



July 22, 2021
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D)
Washington, DC 20580

Re: Louisiana Real Estate Appraisers Board; File No. 161 0068, Docket No. 9374

The undersigned professional appraisal organizations appreciate the opportunity to comment in the above-captioned proceeding, related to a consent agreement between the Federal Trade Commission (FTC) and the Louisiana Real Estate Appraisers Board (LREAB). We are supportive of the appraisal-related provisions contained in Subtitle F of Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and specifically the provisions in Section 1472(i) relating to appraiser compensation being “customary and reasonable”.

This language was crafted as a response to the actions of appraisal management companies (AMCs) in deriving their profits not from value added services, but in taking a significant percentage of the appraisal fee for themselves and forcing appraisers to accept assignments for significantly lower fees than were traditionally offered. They could compel acceptance of these lower fees based on a rapid expansion of AMC market share of appraisal ordering activity in the wake of the Home Valuation Code of Conduct (HVCC).

The HVCC, an agreement between the Attorney General of the State of New York, Freddie Mac, and the Federal Housing Finance Agency, required that lenders who sold mortgages to the government sponsored secondary mortgage market ensure firewalls existed between lending staff and appraisers. Many lenders interpreted the HVCC to (incorrectly) compel the use of AMCs as the firewall, leading to rapid expansion of the need for AMC services. The catalytic effect of HVCC on AMC demand, coupled with a dearth of appraisal orders (coming in the wake of the housing market crash of 2007-08, where mortgage demand cratered), allowed for AMCs to build businesses and profits on the backs of appraisal fees and the appraisers who actually performed the work.

Section 1472(i) of the Dodd Frank Act attempted to fix the fee compression caused by this rapid shift in how and at what cost appraisals were ordered. Congress understood it was necessary to ensure appraisers were insulated from the kinds of pressure and influence that was seen in the run-up to the housing market crash (driven primarily by poorly underwritten mortgage loans, supported by appraisals that were often coerced through threats of nonpayment or blacklisting), and that it was also important appraisers themselves not pay the literal cost of providing the firewall.

Not only did Congress acknowledge this problem, they specifically grasped the role of AMCs in causing fee compression. Section 1472(i)(1) specifically requires that studies done to determine what constitutes customary and reasonable fees “exclude assignments ordered by known appraisal management companies.” In short, Congress wanted to fix appraiser compensation issues that had been caused by the behaviors of AMCs in the first place. In a sense, AMCs had made it impossible for appraisers to seek traditional compensation levels given the breadth and scope of their role in appraisal ordering – distorting the market for appraisal services.

The preceding context is important for framing the consent agreement before us for consideration. We acknowledge that FTC and LREAB have the right to enter into an agreement as parties to ongoing litigation to settle any claims the former has against the latter’s activities. However, it is equally important that FTC specifically ensure that the basis for this consent agreement be fully understood on a going forward basis not only by LREAB but all state appraisal boards who play a vital role in enforcing Section 1427(i) of Dodd Frank.

As we read the proposal, it is the absence of meaningful state oversight of the activities of the LREAB and its market participants (problems that, as we understand it, have been subsequently addressed by the state of Louisiana) that compelled FTC’s action against LREAB. Put differently, it is **NOT** the substance of Section 1472(i) of Dodd Frank that is at issue in this matter. This is a significant distinction that must be made clear from a precedential perspective.

Therefore, we ask FTC and LREAB to be clear in the underlying basis for this consent agreement; namely, that LREAB failed at the time it promulgated and enforced Rule 31101 to meet the requirements for successfully waging a state action defense, and specifically that there was no active supervision of LREAB’s activities that would support use of the state action defense.

Without clarity as to the reason behind the consent agreement, our fear is Congress’s intent – that appraisers be paid in a customary and reasonable manner that reflects traditional ordering practices and not the fee compression of AMCs – would be overridden by this consent agreement, and that other states who fear FTC action (even where oversight of board activity exists) would be chilled from ensuring that AMCs comply with Section 1472(i).

If you have any questions or wish to discuss our views further, please contact John D. Russell, JD, Strategic Partnership Officer for ASA at jrussell@appraisers.org or by phone at (703) 733-2103, or Steve Sousa, Executive Vice President at MBREA at steve@mbrea.org or by phone at (617) 830-4530.

Sincerely,
ASA
MBREA