



APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business ██████████	First	Middle
Claimant ID	██████████	Claim ID	██████████
Claim Type	Real Property Sales		
Law Firm	██		
Parcel Address	Street ██	Parish/ County ██████████	
	City ██████████	State ██	Zip Code
Property Tax Assessment ID	██████████	Parcel ID	████████████████████ ██████████ ██████████

II. DECISION

Denial Upheld

Denial Overturned

III. PRIMARY BASIS FOR PANELIST DECISION

Please select the primary basis for your decision. You may also write a comment describing the basis for your decision.

Claim should have been excluded.

Claim should have been denied.

Claim should not have been excluded.

Claim should not have been denied.

No error.

Comment (optional):
See Decision Comment uploaded.

Claim No. [REDACTED] - [REDACTED]

Claimant [REDACTED] appeals on a consolidated record the respective denials of three Real Property Sales claims, including this one, relating to three units it owned in the [REDACTED] condominium in [REDACTED]. Section 22.4.1 of the Settlement Agreement excludes from the Economic Class “Financial Institutions as identified in the NAICS codes listed on Exhibit 18.” Policy No. 480 v.2 states that the “[a]ppropriate NAICS Code for an Entity shall be the NAICS Code that most accurately describes the Entity’s primary business activities, which are the activities in which the Entity was primarily engaged during the operative Benchmark, Compensation, and Class Periods.” The Settlement Program concluded that the NAICS Code which most appropriately described [REDACTED]’s primary business activity was NAICS Code 522292 – Real Estate Credit. That Code is one of those listed in Exhibit 18 of the Settlement Agreement. It comprises “establishments primarily engaged in lending funds with real estate as collateral.” [REDACTED] contends that the most appropriate NAICS Code for its business activities is the one it used on its 2010 federal tax returns: 531190, “Real Estate.” The underlying facts are not disputed. As [REDACTED] describes the situation in its Opening Memorandum, “[REDACTED]’s members had learned that [REDACTED] Bank, like many banks after the real estate market crash and land fall of Hurricane Katrina in 2005, was shopping its loan portfolio of assets. The members thus seized upon an opportunity that they figured would enable them to foreclose on the mortgage and acquire condominium assets at steep discounts from fair market value, all with an eye toward later selling them for profit.” In fact, the record documents show, [REDACTED] was formed for just that purpose in 2009 only a few days before it purchased from [REDACTED] Bank an assignment of the [REDACTED] mortgage (and underlying promissory note) on January 26, 2009. In denying [REDACTED]’s claims on the basis that it was excluded from Class Membership, the SP noted that [REDACTED] “earned the majority of its 2010 revenue from the acquisition and subsequent foreclosure sale of the mortgage,” having earned \$1,756,436.27 of its \$2,318,716.41 2010 revenue, or 76 percent, from those transactions. The SP concluded that “by acquiring and subsequently foreclosing on, the mortgages, the Claimant stood in the shoes of the mortgage lender, [REDACTED] Bank.” In point of fact, [REDACTED] bought the mortgage covering multiple [REDACTED] units in 2009; foreclosed the mortgage on [REDACTED] at public outcry; held the units until the statutory right of redemption expired; and finally, sold them individually as the opportunity arose. At the foreclosure sale, [REDACTED] allocated the total debt among the 15 units being foreclosed, as each unit was separately offered for sale, and bid that amount. It was the successful bidder for each unit. As explained in an Order entered in an adversary proceeding in the bankruptcy proceeding of [REDACTED], against [REDACTED] and its two owners, “[REDACTED], co-owner of [REDACTED] unit [REDACTED], was present at the sale and placed competitive bids for several units. Ultimately, [REDACTED] was the successful bidder at the foreclosure sale. [REDACTED] bid-in the total amount of its mortgage debt, calculated at \$4,935,370.39, plus \$138,578, a surplus created by the competitive bidder, [REDACTED].” The bankruptcy judge specifically found that “the power of sale in the mortgage allowed [REDACTED], as the Lender, to offer the mortgaged property for sale in whole or in part, or ‘in any other manner the Lender may elect.’” In a Summary of Review provided at the joint request of the three panelists respectively handling [REDACTED]’s three appeals, the SP explained its rationale for assigning the Real Estate Credit NAICS Code as follows

“Once [REDACTED] acquired the mortgage, it was acting as the lender on the [REDACTED] properties. As a result, the Claims Administrator determined that [REDACTED] did not

participate in the June 1, 2009 foreclosure sale as a mere third-party purchaser, but rather as the foreclosing lender. The Claims Administrator thus concluded that the resale proceeds from properties acquired during that foreclosure sale must necessarily be attributed to [REDACTED]'s real estate credit activities arising from the loan purchase and foreclosure.

Because the [REDACTED] revenues comprised the majority of [REDACTED]'s income in 2010, the Claims Administrator determined that [REDACTED]'s primary business activity under Policy 480, v. 2, was real estate credit. The appropriate NAICS Code for this primary business activity is 522292 (Real Estate Credit), which specifically includes mortgage companies and real estate credit lending.”

This panelist concludes that [REDACTED] was indeed acting as the lender in the transactions which generated the bulk of its 2010 revenue, at least at the point it conducted the foreclosure sale and offered the properties individually, as the “Lender” was authorized by the mortgage to do, and then bid them one at a time in using the individual credit amounts it decided to allocate out of the total mortgage indebtedness.

Therefore, no error is found in the selection by the SP of NAICS Code 522292 – Real Estate Credit and that Code assignment automatically excludes [REDACTED] from Class Membership under Exhibit 18. Appeal denied.