

**BACKGROUND PAPER FOR THE
OFFICE OF REAL ESTATE APPRAISERS
(Oversight Hearing, March 7, 2011, Senate Committee on
Business, Professions & Economic Development)**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
FOR THE OFFICE OF REAL ESTATE APPRAISERS**

**BRIEF OVERVIEW OF THE
OFFICE OF REAL ESTATE APPRAISERS**

The Office of Real Estate Appraisers (OREA) within the Business, Transportation and Housing Agency (BT&H) is responsible for regulating the practice of real estate appraisers in California, by ensuring that only qualified persons are licensed to conduct appraisals in federally related real estate loan transactions and that all real estate appraisers licensed by the state adhere to applicable laws, regulations, and standards. Originally enacted in 1990, the OREA was established and charged with developing and implementing a real estate appraiser licensing program that complied with the federal mandate established by Congress in 1989 as a result of the savings and loan disaster of the late 1980's. That mandate, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act, requires states to license and certify real estate appraisers who appraise property for federally related transactions.

OREA currently licenses more than 13,800 licensed appraisers in California, with some 200 new licenses issued and 6,000 licenses renewed in FY 2009/2010. There are four levels of appraiser licensees: appraiser trainee (AT); appraiser licensee (AL); certified residential (AR); and certified general (AG). Levels of licensure are distinguished by increasing levels of education, experience, and scope of practice (property type, transaction value and supervision level). When a licensee wishes to move to up to a higher level of licensure, they must meet the qualifications and apply to "upgrade" the license to a higher license classification. OREA issued more than 500 license upgrades in FY 2009/2010. To date, OREA has approximately 12 percent of the nation's licensed appraisers.

Beginning January 1, 2010, pursuant to SB 237 (Calderon, Chapter 173, Statutes of 2009), companies which operate as third-party brokers of appraisals between clients and appraisers must be registered and certified by OREA as appraisal management companies (AMCs). To date, OREA has issued approximately 200 certificates of registration to AMCs.

OREA is a single program comprised of two core components, licensing and enforcement. The licensing unit sets the minimum requirements for education and experience, according to criteria set by the federal government and California law, to

ensure that only qualified persons are licensed to conduct appraisals in federally related real estate transactions. Applicants must meet minimum education and experience requirements and successfully complete a nationally approved examination.

The enforcement unit, which operates under a federal mandate, ensures adherence to the federally-required Uniform Standards of Professional Appraisal Practice (USPAP), California law and regulations. Both licensing and enforcement functions are required by the Appraisal Subcommittee (ASC), the federal government organization which is mandated to oversee all state real estate appraiser licensing agencies.

OREA is also responsible for the accreditation of education courses and course providers for real estate appraisers. OREA currently has 102 basic education courses and 1,523 continuing education courses on the approved list.

The OREA is responsible for implementation and enforcement of the Real Estate Appraisers Licensing and Certification Law, as contained within the framework of Division 4 of the Business and Professions Code. The OREA mission statement, as stated on its Internet site www.orea.ca.gov is as follows:

***To protect public safety by ensuring the competency
and integrity of licensed real estate appraisers.***

The Director of the Office of Real Estate Appraisers (Director), who serves as the chief executive of the OREA, is appointed by the Governor, subject to Senate confirmation. The Director is mandated to enforce the Real Estate Appraisers Licensing and Certification Law. The current Director, Bob Clark, was appointed by Governor Arnold Schwarzenegger in April 2008. In appointing the Director, consideration shall be given to the qualifications that demonstrate knowledge of the real estate appraisal profession.

OREA publishes *The California Appraiser Newsletter* to educate its licensees, and several consumer, licensee and applicant guides and handbooks are available on its Internet Website.

As a special fund agency, the revenue necessary to operate OREA is derived from fees charged for real estate appraiser licenses, AMC certifications, education course approval fees and various other fees by OREA.

The total revenues anticipated by the OREA for FY 2010/11, is \$ 3,040,000. The total expenditures anticipated for the OREA for FY 2010/11, is \$ 4,827,000. The OREA anticipates it would have approximately 9 months in reserve for FY 2010/11. Over the past decade, some \$19.6 million in loans to the General Fund from OREA's special fund. In June 2010, \$5 million was repaid to OREA, leaving an outstanding balance on loan of \$14.6 million. The Director oversees a staff of approximately 33 people. OREA is headquartered in Sacramento

In July 2010, the OREA submitted its sunset report to the Business, Professions and Economic Development Committee (BP&ED.) The report was submitted at the

request of former BP&ED Committee Chair Senator Gloria Negrete McLeod. In this report provided in Members' binders, the OREA describes more detailed information regarding the responsibilities, operation and functions.

INITIAL OVERSIGHT REVIEW

This is the initial review of the Office of Real Estate Appraisers by this Committee. BP&ED Committee's jurisdiction includes oversight of the OREA.

OREA exists and operates under the mandate of federal law. In 1989, Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act was adopted by Congress mandating states to license and certify real estate appraisers who appraise property for federally related transactions. The federal law was enacted as a result of the savings and loan disaster of the late 1980's.

In response to the federal mandate, the Real Estate Appraisers Licensing and Certification Law was enacted by the California Legislature in 1990 (AB 527, Chapter 491, Statutes of 1990). The Office of Real Estate Appraisers (OREA) was established and charged with developing and implementing a real estate appraiser licensing program that complied with the federal mandate. To date, OREA has approximately 12 percent of the nation's licensed appraisers.

Both California law and federal regulations (Federal Register Volume 73, No. 147, July 30, 2008, pp. 44522-44614 – Regulation Z, effective October 1, 2009; and SB 223, Machado, Chapter 291, Statutes of 2007) were enacted to help prevent the improper influence of appraisers, and to reduce the chances that appraisers would be pressured to "hit" certain target property values or return pre-determined, unsupported valuations when appraising real property.

The federal Home Valuation Code of Conduct (HVCC) became effective May 1, 2009. It is an agreement between Fannie Mae, Freddie Mac, the Federal Housing Finance Agency (FHFA), and New York State Attorney General Anthony Cuomo.

The intent of the HVCC is 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 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 Real Estate Appraisers Licensing and Certification Law. Effective January 21, 2010, OREA adopted emergency regulations governing the implementation of the registration process.

The HVCC has no force and effect as of December 27, 2010, the effective date of the Federal Reserve Board's interim final regulations, implementing the provisions of the

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), signed into law on July 21, 2010. Fannie Mae and Freddie Mac adopted Appraiser Independence Requirements in October 2010 that replaced the HVCC. The requirements maintain the spirit and intent of the HVCC, and are intended to support the integrity of the appraisal process. The Dodd Frank Act does not directly provide states with the authority to implement its requirements. Rather, state regulatory agencies, including OREA, must adopt and maintain effective laws, regulations and policies aimed at maintaining appraiser independence as consistent with the Act. The Dodd-Frank Act contains appraisal independence measures that are similar to those contained in HVCC and in SB 223 in 2007. In the current Legislative Session, SB 6 (Calderon) was introduced to update California's appraiser law to reflect changes made by the Dodd-Frank Act and the Federal Reserve Board's regulations.

There is some concern with whether the OREA has been taking appropriate disciplinary action against appraisers when necessary. Considering the problems that have existed within this industry and the current mortgage crisis, the OREA should be making a concerted effort to take any necessary action against its licensees who may have played a part in both the mortgage and lending crisis and who may have been involved in unethical activities or violated the law.

CURRENT SUNSET REVIEW ISSUES

The following are issues pertaining to the OREA, and other areas of concern for the Committee to consider along with background information concerning this particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The OREA 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.

ADMINISTRATION ISSUES

ISSUE #1: OREA's strategic plan needs to be updated.

Background: According to OREA staff, OREA's Strategic Plan was last updated in 2004, more than six years ago. The Strategic plan is not formally posted on the OREA Internet site (www.orea.ca.gov). However, the Website does give the mission statement: "To protect public safety by ensuring the competency and integrity of licensed real estate appraisers." A values statement is also posted on the Website: "We believe in: Excellence, Leadership, Loyalty, Integrity, Accountability (http://orea.ca.gov/html/about_us.shtml).

In light of the changes to OREA's regulatory and licensing responsibilities and issues which have been raised at both the federal and state levels because of the current housing and economic crisis, the OREA should make establishing a current strategic plan a clear priority in future months.

It appears that OREA has been unable to adopt a current strategic plan because it has been swamped with a variety of regulatory challenges which has stretched its staff to the limits. OREA staff fully acknowledges that it needs to update the strategic plan.

Staff Recommendation: *The OREA should report to the Committee on its progress in updating its Strategic Plan.*

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?

Background: Consumer protection is the essential purpose of all California's occupational licensing and regulatory agencies. However, in many instances statutory schemes do not establish clearly that protecting consumers is the agency's primary mission. The absence of a clear statutory mandate can lead to inconsistencies in agency policy over time and may also contribute to inaccurate judicial interpretations of the statutes.

According to the Center for Public Interest Law (CPIL) which has monitored the activities of many regulatory boards and bureaus for nearly 30 years, the role and purpose of the regulatory and licensing agencies is clearly public protection.

Nearly a decade ago, the Legislature enacted AB 269 (Correa, Chapter 107, Statutes of 2002) to state specifically in each respective licensing act that protection of the public is the highest priority for each board, bureau, committee, and commission regulated under the Department of Consumer Affairs (DCA) within the Business and Professions Code in exercising licensing, regulatory, and disciplinary functions.

Prior to that time, very few of the enabling acts of DCA regulatory agencies actually stated that protection of the public was their purpose. The consumer protection role of regulatory agencies is not always apparent to consumers, courts that are reviewing agency actions, and the agencies themselves. In 1990, the Legislature enacted SB 2375 (Presley, Chapter 1597, Statutes of 1990) which established within the B&P Code for the Medical Board and its affiliated agencies the articulated priority that consumer protection must outweigh other conflicting interests in all agency activities -- licensing, regulation and enforcement.

Under current law, Section 11314 of the B&P Code, OREA is mandated to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest. Even though OREA has the responsibility to regulate the real estate appraisal profession, it would appear important to clarify that the highest priority of OREA is to protect the public.

Staff Recommendation: *Section 11310.1 should be added to the Business and Professions Code, to provide, "Protection of the public shall be the highest priority for the Office of Real Estate Appraisers in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is*

inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

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?

Since its establishment in 1990, the OREA has been a licensing and regulatory program within the Business, Transportation and Housing Agency (BT&H). The OREA operates under the oversight of a Director who, in consultation with the Governor and the Secretary of BT&H, is responsible for administering the licensing and certification for real estate appraisers.

A board that consistently meets in a public capacity, and is 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 board. In addition, such a board enhances the transparency of the business of the state in setting policies and licensing and regulating a profession.

In carrying out its role and responsibilities, it would seem as if an appointed board made up of real estate appraiser licensees, and members of the public, and that has a public member majority, could be an effective forum to better inform the Secretary of BT&H, the Governor, and the Legislature on policy decisions which are made for the future of the real estate appraiser profession in California. This especially seems to be true in light of the complex issues that have arisen in the wake of the recent financial meltdown and home mortgage crisis.

Staff Recommendation: *The OREA should detail its efforts to provide a consistent forum for input from the public and from licensees, and OREA should further advise the Committee as to its assessment of whether a state regulatory board would meet the requirements of the federal law mandating the licensing and regulation of real estate appraisers. The Committee should give consideration to establishing OREA as an independent board of Real Estate Appraisers appointed by the Governor and the Legislature, composed of licensed real estate appraisers and members of the public to prevent any influence of the real estate industry and having a public member majority.*

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

Background: In 2009, AB 33 (Nava) proposed to consolidate the OREA with the DRE. The bill also proposed to make a number of other changes, including: reorganizing the Department of Financial Institutions and Department of Corporations as divisions of a new Department of Financial Services, and establishing a new license to regulate mortgage brokers. During the legislative process, the provisions of the bill unrelated to the consolidation of OREA and DRE became problematic and AB 33 was eventually amended and changed to another subject.

According to some who are familiar with the history of OREA's creation, California originally planned on creating OREA as an independent division of DRE. Placement of the Appraisal Law in the Business and Professions Code, in code sections that begin where the Real Estate Law ends, is one reflection of those original plans. However, a last-minute decision resulted in the creation of OREA as a separate body in 1990 when the Real Estate Appraisers Licensing and Certification Laws were enacted (AB 527, Chapter 491, Statutes of 1990).

There have been periodic attempts to merge OREA with other regulatory agencies including, SB 1866 (Figueroa) from 2002, a vetoed bill that would have folded OREA into the Department of Corporations, and the Governor's 2005 California Performance Review, which recommended consolidating the OREA and the DRE in a Division of Real Estate Licensing in a new Commerce and Consumer Protection Department.

OREA's Independence is a federal mandate. Although FIRREA provides that recommendations of the ASC are nonbinding on the states, the federal law also gives the ASC power to "disapprove" a state's appraiser regulatory scheme if the ASC determines that a state agency's policies, practices, and procedures are inconsistent with Title XI. If a state's regulator is disapproved, no appraisers, licensed or certified by that state, may provide valuations in federally-related real estate transactions; something which effectively eliminates the profession in any state so disapproved.

ASC Policy Statement 1, sets out ASC's standards regarding the structure and independence of state appraisal regulatory agencies. According to that policy statement, ASC does not impose any particular organizational structure on states. However, the ASC believes, "Ideally, States should maintain totally independent State agencies answerable only to the governor or a cabinet level official who has no regulatory responsibility for real estate licensing/certification, promotion, development or financing functions ('realty related activities') A State, however, may choose to locate its state agency within an existing regulatory body. Any State with its appraiser regulatory function in a department that regulates realty related activities must ensure that adequate safeguards exist to protect the independence of the appraiser regulatory function."

In August 2004, the ASC sent a letter to Governor Schwarzenegger in response to a proposal in the CPR to transfer OREA from BT&H to a new Department of Commerce and Consumer Protection, under an Undersecretary for Real Estate, who would also supervise DRE. In that letter, the ASC reminded the Governor that the organizational structure of any state agency that oversees the state appraisers' regulatory body must provide maximum insulation for that regulatory body from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the agency's decisions. The ASC concluded by stating, "The ASC strongly urges that State agency decisions, especially those relating to license or certificate issuance, revocation and disciplinary actions, not be made by State officials who are also responsible for realty related activities. State officials should accept and implement the actions of the appraiser board unless they are inconsistent with the public interest and trust. Additionally, such State agency decisions should be final administrative actions subject only to appropriate judicial review."

For these reasons, any consolidation of OREA with DRE must maintain OREA's ability to issue and revoke licenses and act as the sole administrative (non-judicial) arbiter of disciplinary actions involving appraiser licensees. OREA is a relatively small regulatory agency. It relies upon DRE for some services including, hosting of some IT services (in support of OREA's IT staff), personnel services, and until two years ago, DRE provided budget services for OREA.

Staff Recommendation: *The Office of Real Estate Appraisers should be consolidated as a part of the DRE. In drafting the consolidation legislation, firewalls should be established to ensure that OREA maintains its independence to issue and revoke licenses. Consideration should be made to creating an independent board of Real Estate Appraisers under DRE to prevent any influence of the real estate industry but allow this board to seek resources from DRE as needed.*

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.

Background: The report submitted by OREA and discussions with OREA staff all confirm that the OREA's information systems and data base programs are inadequate to administer a licensing and regulatory program in this state. The staff has indicated that OREA uses Filemaker Pro, a cross-platform relational database application, as its primary data base program. It is inadequate to carry out the types of functions that are needed in a governmental regulatory program. In completing its report to the Committee, several answers indicate that OREA was unable to provide the information requested because the database simply did not track the information. For example, the enforcement statistics on the table on Page 7, of the OREA's Report are reported as "estimates" because the data base does not track the information.

OREA indicates that it recently concluded an internal review of its information technology and that it is now in the process of working with an outside consultant and the DRE to develop a data base processing system similar to DRE's robust Enterprise Information System (EIS). Because of DRE's EIS, OREA will not have to "reinvent the wheel" and it is anticipated that the replacement of the existing data base process will be completed within existing resources.

Since OREA is required by federal law to maintain a firewall between OREA and DRE, the confidentiality, integrity, and security of OREA's information assets, as well as, simplifying and improving operational efficiencies are the key drivers behind this new system.

OREA staff has further indicated that the current anticipated timeframe for implementation of the new database is early in 2012. OREA further states that there are several phases in implementing the new system, not all of which have been fully evaluated as they relate to the needs of OREA; however, OREA anticipates an approximate total cost of \$600,000 to \$700,000 to implement a much more robust database built on the DRE EIS system concept.

OREA states that the new database will be interactive between each listed item. Additional tracking will include such items as performance measurement of licensing and enforcement staff, reporting on applicant basic education and continuing education submittals, coordination of education providers with licensee course completion, improved statistical tracking and reports and improved interface with the federal Appraisal Subcommittee's National Registry. Improving the interaction with the National Registry will significantly improve the reporting of disciplinary action on the national level, according to OREA.

Staff Recommendation: *The OREA should continue its progress of developing a data base processing system similar to and based upon DRE's Enterprise Information System, and report to the Committee on its progress in implementing the new system.*

LICENSING AND PRACTICE ISSUES

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?

Background: OREA currently licenses four levels of appraiser licensees: appraiser trainee (AT); appraiser licensee (AL); certified residential (AR); and certified general (AG). 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% overall reduction in licensing population. It appears that this drop in the number of licensees is due largely to the housing meltdown. In response to that downturn, and because of the mandatory reporting of unethical/unlawful appraisal practice imposed by the Dodd-Frank Act, OREA staff indicates that it has anticipated an increase in complaints and enforcement activity, and accordingly has reclassified one licensing position to an enforcement position. Committee staff notes that with a 33 member staff and the complexity of the issues under the purview of OREA, it is often necessary for staff duties to assume an interdisciplinary nature.

Has OREA seen the need to reassign any more of its licensing staff in light of the decrease in the number of licensees? Is there any need for any changes to its licensing program because of this decrease?

Staff Recommendation: *The OREA should explain to the Committee 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 OREA to redirect staff to other areas of OREA's regulatory programs.*

ISSUE # 7: Appraisal management company registration issues.

Background: Beginning January 1, 2010, pursuant to SB 237 (Calderon, Chapter 173, Statutes of 2009), companies which operate as third-party brokers of appraisals between clients and appraisers must be registered and certified by OREA as appraisal management companies (AMCs). To date, OREA has issued approximately 200 certificates of registration to AMCs.

The federal Home Valuation Code of Conduct (HVCC) became effective May 1, 2009. It is an agreement between Fannie Mae, Freddie Mac, the Federal Housing Finance Agency (FHFA), and New York State Attorney General Anthony Cuomo.

The intent of the HVCC is 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.

As a result of the HVCC agreement, the California SB 237 to require AMCs to register with OREA, and subjects them to the provisions of the Real Estate Appraisers Licensing and Certification Law. Effective January 21, 2010, OREA adopted emergency regulations governing the implementation of the registration process.

OREA further indicates that as of December 27, 2010, the Home Valuation Code of Conduct (HVCC) no longer has any force and effect. This is the effective date of the Federal Reserve Board's interim final regulations, implementing the provisions of the Dodd-Frank Act, which became law on July 21, 2010. Fannie Mae and Freddie Mac adopted Appraiser Independence Requirements in October 2010 that replaced the HVCC. The requirements maintain the spirit and intent of the HVCC, and are intended to support the integrity of the appraisal process. The Dodd Frank Act does not directly provide states with the authority to implement its requirements. Rather, state regulatory agencies must adopt and maintain effective laws, regulations and policies aimed at maintaining appraiser independence as consistent with the Act. In this Legislative Session SB 6 (Calderon) has been introduced to conform California law to reflect the changes made by the Dodd-Frank Act and the Federal Reserve Board's regulations.

Critics have expressed concern that the widespread use of AMCs will push smaller independent appraisers will be run out of business. Concern has also been expressed that instead of offering a buffer between lenders or financial intuitions and the appraiser, that AMCs will instead exert pressure and control on appraisers to meet the performance standards of the AMC.

At this point OREA believes it is premature to assess the sufficiency of current laws on AMC regulation. An ongoing challenge will be having adequate resources to effectively enforce the statutes and regulations, according to OREA.

Although it is very early in the AMC registration process, it would be helpful to receive input from the OREA and interested parties about whether the new AMC registration requirements are achieving the intended purposes of helping to maintain the independence of real estate appraisers, and whether there might be any new unforeseen consequences of the new requirements.

Staff Recommendation: *The OREA should relate to the Committee 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?*

CONTINUING EDUCATION ISSUES

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

Background: Real estate appraiser licenses must be renewed every two years. However, there are two separate continuing education requirements in order to renew a license.

Every two years, a licensee must complete a 7-hour National Uniform Standards of Professional Appraisal Practice (USPAP) Update Course

Every four years, in addition to the 7-hour USPAP course, a licensee must also complete a 4-hour Federal and State Laws and Regulations course, or instead of completing the 4-hour course, an applicant may submit a signed certification statement that all applicable federal and State Laws and Regulations have been read and understood. The certification in lieu of course completion was added to Business and Professions Code Section 11360 (b) in 1999 by AB 431 (Chapter 974, Statutes of 1999).

It is unclear why there are two different continuing education processes for renewing a license. In discussing this issue with the OREA, the Director stated that given the changes presently occurring in the appraisal, real estate, and mortgage lending professions, it would be prudent to consider an amendment to the statute to require the completion of the laws and regulations course every two years, just as the USPAP update course is required.

In addition, giving licensees the option to submit a signed statement that they have read and understand the applicable federal and state laws may not be adequate consumer protection. Furthermore, the Director questions whether this provision is adequate, and will consider proposing a revision to B&P Code § 11360 (b) and to the CCR § 2011 to require the completion of the 4-hour course every two years. In addition, OREA licensing staff estimates that 75-80% of licensees submit the signed certification instead of submitting evidence of course completion.

OREA further believes that the continuing education provisions should also require the licensee to pass an examination at the completion of the federal and state laws course. OREA also has recommended consideration of updating the continuing education provisions to require approval of the California laws and regulations course every two years, instead of the current requirement for course approval every four years.

Staff Recommendation: *The OREA should pursue changing its regulations to: (1) require completion of the laws and regulations course every two years; (2) no longer allow licensees to submit a statement that they have read and understand the federal and state law; (3) require licensees to pass an examination as a part of the continuing education process; and, (4) require the California laws and regulations course to be approved every two years.*

ENFORCEMENT ISSUES

A number of the enforcement issues and staff recommendations in this section are raised due to concerns about the overall abilities of the Office of Real Estate Appraisers to address enforcement issues in light of the current financial and mortgage crisis. The issues and recommendations are set forth in an effort to give the OREA an array of enforcement tools that are available to other licensing agencies under this Committee's jurisdiction.

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

Background: The federal requirement is for states to resolve all complaints filed against appraisers within one year. The most recent ASC Compliance Review (October 2010) found that OREA had 259 outstanding complaints and 184 of those complaints (71%) were unresolved for more than one year.

The ASC noted that since the previous Compliance Review, OREA had implemented a number of process improvements. The improvements had the pending complaints from 415 to 259, and the complaints that were unresolved for more than 1 year from 235 to 184. The ASC further stated its concern that without sufficient resources, OREA may not be able to investigate and resolve appraiser complaints in a timely manner.

Staff Recommendation: *To give the OREA adequate resources to investigate complaints in a timely manner, the Committee should support OREA efforts to increase staffing resources. OREA should report to the Committee on its progress in reducing complaint resolution timeframes, and any efforts to secure more enforcement staffing resources.*

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?

Background: Currently a number of regulatory boards are required to post 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 board or by the licensing program of another state. OREA currently discloses the status of each license online to the public. B&P Code § 11317 further requires OREA to publish a summary of public disciplinary actions, including resignations while under investigation and the violations upon which these actions are based.

There appears to be no reason why OREA should not be subject to the same basic requirements for disclosure over the Internet that the boards and bureaus under DCA are currently required to disclose to the public. Much of this information is considered as public information, and the disclosure of license status and disciplinary information is an important part of informing and protecting the public.

In responding to Committee staff OREA states that accusations are not posted on OREA's Website; however, they are provided upon request pursuant to the Public Records Act. On its Website, OREA only includes final adjudicated enforcement cases that result in published reprovals. Although an accusation is a serious matter that may result in discipline against an appraisal licensee, to post it on the Website prior to an administrative hearing is considered a violation of the respondent's due process rights.

For some time, this Committee has taken the position that not disclosing disciplinary actions is inconsistent with public protection. The Committee has further urged licensing boards and bureaus to publicly disclose accusations filed against licensees. An accusation is a public record under the Public Records Act (PRA). If a consumer made a PRA request to the OREA about a particular licensee, OREA would have to disclose any pending accusation. An accusation means that the complaint has been fully investigated, the investigation is complete, and the agency believes that there is "clear and convincing evidence" of a violation that merits disciplinary action. An accusation is not a naked complaint. The filing of the accusation is what turns a confidential investigation into a matter of public record. Other regulatory licensing agencies such as the Medical Board of California (MBC) have been publicly disclosing accusations since 1993.

In addition, within the last year, the Director of the Department of Consumer Affairs notified Committee staff that each of its licensing boards, bureaus and commissions now post formal accusations against licensees on the board, bureau or commission's Internet Website.

There is no reason why OREA licensees should not disclose accusations that are already public records. Once the investigation is completed, and accusations are filed, the public must be made aware of the charges against licensees.

Staff Recommendation: *The OREA should inform the Committee more fully about its disclosure policies for enforcement actions, and should discuss its*

belief that publishing accusations on the OREA's website, prior to an administrative hearing, is considered a violation of the respondent's due process rights. The OREA should insure that it discloses the status of every license, and any disciplinary action taken against the licensee, including: formal accusations, suspensions, revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the DRE or by the department of another state or jurisdiction.

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?

Background: It is unclear whether OREA currently has explicit statutory authority to recover the costs associated with probation monitoring for a disciplined licensee that has been placed on probation. A number of regulatory boards under the DCA have explicit statutory authority to recover costs associated with probation monitoring. Such a requirement can be made a term of probation for OREA disciplinary cases without statutory authority in stipulated settlements, but statutory authority would give OREA greater explicit authority, lead to quicker resolution of probation terms, and authorize OREA to refuse to renew the license of a licensee who has not paid probation costs.

Staff Recommendation: *The OREA should clarify to the Committee whether it has the 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. If OREA does not have sufficient statutory authority, the law should be amended to authorize OREA to recover reasonable costs of probation monitoring.*

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

Background: OREA has difficulty collecting fines, especially in cases that involved an unlicensed person or a licensee who has given up their license. According to OREA, there is approximately \$266,000 in outstanding debt due from 67 respondents for invoices dated from November 1999 to December 2009. Seven of these are over \$10,000. These old accounts receivable are either being paid via payment plans or OREA is endeavoring to collect the debt via the accounts receivable process which at times may include the Franchise Tax Board Offset program. OREA staff indicates that when a licensee is revoked, there is really no leverage to force them to pay.

As with all regulatory agencies, at times it can be difficult to collect all administrative fines and fees that are due to the agency. In order to improve effectiveness in the collection of monies owed to OREA, including those for fines or cost recovery, the OREA should be authorized to enter into a contract with a collection agency. Legislation would be needed to allow the OREA the ability to provide the collection agency with social security numbers.

Staff Recommendation: *The OREA should be authorized to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts.*

ISSUE # 13: The authority to enter into stipulated settlements without filing an accusation against a licensee should be clarified.

Background: The Administrative Procedures Act (APA) requires an agency to file an accusation or statement of issues against a licensee before the regulatory agency can reach a stipulated settlement with the licensee. While many licensees will not agree to a stipulated settlement without the pressure of a formal accusation having been filed, in the experience of a number of regulatory agencies there are instances in which a licensee is willing to agree to a stipulated settlement earlier on in the investigation stage of the enforcement process. Licensees may be willing to do this in order to minimize the cost of an administrative hearing, or in order to expedite the resolution of a disciplinary matter. In such cases in which a licensee may be agreeable to the disciplinary action of the OREA, the ability to directly enter into a stipulated settlement would save time and costs for both the licensee and the OREA.

The provision to enter into a stipulated settlement should require the settlement to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. In addition, the provision should also allow a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

Section 11315.5 of the B&P Code authorizes the Director of OREA to enter into a settlement of any administrative allegation of violation at any time the director deems it to be in the public interest. The settlement may include a plan for abatement of the violation or rehabilitation or requalification of the applicant, or licensed appraiser, or unlicensed person. It is unclear whether this gives the Director the authority to enter into an agreement prior to an accusation being filed or at any time after the accusation is filed.

The OREA should clarify whether this current authority to enter into a stipulated settlement applies prior to the filing of a formal accusation, or only after an accusation has been filed.

Staff Recommendation: *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.*

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

Background: Existing law allows physicians and surgeons and podiatrists to be suspended while incarcerated. There is no reason why real estate appraisers should

not be subject to the same requirements regarding suspension of their license if they are convicted of a felony and incarcerated. Automatic license suspension is needed to prevent an appraiser from practicing while in prison or while released pending appeal of a conviction. Years may pass before a convicted licensee's license can be revoked.

Staff Recommendation: *The law should be changed to provide that the license of a licensee shall be suspended automatically if the licensee is incarcerated after the conviction of a felony, regardless of whether the conviction has been appealed. In such cases, the OREA should be required to notify the licensee of the suspension and of his or her right to a specified (due process) hearing.*

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

Background: Currently, physicians and surgeons are prohibited from including gag clauses in civil dispute settlements. AB 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. There is no reason why other licensed professionals such as licensed real estate appraisers and AMCs should not be subject to the same prohibition which would prevent them from including a "gag clause" in a civil settlement and thus prevent OREA from receiving information about a licensee who may have violated the law.

The use of gag clauses in civil settlements with licensed professionals still persists. Gag clauses are sometimes used to intimidate injured victims so they will refuse to testify against a licensee in investigations. Gag clauses can cause delays and thwart a licensing agency's effort to investigate possible cases of misconduct, thereby preventing the agency from performing its most basic function – protection of the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed professionals. California should not allow those who harm consumers to hide their illegal acts from the authority that grants them their license to practice as a professional by the use of gag clauses in civil settlements.

Staff Recommendation: *Statutory changes should be made to prohibit a licensed real estate appraiser or an AMC from including, or permitting to be included, any provision in a civil dispute settlement agreement which would prohibit a person from contacting, cooperating with or filing a complaint with the OREA based on any action arising from the licensee's practice.*

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?

Background: In dealing with other regulatory agencies, often a significant factor preventing the timely completion of investigations is the refusal of some licensees to cooperate with an investigation of the regulatory agency. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to

produce documents or answer questions during interviews. The enactment of a statutory requirement could at times significantly reduce the substantial delays that result from a licensee's failure to cooperate during an OREA investigation.

Staff Recommendation: *The law should be changed to declare that it is unprofessional conduct for a real estate appraiser or a registered AMC to fail to cooperate with an OREA investigation. The provision should also specify that failure by a licensee or registrant to furnish information in a timely manner to the OREA, or cooperate in any disciplinary investigation, constitutes unprofessional conduct.*

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?

Background: According to OREA, license applicants are currently required to disclose criminal violations, prior disciplinary action taken against a professional license, or pending criminal charges.

Current law requires individuals who hold certain professional licenses to notify their licensing board when they are indicted, or charged with a felony or convicted of a felony or misdemeanor. Under the B&P Code, a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine are among those required to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she have been convicted of a felony or misdemeanor. Real estate appraisers should also be required to notify the OREA when they are subject to any such action. This would put the OREA on notice that a licensee may have committed acts which would be cause for disciplinary action by the OREA. With regard to this issue, OREA staff has pointed out that the current law may already make this requirement.

Staff Recommendation: *Real estate appraisers should be required to submit a written report to the OREA for the following reasons: (1) the bringing of an indictment or information charging a felony against the licensee; (2) arrest of the licensee; (3) conviction of the licensee of any felony or misdemeanor; and, (4) any disciplinary action taken by another regulatory agency of this state or of another state or an agency of the federal government.*

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

Background: In certain cases involving criminal offenses, the OREA could pursue investigations more quickly if it were able to hire both sworn peace officers and non-sworn investigators. By hiring sworn peace officers, OREA would have access to a greater number of investigatory tools, such as access to the California Law Enforcement Telecommunications System (CLETS), in order to obtain arrest and criminal record information from other states more readily, and have a greater ability to administer search warrants.

Staff Recommendation: *The OREA should give input to the Committee about whether it should be authorized to hire a certain number of investigators with the authority and status of peace officers.*

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?

Background: When a judgment is entered against a licensee, or when a licensee is charged with a felony, it is important for the OREA 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 OREA. Similar provisions already apply to a number of regulatory boards under DCA.

Staff Recommendation: *The law should be amended to require that the clerk of the court provide notice to OREA, 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 OREA.*

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

Background: In a general provision of the B&P Code which applies to all licensing boards Section 494 authorizes a licensing agency to issue an interim suspension order if a licensee has violated the law and that permitting a licensee to continue to practice would endanger the public health, safety, or welfare.

OREA regulations (Title 10, CCR § 3730), based upon the authority of B&P Code § 494, authorizes OREA to issue an interim suspension order to licensees in specified situations. It is unclear to what extent OREA uses this authority to issue interim suspension orders.

Staff Recommendation: *The OREA should advise the Committee as to what extent it has used the authority to obtain an interim suspension order under CCR § 3730 or B&P Code § 494.*

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?

Background: Penal Code Section 23 can be an effective enforcement tool for state agencies that regulate licensees under the B&P Code. Section 23 authorizes a licensing agency to appear in any criminal proceeding against a licensee “to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public.” These provisions authorize the judge to effectively order that a licensee be suspended from practice, or restricted in how he or she may practice under the license.

From discussions with OREA staff, it appears that OREA has never taken action under PC § 23 to request that a judge in a criminal case suspend or restrict a licensee from practice under their license. It seems that in some cases, OREA could effectively use this process to efficiently take action to suspend a licensee from practice when they are facing criminal charges.

It should be pointed out that OREA cannot take administrative action against a licensee convicted of a crime until the time for appeal of the conviction had passed or the conviction had been upheld on appeal. Those due process provisions still apply. The OREA would still have to wait until after the conviction becomes final to take action to revoke a license for a criminal conviction, however PC § 23 allows the agency to request the criminal judge to suspend the licensee in egregious cases.

Staff Recommendation: *OREA should tell the Committee whether there is any reason that it is unable to take action under Penal Code Section 23, and if there is no reason why it cannot take the action under this section, it should immediately take steps to begin utilizing these provisions.*

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

Background: As described elsewhere in this background paper, significant issues have risen in the last decade which have evolved into a global liquidity crisis and an economic downturn. During that time, home equity eroded rapidly, and the focus of real estate activity shifted dramatically. Higher incidence of fraudulent activity and violations in property sales, including property appraisals have been documented by observers in federal and state governments, by consumers and by the news media. Foreclosures account for nearly half of all property sales in California, and significant criticism has been focused upon mortgage practices.

There is some concern with whether the OREA has been taking appropriate disciplinary action against appraisers when necessary. Considering the problems that have existed within this industry and the current mortgage crisis, the OREA should be making a concerted effort to take any necessary action against its licensees who may

have played a part in both the mortgage and lending crisis and who may have been involved in unethical activities or violated the law.

In recent years, when a significant question has arisen with the enforcement and regulatory activities of various regulatory boards within the Department of Consumer Affairs, this Committee and the former sunset review committee have recommended the appointment of an enforcement monitor. Specifically, enforcement monitors were appointed for the Contractors State License Board, the Medical Board of California, the Dental Board of California, the Bureau of Automotive Repair, and the Bureau for Private Postsecondary and Vocational Education. It has been found that the use of an enforcement monitor has been extremely effective in assisting a regulatory agency in improving the overall efficiency of its disciplinary and enforcement system.

An enforcement monitor is typically charged with investigating and evaluating the agency's discipline system and procedures, making its highest priority the reform and re-engineering, as necessary, of the enforcement program and operations, including the agency's complaint, investigation, accusation, and settlement policies and practices.

The OREA has indicated that the federal ASC monitors the real estate appraiser licensing and certification regulatory program of each state and performs on-site Compliance Reviews of state agency programs. Each Compliance Review assesses every facet of a state's appraiser regulatory program, and places particular emphasis on the state agency's enforcement program. OREA indicates that the ASC conducts Compliance Reviews of its operations each year.

OREA suggests that ASC serves as an ongoing enforcement program monitor, and that it would appear redundant to appoint an enforcement monitor at the state level.

Staff Recommendation: *Since the ASC performs Compliance Reviews of OREA each year, staff is not recommending at this time that a separate enforcement monitor be appointed.*

TECHNOLOGY AND INTERNET USE ISSUES

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

Background: OREA's Website, which is currently being re-designed, offers information to consumers about how to file a complaint with OREA. The Website also provides license and registration status information, as well as information regarding disciplinary actions against licensees and registered companies.

OREA states that in order for a complaint to be properly evaluated, the consumer must provide copies of their other supporting documents relative to the appraisal services, so consumers are not encouraged to file complaints online. OREA requires complaints to be filed in writing by using OREA's complaint form and requires each

complaint to be signed under penalty of perjury. It appears that a primary reason why OREA does not accept complaints online is that documentation almost always must be submitted to substantiate the claims made in the complaint, and that it may be deemed to be impractical for online complaints.

It is noted that the Department of Consumer Affairs licensing boards typically receive complaints filed online against licensees, and have done so for a number of years. A typical online complaint form asks the complainant to list the supporting documents that the consumer can supply relating to the complaint, and then once the online complaint is submitted the complainant is advised that they will be contacted with further instructions on where to send copies of documents supporting the allegations in the complaint.

Staff Recommendation: *OREA should move quickly to begin accepting complaints online. OREA should further report its progress to the Committee by January 1, 2012.*

BUDGET ISSUES

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

Background: The OREA is a self-supporting; a special fund agency that obtains its revenues from licensing and certification fees. Currently, the license renewal fees are set in regulation at a level well below the statutory maximum, as demonstrated in the following table.

DESCRIPTION	CURRENT FEE	STATUTORY LIMIT
Application Review	150	150
Issuance (new and renewal):		
Appraiser Trainee	150	300
Appraiser Licensee	150	300
Certified Residential	200	375
Certified General	200	375
Appraisal Management Companies	1,600	1,600

The total revenues and transfers anticipated by the OREA for FY 2010/11, is \$3,040,000. The total expenditures anticipated for the OREA for FY 2010/11, is \$4,827,000. The OREA anticipates it will have approximately 9 months in reserve for FY 2010/11. Over the past decade, some \$19.6 million in loans to the General Fund from OREA's special fund have been made. In June 2010, \$5 million was repaid to OREA, leaving an outstanding loan balance of \$14.6 million. Current budget projections indicate there will be a need for additional repayment in FY 2013/14 at the latest. The Department of Finance has not communicated a repayment date to OREA.

Staff Recommendation: *The OREA should discuss its fund projections, and whether it will have sufficient funds to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas into the foreseeable future.*

ISSUE # 25: Does the OREA have adequate resources to fully implement its mandates including the new requirements to register appraisal management companies?

Background: As previously described, OREA exists and operates under the mandate of federal law enacted after the savings and loan disaster of the late 1980's, requiring states to license and regulate those who make appraisals for federally funded loans.

In response to the more recent mortgage and financial crisis of the last decade, additional federal mandates such as the Home Valuation Code of Conduct (HVCC) effective May 1, 200 have been initiated. The HVCC was recently succeeded by the Dodd-Frank Act in December of 2010. Together these requirements mandate the additional registration and regulation of appraisal mortgage companies.

Throughout its existence, OREA has struggled with sufficient staffing levels. Currently the OREA has an authorized staff of 33, and there are 3 current vacancies. Only recently the OREA was able to obtain its own in-house legal counsel (one person) for the numerous complexities its enforcement and regulatory operations as well as to serve as liaison to the Office of the Attorney General. Committee staff notes that with the scope and breadth of the OREA's operations, it would not be surprising if 2 or 3 more positions could be justified.

As previously noted, a recent Compliance Review by the federal Appraisal Subcommittee (ASC) found that 71 % of OREA's complaints took more than 1 year to complete. The federal requirement is for states to resolve all complaints filed against appraisers within one year. That Review in October 2010 found that of the 259 outstanding complaints, 184 were unresolved for more than one year.

The ASC noted that since the previous Compliance Review, OREA had implemented a number of process improvements, which had reduced the number of pending complaints from 415 to 259, and had also reduced the number of complaints that were unresolved for more than one year from 235 to 184. The ASC further expressed its concern that without sufficient resources, OREA may not be able to investigate and resolve appraiser complaints in a timely manner in the future.

The ASC additionally pointed out that with the current state hiring freeze, the existing staffing vacancies might not be filled and that workload was additionally impacted by the effects of mandated furloughs. The ASC stated that OREA had recently added the licensing and enforcement of appraisal management companies with no additional staff, and concludes with the concern that while the OREA's operations continue to improve, the reduction of personnel could negatively impact the ability of OREA to comply with its mandates.

Staff Recommendation: *The OREA should identify for the Committee the resource challenges that it faces, and advise the Committee of what staffing levels it believes are necessary to fully implement its mandates.*