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Mr. Ryan Shaw  
Louisiana Real Estate Commission  
P.O. Box 14785  
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Via e-mail to [rshaw@lrec.state.la.us](mailto:rshaw@lrec.state.la.us)

Dear Mr. Shaw:

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

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

In reviewing the Proposed Rule, the language appears to be consistent with the language of the enabling statute (LSA-R.S. 37:3415.15) as enacted in 2012, and subsequently amended in 2016, which states that:

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

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

In 2010, the Federal Reserve adopted rules that established two presumptions of compliance for use by lenders and their agents<sup>1</sup>. A lender or agent that utilizes the methodologies in the rules is presumed to be compliant with the requirements for the payment of a customary and reasonable fee. AI has expressed concern with these regulations as to whether they accurately reflect the intent of Congress when it enacted 15 U.S.C § 1639e. However, paragraphs B through D of Proposed Rule 31101 are a near verbatim replication of what is currently within the federal rules regarding the payment of customary and reasonable compensation to appraisers.

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<sup>1</sup> 12 C.F.R. §226.42, later moved to 12 C.F.R. §1046.42

Further, under federal rules<sup>2</sup> adopted in 2015, a state that elects to register and oversee AMCs must impose requirements to establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the federal law regarding the payment of customary and reasonable fees. Louisiana enacted the Appraisal Management Company Licensing and Regulation Act (LSA-R.S. 37:3415.1 *et. seq.*) requiring the licensing and oversight of AMCs in 2010. As such, it appears that the Proposed Rule attempts to ensure that the federal minimum requirements for registration and oversight of AMC's are fulfilled by requiring AMC's operating in Louisiana to pay customary and reasonable compensation to appraisers.

The Dodd-Frank Act does not appear to prevent a state from enacting its own provisions regarding the payment of customary and reasonable fees to appraisers. In fact, the federal law<sup>3</sup> providing for the state registration and oversight of AMCs states that, "Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules" specifically mentioned in the statute.

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

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

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

Sincerely,



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

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<sup>2</sup> 12 C.F.R. § 34.210 *et. seq.*, 12 C.F.R. § 323.8 *et. seq.*, and 12 C.F.R. § 1222.20 *et. seq.*

<sup>3</sup> 12 U.S.C. § 3353(b)