item covers the cost of the ASC database rebuild, intranet and extranet website redesigns, and modifications to the National Registry section of the ASC.gov website. In the 2016 budget, \$150K was allocated to initialize this activity; however, due to project start delays in 2016, only \$98K was expended.

Typically, projects of this scope span a period of at least 2 years. When we established the budgeted line item amount for these services in our 2017 budget, we did not carry over the unused funds from 2016, but instead made a conservative estimate of what we predicted the actual cost would be during 2017. Costs which were scheduled to be incurred in FY16 were then deferred to FY17, thus increasing the line item expenditure. Also, as the project was underway, additional unforeseen complexities arose (*e.g.*, more in-depth structural database issues) contributing to costs increases.

In accounting for the cost of these projects, we are considering the total IT budget and expenditure levels for both FY16 and FY17. The IT budget for 2016 was \$521K with \$315K, or 60.5% spent. The IT budget for 2017 is \$349K, with a projected expenditure total of \$406K, or \$116.5% spending. Combined totals for 2016 and 2017 IT budgets amount to roughly \$871K, with projected expenditure totals of \$722K, or 83%.

As the project progressed, the higher amounts came on the back end of the project performance period. However, the overall IT budget established for the project performance period is expected to be under expended by roughly 17%.

Enclosure: Analysis of ASC’s Prior Years IT Services Costs

Analysis of ASC's Prior Years IT Services Costs

FY	Budget	Actual	Diff (Over)/Under	% IT Budget	Agency Budget	% of Agency Budget
2012	\$ 112,980	56,217	\$ 56,763	49.8%	3,544,675	1.59%
2013	\$ 152,311	72,855	\$ 79,456	47.8%	3,429,749	2.12%
2014	\$ 148,321	128,081	\$ 20,240	86.4%	3,580,587	3.58%
2015	\$ 374,740	237,721	\$ 137,019	63.4%	3,544,282	6.71%
2016	\$ 521,284	315,149	\$ 206,135	60.5%	3,588,570	8.78%
2017 proj.	\$ 349,232	416,894	\$ (67,662)	119.4%	3,451,725	12.08%



MEMORANDUM

TO: Board of Trustees
FROM: David Bunton, President
RE: Update on Operations
DATE: May 11, 2017

In Brief:

Financial Overview: We had a very solid first quarter, with our net income exceeding that of our two previous odd-numbered years (2015 and 2013). Total expenses for the first quarter of 2017 were \$257,000 **below** those of the First Quarter of 2015. Suspending the activities of the APB added to this differential.

Publication Revenue: First Quarter publication revenue exceeded First Quarter revenue of 2015 by approximately \$220,000 and was slightly ahead of 2013. This is due primarily to an increase in license fees and new product sales.

Valuation Roundtable: We held our initial Valuation Roundtable at our headquarters last month that was attended by many valuation stakeholders. The topic was a discussion on the strengths and weaknesses of the current appraiser regulatory structure. The meeting lasted about two hours and we hope to hold additional roundtables in the future.

Speaking Engagements: Since the first of April, the Foundation has participated in nine speaking engagements with over 1,400 attendees.

UASFLA (Yellow Book): Print and electronic copies of the publication were available for purchase in the first quarter and there are two Yellow Book related courses and a June 20th conference with ASFMRA and ASA currently in the works.

State and Federal Legislative Affairs: We continue to monitor state appraisal boards, state legislatures and the US Congress for actions that could impact the Foundation.

Staff Transition: Cathy Johnson, our Vice President of Finance and Administration, will be retiring from the Foundation at the conclusion of our meetings in West Palm Beach. Her duties will be filled by Edna Nkemngwu, who Cathy has been training for the past year to allow for an easy transition.

FINANCIAL OVERVIEW

	1st Quarter 2013	1st Quarter 2015	1st Quarter 2017
Total Revenue	\$1,036,657	\$940,644	\$985,381
Total Expenses	\$941,871	\$1,074,387	\$817,133
Net Income	\$94,787	-\$133,743	\$168,248

PUBLICATIONS

Revenue

	1st Quarter 2013	1st Quarter 2015	1st Quarter 2017
USPAP	\$421,335	\$333,280	\$428,125
National USPAP Courses	\$140,440	\$110,059	\$134,549
Total	\$561,775	\$443,339	\$562,674

PUBLIC RELATIONS

Valuation Roundtable

In late April, we convened a meeting of key valuation stakeholders in our office to talk about the strengths and weaknesses of the current appraiser regulatory system. The two-hour session was informal and very productive. There was general agreement on many of the issues raised, and consensus that we should continue to meet in the future.

In addition to Foundation representatives, participants included:

- American Bankers Association
- Appraisal Subcommittee
- Association of Appraiser Regulatory Officials
- Appraisal Sponsors of the Foundation
- National Association of Home Builders
- National Association of REALTORS®
- Network of State Appraisal Organizations (state coalitions)
- Real Estate Valuation Advocacy Association

Speaking Engagements

Since April 1st, Foundation representatives have given presentations at nine speaking engagements. Combined, we have spoken to over 1,400 people. The speaking engagements are listed below:

- Association of Appraiser Regulatory Officials, Tampa
- Corelogic/FNC, Oxford, MS.
- Urban Institute, Washington, DC
- Freeman's Gallery, Philadelphia
- Missouri Appraisers Advisory Council, Jefferson City, MO
- Arizona Appraisers State Conference, Phoenix
- Illinois Coalition of Appraisers, Chicago
- Buckeye Chapter of the International Right of Way Association, Columbus
- National Association of Realtors, Washington, DC

Collaboration to Promote Qualified Personal Property Appraisers

The Appraisal Foundation is continuing its endeavor to promote the use of professional personal property appraisers who meet a minimum level of qualifications and follow USPAP. We held our second presentation/reception on Wednesday, April 26 in Philadelphia at the oldest auction house in America, Freeman's Auction House. Freeman's graciously funded the reception.

The vision is to have discussions with high-level clients and users of personal property appraisers (e.g. insurers, attorneys, lenders) to discuss topics such as: *What makes a personal property appraiser qualified? Why are ethical standards, like USPAP, so important? What are the potential ramifications of using an underqualified appraiser or one that does not adhere to USPAP?* Using a review of the AQB's personal property appraiser qualification criteria and accounts of disastrous situations when an unqualified individual was retained provide an opinion of value, we hope to drive home the importance of choosing an appraiser wisely. A second goal is to get these high level executives to help us extend this information throughout their organizations, to their colleagues, and their clients.

State Regulator Training

This year, in conjunction with the Association of Appraiser Regulator Officials (AARO) and the Appraisal Subcommittee (ASC), we will once again offer three Investigator Training courses, one for each of the three levels. This year we decided to have all three sessions at the same facility in Tampa:

- Level I: May 8-10 (48 attended)
- Level II: July 10-12 (34 registered)
- Level III: September 11-13 (34 registered)

As I have indicated previously, this program continues to get record setting performance evaluations for both course content and instructors. To date, we have had a total of 902 students attend the sessions (481 regulators have completed Level 1, 299 have completed Level 2 and 122 have completed Level 3).

FEDERAL GOVERNMENT RELATIONS

US Department of Justice/Yellow Book

In the first quarter of this year we released both the print and electronic copies of the *Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)*, more commonly known as the Yellow Book.

We are also developing two accompanying courses:

- 1) A three-day Uniform Appraisal Standards for Federal Land Acquisitions Course, developed in cooperation with ASFMRA & ASA, which will include an exam. It will be available next month.
- 1) A one-day course entitled: *USPAP and the Yellow Book: A Guide to Understanding Their Relationship*. It is authored by Dave Layne and will be available later this year.

These courses will be offered by TAF on a wholesale basis to education providers, much like the USPAP courses.

We are also sponsoring a one-day Yellow Book Conference in conjunction with ASA and ASFMRA, on June 20th in Denver, Colorado. Conference presenters include chief appraisers, attorneys, and staff from the US Department of Justice, the US Forest Service, and the US Department of the Interior. Conference attendees will be welcomed by BOT Chair Tom Boyer and the day will include:

- an overview of major changes and features of the new Yellow Book
- a roundtable of chief appraisers from the Interagency Land Acquisition Conference member agencies detailing their programs and types of appraisal assignments
- a presentation on how to become a contract appraiser for the federal government
- an overview of the federal agency appraisal review process; including common errors and weaknesses.

A three-day Yellow Book Course, jointly offered by ASA and ASFMRA, will follow the conference on June 21-23. It will be taught by Art Clapp, former BOT Chair and one of the authors of the course.

US Department of Energy

As part of our ongoing Memorandum of Understanding (MOU) with the US Department of Energy (DOE), which was extended last year for an additional three years, we are continuing to develop and issue guidance on green and high performance properties. Two Valuation Advisories have already been issued: 1) *Valuation of Green and High Performance Property: Background and Core Competency*, and 2) *Valuation of Green and High Performance Property: One to Four-Unit Residential*. We have recently issued a second exposure draft of the third valuation advisory in the series, *Valuation of Green and High Performance Property, Non-Residential Property*.

LEGISLATIVE AFFAIRS

Federal

Since the House Financial Services Subcommittee hearing in November of last year, we are unaware of any significant action in Congress that could impact The Appraisal Foundation or the Appraisal Subcommittee. The House Financial Services Committee passed the Choice Act last week, which modifies many sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act. However, there were no material references to appraisal in the legislation.

Last month there was a hearing in the House Veteran's Affairs Committee regarding the Veteran's Affairs appraisal program. Following the hearing, we sent a letter to the Committee that outlines our view about the reason for a shortage of appraisers in some rural markets. A copy of our correspondence is attached for your reference.

We will continue to monitor Congressional activities and arrange meetings whenever appropriate.

States

The Appraisal Institute continues to actively promote their position that standards other than USPAP should be allowed for non-federally related transactions. Their effort has taken on several different forms: in California appraisers could opt out of six areas of USPAP, in North Carolina appraisers could follow the Federal Interagency Evaluation Guidelines instead of USPAP and in Kansas there is a legislative effort to adopt the Appraisal Institute standards as an alternative choice for appraisers to use instead of USPAP. These efforts, as well as those in Texas, Florida, Montana, Virginia, Missouri, and Tennessee, have yet to result in any the of fifty states and five territories that license and certify real estate appraisers to adopt another set of valuation standards. Having said that, the Appraisal Institute seems as determined as ever to proceed with this effort.

ADMINISTRATION

As was previously announced, Cathy Johnson, our Vice President of Finance and Administration, is retiring from the Foundation and her last day Saturday, May 20th. She has been a dedicated and valuable employee and will be greatly missed.

Over the past year, Edna Nkemngu, who has been with the Foundation for over a decade, received her CPA and has been trained by Cathy to ensure a smooth transition. Edna takes over as our Director of Finance and Administration on Monday, May 22nd.

Replacing Edna as our Staff Accountant is Quadri Muse-Ariyoh, who was hired on April 24th and is a recent graduate of Towson University.

Board of Trustees
May 11, 2017
Page Six

UPCOMING BOT MEETINGS AND TELEPHONE BRIEFINGS

3rd Quarter BOT and Sponsor Telephone Briefing
September 6, 2017 – 11amET (BOT) and 2pmET (Sponsors)
Dial in to be circulated at a later date

2017 Fall Board of Trustees and Sponsoring Organizations Meeting
November 2-5, 2017

Embassy Suites by Hilton Scottsdale Resort

5001 N. Scottsdale Road
Scottsdale, AZ 85250

2018 Executive Committee Meeting (Executive Committee Only, Closed Meeting)
January 5-7, 2018

InterContinental Hotel Tampa

4860 West Kennedy Blvd
Tampa FL 33609-2524

2018 Spring Board of Trustees, NACAO and Sponsoring Organizations Meetings
May 16-19, 2018

Hyatt Regency Cleveland at the Arcade (Pending Contract Confirmation)

420 Superior Avenue E,
Cleveland, OH 44144

2018 Fall Board of Trustees and Sponsoring Organizations Meeting
November 1-3, 2018

Renaissance Palm Springs (Pending Contract Confirmation)

888 E Tahquitz Canyon Way,
Palm Springs, CA 92262

Attachment: April 13, 2017 correspondence



April 13, 2017

Mr. Jon Clark
Staff Director
Subcommittee on Economic Opportunity
Committee on Veterans' Affairs
U.S. House of Representatives
335 Cannon House Office Building
Washington, DC 201515

Dear Mr. Clark:

This is a follow up to the recent Subcommittee oversight hearing entitled "Assessing VA Approved Appraisers and How to Improve the Program for the 21st Century." Specifically, I would like to address the perceived shortage of real estate appraisers, particularly in rural markets.

In 2008, the Housing and Economic Recovery Act (HERA) amended Section 202 of the National Housing Act to revise qualification standards for Federal Housing Administration (FHA) approved appraisers. As a result, Section 202(f) of the National Housing Act mandated that all appraisers chosen or approved to conduct appraisals of properties that will be security for FHA-insured mortgages must:

- 1) be "certified" by the state in which the property to be appraised is located; or by a nationally recognized professional appraisal organization, and
- 2) have demonstrated verifiable education in the appraisal requirements established by FHA.

A copy of a letter dated December 17, 2008 from the U.S. Department of Housing and Urban Development announcing this revision is enclosed for your reference.

Prior to this change, FHA was using state licensed residential appraisers, the lowest of three appraiser classifications (state licensed residential, state certified residential, and state certified general). Our Appraiser Qualifications Board, which sets the minimum qualifications for each of the classifications, believes that state licensed residential appraisers are competent to perform residential appraisals.

Mr. Jon Clark
April 13, 2017
Page two

The new state certified appraiser requirement had a huge impact on residential appraisers. Enclosed is a chart developed by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council that shows the number of appraiser credentials (some individuals hold a credential in more than one state) for the past 25 years. Note the significant drop in the number of state licensed residential appraisers (the yellow line) and how it correlates with the effective date of the new FHA policy.

Over the past ten years, the number of state licensed residential appraisers has dropped from 30,286 to 7,854, a 75 percent decrease. Individuals either upgraded to state certified residential or relinquished their license.

This has had a significant impact in rural markets. In many rural communities around the country, individuals often work in multiple trades or professions such as real estate brokerage, insurance, notary public, and appraising. When part-time appraisers were faced with having to meet the higher qualifications, many opted out and let their appraisal license lapse.

The FHA policy change affected the entire residential appraisal market. Allowing state licensed appraisers to once again appraise properties that will be security for FHA-insured mortgages would be a significant step in helping to alleviate the shortage of appraisers, particularly in rural markets.

If you have any questions or would like additional information, I can be reached at 202-624-3040 or at david@appraisalfoundation.org.

Sincerely,

A handwritten signature in black ink, appearing to read "David S. Bunton". The signature is fluid and cursive, with a long horizontal stroke at the end.

David S. Bunton
President
The Appraisal Foundation

Enclosures



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

December 17, 2008

MORTGAGEE LETTER 2008-39

**TO: ALL APPROVED MORTGAGEES
ALL FHA ROSTER APPRAISERS**

SUBJECT: Revised Eligibility Requirements for FHA Roster Appraisers

Section 1404 of the Housing and Economic Recovery Act of 2008 (HERA) (Public Law 110-289, approved July 30, 2008) amended Section 202 of the National Housing Act to revise qualification standards for Federal Housing Administration (FHA) approved appraisers. This mortgagee letter sets forth the revised eligibility requirements for appraisers to qualify for placement and retention on the FHA Appraiser Roster and provides the timeline for implementation of those requirements.

Section 202(f) of the National Housing Act mandates that all appraisers chosen or approved to conduct appraisals of properties that will be security for FHA-insured mortgages must: (1) be "certified" by the State in which the property to be appraised is located; *or* by a nationally recognized professional appraisal organization, *and* (2) have demonstrated verifiable education in the appraisal requirements established by FHA. (Note that the term "state" as used throughout this Mortgagee Letter includes U.S. Territories.)

IMPLEMENTATION DATES

Although Section 202(f) of the National Housing Act was made effective upon enactment, FHA has determined that the loss of available FHA Roster appraisers in certain locations will impede its ability to support affordable mortgage financing in those areas, which would contravene the goals of the HOPE for Homeowners Program and hinder use of other FHA single family programs at a time when use of those programs has increased significantly. Therefore, in order to implement this change in appraiser eligibility requirements in a manner that is not disruptive to the FHA mortgage lending process, the requirement will be phased in as follows:

1. **Effective October 1, 2008**, FHA stopped accepting applications to the FHA Appraiser Roster from licensed but uncertified appraisers. All applicants for the FHA Appraiser Roster must be state certified (certified residential or certified general) appraisers who meet the minimum certification criteria issued by the

Appraiser Qualifications Board (AQB) of the Appraisal Foundation. The requirements that applicants not be listed on the General Service Administration (GSA) Excluded Parties List System (EPLS), HUD's Limited Denial of Participation List (LDP), or HUD's Credit Alert Interactive Voice Response System (CAIVRS) remain unchanged.

2. **No Later than October 1, 2009**, all FHA Appraiser Roster appraisers in **all** states and territories must be state certified in order to be eligible to conduct appraisals for FHA-insured mortgages and remain on the FHA Appraiser Roster.

FHA MORTGAGEE INSTRUCTIONS:

Commencing October 1, 2009, all FHA-approved lenders must use state certified appraisers for FHA-insured mortgages. The appraiser assignment field within the Case Number Assignment screen in FHA Connection must be input with an appraiser who is listed as either certified residential or certified general on the FHA Roster for the state in which the property is located. If, on or after October 1, 2009, an FHA-approved lender enters an appraisal assignment into FHA Connection for a property from a FHA Roster Appraiser who is licensed but not certified in accordance with this Mortgagee Letter, the appraisal will be unacceptable for FHA-insured financing and a second appraisal, performed by a state certified appraiser, must be completed at the lender's expense.

When appraisal assignments (case # assignments) are given to licensed appraisers prior to October 1, 2009, but the appraisal is not completed until after that date, the appraisal will be acceptable. However, the lender must assure that the appraisal assignment date is entered accurately into FHA Connection which must be a date prior to October 1, 2009. In these cases, the appraisal assignment must be submitted to the lender no later than October 30, 2009.

Appraisals that were completed by licensed appraisers prior to the deadline, which are transferred to a new lender, may be used as long as the original assignment date occurred prior to October 1, 2009.

ADDITIONAL INFORMATION - CERTIFICATION AND EDUCATION OF APPRAISERS

Currently, FHA allows both licensed and certified appraisers to conduct appraisals for FHA-insured mortgages as long as they qualify under the minimum criteria issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation as authorized under the provisions of Title XI of the Financial Institutions, Reform, Recovery and Enforcement Act of 1989 (FIRREA). (See the FHA Appraiser Roster regulations at 24 CFR 200.202.) Under FIRREA, the AQB establishes the minimum education, experience and examination requirements for real property appraisers to obtain a state certification. In addition, the AQB performs a number of ancillary duties related to real property and personal property appraiser qualifications.

To meet the new eligibility requirement, FHA appraisers must be certified by the state in which the property to be appraised is located, or by a nationally recognized professional organization. Under new section 202(f) of the National Housing Act, licensed appraisers would no longer be authorized to conduct appraisals of properties securing an FHA-insured mortgage.

Through FIRREA, Congress authorized the Appraisal Foundation to establish minimum qualification requirements for state certification of appraisers as well as promote minimum uniform appraisal standards. The Appraisal Foundation serves as the parent organization to AQB and the Appraisal Standards Board (ASB) to accomplish this mission. The AQB promulgates and maintains appraiser qualification criteria and the ASB promulgates and maintains the Uniform Standards of Professional Appraisal Practice (USPAP). The FHA Appraiser Roster regulations acknowledge this national role by requiring that appraisers applying for placement on the roster meet the minimum AQB education, examination, and training criteria. Given these unique responsibilities, FHA has determined that the Appraisal Foundation is a “nationally recognized professional appraisal organization” within the meaning of new section 202(f) of the National Housing Act. Moreover, FHA has determined that appraisers meeting the AQB criteria, as required by the FHA Appraiser Roster regulations, have “demonstrated verifiable education in the appraisal requirements established by FHA” under the new law.

FHA recognizes that there may be other national professional organizations that satisfy the requirements of section 202(f), and that there may be additional means of demonstrating verifiable education in FHA appraisal requirements. HUD will publish a notice in the Federal Register inviting the public to comment on nationally recognized professional appraisal organizations that FHA should consider as meeting the new statutory requirements.

Appraiser Qualification Criteria

Appraisers seeking to become state certified should review the 2008 Real Property Appraiser Qualification Criteria at:

<http://www.appraisalfoundation.org>

Procedures to Obtain Placement on the FHA Appraiser Roster

Applicants who meet all eligibility criteria may apply on-line at:

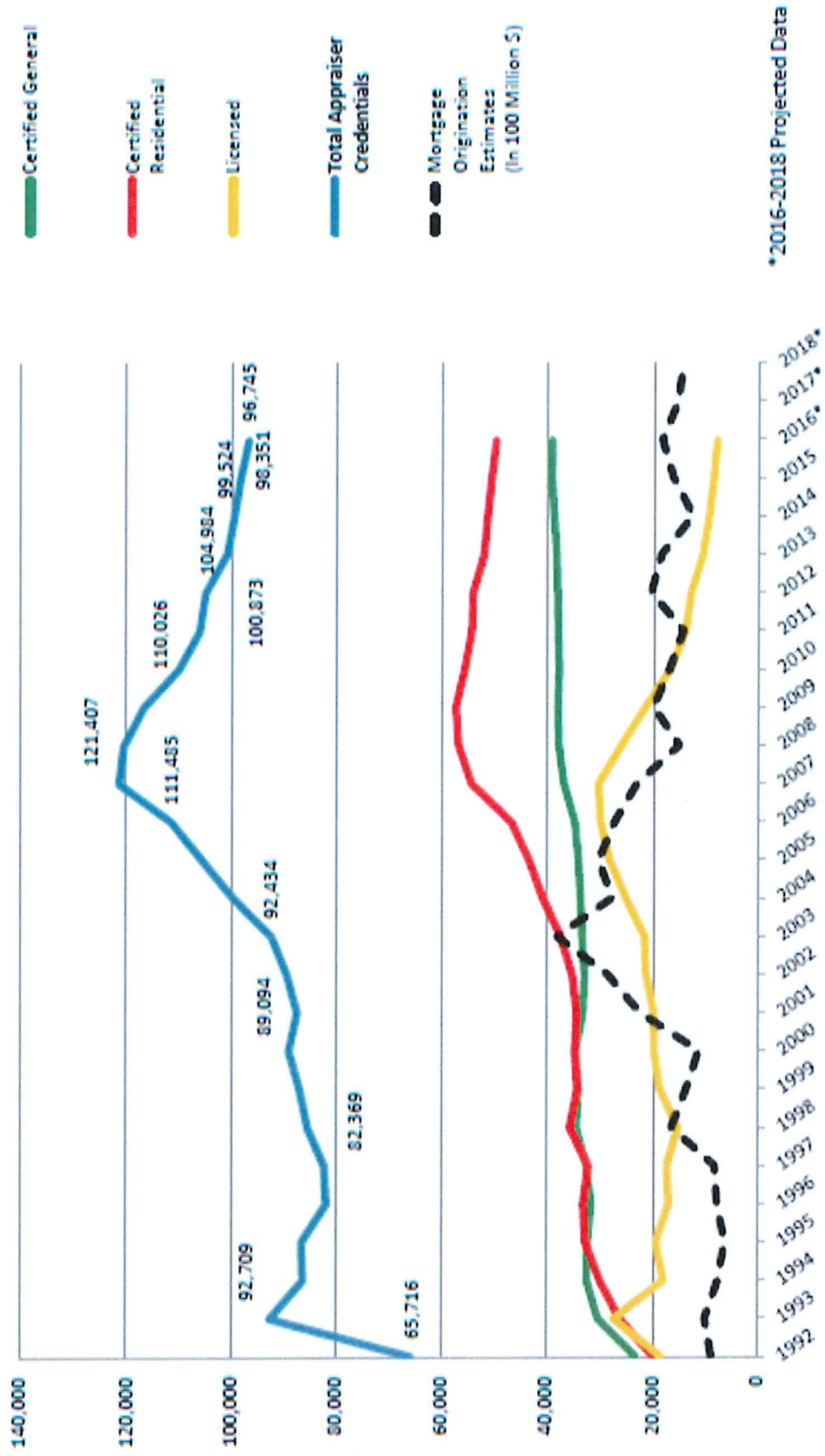
<http://www.hud.gov/appraisers>

If you have any questions concerning this Mortgage Letter, please call 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

Mortgage Origination Values and Appraiser Credential Trends



THE APPRAISAL FOUNDATION
Authorized by Congress as the Source of Appraisal Standards and Appraiser Qualifications

10 Year Trend: Appraiser Credentials

	<u>2007</u>	<u>2017</u>
Certified General	36,881	39,210
Certified Residential	54,177	49,187
State Licensed	30,286	7,854



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

DOCKET NO. 9374

COMPLAINT

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

NATURE OF THE CASE

1. The Louisiana Real Estate Appraisers Board (the “Board”), a state agency controlled by licensed real estate appraisers, has unreasonably restrained price competition for real estate appraisal services provided to appraisal management companies (“AMCs”) in Louisiana. AMCs act as agents for lenders in arranging for real estate appraisals.
2. The Board adopted a regulation, effective as of November 20, 2013, purportedly implementing a requirement under federal and Louisiana law that AMCs pay appraisers a “customary and reasonable” fee for real estate appraisal services. In both promulgating and subsequently enforcing that regulation, the Board has unlawfully restrained price competition.
3. First, by its express terms, the Board’s fee regulation unreasonably restrains competition by displacing a marketplace determination of appraisal fees. Under the regulation, AMCs must compensate appraisers at a rate determined by one of three methods: (1) an AMC may use a survey of fees recently paid by lenders in the relevant geographic area; (2) an AMC may use a fee schedule established by the Board; or (3) an AMC may identify recently paid fees and adjust this base rate using six specified factors. By requiring one of these three methods, the Board prevents AMCs and appraisers from arriving at appraisal fees through bona fide negotiation and through the operation of the free market.

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

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

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

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

RESPONDENT

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

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

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

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

JURISDICTION

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

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

THE PROVISION OF APPRAISAL SERVICES THROUGH APPRAISAL MANAGEMENT COMPANIES

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

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

Federal Law Regarding AMCs

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

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

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

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

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

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

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

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

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

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

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

Louisiana Statutes Regarding AMCs

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

28. In 2012, the Louisiana legislature amended the AMC Law to require AMCs to “compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the presumptions of compliance under federal law.” The AMC Law authorizes the Board to promulgate regulations necessary for enforcement of the AMC Law. The AMC Law does not require the Board to impose standards for customary and reasonable fee requirements beyond what federal law provides, or to set customary and reasonable fees at any particular level.

THE BOARD’S ACTIONS TO SUPPRESS COMPETITION

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

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

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

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

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

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

[REDACTED] Appraisers responded, [REDACTED]

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

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

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

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

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

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

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

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

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

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

EFFECTS ON COMPETITION OF THE BOARD'S ACTIONS

44. The Board's actions have unreasonably restrained competition and harmed consumers. The Board's actions tend to restrain significantly appraisal fee negotiations between appraisers and AMCs, and to raise prices paid by AMCs for appraisal services in Louisiana above competitive levels.

45. As a result of the Board's actions, Louisiana appraisers [REDACTED]

In one case, [REDACTED]

46. In another case, [REDACTED]

47. In another case, [REDACTED]

48. As a result of [REDACTED] the Board's enforcement campaign, AMCs operating in Louisiana have increasingly used median fees reported in SLU Center surveys to set appraisal fees. Several AMCs that have been the target of Board investigations and enforcement actions, including Coester and iMortgage, have explicitly agreed with the Board to use the SLU Center reports to set appraisal fees. Other AMCs have decided to use SLU Center reports to set fees after learning of the Board's enforcement campaign, in an effort to avoid Board scrutiny and sanctions.

49. The relevant market for purposes of analyzing the Board's conduct consists of real estate appraisal services sold to AMCs in Louisiana. While appraisal fees may vary by region or metropolitan area within Louisiana, the Board possesses and has exercised the power to raise fees paid by AMCs statewide through its regulation of AMCs.

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

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

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

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

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

VIOLATION OF THE FTC ACT

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

NOTICE

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

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

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

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

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

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

NOTICE OF CONTEMPLATED RELIEF

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

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

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

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

By the Commission.

Donald S. Clark
Secretary

SEAL:

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



ORIGINAL

Docket No. 9374

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

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

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

GENERAL RESPONSE TO THE COMMISSION’S ALLEGATIONS

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

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

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

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

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

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

NATURE OF THE CASE

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

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

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

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

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

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

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

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

RESPONDENT

8. LREAB admits the allegations in paragraph 8.

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

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

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

JURISDICTION

12. LREAB admits the allegations in paragraph 12.

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

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

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

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

Federal Law Regarding AMCs

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

17. LREAB admits the allegations in paragraph 17.

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

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

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

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

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

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

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

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

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

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

Louisiana Statutes Regarding AMCs

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

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

THE BOARD'S ACTIONS TO SUPPRESS COMPETITION

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

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

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

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

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

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

35. LREAB admits the allegations in paragraph 35.

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

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

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

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

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

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

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

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

EFFECTS ON COMPETITION OF THE BOARD'S ACTIONS

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

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

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

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

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

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

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

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

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

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

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

VIOLATION OF THE FTC ACT

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

AFFIRMATIVE DEFENSES

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

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

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

NOTICE OF CONTEMPLATED RELIEF

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

Dated: June 19, 2017

Respectfully submitted,

/s/ W. Stephen Cannon

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

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

Notice of Electronic Service

I hereby certify that on June 19, 2017, I filed an electronic copy of the foregoing Answer of Respondent Louisiana Real Estate Appraisers Board to the 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 June 19, 2017, I served via E-Service an electronic copy of the foregoing Answer of Respondent Louisiana Real Estate Appraisers Board to the 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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Federal Trade Commission
CKennedy@ftc.gov
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Geoffrey Green
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Complaint

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Respondent

James J. Kovacs
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Respondent

I hereby certify that on June 19, 2017, I served via other means, as provided in 4.4(b) of the foregoing Answer of Respondent Louisiana Real Estate Appraisers Board to the Complaint, upon:

Sean Pugh
Attorney
U.S. Federal Trade Commission
spugh@ftc.gov
Complaint

W. Stephen Cannon
Attorney

**Statement Of The Louisiana Real Estate Appraisers Board
Regarding Today's Action by The Federal Trade Commission**

BATON ROUGE, LA (May 31, 2017) – In an administrative complaint filed today by the Federal Trade Commission (FTC), it was alleged that the Louisiana Real Estate Appraisers Board (LREAB) had fixed the minimum price of residential real estate appraisals by enforcing the Board's obligations under federal law to ensure that appraisers are paid customary and reasonable fees for their services.

Bruce Unangst, Executive Director of the Louisiana Real Estate Appraisers Board (LREAB), said:

“Respectfully, the FTC is just plain wrong. By issuing this legally faulty and factually incorrect complaint, the FTC is seeking to punish a Louisiana state agency for following federal regulatory mandates. Specifically, Dodd-Frank regulations – intended to protect consumers by ensuring the integrity of home mortgage appraisals – require that state appraisal agencies ensure Appraisal Management Companies (AMCs) pay “customary and reasonable” fees for home appraisals. It is the federal government that put these requirements on state appraisal agencies, and our Board followed these federal regulations after an open, public and transparent rulemaking process. To now suggest that LREAB's good faith efforts to comply with federal law is some sort of shadowy price-fixing conspiracy is ludicrous. Congress and six financial regulatory agencies in Washington have directed Louisiana to do exactly what the FTC is now alleging is an antitrust violation.

“These claims distort the reality of the Board's conduct in an attempt to stitch together a conspiracy where none exists. We plan to vigorously contest these charges and defend the interests of Louisiana consumers while ensuring our state complies with federal appraisal independence regulations.”

W. Stephen Cannon, Constantine Cannon LLP, Washington, D.C., counsel to LREAB, said:

“This is truly an overreach by the FTC, in direct contradiction to the federal government's focused and consistent efforts since the 1980s to ensure the integrity of the residential mortgage market. With this misguided attempt at antitrust enforcement, the Commission has placed both federal and state efforts to protect consumers from unsound mortgages in serious jeopardy. I have no doubt a judge will agree that the Board's actions to protect Louisiana consumers were appropriate and justified.”

Contact: Jim Haggerty or Andrea Garcia
(212) 683-8100
jhaggerty@prcg.com; agarcia@prcg.com

Louisiana Real Estate Appraisers Board (LREAB)

Background

May 31, 2017 – In filing its administrative complaint against the Louisiana Real Estate Appraisers Board (LREAB), the FTC seeks to punish a Louisiana state agency for complying with the mandates established by federal financial regulatory agencies, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Consumer Financial Protection Bureau, as well as the Federal Housing Finance Agency.

Over three decades, Congress and the federal financial regulatory agencies have sought to prevent the recurrence of mortgage-based financial crises by ensuring the integrity of the real estate appraisal process by mandating state regulation of appraisers:

- Responding to the savings and loan crisis, in 1989, Congress mandated the establishment of state appraisal licensing agencies, such as the Board, and subjected their activities to federal oversight and audits. The Board was established as Louisiana’s agency to comply with the 1989 federal requirements.
- Responding to the residential mortgage crisis, the 2010 Dodd-Frank Act required lenders and their agents—Appraisal Management Companies (“AMCs”)—to adhere to “appraisal independence” standards to protect consumers from manipulated mortgage appraisals or appraisers with limited knowledge or experience. These independence requirements included a Congressionally-mandated obligation to pay customary and reasonable fees to compensate appraisers for necessary skills and geographic experience, as set out in implementing Federal Reserve Board rules.
- The Dodd-Frank Act further mandated that the federal financial agencies establish minimum requirements for state appraisal agencies, such as the Board, to register AMCs and ensure AMCs’ compliance with the appraisal independence standards, including paying customary and reasonable fees to appraisers. Finally Dodd-Frank expanded the scope of federal audits of state appraisal agencies to ensure they have complaint, investigation, and enforcement programs in case of AMC rule violations.
- In response to Dodd-Frank, in 2012, the Louisiana Legislature amended the Appraisal Management Company Licensing and Regulation Act, requiring the Board to promulgate the Customary and Reasonable Rule. The Board spent an entire year working with Louisiana stakeholders – lenders, appraisers, and appraisal management companies – to promulgate a Customary and Reasonable Rule that complied with the mandated federal requirements.

- The FTC is alleging that the Board turned an academic study of fees paid to appraisers in Louisiana – conducted by Southeastern Louisiana University (SLU) and specifically permissible under federal regulations – into a “floor” on such fees. This ignores the Board’s federal regulatory obligation to investigate complaints regarding appraisal fees paid for specific appraisals to determine whether those fees paid are customary and reasonable. A fee study is just one way to show that appraisal fees meet a federal regulatory “presumption of compliance” with the customary and reasonable standard. LREAB regulations expressly allow use of other approaches to demonstrate compliance as well. Moreover, the FTC alleges an antitrust violation because several of LREAB board members hold appraiser licenses, even though only two of the Board’s ten current members are active residential appraisers.

###

**Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency**

**Interagency Advisory on the Availability of Appraisers
May 31, 2017**

In comments received by the federal bank regulatory agencies¹ (collectively, the agencies) pursuant to the agencies' review of regulations under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA),² representatives from the financial industry raised concerns regarding the timeliness of appraisals due largely to what they believe to be problems with the availability of state certified and licensed appraisers, particularly in rural areas. The agencies, jointly with the National Credit Union Administration, are providing this advisory to apprise insured depository institutions and bank holding companies (collectively, regulated institutions) of two existing options that may address appraiser shortages, particularly in rural areas: temporary practice permits and temporary waivers.

Temporary Practice Permits

Section 1122(a) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI)³ requires a state appraiser certifying or licensing agency to recognize the certification or license of an appraiser issued by another state on a temporary basis for federally related transactions (FRT).⁴ Subject to limitations in states' laws, temporary practice permits could allow state certified or licensed appraisers to provide their services in states where they are not certified or licensed, including those experiencing a shortage of appraisers.

Appraisers must apply to the relevant state appraiser regulatory agency for a temporary practice permit.⁵ Section 1122 of Title XI prohibits a state appraiser certifying or licensing agency from imposing excessive fees or burdensome requirements for a temporary practice permit.

¹ The federal bank regulatory agencies include the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC).

² Pub. L. No. 104-208, 110 Stat. 301. The agencies recently completed a review of their respective regulations pursuant to the EGRPRA, including their appraisal regulations, to evaluate whether the regulations are outdated, unnecessary, or unduly burdensome, and to consider how to reduce regulatory burden on institutions regulated by the agencies while, at the same time, ensuring their safety and soundness and the safety and soundness of the financial system. Written comments were solicited through four *Federal Register* notices. Additionally, comments were received at six outreach events the bank regulatory agencies held in various regions of the country. This advisory is responding to specific questions that have been raised about appraisals as part of the agencies' EGRPRA outreach process. See transcripts at <http://egrpra.ffiec.gov/outreach/outreach-index.html>.

³ Pub. L. No. 101-73, 103 Stat. 183 (codified at 12 U.S.C. 3331 et seq.).

⁴ 12 U.S.C. 3351(a).

⁵ Refer to <https://www.asc.gov/State-Appraiser-Regulatory-Programs/TemporaryPracticeAndReciprocity.aspx> for contact information for State appraiser regulatory agencies.

In addition, reciprocity⁶ is a widely used practice in which one state recognizes the appraiser certification and licensing of another state, permitting state certified and licensed appraisers to perform appraisals across state lines.

Temporary Waivers

Section 1119 of Title XI authorizes the Appraisal Subcommittee (ASC), after making certain findings and with the approval of the FFIEC, to grant temporary waivers of any requirement relating to certification or licensing of individuals to perform appraisals under Title XI in states or geographic political subdivisions of any states where there is a shortage of appraisers leading to significant delays in obtaining appraisals in connection with FRTs.⁷ These temporary waivers may provide regulated institutions lending in affected areas with access to more individuals eligible to complete the appraisals required under Title XI, which may help alleviate some of the cost and burden associated with having a shortage of state certified or licensed appraisers in affected areas.

The ASC has issued regulations⁸ governing the processing of temporary waiver requests. Requests can be submitted by any of the following:

- A state appraiser certifying or licensing agency.
- A federal bank regulatory agency.
- A regulated financial institution or credit union.
- Other persons or institutions with a demonstrable interest in appraiser regulation.

The requesting party must provide evidence of the shortage of appraisers in a geographic area and must demonstrate that the scarcity of appraisers has led to significant delays in the performance of appraisals on FRTs in that area. While an individual regulated institution may submit a request, the waiver request would apply to the affected geographic area. If granted, the requirement to use a certified or licensed appraiser on FRTs would be waived for all regulated institutions engaging in FRTs in the affected geographic area, regardless of who initially requested the waiver.

After receiving a waiver request, the ASC's regulations specify issuing a public notice in the *Federal Register* requesting comment on the proposed waiver. Within 15 days of the close of the 30-day comment period, the ASC is required to issue a decision on the request for a temporary waiver. The ASC's decision is subject to approval by the FFIEC. The agencies have representatives on the ASC board, are FFIEC members, and will work with the ASC to streamline the process for evaluating temporary waiver requests.

⁶ Appraisal Subcommittee (ASC) of the Federal Financial Institution Examination Council (FFIEC), *Policy Statements*, June 1, 2013, at <https://www.asc.gov/Documents/PolicyStatements/ASC%20Policy%20Statements%2006.01.13.pdf>. (See Policy Statement 5.)

⁷ 12 U.S.C. 3348(b).

⁸ 12 CFR part 1102, subpart A.

After receiving FFIEC approval to grant a waiver request, the ASC will issue an order specifying the time period during which the waiver will be in effect. The ASC can extend the waiver upon petition from an interested party and approval by the FFIEC after notice and comment. In the event an appraiser shortage abates before the end of the waiver period, the ASC has the discretion to terminate the waiver before its expiration.

The agencies' appraisal regulations⁹ require regulated institutions to obtain appraisals for FRTs unless an exemption applies. Such appraisals must meet five criteria. One criterion requires that the appraisal be performed by a state certified or licensed appraiser. If the ASC grants a waiver from the certification and licensing requirement, then regulated institutions will not be required to obtain appraisals by state certified or licensed appraisers on FRTs originated in the designated area for the duration of the waiver period. However, the remaining appraisal criteria must still be met for the appraisal to comply with Title XI.¹⁰

⁹ 12 CFR part 208, subpart E (Regulation H) and 12 CFR part 225, subpart G (Regulation Y) (Board); 12 CFR part 34, subpart C (OCC); 12 CFR part 323 (FDIC); and 12 CFR part 722 (NCUA).

¹⁰ As described in the Interagency Appraisal and Evaluation Guidelines, persons qualified to perform appraisals should possess the appropriate appraisal or collateral valuation education, expertise and experience relevant to the type of property being valued. *75 Fed. Reg.* 77450 (December 10, 2010).



THE APPRAISAL FOUNDATION

Authorized by Congress as the Source of Appraisal
Standards and Appraiser Qualifications

June 6, 2017

Ms. Maria Fernandez
Senior Associate Director
Office of Housing and Regulatory Policy
Division of Housing Mission and Goals
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

Via e-mail: maria.fernandez@fhfa.gov

Dear Ms. Fernandez:

We appreciate the opportunity to have met with Fannie Mae and Freddie Mac officials on May 23, to learn of the plans of the enterprises to waive appraisals in certain loan transactions. As the entity authorized by Congress to establish appraisal standards and appraiser qualifications in the United States, The Appraisal Foundation has significant concerns about these initiatives.

One thing everyone can agree on when it comes to real estate: markets are extremely cyclical. While our concerns would apply at any time, they are increased *significantly* given the rollout of these programs at a time where housing prices have increased dramatically over the last several years. Frankly, using “backward-looking” data to project a property’s value based on transactions that occurred at the height of a market creates a recipe for disaster.

While it’s true that appraisers also use historical data, competent appraisers with expertise in a marketplace may be able to recognize changes in market trends much more quickly. Appraisers may be able to supplement an analysis of historical sales by recognizing marketplace factors such as increased marketing times and available inventory, increases in the number of listings with price reductions, the prevalence of seller concessions, and new listings reflecting a lower pricing threshold, just to name a few. Thus, a competent and professional appraiser may be able to provide a more accurate opinion of value in a changing market, even with access to the same historical sales data. We believe performing a lesser level of due diligence at this time is a step 180 degrees in the wrong direction.

As stated above, we have concerns with policies allowing for a waiver of appraisals in a great number of situations. But we’re also concerned that the proposed roll out of these programs at this time lacks some of the detail and clarity needed for proper implementation. Specifically, our concerns include:

Fannie Mae said previous appraisal information would be necessary for a loan to qualify for an appraisal waiver, while Freddie Mac indicated that waivers would be allowed even when no previous appraisal information was available. This inconsistency is evidence that additional details must still be developed.

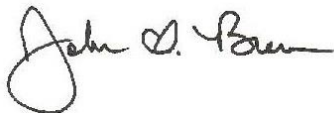
Fannie Mae and Freddie Mac are not in sync with respect to the applicability of the proposed waiver programs. Fannie Mae estimates waivers would apply to 10 percent of refinance transactions, with no waivers applicable to purchase transactions. No such specific estimates were provided by Freddie Mac which, in and of itself, is troubling. Again, this inconsistency signals lack of clear forethought.

Lastly, the reason provided for the need to consider appraisal waivers was due to a shortage of appraisers, which increased both costs and delays in obtaining an appraisal. While we are aware that some markets experienced such issues on a small scale, those very same markets have achieved an equilibrium and appraisals are now being performed in a timely manner, at a reasonable cost. We believe that many opportunists saw this short term shortage as their chance to increase profit potential and eliminate some of the vital "checks and balances" needed for sound investment practices.

In summary, we believe the proposals require further study prior to implementation. We think a focus group consisting of constituents with varying perspectives would be most beneficial. We would be pleased to participate in any such effort, and hope that we can be considered a resource in this and any future valuation-related initiatives.

Please feel free to contact me if I can provide any additional information or be of further assistance. I can be reached by calling (202) 624-3044, or via e-mail at john@appraisalfoundation.org.

Sincerely,

A handwritten signature in black ink that reads "John S. Brennan". The signature is written in a cursive style with a large initial "J" and "B".

John S. Brennan
Director of Appraisal Issues
The Appraisal Foundation



Northern Colorado Association of Real Estate Appraisers

June 9, 2017

Jim Park, Executive Director
Appraisal Subcommittee
1401 H Street N.W.
Suite 760
Washington, DC 20005

Dear Jim Park,

On behalf of Colorado Appraiser Trainees, we write today to highlight the obstacles we face in becoming Licensed or Certified Appraisers in the current regulatory climate. To date, despite completing the required coursework, submitting hundreds of resumes to appraisers, making dozens of phone calls, and networking with industry associations, the immediate obstacle we face is getting hired by a Supervising Appraiser.

The following quotes from local appraisers articulate why Trainees across the US are having such a difficult time getting hired:

"A trainee that has completed the basic core classes adds little value to a seasoned appraiser that is under tight deadlines and heavy regulation to produce a reasonable income for themselves.~ Local Colorado Appraiser

"Perhaps today this is difficult because of the current environment that requires quick turn times or because fees are too low to allow a supervising appraiser to space out his/her jobs and include time for training." ~ Local Colorado Appraiser

As Trainees, we understand the time commitment is a challenge, as the required number of hours and years for certification is difficult. We acknowledge that for Supervising Appraisers there are legitimate legal and physical liabilities associated with hiring a Trainee, as well as the financial burden of splitting the fees with them. We also accept the reality that current regulations steer lenders toward the most qualified appraiser, thereby excluding a competent Trainees' participation in an assignment.

Despite these obstacles, the recent FNMA clarification *has* paved the way for the investing community to seriously consider accepting qualified trainee participation in appraisal assignments. This is an essential step in making credible trainees more valuable to Supervising Appraisers. With your help, we believe other regulators will follow FNMA's lead.

As Appraiser Trainees, we ask you to join in this endeavor, creating a mutually beneficial relationship between Trainees, Supervising Appraisers and lenders. Making the hiring of Trainees worthwhile for all parties will go a long way toward strengthening the appraisal industry as a whole. A response would be greatly appreciated. Please let us work together to be part of the solution to this ongoing problem.

Sincerely,

**Ad Hoc Trainee Committee
Northern Colorado Association of Real Estate Appraisers (NCAREA)**

Ellen Koenig, Trainee



Tamara Roldan, Trainee

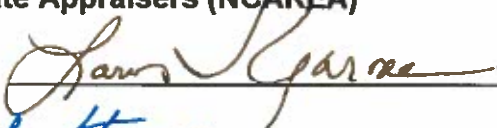


Kathryn Scott, Trainee



**Board Members
Northern Colorado Association of Real Estate Appraisers (NCAREA)**

Louis J. Garone, President, MAI, SRA, AI-GRS



Stephen Stompor, Membership Chair



CC: Colorado Coalition of Appraisers: Douglas Loeper, President • Colorado Department of Regulatory Agencies: Marcia Waters, Director of the Division of Real Estate • ASC: Jim Park, Executive Director • TAF: David S. Bunton, President • AQB: Joseph C. Traynor, Chair • OCC: Keith A. Noreika, Acting Comptroller of the Currency • FHFA: Melvin Watt, Director • HUD: Ben Carson, Secretary • VA: Dr. David J. Shulkin, Secretary • FHA: Genger Charles, General Deputy Assistant Secretary for Housing • NCUA: Mark A. Treichel, Executive Director • FNMA: Timothy J. Mayopoulos, President and CEO • FHLMC: Donald H. Layton, CEO • FFEIC: Judith E. Dupre, Executive Secretary, Duties and Responsibilities • CFPB: Richard Cordray, Director • FDIC: Martin J. Gruenberg, Chairman • CBA: David Kelly, Chairman