

Louisiana Real Estate Appraisers Board

Substantial Change Hearing on Proposed Rules: LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101
July 22, 2013

SUMMARY REPORT – PART ONE

This report is prepared in response to written comments received by the board and testimony given at the July 22, 2013 public hearing, regarding substantive changes to the proposed Appraisal Management Company (AMC) rules.

1. Section 30401.A.5

This section of the rules is related to appraiser competency. It requires an AMC to obtain written verification from an appraiser that he or she is aware that misrepresentation of competency may be subject to the mandatory reporting requirement in the most current version of the Uniform Standards of Professional Appraisal Practice (USPAP).

The expressed concern was that AMC's do not have an obligation to comply with USPAP because the AMC is not performing the appraisal; however, the language in the proposed rule is very clear and does not subject the AMCs to anything more than what is already required pursuant to the Federal Interim Final Rules and Interagency Guidelines.

LSA-R.S. 37:3415.13 requires each AMC seeking to be licensed to make an annual certification to the board that it has a system in place to periodically review the work of appraisers performing real estate appraisal services for the AMC. This provision is to ensure that the real estate appraisal services are being conducted in accordance with USPAP. Further, prior to or at the time of making the assignment, the law requires an appraisal management company to verify that the appraiser receiving the assignment satisfies each provision of the competency rule of USPAP for the appraisal being assigned.

The Federal Interim Final Rules further provide that a creditor or settlement service provider involved in a transaction that has a reasonable basis to believe that an appraiser has not complied with ethical or professional requirements under the applicable federal or state law, or USPAP, must report the failure to comply with the appropriate state agency. Pursuant to the Federal Interim Final Rules, settlement services include AMCs.

So, although the AMCs may not have to comply with USPAP, the appraisers working for them do and the AMC has to ensure that this is being done. Therefore, there appears to be no reason to alter the language proposed in Section 30401.A.5.

2. Section 30501.B.7

This proposed rule is relative to record keeping and requires that the AMC, in addition to other records, must maintain a list of all real estate fee appraisers, with information on the turn time in which the

appraisal services are required to be performed. This section of the rules was originally proposed to read, "...the time frame in which the appraisal services are required to be performed". Based on concerns from certain AMCs and other industry leaders, it was requested that the term be changed to "turn time" rather than "time frame".

The concern voiced at the hearing was that there needed to be clarification that record keeping for turn time should be kept at the transactional level. The rule simply requires that the AMCs keep a record of the turn time in which the appraisal services are required to be performed. That language is very clear. AMCs are required to create and keep records such as this to monitor the progress of the appraisal. Therefore, the rule as written requires no further clarification or modification.

3. Section 31101

This rule addresses customary and reasonable fees and presumption of compliance. The expressed concerns regarding this rule involve various issues. One addresses the payment of appraisers by the AMC within thirty (30) days of the completed appraisal report being submitted to the AMC. The board is a regulatory agency required to protect the public and to oversee issues regarding appraisers. This rule is a direct result of the failure of certain AMCs to make timely payment to appraisers and subsequently declaring bankruptcy or otherwise failing to pay appraisers. The rule does not place any additional burden on the AMCs and is set forth to protect the public and the appraisers. Further, it gives the AMC the option to pay the fee appraiser within the thirty (30) days or pay the appraiser in accordance with another payment schedule agreed to in writing by the appraiser and the AMC. Therefore, this is not restrictive and there is no need to remove this from the rules.

The other issues concern the customary and reasonable fee to be paid to appraisers. There was some misconception that the board would have the ability to sanction an AMC for violating federal law, if a federal court found that the AMC did not pay the customary and reasonable compensation. LSA-R.S. 37:3415.15 addresses fees, customary and reasonable, and disclosure. The state regulatory agency, Louisiana Real Estate Appraisers Board, regulates those sections of Title 37 that involve real estate appraisers and appraisal management companies, therefore, the board does not sanction an AMC for violating federal law, but rather may sanction an AMC for violating Louisiana law that has been drafted to be consistent with federal law and the Federal Interim Final Rules.

The federal law does not allow the state to create a law that is inconsistent. When state law conflicts with a federal law or impedes the objective of the federal law, the state law is impliedly preempted. This also applies when Congress clearly evidences their intent to preempt state law in the area but does not include explicit language to that effect in the legislation. Dodd-Frank is very clear that it preempts state law only to the extent that there are inconsistencies between the state law and Dodd-Frank. There is no language in Dodd-Frank that explicitly bars states from passing legislation regulating the activity which is the subject of the Act, and Louisiana did pass legislation regulating this activity. Dodd-Frank states that if state law provides greater protections than the Act provides, then it will not render the state law "inconsistent" with the Act.

In Section 1124(b), the Act states that “Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a). Further, Section 1124(f)(3) states that Section 1117 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended by adding the following:

“The duties of such agency may additionally include the registration and supervision of appraisal management companies and the addition of information about the appraisal management company....”

The federal law clearly gives states the right to regulate the AMCs. Further, LSA-R.S. 37:3415.14 requires AMCs to make an annual certification to the board that it maintains detailed records of certain things, including the fee paid to the appraiser. Clearly, that would not be necessary if the board had no authority to regulate the fees. The board is simply enforcing laws of the state of Louisiana, not federal law or the Truth in Lending Act.

“Market Area” being defined has also been mentioned as an area of concern. There has been a question of the board defining that term. The rules are not in conflict with the federal law and the board has the authority to define the term and has done so in a manner that is not confusing.

The presumptions addressed in Section 31101 were discussed at the hearing. There was some concern that the rule was too restrictive. However, the rule is not requiring any more of the AMCs than is required by the federal law. If AMCs elect to compensate fee appraisers on any basis other than an established fee schedule, as described in the rule, then they are required to review several factors listed and make appropriate adjustments to recent rates paid in the relevant geographic market to ensure that the compensation is reasonable. The factors that an AMC is required to review are contained in the federal law under the presumption of compliance, wherein it states that the “creditor or its agents shall review the factors below and make adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.” Those factors are the same ones that are contained in the rules. Therefore, there are no additional requirements or burdens being placed on the AMCs.

4. Section 30900

Economic impact, as it relates to the rules regarding audits, was expressed as a concern. The rules require that audits may be authorized by the executive director, or by affirmative vote of the board, to determine compliance with all provisions of applicable law and rules. Dodd-Frank specifically allows states to regulate AMCs. The regulation would be ineffective if the board were not able to audit the AMCs for compliance with the law and rules. The law and the promulgated rules are in accordance with and track the federal requirements and the interim federal rules. There are no additional requirements; therefore, there would be no additional costs or economic impact.

Based on a thorough legal, technical, and common sense review of the issues raised, and our

responses provided herein, it is the intention of the Louisiana Real Estate Appraiser Board to move forward with the promulgation of the proposed rules and regulations, as amended, and published in the Potpourri Section on page 1646 of the Louisiana Register. The board has gone to extraordinary lengths to maintain dialog with all stakeholders, which resulted in amending the initial proposed rules to incorporate suggested changes, and conducting an additional public hearing to solicit any additional input on the amended rules. The rules as written meet the federal mandate for the board to register and regulate appraisal management companies consistent with federal law, rules and regulations.

Arlene Edwards
Attorney for the LA Real Estate Appraisers Board

Bruce Unangst
Executive Director

AE:sb

Louisiana Real Estate Appraisers Board

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SUMMARY REPORT – PART TWO

TRADE ORGANIZATIONS*

In Opposition

*Membership rolls of (a) and (b) listed below are comprised largely of the same members. The entire membership of (b) holds dual membership in (a), as indicated in bold.

- (a) **Real Estate Valuation Advocacy Association (REVAA)** - Executive Director Don Kelly
Members produce and deliver real estate valuation products including Appraisals, Broker Price Opinions (BPOs), Automated Valuation Models (AVMs), and other valuation methods that benefit mortgage investors, servicers, originators, and borrowers.

Represented at the hearing by: Robert L. Rieger, Jr.
Adams and Reese, L.L.P.
450 Laurel Street
Suite 1900
Baton Rouge, Louisiana 70801

Membership consists of 10 members:

- (1) Clear Capital
- (2) **CoreLogic** (Attending the hearing was Kim Drake Loy, Vice-President and Associate General Counsel)
- (3) Data Quick
- (4) eMortgage Logic
- (5) **Lender Processing Services**
- (6) Pro Teck Valuation Services
- (7) **PCV/ Murcor Real Estate Services**
- (8) **Rel's Valuation** (Attending the hearing was David Cherner, Compliance Director)
- (9) **Service Link**
- (10) Single Source

The board received four written comments. One letter of opposition was sent on behalf of the REVAA organization by Executive Director Don Kelly, and individual letters of opposition were sent by members (2), (3) and (8). Content was in keeping with the testimony of REVAA counsel and the representatives named in (2) and (8).

(b) Coalition to Facilitate Appraisal Integrity Reform (FAIR)

FAIR is a coalition of 5 of the approximately 315 Appraisal Management Companies (AMCs) nationwide that operate networks of individual appraisers and appraisal firms for the completion of appraisal reports. Membership in FAIR represents half of the total membership in REVAA (a) above.

Represented by: K&L Gates LLP, Washington, D.C.
1601 K Street NW
Washington, DC 20006

Counsel did not appear at the July 22, 2013 public hearing on substantial rule changes. Letters from two counselors within the firm, Morey Barnes Yost and Nancy L. Weissgold, were submitted via email in March, in response to the Notice of Intent that appeared in the February 20, 2013 *Louisiana Register*. The letter from Ms. Yost specifically names FAIR as her client; the letter from Ms. Weissgold does not provide the name of her client, although it is assumed to be FAIR. Subsequent comments were not submitted by counsel in response to the public hearing notice that appeared in the Potpourri Section of the June 20, 2013 *Louisiana Register*.

Membership consists of 5 AMC members, who hold dual membership in (a) above:

1. CoreLogic Valuation Services
2. LSI, a division of Lender Processing Services, Inc.
3. PCV/Murcor
4. ServiceLink Valuation Solutions, LLC, a Fidelity National Financial, Inc. company
5. Valuation Information Technology, LLC d/b/a Rels Valuation, an affiliate of CoreLogic, Inc. and Wells Fargo Bank

Collective Summary of Comments:

Chapter 311 - Compensation of Fee Appraisers:

Not restricted to residential appraisal
Redundant with federal law
No statutory authority

Section 30900(F) re auditing authority:

Significant economic impact
Appraiser license verification – mandatory reporting
Record keeping (turn time)
Performance of full or partial audits – no statutory authority

TRADE ORGANIZATIONS

In Support

- (a) Louisiana Chapter of the Appraisal Institute – President Cheryl Bella

The Appraisal Institute is an organization of professional real estate appraisers comprised of 91 Chapters.

Membership consists of 300+ real estate professionals of whom more than half hold either the MAI or SRA designation

Letter of support received via email

- (b) Louisiana REALTORS® - Norman Morris, Senior Vice-President

Louisiana REALTORS® is a member-based trade association established to assist its members in the business of real estate in Louisiana.

Membership consists of 10,000+ Louisiana real estate licensees.

Letter of support sent via email

- (c) Louisiana Home Builders Association – President Billy Ward

Louisiana Home Builders Association is a member-based association that, among other things, represents the homebuilding industry before state and regulatory bodies.

Membership consists of 5020 members

Letter of support sent via email

Summary of Comments:

States are permitted to enact additional requirements

States are required to enact registration and supervision laws

State laws must comply with minimum requirements

Need remedy when service is not provided by AMC

Provides a level playing field

Geographic competency

Provides clarity

Consumers, lenders, appraisers are without recourse now

INDIVIDUAL LOUISIANA CERTIFIED REAL ESTATE APPRAISERS

In Support

Received via email

- (1) Steve Alvarez
- (2) Frank L. Carr
- (3) Pamela Hartzog
- (4) Greg Heimsoth
- (5) Norman Hingle
- (6) Ernie L. Jones
- (7) Glenn LaBorde
- (8) Arthur LeBlanc, Jr
- (9) Jerald Saltzman
- (10) Kevin Stubbs
- (11) Chad Viator

In Opposition (None received)

INDIVIDUAL APPRAISAL MANAGEMENT COMPANIES (AMCs)

In Support (None received)

In Opposition

Received via email

Paul Boyer, Chief Appraiser and Compliance Officer
DataVerify National Property & Valuation Services, Inc. d/b/a SBS Appraisal Management Company
Pennsylvania-based AMC (address not provided)