

# **BACKGROUND PAPER FOR THE BUREAU OF REAL ESTATE APPRAISERS**

**(Joint Oversight Hearing, March 9, 2016, Senate Committee on  
Business, Professions and Economic Development and the Assembly  
Committee on Business and Professions)**

## **IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE BUREAU OF REAL ESTATE APPRAISERS**

### **BRIEF OVERVIEW OF THE BUREAU OF REAL ESTATE APPRAISERS**

#### **History and Function of the Bureau of Real Estate Appraisers**

##### ***Federal Financial Institutions Reform, Recovery and Enforcement Act***

In 1989, Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) was adopted by the United States Congress mandating all states to license and certify real estate appraisers who appraise property for federally related transactions. FIRREA established the Appraisal Subcommittee (ASC) within the Financial Institutions Examinations Council (FFIEC). The ASC provides grants to the Appraisal Foundation (TAF) and oversees the entity.

TAF is composed of three independent boards: the Appraisal Practices Board (APB) which offers voluntary guidance to appraisers, regulators and users of appraisal services on recognized valuation methods and techniques for all valuation disciplines; the Appraisal Standards Board (ASB) which develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP); and the Appraiser Qualifications Board (AQB) which establishes the minimum education, experience and examination requirements for real property appraisers to obtain a state license or certification through the Real Property Appraiser Qualification Criteria. USPAP is a set of standards for professional appraisal of real estate, personal property, business, and mass appraisal.

Title XI of FIRREA also requires that real estate appraisals used in conjunction with federally related transactions are performed in accordance with USPAP. State certified and licensed real property appraisers are currently required to adhere to USPAP by their respective state appraiser regulatory agencies. Many appraisers are also bound to comply with USPAP through requirements placed on them by their client or intended user.

In response to the federal mandate, the California Legislature enacted the Real Estate Appraisers Licensing and Certification Law (Appraisers Law) in 1990 (AB 527, Chapter 491, Statutes of 1990),

which established the Office of Real Estate Appraisers (OREA), entirely funded by regulatory fees. At that point, OREA had approximately 12 percent of the nation's licensed appraisers.

### ***Home Valuation Code of Conduct***

In the spring of 2009, New York Attorney General Andrew Cuomo, Fannie Mae and Freddie Mac, with support from the Federal Housing Finance Agency, developed a set of appraisal rules called the Home Valuation Code of Conduct (HVCC). HVCC was adopted to isolate parties with a financial interest in a mortgage loan transaction from appraiser selection and retention.

The intent of the HVCC was to enhance the independence and accuracy of the appraisal process, and provide added protections for homebuyers, mortgage investors and the housing market. Any lender that sells a mortgage loan to Fannie Mae or Freddie Mac must adhere to the HVCC.

Due to the increased use of Appraisal Management Companies (AMCs) by lending institutions, a significant result of the HVCC agreement, the California Legislature enacted SB 237 (Calderon, Chapter 173, Statutes of 2009) requiring AMCs, as defined, to register with OREA, and subjects them to the provisions of the Appraisers Law. Effective January 21, 2010, OREA adopted emergency regulations governing the implementation of the registration process.

### ***The Dodd-Frank Wall Street Reform and Consumer Protection Act***

In 2010, Congress enacted The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, P.L. 111-203). Dodd-Frank includes appraiser independence provisions similar to the Home Valuation Code of Conduct and sunsets those provisions. Dodd-Frank required the Federal Reserve to amend the appraisal independence rules in Regulation Z of the Truth in Lending Act. The interim final rule was effective April 1, 2011 and applies to all consumer credit transactions secured by a consumer's principal dwelling.

### ***Governor's Reorganization Plan No. 2***

In 2012, Governor Brown submitted a reorganization plan to the Legislature. As a result, on July 1, 2013, OREA became the Bureau of Real Estate Appraisers (BREA or Bureau) within the Department of Consumer Affairs (DCA).

AB 1317 (Frazier, Chapter 352, Statutes of 2013) enacted the statutory changes necessary to reflect the changes in law made by the Governor's Reorganization Plan No. 2, including moving the former OREA from under the jurisdiction of the former Business, Transportation, and Housing Agency to become a new BREA under DCA within the Business, Consumer Services, and Housing Agency.

BREA, which is entirely funded by licensing fees, is a single program comprised of two core components: licensing and enforcement.

The Licensing Division of the Bureau is responsible for applicant compliance with the minimum requirements for licensure in accordance with criteria established by the federally mandated TAF and

California law. The minimum requirements for licensure are established by the AQB of the TAF. The Licensing Division also registers AMCs in compliance with California law.

The Enforcement Division of the Bureau investigates the background of applicants, licensees, and AMC registrants to ensure they meet the standards for licensure. The Enforcement Division also investigates complaints of violations of the USPAP and ensures that appraisers and registered AMCs adhere to all applicable laws and regulation

The Bureau is also responsible for the accreditation of educational courses and providers for real estate appraisers and currently has more than 800 pre-licensing and continuing education courses approved. In addition to the real estate appraisal related courses offered by California's community colleges and universities, over 70 proprietary schools provide appraisal education.

The Bureau's mission is to:

***Safeguard public trust by promoting professionalism in the real estate appraisal industry through licensing, education, and enforcement.***

James Martin was appointed Director of OREA in July of 2012 by Governor Brown. The Director is mandated to enforce the Appraisers Law. Mr. Martin was reappointed Bureau Chief in July 2013 with the reorganization of the Bureau within the DCA.

The Bureau does not have an advisory committee.

The Bureau is a member of the Association of Appraisal Regulatory Officials (AARO), a national organization whose membership includes approximately 48 states and territories.

### **Fiscal, Fund and Fee Analysis**

A fund condition analysis (provided on the next page) shows that the Bureau has 16.2 months in reserve for FY 2014/2015 and 12.0 months for FY 2015/2016. The Bureau's revenue is closely linked to variations in the real estate market, both statewide and nationally. Swings in supply and demand, interest rates, employment, and the availability of capital all affect the market for real estate appraisal services, and subsequently the number of licensed appraisers.

Loans made from the former OREA to the General Fund include \$1 million in FY 2003/2004, \$2 million in FY 2004/2005, and \$16.6 million in FY 2008/2009. Payments made back to the Bureau include \$5 million in FY 2009/2010 and \$8.1 million in FY 2013/2014, leaving a remaining balance of \$6.5 million which the Bureau expects to receive in FY 2016/2017.

<b>Fund Condition</b>						
(Dollars in Thousands)	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16
Beginning Balance	7,075	6,046	4,130	2,886	9,910	7,625
Revenues and Transfers	3,528	2,927	3,662	12,102	3,097	3,822
<b>Total Revenue</b>	\$3,528	\$2,927	\$3,662	\$4,002	\$3,097	\$
Budget Authority	4,827	4,914	4,971	5,422	5,680	5,651
Expenditures*	4,062	4,831	4,981	5,078	5,470	5,661
Loans to General Fund	0	0	0	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid From General Fund	0			8,100		
<b>Fund Balance</b>	\$6,541	\$4,142	\$2,811	\$9,909	\$7,625	\$5,786
<b>Months in Reserve</b>	16.2	10.0	6.6	21.7	16.2	12.0

The Bureau's budget grew significantly during the real estate boom from 2003 to 2008 and licensing fees were reduced in 2009. Since that time, the population of licensed appraisers in California has declined by nearly 50 percent as market activity declined. Business and Professions Code (BPC) §§ 11400-11409 and Title 10 California Code of Regulations (CCR) §§ 3581-3583 provide authority for fees collected by the Bureau for appraiser licensing and the registration of AMCs.

<b>Fee Schedule and Revenue</b>							
(Revenue Dollars in Thousands)							
Fee	Current Fee Amount	Statutory Limit	FY 2011/12 Revenue	FY 2012/13 Revenue	FY 2013/14 Revenue	FY 2014/15 Revenue	% of Total Revenue
AT Initial/AL Renewal/Any Reciprocal	\$310-\$355		109	512	408	297	17.23%
AL Initial	\$455*	\$450	18	-	7	14	0.51%
AR/AG Initial/AL Late Renewal	\$435-\$510	\$525	44	62	97	132	5.60%
AT Renewal	\$310*	\$450	39	69	66	55	2.96%
AR/AG Renewals & AT Late Renewal	\$435*	\$525	447	2180	1648	84	42.34%
AR/AG Late Renewal	\$560*		1671	99	82	84	4.06%
Upgrades AT to AL	\$210*		51	12	13	11	0.59%
Upgrades AT to AR & AT to AG	\$285*		-	9	15	7	0.54%

Upgrades AL to AR & AR to AG	\$235*		-	37	48	49	2.37%
Reciprocal Residential	\$355*		-	1	-	-	0.00%
DCSS or Other Reinstatement App	\$140		-	-	1	1	0.05%
Dishonored Check Reinstatements	\$25		-	-	-	-	0.00%
AMC App Review/Registration	\$1,750		255	206	259	184	10.83%
AMC Controlling Person App	\$80 each		24	5	3	3	0.15%
AMC Misc Changes	\$20			3	1	1	0.05%
Temp Practice Permits	\$80			20	22	20	1.03%
Non Taxable Sales Sale of State Registry	\$55		2	-	1	1	0.05%
One Year Subscription - CA Registry Full List	\$600		-	--	1	-	0.02%
Petition for Equivalency	\$45 each		58	3	2	2	0.10%
Misc Changes & Dup Licenses & Lic History	\$20 each		15	24	10	8	0.44%
Course Provider Acc App New/Renew	\$300		64	5	6	6	0.29%
BE Course Accreditation	\$500		3	48	16	14	0.73%
BE USPAP Course Accreditation	\$250		-	-	2	43	1.10%
CE Course Accreditation	\$200		-	-	34	3	0.90%
CE USPAP Course Accreditation	\$100		-	-	4	-	0.10%
Miscellaneous	Variable		1	11	-	-	0.00%
Penalty Assessments (Fines)	Variable		127	236	148	83	5.65%
Penalty Assessments - Cost of Enforcement	Variable		-	110	60	9	1.69%
Penalty Assessments - Monitoring Costs	Variable		-	8	14	12	0.64%

\* Inclusive of additional fees including application review, background check, child support check, federal registry fee, state registry fee, and license issuance.

During the past fiscal year, the Bureau’s enforcement program accounted for 47 percent of the Bureau’s expenditures, the administration program accounted for 29 percent, and the licensing program accounted for 17 percent. The Bureau’s pro rata costs to the DCA accounted for 7 percent of the Bureau’s expenditures.

<b>Expenditures by Program Component</b> (list dollars in thousands)								
(Dollars in Thousands)	FY 2011/12		FY 2012/13		FY 2013/14		FY 2014/15	
	Personnel Services	OE&E						
Licensing	483	338	453	293	609	295	643	301
Examination	-	-	-	-	-	-	-	-
Enforcement	1249	1281	1305	1231	1462	1066	1607	987
Administration*	927	564	962	586	937	393	1113	462
DCA Pro Rata	-	-	-	228	-	300	-	361
<b>TOTALS</b>	<b>\$2,659</b>	<b>\$2,183</b>	<b>\$2,720</b>	<b>\$2,338</b>	<b>\$3,008</b>	<b>\$2,053</b>	<b>\$3,363</b>	<b>\$2,111</b>

### **Staffing Levels**

The Bureau reports that it does not currently have any staffing challenges. The Bureau has established a goal for organizational effectiveness in its Strategic Plan and as such, the Bureau has a plan for succession of longtime staff when they leave, focusing on recruitment and retention. Goal 4 of the Strategic plan specifically states, “The Bureau standard is to build an excellent organization through proper Bureau governance, effective leadership, and responsible management, with a focus on retention and succession planning.” The Bureau implements promotional opportunities within the organization, staff cross-training and often rotates or expands staff duties as needed to ensure maximum utilization of its staff.

In terms of training, the Bureau utilizes DCA’s Strategic Organizational Leadership and Individual Development (SOLID) which provide staff training to boost analytical skills, computer and software skills and supervision. The Bureau also utilizes the specialized investigator training provided and paid for by the ASC. BREa also works to ensure that its investigators maintain current knowledge about the industry.

### **Licensing**

The license renewal cycle is two years, with a four-year cycle for continuing education. Title 10 CCR § 3570 provides a 90-day time frame within which licensing applications must be processed, ensuring that the Bureau provides applicants written notice of whether their application is complete or deficient within 90 days. The Bureau is also expected to approve or deny a license within 90 days of receipt of a Request for Issuance form, which indicates that all requirements for licensure have been met, including a background investigation and passage of the licensing examination. The Bureau is currently meeting these requirements and does not have any licensing backlogs, due in large part to the capability to process renewals online.

The Bureau issues approximately 360 new licenses and approximately 5,800 license renewals annually, across four license types: trainee (AT), residential (AL), certified residential (AR), and

certified general (AG). Each license has a limited scope except for the “certified general” license type. If a licensee has a license other than the AG and meets the requirements for a higher level license, they can upgrade their license through an application to the Bureau. License upgrade applications have averaged 260 annually over the last four years. The Bureau issues approximately 125 new AMC registrations annually and approximately 86 AMC renewals annually.

<b>Licensee Population</b>					
		FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
AT	Active	1339	864	791	786
	Out-of-State	N/A	N/A	N/A	N/A
	Out-of-Country				
	Delinquent				
AL	Active	2732	2108	1851	1673
	Out-of-State	4	1	9	3
	Out-of-Country				
	Delinquent				
AR	Active	6412	6222	6036	6015
	Out-of-State	24	17	50	43
	Out-of-Country				
	Delinquent				
AG	Active	3439	3374	3290	3264
	Out-of-State	12	9	112	101
	Out-of-Country				
	Delinquent				

Per Title XI of FIRREA (1989), and amended by the Dodd-Frank Act, the Bureau offers reciprocity when an appraiser has a valid home state credential from a compliant state whose credentialing requirements meet or exceed those of California at the time of application. Licenses are issued without additional examination, but the licensing fee is still required. Applicants are required to submit documentation of their current license and a letter of license history. Out-of-country applicants must meet the initial licensing requirements required of a new applicant. The Bureau is currently in the process of removing the need for agreements between states for reciprocity that is in its regulations, stemming from a policy statement issued by the federal ASC in 2013. The goal is to ensure that appraisers from other states can receive a California license when qualified.

The Bureau identifies military personnel on applications but does not currently track these applicants. According to the Bureau, it has had one applicant offer military education towards meeting the requirements for licensure whose military education was accepted. Experience and training requirements dictated by the AQB are very specific and can only be met through working in the appraisal profession while under the supervision of a state certified appraiser.

The examination for each license category is a national examination developed by the AQB of the TAF and administered to all license candidates nationwide. The chart below details the amount of applicants who sat for the examination by license type. The chart also highlights the passage rate.

<b>National Examination: California Applicants for National Exam</b>				
License Type		Res/Trainee	Cert Residential	Cert General
Exam Title		National Uniform	Licensing & Cert	Examination
FY 2010/11	# of 1 <sup>st</sup> Time Candidates	198	170	74
	Pass %	55	65	62
FY 2011/12	# of 1 <sup>st</sup> Time Candidates	229	121	45
	Pass %	65	69	87
FY 2012/13	# of 1 <sup>st</sup> Time Candidates	278	112	34
	Pass %	34	71	32
FY 2013/14	# of 1 <sup>st</sup> time Candidates	224	313	61
	Pass %	48	55	67
Date of Last OA		Ongoing	Ongoing	Ongoing
Name of OA Developer		AQB	AQB	AQB
Target OA Date				

For California applicants, the pass rates for first time test takers averaged approximately 60 percent, except for 2013 where the pass rate fell to 44 percent. Retake pass rates averaged just over 40 percent, except for 2013 where the pass rate was only 25 percent. The Bureau notes that this trend is generally consistent with the national pass rates, particularly for lower license levels where applicants with the less education and experience are more impacted by ongoing changes in the exam made by the AQB. BREA states that the reason for the drop in the pass rate in 2013 is unclear, but may have possibly been attributed to increased federal requirements for licensure which in turn led many California licensees to try to upgrade their license type.

Testing for all three licensure categories is computerized. The examinations for all license categories is scheduled and administered at 16 testing sites located throughout the state, at least five times a week.

All applicant types must submit their fingerprints, via Livescan or hardcopy fingerprint cards, for a criminal background check to the Federal Bureau of Investigation (FBI) and Department of Justice (DOJ). The ASC also maintains a National Registry of licensed appraisers that the Bureau uses to check for disciplinary actions against all license applicants, and the Bureau checks the National Registry prior to renewing a license. Depending on the discipline stated on the National Registry, the Bureau may institute disciplinary action against the license or deny the license. Applicants are required to provide certified copies of police reports and/or court documents related to the applicant's record. The Bureau follows up by acquiring an original set of documents directly from the arresting agency or the court of record in cases of significant violations or if incomplete records are submitted by the applicant.

## **Continuing Education**

The term of a California real estate appraiser's license is two years. All licensed appraisers must meet minimum continuing education (CE) requirements before renewing their license. A total of 56 hours of continuing education is required during the four-year CE cycle including the following mandatory courses for all license categories.

- 7-hour National USPAP course-required every two years.
- 4-hour Bureau approved course entitled "Federal and State Laws and Regulations" is required every four years. This 4-hour course is an addition since the last sunset review (BPC § 11360(a)).

In practical terms, this requires a renewal of the 7-hour USPAP course every two years on its own, and a full CE (56 hours) renewal every four years. Generally the requirement is a full CE 56 hour renewal every other two year cycle, with a reduced 7 hour CE renewal cycle in between.

CE courses or seminars must cover appraisal related topics including subjects such as land use planning, appraisal computer applications, cost estimating, and green building appraisals.

Bureau staff reviews each completion certificate for course name and approval number, number of hours, method of instruction, completion date, and a penalty of perjury statement with signature of instructor/verifier. As such, subsequent audit of licensee continuing education is not necessary.

Failure to submit required evidence of continuing education results in denial of the application so there are no licensees who failed to complete their continuing education. There are approximately 15 fails a year, accounting for less than one percent of renewals.

The Bureau began conducting audits on CE providers in February 2016. Through the use of investigators sitting in on a CE class and by reaching out to licensees about their experience with a particular CE provider, the Bureau believes it has strengthened its role in monitoring CE providers. The Bureau also requires CE providers to resubmit an entirely new application every four years. During the four-year accreditation period, course providers must notify the Bureau of any material change to the education offering, ownership or operating policies.

## **Enforcement**

The primary program goal for enforcement by BRE is timely, effective, and consistent processing of complaints in a manner that is equitable and well-documented. ASC Policy Statement 7 requires resolution of complaints filed against appraisers within one year of the complaint filing date. The Bureau reports that, in the majority of cases, the Bureau is meeting these expectations. However, there are a small number of very complex multiple property cases that do not meet the Bureau's one year timeline. To improve performance, the Bureau is employing multiple measures including, increasing the frequency of, and attendance at settlement conferences, seeking the earliest possible hearing date, and working with investigators to reduce investigation time.

The volume of complaints increases and decreases with significant changes in market trends, lending volumes, and property values. These variations in complaint volume are very difficult to quantify due to the many market variations and factors that drive home values up or down, sometimes over a relatively short time period. A surge or reduction in complaints may seem reversed or counter intuitive due to the delay in the timing of the complaint when compared to the actual transaction and the market's ability to recognize the outcome of appraisal reports that may be a few years old. During the real estate boom from 2003 to 2007, complaints were down in volume, but during the downturn from 2008 to 2012, complaints increased by approximately 40 percent. The Bureau continually works to improve any potential barriers by maintaining an adequate number of qualified enforcement staff, working with the Office of the Attorney General to ensure better understanding of technical appraisal issues, ensuring a timely draft of pleadings and request earliest hearing date, and requesting settlement conferences on cases not requiring a mandatory conference.

The Bureau has established prioritization for its enforcement activity. First priority cases are those where the subject of the new complaint is presently the object of another investigation already in progress, pending disposition, or complaints that provide evidence of systematic fraud or other danger to the public. In general, the extent to which a complaint demonstrates a threat to the public, such as fraud and forgery, elevates the priority. Cases are otherwise investigated in the order received.

BPC § 11318 requires a licensed real estate appraiser to notify the Bureau, within 30 days, of an indictment or conviction charging a felony against a licensee or any disciplinary action taken by another licensing entity or authority in California, other state, or by a federal agency. At the federal level, there are also mandatory reporting requirements. 15 United States Code Annotated § 1639e (e) requires any mortgage lender, mortgage broker, mortgage banker, real estate broker, AMC or employee thereof, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the USPAP, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency. The Bureau has not had any issues in receiving these reports.

Cite and fine authority is the most common disciplinary action taken by the Bureau, encompassing over 80 percent of disciplinary outcomes. Citations are typically used for violations that do not involve fraud, gross ethical abuses or significant lack of competency. The most common violations found in citations include erroneous reporting of a property characteristic and inappropriate use of comparable sales data.

The most common violations yielding a citation relate to Standard Rule 1 and 2 of the USPAP. USPAP is a document that sets forth the minimum standards used in the industry and are imbedded in both federal and state law. The purpose of USPAP is to establish requirements for appraisers that promote a high level of public protection and result in appraisal services that are meaningful and not misleading.

BPC § 11315(d) allows maximum fines of \$10,000 per violation. However BREA notes that citation fines typically range from \$500 to \$3,000.

The Bureau includes a request for costs in every accusation and statement of issues. The Bureau has improved investigator declarations needed in order for the court to award cost recovery. These improvements include a more detailed documentation of the investigator's time in order to recover the full amount of time expended bringing a case to hearing. The Bureau also prohibits licensees who owe costs from renewing their licenses until the amount is paid (BPC § 11409(c)(2)).

All cases seeking revocation seek cost recovery. Surrenders are very rare, but when accepted by the Bureau they are usually conditional on payment of cost recovery. Most cases settle, and the Bureau and respondent typically agree to have respondent pay a monetary amount in addition to any probationary terms that may be applicable. Typically, the amount is negotiated as a fine, not cost recovery, because respondents are more willing to accept paying a fine rather than cost recovery. The amount varies from case to case, but it usually is from \$2,000 to \$5,000. Cases that do not settle and go to hearing usually contain an order for partial or full cost recovery. The amount of recovery for cases that go to hearing varies greatly from a few thousand to tens of thousands of dollars depending on the complexity and length of the hearing. The Bureau currently has nine cost awards totaling \$86,000 that have not been paid in the Franchise Tax Board collection process, three of those within the last two years. The Franchise Tax Board collection order runs indefinitely so it is unknown which cost awards are uncollectable. The Bureau does not seek cost recovery for citations because the respondents are ordered to pay a fine.

### **Unlicensed Activity and the Underground Economy**

BPC § 11320 states in part: "no person shall engage in a federally related real estate appraisal activity governed by this part or assume or use the title of or any title designation or abbreviation as a licensed appraiser in this state without first obtaining a license as defined in Section 11302." Lenders are required by Title XI of FIRREA to ensure that appraisals are performed by licensed appraisers, with the appropriate license level, when the loan is a federally related transaction. In the rare case that a complaint is received regarding unlicensed activity, the case is investigated and may be resolved with a citation, a cease and desist letter, and/or referral to the district attorney's office.

California is not a mandatory licensure state. This means individuals can appraise property without a license as long as the property they appraise is not involved in federally related real estate appraisal activity. Of the subset of appraisers who are required to be licensed, those involved in federally related real estate appraisal activity, there are a couple factors that prevent unlicensed individuals from practicing without a license. Lenders who facilitate federally related real estate appraisal activity ensure the appraisers are licensed in order for the transaction to comply with federal law. Also, practicing without a license subjects an appraiser to criminal action and Bureau citation. As a result, the Bureau receives very few complaints for unlicensed activity. Additionally, the market usually prefers licensed appraisers. Based on the reasons above, the Bureau does not believe there is an underground economy, as it relates to real estate appraising.

## PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

This is the first review of BREA. The former OREA was reviewed in 2011, at which time 25 issues were raised. Below are actions which have been taken over the last four years to address a number of these. In November 2015, the Bureau submitted its required sunset report to these Committees. In the report, the Bureau described actions it has taken since its prior review to address the recommendations of the Committees. For those which were not addressed and which may still be of concern, they are addressed and more fully discussed under “Current Sunset Review Issues.” Items completed or pending based on recommendations from the Committees include the following:

- **ISSUE #1: The OREA should report to the Committees on its progress in updating its Strategic Plan.**

*According to the Bureau, a new Strategic Plan was completed in July 2014.*

- **ISSUE #2: Should the Real Estate Appraisers' Licensing and Certification Law be amended to clarify that protection of the public is the highest priority of the OREA?**

*BPC § 11310.1 was added through SB 706 (Price, Chapter 712, Statutes of 2011) to make this change.*

- **ISSUE #3: Should the Office of Real Estate Appraisers be established as a regulatory board with a public member majority composed of members appointed by the Governor and the Legislature?**

*As result of the implementation of the Governor's Reorganization Plan 2 in 2013, the Bureau operates under the oversight of the Bureau Chief, who, in consultation with the Director of DCA and the Governor, is responsible for administering the Bureau's licensing, education and enforcement programs. Since its inception in 1989 the program has operated as a non-board entity where the Chief is appointed by the Governor, subject to confirmation by the Senate, with consideration of qualifications that demonstrate knowledge of the appraisal profession. The Bureau asserts that it maintains open communication with the public and licensees while maintaining the efficiencies of a bureau. The Bureau highlights its public outreach efforts and available avenues for members of the public to provide feedback and outline concerns.*

- **ISSUE #4: Should the Office of Real Estate Appraisers be consolidated with the Department of Real Estate?**

*The implementation of the Governor's Reorganization Plan No. 2 resulted in the Office of Real Estate Appraisers becoming the Bureau of Real Estate Appraisers within the DCA. According to the Bureau, this change provides the efficiencies and administrative support that might have been gained in a consolidation with the former Department of Real Estate while also maintaining the Bureau's independence consistent with the federal mandate.*

- **ISSUE #5: The OREA's information technology systems are woefully out of date and are unable to provide the types of information that is appropriate and necessary for the administration of a state licensing and regulatory agency.**

*The Bureau launched the REALE application in the summer of 2012.*

- **ISSUE #6: The number of licensed real estate appraisers has decreased in recent years. What adjustments has OREA made because of this decrease in those which it licenses?**

*Changes in market supply and demand, interest rates, employment, and the availability of capital all affect the demand for real estate appraisal services and subsequently the number of licensed appraisers. Since the 2008 market downturn, the number of licensed appraisers in California has dropped by approximately 50 percent and is still declining. The national population of licensed appraisers has had a similar drop and California still has approximately 12 percent of all licensed appraisers in the country. As a special fund program the Bureau's revenue is closely linked to variations in the real estate market, both statewide and nationally. In 2009 license fees were reduced due to the significant revenue growth resulting from the population increase from 2003-2007.*

- **ISSUE #7: The OREA should relate to the Committees its early observations of the new AMC registration requirement. Are the new rules accomplishing what was intended? What are the challenges that still face OREA in implementing these new requirements?**

*The AMC registration requirement provided a good foundation for AMC regulation. However, in June 2015, several federal agencies issued joint regulations on AMCs. Among these changes are new definitions for what an AMC is and what services they provide; a national reporting and fee collection responsibility for states; and requirements for states to monitor AMCs as they meet new requirements such as appraiser competence and independence rules. The Bureau must meet or exceed these new regulations by June 2018. The Bureau is currently evaluating the changes that likely need to be made in order to meet and exceed the new federal regulations.*

- **ISSUE #8: Are there improvements that could be made to the current continuing education program?**

*SB 706 (Price, Chapter 712, Statutes of 2011) addressed this issue by requiring completion of a California laws and regulations CE course every four, rather than two, years. The Bureau is working on regulations to require licensees to pass an examination as part of this course.*

- **ISSUE #9: A recent Compliance Review found that 71 percent of complaints took more than 1 year to complete.**

*In a 2012 ASC review, the Bureau had 259 outstanding complaints, 83 of which were unresolved for more than one year without special documented circumstances. Of those, 72 were at various stages of the disciplinary process and only 11 were still at the Bureau pending investigation. The 2014 review found 134 outstanding complaints, 16 of which were unresolved*

*for more than one year without special documented circumstances. Of those, 15 were in various stages of the disciplinary process, with only one still at the Bureau pending investigation.*

*The Enforcement Division significantly reduced the number of older cases. Since the 2012 ASC review the Bureau has hired two more investigators, took full advantage of the Appraiser Regulatory Agency Investigator Training, and reduced the enforcement case backlog. Additionally, the permanent filling of the Chief of Enforcement position together with devoting more in-house legal resources to enforcement has advanced effectiveness and efficiency in the enforcement program.*

- **ISSUE #10: Should the OREA disclose the status of every license, including suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the OREA or by the department of another state or jurisdiction?**

*SB 706 (Price, Chapter 712, Statutes of 2011) addressed this concern by requiring the Bureau to publish the status of every license and registration including accusations, suspensions, and revocations on the internet. The Bureau has complied with this new requirement and has been posting all accusations, suspensions, and revocations. Additionally, when reviewing a license online, the Bureau's website displays the name, license number, company, phone address, license level, license status, license history, effective dates of the license and any action that has been taken against that licensee.*

- **ISSUE #11: Does the OREA have the authority to recover reasonable costs for probation monitoring for a licensee who is placed on probation by an administrative law judge?**

*The Bureau has begun the internal regulatory review process to establish disciplinary guidelines. These guidelines will provide authority to recover reasonable costs of probation monitoring for a licensee who is placed on probation, or issued a restricted license by administrative law judge or through a stipulated settlement.*

- **ISSUE #12: Should OREA be authorized to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts?**

*The Bureau agrees it should be authorized to enter into a contract with a collection agency to recover outstanding fees, fines, or cost recovery amounts. The Bureau has explored entering into such agreements, but has encountered legal issues with sharing social security numbers. While the Bureau cannot work with collection agencies, it does utilize Franchise Tax Board intercepts which help recover any outstanding monies.*

- **ISSUE #13: The OREA should clarify the nature of its current authority to enter into a stipulated settlement, and if necessary, this provision should be amended to authorize OREA to enter into a settlement agreement with a licensee, or applicant, prior to OREA's issuance of an accusation against the licensee or statement of issues against an applicant.**

*BPC § 11315.5 states that the Bureau may, at any time the Chief deems it to be in the public interest, enter into a settlement of any administrative allegation of violation upon any terms and conditions as the Chief deems appropriate. This provision allows the Bureau to enter into a stipulated settlement prior to issuance of an accusation or statement of issues against a licensee or applicant.*

- **ISSUE #14: Should an OREA license be automatically suspended while the licensee is incarcerated?**

*SB 706 addressed this concern by granting OREA this authority.*

- **ISSUE #15: Should there be a prohibition of Gag Clauses in Civil Dispute Settlement Agreements?**

*AB 2570 (Hill, Chapter 561, Statutes of 2012) added BPC § 143.5 addressed this issue by prohibiting a licensee of any board, bureau, or program under DCA from using or allowing the use of confidentiality agreements, or “gag clauses,” in settlement agreements.*

- **ISSUE #16: Should the failure to cooperate with an OREA investigation by a licensee be unprofessional conduct thereby making the license subject to disciplinary action?**

*Currently, if a licensee or registrant fails to provide documents to the Bureau as required by BPC §§ 11328 or 11328.1, the licensee/registrant is subject to discipline. The Bureau does not believe a statutory change is necessary.*

- **ISSUE #17: Should OREA licensees be required to report to the OREA upon arrest, conviction or upon any disciplinary action taken against the licensed person by another state or federal regulatory agency?**

*SB 706 addressed this issue but the Bureau has recommendations explored in Issue #9 below to further enhance these important efforts.*

- **ISSUE #18: Should OREA be authorized to hire a certain number of investigators with the authority and status of peace officers?**

*The Bureau now receives law enforcement expertise and sworn investigators from the DCA Division of Investigation.*

- **ISSUE #19: Should court clerks be required to report to OREA when a judgment is entered against an OREA licensee for a crime or personal injury, or when a felony charge is filed against an OREA licensee?**

*The Bureau did not take a position on this proposal.*

- **ISSUE #20: Does OREA have adequate authority to suspend a license when necessary to protect the public?**

*The Bureau has the authority to issue an interim suspension order (ISO), as well as a process to evaluate all complaints to determine which, if any, qualify for an interim suspension order. The Bureau has been successful in using this authority.*

- **ISSUE #21: Should the OREA utilize the authority under Section 23 of the Penal Code to request that a judge in a criminal case suspend or restrict a licensee?**

*The Bureau has established a screening procedure to determine what, if any, arrests warrant a Penal Code § 23 action. Subsequent arrest notifications are reviewed daily to determine if any arrest demonstrates a threat to the public. Arrests for fraud or other deceitful conduct, violent crimes, and all felony arrests are brought to the Chief of Enforcement and who determines whether to bring a Penal Code § 23 action.*

- **ISSUE #22: Should an independent enforcement program monitor be appointed to investigate and evaluate the OREA's enforcement program?**

*Given the ASC oversight and audit authority, the Bureau agrees that additional enforcement monitoring is not necessary.*

- **ISSUE #23: Are there improvements the OREA can make to enhance its internet capabilities?**

*The Bureau accepts complaints online via a webpage link entitled "File a Complaint Online." The law allows a complaint to be filed by anyone, and this service is available online to any member of the public, homeowner, lender, borrower, investor, appraiser, or other stakeholder.*

- **ISSUE #24: Is the OREA adequately funded to cover its administrative, licensing and enforcement costs and to effectively carry out its enforcement program?**

*The Bureau has a healthy reserve of 16.2 months projected for Fiscal Year 2014/2015 and 12.0 months for Fiscal Year 2015/2016.*

- **ISSUE #25: Does the OREA have adequate resources to fully implement its mandates including the new requirements to register AMCs?**

*The addition of two investigators and the implementation of REALE have improved the balance of workload to resources at the Bureau. The implementation of the new federal requirements for AMCs is the next project and given current workload trends the Bureau expects this new AMC project to be absorbable.*

# CURRENT SUNSET REVIEW ISSUES FOR THE BUREAU OF REAL ESTATE APPRAISERS

The following are unresolved issues pertaining to the Bureau, or those which were not previously addressed, and other areas of concern for the Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions (Committees) to consider, along with background information concerning the particular issue. There are also recommendations the Committees' staff have made regarding particular issues or problem areas which need to be addressed. The Bureau and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

## ADMINISTRATIVE ISSUES

### **ISSUE #1: (STRATEGIC PLAN) Is the BREa able to meet the goals and objectives of its Five Year Strategic Plan developed in 2014?**

**Background:** The BREa's most current Strategic Plan was updated in 2014. The five-year Strategic Plan is the culmination of the collective efforts of BREa employees, managers and supervisors, and executive staff. Extensive surveys were conducted to help identify current challenges, such as addressing the aftermath of a global real estate meltdown, and future needs, such as ensuring the Bureau has a dynamic, educated and connected workforce. BREa must respond not only to a changing regulatory climate but also to real estate market conditions and trends which impact program processes and workload. The plan aims to position the Bureau to be flexible and excel in a leadership role protecting the public and consumers of appraisal services in California and nationwide.

The Strategic Plan outlines the following five strategic goals for the Bureau:

1) Licensing and Registration

*The Bureau promotes licensing standards for licensees and registration standards for AMCs to protect consumers and allow reasonable access to the profession.*

2) Enforcement

*The Bureau protects the safety of consumers through the enforcement of the laws and regulations governing the practice of licensed Real Estate Appraisers and registered AMCs*

3) Laws and Regulations

*The Bureau pursues statutes, regulations, policies, and procedures to strengthen and support the Bureau's mandate and mission.*

4) Organization Effectiveness

*The Bureau standard is to build an excellent organization through proper Bureau governance, effective leadership, and responsible management, with a focus on retention and succession planning.*

5) Communication, Customer Service, Outreach

*The Bureau informs consumers, licensees, and stakeholders about the practice and regulation of the profession, while ensuring responsive customer service.*

Despite BREAs initiative to develop a strategic plan, the 2015 Sunset Report lacks any update on whether or not the Bureau has met or plans to meet any of these goals.

In light of the recent and future changes to the Bureau's regulatory and licensing responsibilities and with the current staffing and resource levels of the BREAs, does the BREAs believe that it is able to meet all of its strategic goals and objectives by 2018?

**Staff Recommendation:** *The BREAs should report to the Committees on the status of meeting its strategic goals developed and implemented two years ago. Particularly related to Goal 4 in the plan related to organizational effectiveness, the Bureau should advise if it has any remaining staff vacancies and how long positions have been vacant.*

**ISSUE #2: (PUBLIC INTERACTION WITH THE BUREAU) Should a Real Estate Appraiser Advisory Committee be established with a public member majority to advise the Bureau Chief and give policy input to the BREAs, the Administration, and the Legislature?**

**Background:** Since its establishment in 1990, the BREAs has been a licensing and regulatory program first within the Business, Transportation and Housing Agency as an Office and now as a Bureau within DCA. The BREAs operates under the oversight of a Bureau Chief who, in consultation with the Governor and the Director of DCA, is responsible for administering the licensing and certification for real estate appraisers.

At this point, the Bureau only maintains a webpage with information and links to all consumer and licensee material. The Bureau also posts and emails a quarterly newsletter containing articles, statistics, and updates, as well as a list of enforcement actions taken during the previous three months.

An advisory committee that consistently meets in a public capacity, subject to the notice requirements of the open meeting laws, is a valuable forum for input from the public, including consumers and consumer interest groups, licensee discussions, and issues raised by public members of the committee. In addition, such a committee could enhance the transparency of BREAs.

In carrying out its role and responsibilities, it would seem as if an advisory committee could be an effective forum to better inform BREAs, the Administration, and the Legislature on future policy decisions which need to be made for the future of the appraisal profession in California. This

especially seems to be true in light of the complex issues that have arisen in the previous financial meltdown and home mortgage crisis.

**Staff Recommendation:** *BREA should detail its efforts to provide a consistent forum for input from the public and from licensees. BREA should further advise the Committees as to whether an advisory committee should be established with a public member majority to advise the Chief and give policy input to BREA, the Administration, and the Legislature.*

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**ISSUE #3: (BREA INFORMATION TECHNOLOGY) BREA has its own system to support its regulatory activities. How does the DCA support the Bureau's system?**

**Background:** In 2009, staff subject matter experts of the former OREA, working with a dedicated information technology team, began development of a customized web based enterprise information system known as the Real Estate Appraiser Licensing and Enforcement (REALE) system. This comprehensive system includes tools and the ability to produce reports aimed at improving the efficiency and effectiveness of regulation by the Bureau. The REALE system handles licensing, enforcement, and tracking the completion of continuing education.

In 2012-2013, further implementation and enhancement of the REALE database yielded new efficiencies and services including on-line license renewal and temporary practice permits, automated education verification, and real-time reporting between the California Appraisers License Registry and the federal ASC Registry. These improvements significantly reduced license renewal turnaround time and increased consumer protection as California is the only state in the nation offering immediate verification of their credential holders at the national level.

The Bureau is not participating in the development of the DCA's BreEZe system and there are currently no plans to transition to BreEZe. Prior to becoming part of the Department, the Bureau developed REALE.

**Staff Recommendation:** *BREA should report on continued efforts to enhance REALE and support it receives from the DCA for this system.*

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**ISSUE #4: (RELATIONSHIP WITH DCA FOLLOWING THE 2012 REORGANIZATION AND TRANSFER TO THE DCA) Has DCA provided adequate resources and management to BREA?**

**Background:** On July 1, 2013, the Office of Real Estate Appraisers became the California Bureau of Real Estate Appraisers under DCA, following the approval of Governor Brown's Reorganization Plan. The Governor's plan, without objection by the legislature, cut the number of state agencies from 12 to 10 and eliminated or consolidated dozens of departments and entities.

Since the reorganization, it appears that DCA has not consistently provided HR resources and management to BREA. For example, purchase orders, IT orders, contract payments, and

miscellaneous human resources requests have all been skipped or not processed at some time since the OREA has been a Bureau at the DCA.

With similar reports from other DCA entities, DCA and BREa should both discuss the transition from Office to Bureau and how DCA can better meet BREa needs. Given DCA's apparent inconsistency in management, BREa and DCA should jointly explain how to increase efficiency.

**Staff Recommendation:** *BREa should update the Committees as to whether DCA's functions and role have improved. Additionally, BREa should compare its functionality as a Bureau to when it was an Office.*

## **BUDGET ISSUES**

### **ISSUE #5: (PRO RATA) What services does BREa receive for its share of pro rata?**

**Background:** Through its various divisions, DCA provides centralized administrative services to all boards and bureaus. Most of these services are funded through a pro rata calculation that is based on "position counts" and charged to each board or bureau for services provided by personnel, including budget, contract, legislative analysis, cashiering, training, legal, information technology, and complaint mediation. DCA reports that it calculates the pro rata share based on position allocation, licensing and enforcement record counts, call center volume, complaints and correspondence, interagency agreement, and other distributions. In 2014, DCA provided information to the Assembly Business, Professions and Consumer Protection Committee, in which the Director of DCA reported that "the majority of [DCA's] costs are paid for by the programs based upon their specific usage of these services." DCA does not break out the cost of their individual services (cashiering, facility management, call center volume, etc.).

BREa reports that it utilizes DCA for a minimum number of administrative functions, including human resources and the Department's centralized call center. The Bureau has its own internal legal counsel and completely separate IT system as outlined above. While it appears that the DCA provides assistance to BREa, it is unclear how the rates are calculated and charged to the Bureau. Additionally, the question arises as to whether the amount charged equates to the amount of services used by the Bureau.

During the past fiscal year, the Bureau's enforcement program accounted for 47 percent of the Bureau's expenditures, the administration program accounted for 29 percent, and the licensing program accounted for 17 percent. The Bureau's pro rata costs accounted for 7 percent of the Bureau's expenditures. The following lists the breakdown, by year, of the amount of money BREa paid to DCA for pro rata:

FY 2013/2014: \$300,000 dollars  
FY 2014/2015: \$361,000 dollars  
FY 2015/2016: \$460,000 dollars  
FY 2016/2017: \$500,000 dollars

BREA reports that it is currently authorized for 33.8 authorized positions. Pro Rata represents 8 percent of the Bureau's allocated budget for FY 2016/2017.

Since BREA functions mostly as an independent entity, BREA should explain why pro rata charges almost doubled since FY 2013/2014.

**Staff Recommendation:** *BREA should advise the Committees for the basis upon which pro rata is calculated, and the methodology for determining what services it receives from DCA. DCA should also explain to the Committees why BREA's pro-rata has almost doubled since FY 2013/2014.*

## **EDUCATION ISSUES**

### **ISSUE #6: (LICENSEE EDUCATION) Are there improvements that could be made to the licensee education program?**

**Background:** Prior to licensure, applicants are not required take a course or pass an exam to show fluency in federal and state laws and regulations. Only upon renewal of the licensure must real estate appraisers demonstrate their knowledge of federal and state laws and regulations.

Real estate appraiser licenses must be renewed every two years. However, there are two separate CE requirements in order to renew a license. All licensed appraisers must meet minimum CE requirements before renewing their license. A total of 56 hours of CE is required during the four-year continuing education cycle including the following mandatory courses for all license categories.

- 7-hour National USPAP course-required every two years.
- 4-hour Bureau approved course entitled "Federal and State Laws and Regulations"- required every four years. This 4-hour course is an addition since the last sunset review (BPC § 11360(a)).

In practical terms, this requires a renewal of the 7-hour USPAP course every two years on its own, and a full CE (56 hours) renewal every four years. Generally the requirement is a full CE 56 hour renewal every other two year cycle, with a reduced 7 hour CE renewal cycle in between.

To ensure adequate public protection and curtail unnecessary complaint investigations, licensees should be required to initially demonstrate their knowledge of the federal and state laws regulating the appraisal profession. The most effective way to accomplish this would be to require licensees, prior to licensure, to pass a short, multiple-choice examination that would include questions regarding federal and state laws and regulations.

Additionally, to keep courses up-to-date, the Bureau proposes a requirement that the California laws and regulations course must be approved by the Bureau every two years. By amending the Appraisal Law, BREA believes it would be able to provide proper oversight of CE courses and ensure that current licensees are tested and fluent in California laws and regulations course.

**Staff Recommendation:** *BREA should inform the Committees on the process, the cost, and the feasibility of requiring applicants to have taken a course in state and federal regulations prior to licensure, rather than the current requirement that licensee complete this education only upon renewal of their license. The Bureau should discuss whether this process involves hand-scoring or whether a computer-based technology is available. Additionally, since both federal and state laws change often, the Committees may wish to amend the Appraisal Law so that BREA can provide oversight to CE courses that test for fluency in California laws and regulations.*

## **LICENSING AND ENFORCEMENT ISSUES**

**ISSUE #7: (LIMITED ENGLISH PROFICIENT APPLICANTS) What can BREA do to improve access to licensing materials and exams for limited English proficient (LEP) applicants?**

**Background:** Throughout BREA’s 2015 Sunset Report, there is no reference of efforts it takes to ensure its services are available to California’s LEP population.

According to information from the United States Census Report in 2011, 43 percent of Californians, or more than 15 million residents, reported that they spoke a language other than English at home. While BREA’s mission is mainly to protect consumers, it also has a responsibility to its licensing population to ensure that current licensees and potential licensees are able to obtain the appropriate instruction and training necessary to meet California's safety standards, while expanding employment and business opportunities for individuals throughout the State. BREA has the highest licensing population of appraisers in the United States. Given the large licensing population, BREA needs to ensure its diverse population obtains access to the appropriate education and, upon completion of a BREA-approved curriculum, is able to pass the required licensing examinations. It would be beneficial for BREA to also focus its efforts with schools and examination providers to better understand the issues presented to LEP test takers to ensure that testing problems do not hinder an applicant's ability for licensure.

Also, it is important to note that other states, like New York, have translated many application forms into other languages as a means of ensuring that candidates can enter the profession regardless of the language they are most comfortable speaking. What is BREA doing to improve its services so that all groups may apply for licensure?

**Staff Recommendation:** *BREA should explain to the Committees its outreach efforts to LEP consumers and applicants. The Bureau should explain steps it is taking to ensure outreach to LEP interested parties, including consumers and licensees.*

**ISSUE # 8: (DECREASE IN LICENSEE POPULATION) The number of licensed real estate appraisers has steadily decreased. What adjustments has BREA made because of the decrease in licensee population?**

**Background:** BREA currently licenses four levels of appraiser licensees: trainee, residential, certified residential and certified general. Each level of licensure is distinguished by an increasing level of education, experience, and scope of practice (the type, value level of the appraisal, and the level of

supervision which they must operate under). When a licensed person wishes to move to up to a higher level of licensure, he or she must meet the qualifications and apply to “upgrade” the license to a higher license classification.

In FY 2006/07, there were approximately 20,000 licensees under the OREA. In FY 2009/10 that number fell to just over 14,500 licensees – a drop of some 5,500 licensees, a 27 percent overall reduction in licensing population. As of February 2016, the Bureau reports it has 11,500 licensees. It appears that this drop in the number of licensees is due largely to the housing meltdown.

Has BREA seen the need to lower its staffing levels? Is there any need for any changes to its licensing program because of this decrease? How can the Bureau sustain a healthy licensee population?

***Staff Recommendation:*** *BREA should explain to the Committees the impact of the drop in the number of licensees upon its operations, including the impact upon revenues and licensing staff, and any efforts made by the BREA to redirect staff to other areas of BREA’s regulatory programs. Additionally, given the shrinking licensee population, does the Bureau plan on requesting a fee increase to sustain its regulatory functions? Has this drop in the number of licensees impacted California consumers? If so, how?*

**ISSUE # 9: (REPORTING REQUIREMENTS) Should BREA licensees be required to report to the BREA upon arrest?**

**Background:** Other than subsequent arrest records provided to BREA from DOJ, there is no requirement by local officials or organizations, or other professionals, or for civil courts to report actions taken against a licensee. However, mandatory self-reporting requirements of violations of the Appraisers Law are set forth in BPC §11318.

BPC § 11318 requires a licensed real estate appraiser to notify the Bureau, within 30 days, of an indictment or conviction charging a felony against a licensee or any disciplinary action taken by another licensing entity or authority in California, other state, or by a federal agency.

In 2011, SB 706 (Price, Chapter 712, Statutes of 2011) amended BPC § 11318 to require the information recommended by the Committees. The Bureau advised that it believes it needs to take additional steps to receive this important information and has provided two options for consideration. The first option is to amend BPC § 11318 to require licensees to provide the Bureau documents related to an arrest within 30 days of an arrest. Currently, licensees are only required to notify the Bureau of felony charges or any conviction. However, the criminal process can be slow and these notification markers can be months or even years from the act that caused an arrest. Furthermore, the Bureau is notified of all arrests via subsequent arrest notifications and then requests the licensee provide information related to the arrest. However, there is no obligation for a licensee to respond to the Bureau's letter. Therefore, the Bureau proposes to require licensees provide notification within 30 days of an arrest. The second option is to add a new section specifying that, similar to provisions of other programs under the DCA, the failure of, or refusal by, a licensee to respond to a written request from a representative of the Bureau, is grounds for enforcement action. Currently, the Bureau does not have authority to discipline a licensee for failure to respond to a request for information and this puts the

public at risk, particularly when it concerns the investigation of criminal action. By providing the Bureau with this authority, the public will be provided with enhanced protections when the Bureau takes enforcement action against licensees who refuse to cooperate.

**Staff Recommendation:** *The Appraisers Law should be amended to ensure that BREA licensees submit a report to the Bureau when arrested.*

**ISSUE # 10: (REPORTING REQUIREMENTS) Should court clerks be required to report to BREA when a judgment is entered against a BREA licensee for a crime or personal injury, or when a felony charge is filed against a BREA licensee?**

**Background:** When a judgment is entered against a licensee, or when a licensee is charged with a felony, it is important for the BREA to be notified so that it can take action against a licensee if the circumstances of the judgment or charge warrant disciplinary action. This is basic information that should be reported by the clerk of the court to the BREA. Similar provisions already apply to a number of regulatory boards under DCA, such as the Medical Board, Physician Assistant Board, and Podiatric Medicine Board (BPC § 803.5).

**Staff Recommendation:** *The law should be amended to require that the clerk of the court provide notice to BREA, if there is a judgment for a crime committed in excess of \$30,000, for which the licensee is responsible due to negligence, error or omission in practice, or his or her rendering unauthorized professional services. The law should further be amended to require the clerk of the court to report any filings of charges of a felony against a real estate appraiser to the BREA.*

**ISSUE # 11: (FORCES INFLUENCING VALUE) What is the Bureau doing to maintain independence and lawful relationships between loan officers, AMCs, and appraisers?**

**Background:** The licensed or certified appraiser, by reason of professional training, experience, and ethics is responsible for furnishing clients with an objective third party opinion of value, arrived at without pressures or prejudices from the parties involved with the property, such as an owner or lender. The appraiser has a heavy personal and professional responsibility to be correct and accurate in opinions of value. Otherwise, the appraiser's clients may easily suffer loss as well as the appraiser's professional reputation.

By attempting to isolate parties with a financial interest in mortgage loan transactions, the federal government mandated that AMCs be used for federally related transactions after June 2018. However, California has been regulating AMCs since 2009. An AMC works with lenders and appraisers to facilitate the ordering, tracking, quality control and delivery of appraisal reports. AMCs have been in existence since the 1960s, but in limited numbers when compared to today.

In 2009, New York Attorney General Andrew Cuomo, Fannie Mae and Freddie Mac, with support from the Federal Housing Finance Agency, developed a set of appraisal rules called the HVCC. The rules were developed to isolate parties with a financial interest in a mortgage loan transaction from appraiser selection and retention. Although no longer in force, HVCC influenced the Appraiser

Independence rules now found in The Dodd-Frank Act. As a result, AMCs have proliferated as many lenders use their services in order to provide strict adherence to the Dodd-Frank Act, Truth in Lending Act, and Interagency Guidelines.

Critics have expressed concern that the widespread use of AMCs pushes smaller independent appraisers out of business. Concern has also been expressed that instead of offering a buffer between lenders or financial intuitions and the appraiser, AMCs have instead exerted pressure and control on appraisers to meet the performance standards of the AMC. Additionally, critics underscore that the potential for undue influence has simply shifted from lenders to AMCs.

Since AMCs are largely used today, it would be helpful to receive input from the BREA and interested parties about whether the AMC registration requirements are achieving the intended purposes of helping to maintain the independence of real estate appraisers.

***Staff Recommendation:*** *BREA should explain to the Committees any observations of the AMC registration requirement. Are the rules accomplishing what was intended? How will the new rules published by the Federal Registrar affect BREA’s regulatory functions? Have there been complaints that AMCs exercise undue dominance over appraisers? Is there a possibility of kickbacks or gifts between AMCs and lenders? Are appraisers forced out of the profession because of harsh and cheap practices of AMCs?*

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**ISSUE # 12: (STANDARDS OF CONDUCT) Should appraisers be able to use any standard of valuation practice for use in conducting non-federally related transactions?**

**Background:** In 2015, legislation was proposed dealing with the standards of conduct and performance for appraisals of non-federally related transactions. Specifically, AB 624 (Wilk) would have dictated that USPAP constitutes the minimum standard of conduct and performance for federally related transactions related to real estate appraisal activity; added any nationally or internationally recognized valuation standard that is approved by the Bureau to the definition in the Appraisal Law for a standard of valuation practice; defined non- federally related transactions to mean the act or process of making or performing an appraisal on real estate or real property for any purpose other than a federally related transaction; and authorized licensed appraisers to use *any* standard of valuation practice approved by BREA, as defined, when conducting any non- federally related transactions, so long as this is disclosed to and agreed upon by the client. The bill would have clarified that if a standard other than USPAP was used for an appraisal, the provisions of USPAP relating to ethics, competency, recordkeeping and scope of work must still be complied with.

There are several international valuation standards currently promulgated by other leading appraiser institutions around the world. The Royal Institute of Chartered Surveyors (RICS) produces the “Red Book” of appraisal standards; that institution’s mandatory rules and best practice guidance for those performing asset valuations. Canada also has a version of standards modeled after USPAP, which is called the Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP). The other major valuation standard utilized today is the International Valuation Standard (IVS), created by the International Valuation Standards Committee (IVSC). The IVSC includes diverse members in 51

countries and appraisal organizations (including TAF and RICS) that work to develop international technical and ethical standards for valuation practices.

Currently, there is no single set of global standards for conducting appraisal services. However, a press release by the IVSC and TAF in June 2015 announced, “the two organizations are working together to harmonize any remaining differences between the IVS and USPAP.” The press release further stated that the two organizations will produce a “bridge document” to reconcile the two standards; appraisers using this “bridge document” will be able to develop appraisals that are compliant with both IVS and USPAP. Although this is an important first step in creating a global appraisal standard, the timeline for this “bridge document’s” release is unknown. This new memorandum is the follow up to the “Madison Agreement” by the IVSC and TAF in 2006, in which both organizations had also agreed to work toward reconciliation of IVS and USPAP standards.

It is important to note that one of the twelve most frequently asked questions involving enforcement on the Bureau's website is whether a licensee may voluntarily "suspend" his or her license to perform non-USPAP appraisals. According to the Bureau’s website, one of the most common reasons a licensee wishes to wish to suspend or terminate their license is the desire to produce non-USPAP appraisals for real estate brokers or for tax appeal purposes, which are considered non- federally related transactions appraisal services. However, there is currently no provision for permitting such a suspension of licensure prior to the license expiration, and the Bureau regulations require every holder of an appraiser license to conform to and observe USPAP at all times, regardless of the type of transaction.

Since USPAP has been the single standard used by appraisers in California for all appraisal services, there is a specified curriculum that is required for complete competency in using this appraisal standard. Currently, all four appraiser license levels are required to complete 15 hours of USPAP training of initial licensing. For subsequent renewals, licensees are required to take 14 hours of CE USPAP courses every two year. However, it should be noted that the Bureau currently does not have other qualified education requirements for other valuation standard practices to ensure competency and compliance by appraiser licensees to the same extent that it does for USPAP. Licensees are able to take elective courses to learn about other valuation standards, but these courses are not part of the required curriculum by the Bureau and licensees are not tested to show any level of competence in their use.

It would be helpful for the Committees to better understand the specific cases in which a non-federally related transaction would require a different standard other than USPAP. It would also be helpful for the Committees to better understand if such a change would be necessary and if there is another standard that appraisers may be using for non-federally related transactions.

**Staff Recommendation:** *BREA should inform the Committees if a broadening of the list of appropriate standards is necessary to complete non-federally related transactions. What would be the impact to the profession and the BREA if other standards besides USPAP were utilized for non-federally related transactions?*

## **FEDERAL COMPLIANCE ISSUES**

### **ISSUE # 13: (FEDERAL OVERSIGHT) Has BREA corrected the issues raised by the Appraisal Subcommittee's 2014 Compliance Review?**

**Background:** ASC staff conducted a Compliance Review (Review) of the California appraiser regulatory program (Program) on October 6-10, 2014, to determine the Program's compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

The ASC considered the preliminary results of the Review and the State's response to those results. The Program was awarded an ASC Finding of "Good." The ASC identified the following areas of non-compliance:

- States must have a policy for issuing a reciprocal credential to an appraiser from another State under the conditions specified in Title XI; and
- States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date in the absence of special documented circumstances.

Given the upcoming October 2016 Compliance Review, BREA should explain to the Committees whether all non-compliance areas have been corrected and, if not, how the Bureau plans on correcting the issues before the Review.

**Staff Recommendation:** *BREA should update the Committees on correcting ASC's noted non-compliance areas. If these issues are still unresolved, how does the Bureau plan on correcting them prior to the October 2016 review?*

### **ISSUE # 14: (FEDERAL-STATE CONSISTENCY) Has the Bureau analyzed where California Appraisers' Law complies with federal regulations and where it needs to be updated?**

**Background:** The final rule to implement the minimum requirements in the *Dodd-Frank Wall Street Reform and Consumer Protection Act* for the registration and supervision of AMCs were released in April 2015. These are federal minimum requirements including a rule to guide both the lending institutions and state appraisal regulatory agencies. An AMC is an entity that meets the statutory appraiser panel threshold size and provides certain types of appraisal management services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations.

States have 36 months to implement statutes and regulations to comply with the new requirements. Review and comparison of existing AMC law in California (BPC § 11343–11346) with the new federal rule shows that change to California law is needed.

**Staff Recommendation:** *BREA should explain to the Committees what changes need to be made in California law and whether the Bureau has developed any language conforming to these new federal regulations.*

**CONTINUED REGULATION OF THE PROFESSION BY THE BUREAU OF  
REAL ESTATE APPRAISERS**

**ISSUE # 15: (SHOULD THE BUREAU BE CONTINUED?) Should the licensing and regulation of appraisers and AMCs be continued and be regulated by the Bureau?**

**Background:** The welfare of consumers is best protected when there is a well-regulated appraisal profession. BREAA should be continued with the recommendation for further review by the Committees in four years.

This is the Bureau's first Sunset Review since moving under DCA and thus should have the opportunity to address new and existing issues raised within the Bureau as well as from the Committees. The Bureau and Department appear committed to working collaboratively with the Legislature and the Committees to find solutions moving forward in the regulation of this important profession.

**Staff Recommendation:** *Recommend that appraisers and AMCs continue to be regulated by the Bureau in order to protect the interests of licensees and the public, and that the Bureau's operations and the Appraisers Law be reviewed again in four years by the respective policy committees of the Senate and Assembly.*