

California State Auditor

B U R E A U O F S T A T E A U D I T S

Office of Real Estate Appraisers:

Improvements Are Needed in Complaint Processing, Personnel Practices, and in Some Licensing Procedures



March 1998
97112

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CALIFORNIA STATE AUDITOR

KURT R. SJOBERG
STATE AUDITOR

MARIANNE P. EVASHENK
CHIEF DEPUTY STATE AUDITOR

March 17, 1998

97112

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the Office of Real Estate Appraisers (department). This report concludes that the department has a large backlog of complaints that it has been unable to resolve promptly. Delays in resolving complaints are attributable to staffing decisions and turnover and the department's lack of adherence to internal procedures. In addition, certain of its personnel practices have violated state and federal rules. Finally, the department needs to improve some of its licensing procedures to enhance their effectiveness.

Respectfully submitted,

A handwritten signature in black ink that reads "Kurt R. Sjoberg". The signature is written in a cursive style.

KURTR. SJOBERG
State Auditor

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Summary



Audit Highlights . . .

The Office of Real Estate Appraisers:

- Has a large backlog of complaints that it has been unable to resolve promptly.**
 - Violated certain state policies and procedures pertaining to limited-term appointments and provisions of the Fair Labor Standards Act governing recordkeeping and overtime.**
 - Processes licenses in accordance with established guidelines; however, it needs to improve certain of its licensing procedures to ensure that it subjects the work of all licensed and certified appraisers to review and that deficiencies noted at license test sites are promptly corrected.**
- 

Results in Brief

Some management practices of the Office of Real Estate Appraisers (department) have adversely affected its ability to protect consumers and to fulfill its responsibilities to employees. Currently, it has a large backlog of complaints and is experiencing extraordinary delays in resolving them. These circumstances were partly caused by not establishing an Enforcement Division sooner. Management decisions to staff its Enforcement Division initially with primarily limited-term appointments and to allow positions to remain vacant for long periods also contributed to these circumstances. In addition, personnel decisions, such as making two-year, limited-term appointments without meeting the necessary requirements and failing to maintain adequate records of overtime, may have exposed the State to potential liability.

Further, although the department generally processes license applications in accordance with established guidelines, its policies for reviewing renewals can be improved to ensure that the work of all licensed appraisers meets professional standards. Finally, the department did not promptly address deficiencies upon inspecting some of its licensee testing sites.

The department has two primary functions. One is to ensure the availability of State certified and licensed appraisers to perform real estate appraisals contracted for, or regulated by, the Resolution Trust Corporation or any federal financial institution regulatory agency by licensing qualified appraisers. The department's other function is to investigate complaints of incompetence, fraud, or unethical behavior against licensed and, in some instances, unlicensed appraisers.

Our review disclosed that the department currently has 641 open complaints. It receives approximately 330 complaints annually and takes an average of 1.5 years to close them. We found that in at least 17 cases, the department's delays had caused it to lose jurisdiction over the complaint and, as a result, it failed to protect the public.

We also noted the following specific conditions that contribute to the department's delays:

- Turnover, vacancies, and the department's own delays in filling these vacancies have left the Enforcement Division short-staffed.
- Although the department has established procedures to review and prioritize complaints to determine jurisdiction and severity, it does not adhere to them. Specifically, 18 of the 95 cases that we reviewed were not within the department's jurisdiction, and the department closed only 2 promptly. Further, of the 686 complaints the department received between January 1, 1995, and October 31, 1997, it has not prioritized 228, or 33 percent, and has no plans to do so. If the department does not prioritize cases promptly, it may not be aware of potential risks to the public.
- The department does not always maintain documentation in its complaint files to support investigation procedures. For example, 10 of the 23 cases for which the department stated that it had conducted appraisal reviews lacked evidence to support its statements. In one instance, because it was unable to locate the reviews, it performed them again.
- Because information in the Enforcement Division database is not always accurate or complete, it is not an effective tool for managing complaints.

Additionally, we noted certain personnel practices in the Enforcement Division that did not comply with the State Personnel Board (SPB) rules and the Fair Labor Standards Act (act). Because the department did not meet all of the requirements for two-year, limited-term appointments, it may have denied some of its employees certain rights, privileges, and benefits that would have accrued to them if they were initially appointed as permanent employees. Also, the department does not maintain records of overtime to ensure that staff members are duly compensated, a violation of the act.

In examining the department's licensing program, we discovered that the department generally processes applications in accordance with established guidelines; however, it has no assurance that the work of 31 to 63 percent of its current licensees meets professional standards. Additionally, for two of the three licensee testing sites the department inspected, it did

not promptly report deficiencies to the exam provider nor follow up to make sure the provider promptly corrected these deficiencies.

Recommendations

To improve its current complaint processing and to more effectively and efficiently resolve complaints, the department should take the following actions:

- Develop a method to determine the number of appraisers/investigators needed to meet its current workload and eliminate the backlog. Then, fully staff the Enforcement Division to meet current workload and consider appointing temporary staff or contracting out to eliminate the backlog.
- Review and prioritize all complaints promptly.
- Identify those complaints outside its jurisdiction and recommend other possible courses of action complainants may take. If necessary, promptly forward the complaints to another authority.
- Develop and implement a retraining program to ensure staff maintain documentation, such as checklists, reports, and summaries of investigation activity in the complaint files.
- Continue to identify and correct errors identified in its Enforcement Division database.

To ensure that employees are compensated for their overtime in the future, we recommend that the department maintain accurate attendance records that document overtime hours and compensate its employees in accordance with the act.

We recommend that the SPB review the department's use of limited-term appointments, and determine the extent to which it may have denied its former and current employees rights, benefits, or privileges that would have accrued to them if they were initially appointed as permanent employees.

We recommend that the Department of Personnel Administration—Classification and Compensation Division review the department's overtime practices, and determine the extent to which its former and current employees are entitled to receive compensation for any overtime worked.

To improve its licensing process, the department should:

- Subject the work of all licensed and certified appraisers to periodic review.
- Report the results of licensee testing site inspections to the exam provider within 30 days and follow up with the exam provider 30 days thereafter to determine that corrective action has been taken.

Agency Comments

The Office of Real Estate Appraisers (department) agrees with our recommendations and states its intention to eliminate the complaint backlog by the end of the year. In addition, the department provides some supplemental information about its operations and its view of the conditions that the department has operated under since its inception.

Introduction

Background

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI), requires that real estate appraisals for federally related transactions (FRT) be prepared in accordance with uniform standards by competent individuals whose professional conduct is subject to effective review. Title XI defines an FRT as a transaction that requires the services of an appraiser and is contracted for, or regulated by, the Resolution Trust Corporation (RTC) or any federal financial institution regulatory agency, such as the Board of Governors of the Federal Reserve System or Federal Deposit Insurance Corporations.

In 1990, the Legislature enacted the Real Estate Appraisers' Licensing and Certification Law with the intent of implementing Title XI policy and establishing a state program to license and certify real estate appraisers. As a result, the Office of Real Estate Appraisers (department) was created to ensure the availability of state-certified and licensed appraisers for FRT appraisals and to supervise such appraisers. The department reports directly to the Secretary of the Business, Transportation and Housing Agency.

The Organization of the Department

The department has five divisions: Licensing, Enforcement, Legal, Legislative and External Affairs, and Administration. Their functions are described below.

The Licensing Division ensures that applicants for licenses and certifications meet minimum requirements. The department has established experience and education requirements that meet or exceed those set forth by the Appraisal Qualifications Board of the national Appraisal Foundation (foundation) for its trainee, residential, certified residential, and certified general licenses. Applicants applying for licenses or certificates, other than the trainee license, must have both appraisal experience and classroom training in real estate. Licensed appraisers must also

receive continuing education. This division is responsible for accrediting the course providers and approving the courses fulfilling basic and continuing education requirements.

The Enforcement Division investigates the background and conduct of applicants and licensees as well as complaints against licensees and course providers. When appropriate, it imposes disciplinary sanctions. Licensees must conduct business in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the foundation's Appraisal Standards Board. The division investigates complaints against applicants and licensees concerning unethical or unprofessional behavior and appraisals that do not conform to the USPAP. In addition, the division investigates complaints against unlicensed appraisers when they involve an appraisal for an FRT. If the division determines that complaints against either a licensee or an unlicensed appraiser are not within its jurisdiction, the department has the authority to refer complaints to the appropriate authorities.

The Legal Division represents the department in disciplinary actions against appraisers. It also acts as a liaison for complaints the department refers to local district attorneys or the Attorney General's Office.

The Legislative and External Affairs Division monitors and analyzes relevant state and federal legislation and regulations, responds to legislative and general public inquiries, and represents the department before the Legislature. In addition, the division promotes the value of using state licensed and certified appraisers by publishing newsletters, information booklets, and brochures.

Finally, the Administration Division performs the support functions of the department, including accounting, budgeting, information technology, and personnel.

Reviews Performed by Other Entities

During 1997, other entities reviewed the department's program operations and internal control policies and procedures. Specifically, the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council, the entity responsible for monitoring the requirements established by the states for the certification and licensing of those qualified to perform FRT appraisals, reviewed the department's regulatory program to check whether it enforces Title XI requirements. The scope of the ASC review differed significantly from our audit. Specifically, while the focus of the ASC review was the

department's compliance with laws and regulations, our focus was the department's overall operational efficiency and effectiveness.

Additionally, the department requested the Department of Finance, Office of State Audits and Evaluations (OSAE), to conduct a risk assessment of certain accounting, administrative, and information security controls. The OSAE review was also of limited scope and did not address controls over the operation and performance of the department's licensing and enforcement activities.

A summary of these findings and recommendations, and the department's response to the reviews, is presented in the Appendix.

Scope and Methodology

The Joint Legislative Audit Committee requested the Bureau of State Audits to conduct a comprehensive performance audit of the department.

To understand the responsibilities of the department, we reviewed pertinent federal and state laws and regulations; the ASC Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers; the USPAP; and the examination, experience, and education qualifications set forth by the Appraisal Qualifications Board of the foundation. In addition, we reviewed the department's strategic plan, organization structure, policies, and procedures.

To ensure that there would be minimal duplication of efforts between our review and those of the ASC and the OSAE, we examined their planning documents and final reports.

To assess the efficiency and effectiveness of the department's licensing process, we reviewed and evaluated the department's procedures. We also selected 50 license applications and reviewed them for compliance with the department's regulations and procedures. Finally, we reviewed the department's management of its contract with the national examination provider that administers its licensing examinations.

To determine whether the department investigates complaints efficiently, we randomly selected 29 closed complaints and 30 related cases against the randomly selected appraisers. We reviewed the department's Enforcement Review Committee

recommendations, formerly the Compliance Review Committee (CRC), to see if the department followed through on them. We also analyzed its complaint-closure activity using the Enforcement Division database. Specifically, we calculated the average, minimum, and maximum time it took the department to close cases. We also determined whether the department assigned priority ratings to complaints by reviewing department reports.

To ascertain the department's backlog of complaints, we obtained a listing of all complaints in the Enforcement Division database, including those referred from the Licensing Division, and identified those that were open. Then we calculated the average, minimum, and maximum number of days that these complaints have been open. We randomly selected 14 open complaints and 14 related cases against the randomly selected appraisers and another 8 cases that were brought to our attention by interested parties. We reviewed the priority ratings, any action taken by the department, and the status of these complaints.

To identify and evaluate the department's plans for eliminating its backlog, we interviewed management. In addition, we prepared a workload analysis to determine the number of appraiser/investigators that would allow the department to stay current with its complaints.

To determine whether the department properly accounts for fees collected from applicants and licensees, we tested the internal controls for 25 cash receipts. Our review of the department's internal controls for cash receipts did not reveal material weaknesses.

To calculate the sufficiency of the fees collected to cover the costs of the department's operations, we analyzed its revenues, expenditures, and fund balances for fiscal years 1991-92 to 1996-97.

In addition, to determine the department's staff turnover rate for the period of January 1, 1991, to July 31, 1997, we obtained listings from the State Controller's Office (SCO) of employees appointed, separated, or transferred. We analyzed the data and identified the periods with the highest frequency of separations from state service and transfers to other state agencies. We computed the department's turnover rate using the total number of regular employees transferring to other state agencies or separating from state service in relation to the department's filled positions. Also, using the information provided by the SCO, we surveyed all the department's former employees who left between July 1, 1994, and July 31, 1997.

Further, to assess the department's compliance with the State Personnel Board's rules and procedures for limited-term appointments, we reviewed the applicable rules and procedures, copies of selected employees' reports of appointment and separation, related documents, and the agency's written justification for using limited-term appointments.

Finally, to assess the department's compliance with the Fair Labor Standards Act (act), we reviewed the act, the department's overtime policy, time sheets for all appraiser/investigators in the department's Enforcement Division, and other related documents. In addition, we interviewed management concerning its policies and procedures for overtime.

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Chapter 1

Delays and Inefficiencies Exist in Complaint Processing

Chapter Summary

The Office of Real Estate Appraisers (department) currently has a large backlog of complaints. Although the department is planning to eliminate this backlog, its plan does not fully address the staffing needs required to do so. Delays in resolving complaints are attributable to the department's staffing decisions and turnover, and its lack of adherence to internal procedures. Additionally, the department has not established specific disciplinary guidelines for appraisers who violate regulations and standards. Furthermore, the department has collected reimbursements from appraisers for complaint investigations without proper authority and has been unable to substantiate the calculation of these reimbursements.

A Large Backlog of Complaints Exists in the Enforcement Division


A total of 641 complaints remain unresolved, some for as long as four years.

Between fiscal years 1991-92 and the first half of 1997-98, the department received a total of 1,867 complaints against appraisers. This includes both externally filed complaints and complaints referred from the Licensing Division. However, as of January 6, 1998, 641, or more than one-third of these complaints, remain unresolved, some for as long as four years. Table 1 presents the aging of the open complaints. For example, of the 385 complaints the department received in fiscal year 1993-94, 8 remain open. On average, these 8 complaints have been open for 3.8 years.

The department's backlog of complaints has grown over the past 6.5 fiscal years. According to the department, the backlog resulted because the department did not establish its Enforcement Division until July 1994 and did not begin hiring investigators until February 1995. As a result, it was unable to promptly investigate many of the 952 complaints received up to February 1995.

Table 1

Many Complaints Remain Open for Long Periods

| Fiscal Year Received | Total Complaints Received | Complaints Remaining Open | Average Time Open | Minimum Time Open | Maximum Time Open |
|-----------------------------|----------------------------------|----------------------------------|--------------------------|--------------------------|--------------------------|
| 1991-92 | 52 | 0 | N/A | N/A | N/A |
| 1992-93 | 299 | 0 | N/A | N/A | N/A |
| 1993-94 | 385 | 8 | 3.8 years | 3.5 years | 4.0 years |
| 1994-95 | 337 | 88 | 2.8 years | 2.5 years | 3.5 years |
| 1995-96 | 265 | 155 | 2.0 years | 1.5 years | 2.5 years |
| 1996-97 | 379 | 260 | 11.8 months | 6.4 months | 1.5 years |
| 1997-98* | 150 | 130 | 2.7 months | 7.0 days | 6.0 months |
| Total | 1,867 | 641 | | | |

Source: Enforcement Division database as of January 6, 1998

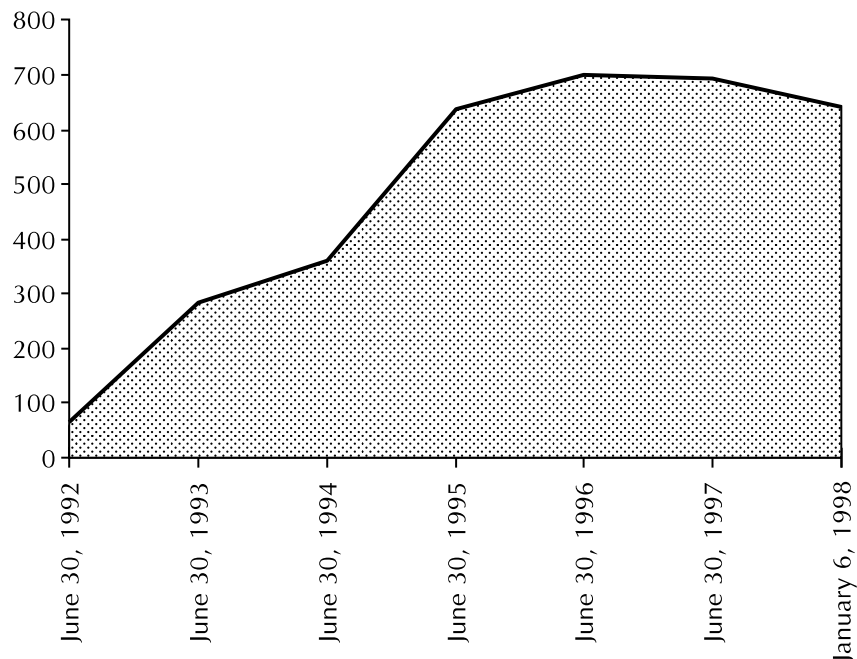
*Fiscal year 1997-98 data is presented from July 1, 1997, to January 6, 1998.

Before staffing the Enforcement Division, the department assigned staff from its other divisions in an attempt to eliminate some of the backlog. By February 1995, these employees closed approximately 400 complaints, most for lack of jurisdiction. The department also attempted to reduce the backlog by contracting with consultants to perform on-site appraisal reviews for some investigations. While the consultants completed reviews for nearly 100 complaints, the department retained responsibility for completing all of its investigations and made the final disciplinary decisions.

The department no longer uses consultants, citing problems with conflicts of interest because consultants often reviewed competitors' work. Additionally, the department stated that the consultants' work did not meet national standards. However, even though the department could have opened complaints against these contractors for substandard work, it did not do so. Thus, we were unable to substantiate the department's claim. Because the department was responsible for ensuring that the consultants' reviews were accurate and met applicable standards before it made final investigative decisions, we do not believe that its reasons for ceasing to contract with consultants for appraisal field reviews outweigh the benefits of their use.

Figure 1 presents the growth of the department's complaint backlog over the last 6.5 fiscal years.

Figure 1
Growth in Complaint Backlog




Source: Enforcement Division database as of January 6, 1998

The department plans to eliminate the backlog by December 31, 1998. This plan focuses on older and public safety cases, and on filling vacant positions. However, the department assumes that only complaints currently older than one year are backlogged. Although, as of January 1998, only 362 complaints fall within this parameter, by December 1998, all 641 open complaints will be over one year old and should be resolved.


Even though the department plans to eliminate the backlog, its plan for doing so is inadequate. Specifically, as we discuss on page 15, the department does not prioritize all complaints and therefore may not be aware of situations involving public safety issues. Additionally, the department has not determined the number of additional staff it needs to hire, stating only that it will hire as many as necessary depending on the number and type of complaints that are open after it tests and interviews applicants.

An adequate plan for eliminating the backlog should address the number of staff required to do so. Therefore, the department should determine, or at best, reasonably estimate,

this number. For example, the department may project the number of appraiser/investigators it needs based on its past performance. Using this method, below we have projected the department's workload abilities based on the number of appraiser/investigators for which it is budgeted.



Unless the department improves its performance or augments its staff on a temporary or contract basis, it will not eliminate the backlog by December 1998.




As of late February 1998, the department has eight appraiser/investigator positions budgeted for its Enforcement Division, of which four are vacant. Should the department fill the four vacancies and train the new employees by April 1998, its past performance indicates that it will only be able to close approximately 371 complaints by December 1998. As a result, at least 270 of the 641 will remain unresolved and will become over one year old by this time. In addition, because the department receives an average of 330 new complaints each year, as we discuss in Chapter 2, there could be as many as 600 complaints open at December 31, 1998. Therefore, even if the department fills its four vacant positions, if it does not also improve its performance or augment its staff on a temporary or contract basis, it will not be able to eliminate the backlog by December 1998.

Departmental Vacancies Contributed to Delays in Resolving Complaints


Once the department began hiring appraiser/investigators in February 1995, it made two-year, limited-term appointments, rather than permanent appointments, for ten employees, as will be discussed in more detail in Chapter 2. Unfortunately, the majority of employees have subsequently separated from state service or transferred to other state agencies, creating vacancies that have contributed to the department's inability to eliminate the backlog and promptly investigate new complaints. Further, employees often left the department before resolving the complaints assigned to them. As a result, the department reassigned the complaints to other investigators who had to first familiarize themselves with the issues before attempting to resolve the cases. Generally, this included re-reviewing the complaints, re-contacting the witnesses, and re-writing the reports. Not only was this process duplicative and inefficient, it delayed complaint resolution. The following example illustrates how vacancies in the Enforcement Division contribute to delays in complaint resolutions.

In December 1994, the department received a complaint against an individual who allegedly prepared a fraudulent appraisal. The department immediately assigned the complaint to an investigator who spent seven months investigating the case with the local district attorney's office. This joint

investigation uncovered a scheme to defraud the mortgage industry and identified four more appraisers, for whom the department opened additional complaints, and two non-appraisers who were also involved. The district attorney's office filed criminal charges against one of the appraisers and against the two non-appraisers and arraigned the three in June 1995.



Investigator turnover caused re-reviewing complaints, re-contacting witnesses, and re-writing reports which is duplicative and inefficient.



Although the investigator had substantially completed the investigation and prepared a report in October 1995, the department did not discipline the five appraisers because of the district attorney's pending criminal proceedings, which ended in August 1996. In September 1996, because the first investigator had transferred to a different agency, another investigator began working on the case. However, the second investigator merely rewrote the initial report, then also transferred to another agency. Ten months passed until a third investigator resumed the investigation.

As of January 1998, the department has revoked the licenses of two of the five appraisers and scheduled an administrative hearing with another. In addition, the department closed its investigations of the remaining two appraisers because their licenses expired.

In addition to the delays caused by employee turnover, the department cites delays due to the district attorney's office criminal proceedings and difficulties in obtaining evidence.

Because the district attorney's office was involved in criminal proceedings, it is reasonable that the department did not proceed on this issue at the same time. However, given the severity of the issue, the department should have promptly reassigned the complaints once the investigators assigned to them transferred to other agencies.

***Delays in Resolving Complaints
Inhibit the Department's Ability
To Protect the Public***

The overall effect of the department's backlog and employee turnover is that the Enforcement Division has been unable to resolve complaints promptly. Although the department closed some complaints within one day, it took more than five years for others. Table 2 displays the average, minimum, and maximum amounts of time it took the department to close complaints it received over the last 6.5 fiscal years. While Table 2 identifies the number of complaints the department closed, it does not reveal when they were closed. For example,

even though the department has closed all 52 complaints that it received in fiscal year 1991-92, it did not do so during 1991-92. As previously mentioned, the department has not closed 641 of its complaints.

Table 2

Many Complaints Are Not Resolved for Years

| Fiscal Year Received | Total Complaints Received | Complaints Closed | Average Time To Close | Minimum Time To Close | Maximum Time To Close |
|-----------------------------|----------------------------------|--------------------------|------------------------------|------------------------------|------------------------------|
| 1991-92 | 52 | 52 | 1.7 years | 28 days | 5.1 years |
| 1992-93 | 299 | 299 | 1.4 years | 12 days | 5.1 years |
| 1993-94 | 385 | 377 | 1.9 years | 1 day | 4.2 years |
| 1994-95 | 337 | 249 | 2.0 years | 2.5 years | 3.4 years |
| 1995-96 | 265 | 110 | 1.2 years* | 1.5 years | 2.4 years |
| 1996-97 | 379 | 119 | 4.8 months* | 6.4 months | 1.4 years |
| 1997-98** | 150 | 20 | 1.8 months* | 7 days | 4.4 months |
| Total | 1,867 | 1,226 | | | |

Source: Enforcement Division database as of January 6, 1998


*Because the department has closed fewer than half of the complaints received in these fiscal years, the averages are substantially less than previous years' averages and can be expected to increase.

**Fiscal year 1997-98 data is presented from July 1, 1997, to January 6, 1998.


By not promptly investigating and resolving complaints, the department cannot proceed with disciplinary actions, thereby allowing some appraisers to remain licensed long after they have committed serious violations. The following case is an example of such an instance.

In September 1994, the department received numerous complaints alleging that an appraiser, whom the department licensed in July 1994, falsified his license application by stating that he had appraisal experience when, in fact, he did not. Despite these allegations, the department did not investigate until July 1995. At this time, the case investigator held a conference call with a witness but transferred to another agency without doing anything more. It took the department nine months to resume the investigation.

In May 1996, the department's subsequent investigator substantiated that the appraiser falsified his application and, in August 1996, the department held a conference to allow him to provide evidence in his own defense. However, it took the department until March 1997, seven months later, to consider



Some appraisers remain licensed long after they have committed serious violations.



the evidence and notify the appraiser of its findings and decision to revoke his license. Furthermore, it took the department another four months to formally accuse the appraiser and notify him that he may request an administrative hearing, which he did. The hearing was originally scheduled for September 1997 but was postponed until December 1997 at the request of both the department and the appraiser. Currently, the appraiser remains licensed pending the hearing, which was again postponed until March 1998, nearly 3.5 years after the department received the initial complaints.

The department states that it did not begin investigating this case when it received the complaints because it had not yet hired or trained investigators. Additionally, it has not revoked the appraiser's license because it cannot do so until after the hearing. Although the department is correct in that it cannot revoke the appraiser's license until after the hearing, its own actions have substantially delayed the process, thus preventing prompt and appropriate disciplinary action.

When the department does not promptly investigate complaints, it not only delays its ability to take disciplinary actions but it also risks losing the ability to do so. In December 1997, the department closed 17 complaints against appraisers because their licenses had expired. However, in all but one instance, the department had received the complaints long before these expirations occurred. Specifically, the department received 16 of the 17 complaints between five months and two years before the appraisers' licenses expired.

For 3 of the 16 complaints, the department began investigations but did not complete them. For 2 other complaints, the department determined that the appraisers violated the Uniform Standards of Professional Appraisal Practice (USPAP) after the appraisers' licenses had expired; therefore, it was unable to pursue disciplinary actions against them. The department did not investigate the remaining 11 complaints. Because of its delays, none of the people who filed the 16 complaints received the satisfaction of knowing that the department, whose goal it is to protect the public, thoroughly investigated their complaints.

The Department Does Not Review and Prioritize All Complaints

—◆—
Of the 18 non-jurisdictional complaints we reviewed, the department closed only 2 promptly, and the remaining 16 were open from three months to three years before closure.
—◆—

Because of the varying nature and large number of complaints the department receives, it has established procedures to review and prioritize each one. These procedures call for an investigator to determine whether complaints are within the department's jurisdiction and also to assign priority levels within 48 hours of receiving them. The Enforcement Division calculates priority levels based on risk factors such as the continued harm to the public, the severity of the allegation, and the number of other complaints against the same appraiser. Prioritizing effectively flags those complaints that pose the highest risk to the public. It also allows the department to close complaints outside its jurisdiction and to identify those that should be forwarded to other authorities. Unfortunately, the department does not always follow these procedures.


We noted that 18 of the 95 complaints we reviewed were outside the department's jurisdiction. However, the department only made prompt determinations for two. The remaining 16 complaints remained open from three months to three years before the department recognized that it lacked jurisdiction and closed them.

As required by Title 10, California Code of Regulations, Section 3726, the department is to forward non-jurisdictional complaints to another authority, if appropriate, and to notify the complainants of such action or of other actions they may be able to take to secure relief. Despite these requirements, the department did not recommend other courses of action in 8 of the 18 non-jurisdictional cases. In addition, the department did not forward any to another authority until we recommended it do so, even though 11 involved appraisers with multiple complaints. The following example involves an appraiser with a total of six complaints filed against him, all of which the department initially failed to forward to another authority.


Between August 1992 and October 1994, the department received four complaints against the same unlicensed appraiser alleging improper appraisals and forgery. The department determined that it did not have jurisdiction because the appraiser was unlicensed and, by December 1996, closed all four without investigating. Given the number of complaints, the department should have notified another authority, but failed to do so. In February and June 1997, the department received two further complaints that this individual took money from the public without performing appraisals. Although the department had closed the four earlier complaints for lack of

jurisdiction, it did not determine that it again lacked jurisdiction for the additional complaints until we recommended that it forward the two most recent to another authority.

The department claimed it did not forward the two complaints to a district attorney's office in September 1997 for lack of staff. However, this does not relieve the department from fulfilling its regulatory responsibilities. It is management's responsibility to hire necessary staff to ensure that the public is able to secure relief, even for complaints outside the department's jurisdiction.



The department has not assigned priority levels to 228, or 33 percent, of the 686 complaints it received from January 1, 1995, to October 31, 1997.



In addition to failing to determine jurisdiction, the department does not always prioritize complaints. Of the 686 complaints that the department received from January 1, 1995, to October 31, 1997, it has not assigned priority levels to 228, or 33 percent. Thus, the department may not be aware of potential public risk that requires prompt attention.


When told of the 228 unprioritized cases, the deputy director said he was surprised because he had informed his staff that these prioritizations must be done. This surprise indicates that the department has not been monitoring the performance of its staff. Because management is responsible for ensuring that staff adhere to internal policies and procedures, it should have been aware that the complaints were not being prioritized and taken corrective action. At this time, the department does not plan to assign priority levels to these cases.

Complaint Files Lack Evidence To Support Conclusions in Some Investigations

For 23 of the 95 files we reviewed, the department stated either in letters to complainants or in formal accusations against appraisers that it had reviewed their appraisals and concluded whether or not the appraisers violated the USPAP. However, in 10 instances, we were unable to substantiate that the department completed these reviews. Specifically, aside from brief summaries noting that the department had performed appraisal reviews and the types of violations committed, if any, there was no other corroborating documentation, such as checklists or review reports, as in the other 13 instances.

In nine of the ten complaints, the department concluded, that the respondents violated the USPAP. Although eight resulted in warning letters but no disciplinary actions, two had more severe outcomes. Specifically, one respondent resigned his license and the department revoked another's right to renew. For the tenth complaint, the department concluded that the respondent did not commit any violations. Because the department did not

document its appraisal reviews, it cannot substantiate that it performed them or defend its judgements. Following is one instance when, because the department lacked documentation to support its decisions, it had to repeat five appraisal reviews.


The department could not locate five appraisal review reports and, as a result, had to perform them again.


During its investigation of six complaints against one appraiser, the department reviewed a total of seven appraisals and determined that he committed USPAP violations. The appraiser requested an administrative hearing, and his attorney filed a motion of discovery requesting copies of the appraisal review reports. However, the department could not locate five of the reports and, as a result, performed them again. Had the department maintained proper documentation, it could have avoided duplicating prior work and instead concentrated its efforts on eliminating the backlog.

The department has stated that it is aware that some of its files do not contain sufficient documentation and agrees that it needs to improve. It also stated that although it has provided its investigators with training and procedures for conducting and documenting appraisal reviews, they do not always adhere to these policies. In our opinion, the department's management must ensure that its staff consistently follow policies and procedures, particularly for including appropriate documentation to adequately support the department's conclusions. The department states that it intends to develop and implement a retraining program to ensure staff maintain appropriate documentation.

Database Errors Prevent the Department From Effectively Managing Its Complaints

The department's lack of adherence to internal procedures not only causes delays and inefficiencies in complaint resolutions, it prevents the department from effectively managing the complaint process. Specifically, the department does not always follow procedures when entering or updating information in the Enforcement Division database and, as a result, the database is incomplete and inaccurate. Consequently, the database cannot be relied upon as a tool for managing the department's complaints.

According to internal procedures, when the department receives a complaint, it enters information into a database record, such as the date received, the name of the complainant, and the name of the respondent. Once the department resolves the complaint, it enters that date. The department has stated that it normally determines the number of open complaints through


The database lacked closure dates for 70 complaints that appeared to be closed, and reflected closure dates earlier than the receipt dates for 9 others.


this database. However, we identified 70 complaints that appeared to be closed, but did not contain closure dates. After we discussed the omissions with the department, it entered the dates into the database.

In addition to being incomplete, the department's database also contains errors. For example, we noted nine complaints with closure dates earlier than the receipt dates. Because the receipt and closure dates identify the amount of time that it took the department to resolve a case, it is important for both to be accurate.

Another example of the type of error that we noted in the database occurred when we randomly selected complaint files for testing. Although we selected 98 open and closed complaints from a list compiled from the Enforcement Division database, the department could not locate three files. The department cited changes in its system of numbering files for its inability to locate one complaint, stated that one record was entered into the database in error, and could not explain the third. Although the department has since corrected these errors, it was not aware of them until we asked to review the files.

The department has stated that it is aware its database contains errors and will continue to correct any others that it identifies. Specifically, the department stated that it is currently preparing to convert its database and will take this opportunity to correct as many errors as possible.

The Department Lacks an Established Set of Disciplinary Guidelines


While general guidelines exist, the department has not established specific application criteria for disciplinary decisions.


During our testing, we also became aware of apparent inconsistencies in the department's application of disciplinary actions. For instance, for the same violation, the department has fined appraisers a range of \$250 to \$3,000 or, in some instances, imposed no fine. Title 10, California Code of Regulations, Section 3724, allows the department to assess fines up to \$10,000, but it also requires the department to consider general guidelines when doing so. These guidelines include the seriousness of the violation, the good faith of the appraiser, the history of previous violations, the evidence that the violation was willful, and the extent to which the appraiser has cooperated with the department. While general guidelines exist, the department has not established specific application

criteria for disciplinary decisions; however, it intends to have a team review and make recommendations for making these decisions in the future.


In the absence of specific guidance, the department states that it considers each complaint on a case-by-case basis, in light of general regulatory guidelines and how it has dealt with similar cases. However, the department does not always document its consideration of the above factors, as described in the following example. Also, because the department lacks a method to summarize past disciplinary actions by the nature of the case, it cannot be certain that it weighs all appropriate situations before imposing disciplinary sanctions.

In July 1996, an Enforcement Division investigator substantiated that an appraiser violated the USPAP when preparing an appraisal in July 1993. While the investigator recommended that the department fine him a minimum of \$1,500 and require him to complete 15 hours of continuing education, the department fined the appraiser \$2,500 and required him to complete 60 hours. We questioned this penalty because the complaint file did not contain any supporting documentation. The department stated that evidence indicated that the appraiser had intentionally selected high-value properties to compare to his client's property in order to inflate its value. Because of the totality of circumstances, the seriousness of the violations, and penalties imposed in other matters, the \$2,500 was a more appropriate sanction.

Our review of the specifics of the above case indicated that, although the investigator found that the appraiser tended to value property at the "transaction price" and failed to include certain information in his reports, there was no evidence to verify the department's statement that he intentionally selected high-value properties. In addition, the file lacks documentation to support the weight of these findings against the fact that there were no other complaints filed against the appraiser. Moreover, the file did not indicate any consideration of his willingness to cooperate before the department assessed the fine. Finally, although we requested examples of the other similar cases on which the department based the \$2,500 fine, it was unable to provide them, stating that its database does not currently maintain information in that manner.



Without specific guidance and documentation of prior cases to make disciplinary decisions, the department cannot ensure that it treats all appraisers equitably.



Without specific guidance and documentation of prior cases to make disciplinary decisions, the department cannot ensure that it treats all appraisers equitably. Further, because the department does not record how it bases its decisions, we could not substantiate those decisions.

The Department Imposed the Costs of Its Investigations on Respondents Without the Proper Authority

During calendar years 1995 and 1996, the department ordered 13 respondents to pay the costs of their investigations, or enforcement costs, totaling more than \$15,300. To date, the department has collected \$2,220, although it did not receive legislative authority to do so until January 1998. The department may now collect the reasonable costs of investigations, enforcement, and prosecution of any licensed appraiser or person who acts in that capacity who has violated statutes or regulations. Because the department did not have the authority to impose and collect enforcement costs in 1995 and 1996, it is holding money that rightfully belongs to others.

The department's legal counsel stated that he believed the department had authority to impose and collect enforcement costs based on his understanding of the law. However, it came to his attention that the department needed specific statutory authority to do so. As a result, the department stopped ordering these payments and sought legislative authority to recover such costs. Although the department has not returned the amounts previously collected, it stated it is researching whether it is able to do so.

The Department's Calculation of Enforcement Costs Is Not Supported

According to the department, it calculated enforcement costs by multiplying the number of hours it spent investigating a complaint by a unit cost, depending on the staff involved. These unit costs included salary and benefits plus overhead and administrative costs. For example, if a supervising investigator, an investigator, and a clerical staff person worked on a complaint, the department would have multiplied their respective hours by these unit costs.

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For 11 of the 13 instances in which the department ordered payment of enforcement costs, neither the files nor the database contained evidence to support its charges.

Although the department's method for calculating enforcement costs appears rational, it is dependent on staff accurately recording their time. However, we reviewed the files and database for 11 of the 13 instances involving enforcement costs and found that neither the files nor the database reflected the amount of hours that the department used to calculate the costs.

Internal procedures require all Enforcement Division staff to record in the database the amount of time that they spend working on a complaint to the nearest one-tenth of an hour. Once the department has resolved a complaint, it can query the database to add all the time spent on a particular complaint. Although the database can be an effective tool for determining the number of staff hours worked on a complaint, the department does not regularly verify that staff are recording their time. As a result, enforcement costs may not be accurate.

In addition, the department cannot support the unit costs it established. Specifically, the department cannot support its calculation of the overhead and administrative amounts included in the unit costs.

Conclusion

For the past several years, the department has received more complaints than it has been able to resolve. As a result, the department has a large backlog of unresolved complaints, some of which have been open for up to four years. Although the department has set a goal to eliminate the backlog, its plan for doing so is inadequate. The initial cause of the department's backlog was the lack of an Enforcement Division. Although currently established, the Enforcement Division is short-staffed, perpetuating the growth of the backlog and causing delays in complaint processing. In addition, the department does not always comply with state regulations and internal procedures when it investigates complaints, causing further delays. Moreover, the department has not established specific disciplinary guidelines. Finally, it has imposed and collected enforcement costs without the proper authority and cannot support its calculation of those amounts.

Recommendations

To more effectively and efficiently resolve complaints, the department should take the following actions:

- Assess process efficiency and determine the number of appraiser/investigators needed to meet its current workload and eliminate the backlog. Then, fully staff the Enforcement Division to meet current workload and consider appointing temporary staff or contractors to eliminate the backlog.
- Prioritize all existing and new complaints promptly.

- Promptly identify those complaints outside its jurisdiction and either recommend other courses of action complainants may take or forward the complaints to another authority if appropriate.
- Develop and implement a retraining program to ensure staff maintain documentation such as checklists, reports, summaries, and completed activity logs of investigations and appraisal reviews in the complaint files.
- Continue to identify and correct errors in its Enforcement Division database.

To provide a basis for disciplinary decisions and to more effectively ensure compliance with regulations, the department should establish specific disciplinary criteria and document support for its decisions.

To ensure that it does not hold money that belongs to others, the department should promptly refund the money already collected for enforcement costs imposed before it had authority to recover such costs.

To ensure that enforcement costs imposed on respondents are supported, the department should regularly review the database to verify that staff accurately record the amount of time spent on investigations. Additionally, the department should document the unit costs used to calculate enforcement costs.

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Chapter 2

Department Vacancies Contributed to the Backlog of Complaints and Personnel Practices Have Violated Some State and Federal Rules

Chapter Summary

The vacancies in the Enforcement Division of the Office of Real Estate Appraisers (department) have contributed to the growing backlog of complaints. Since its inception, the department has experienced an inordinate staff turnover rate of 241 percent, which can be attributed to its use of temporary and limited-term appointments, and its work environment. Further, while implementing the decision of the Business, Transportation and Housing Agency (agency) to staff the Enforcement Division with limited-term appointments, the department violated the State Personnel Board (SPB) rules that apply to some of those appointments. Finally, the department has violated certain provisions of the Fair Labor Standards Act (act).

A Poor Working Environment and Use of Limited-Term and Temporary Appointments Contribute to Turnover

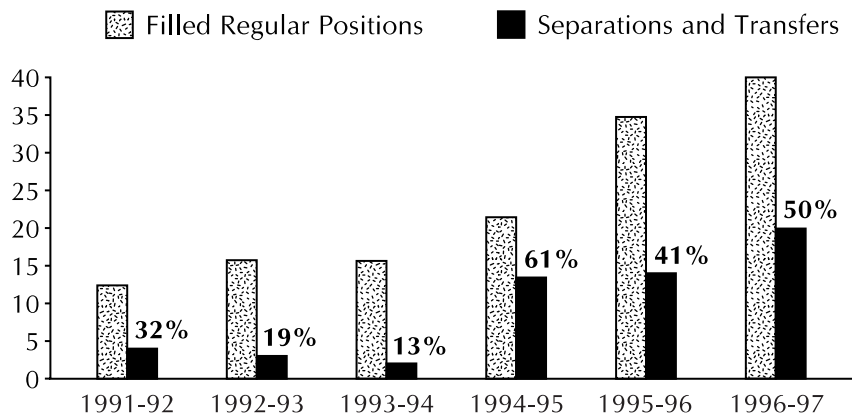
As discussed in Chapter 1, turnover of the appraiser/investigators in the Enforcement Division is one of the factors contributing to the backlog of complaints. Analyzing the department's employment activity for its regular employees (those appointed on either a permanent or limited-term basis) during the period of January 1991 to June 30, 1997, we found that while it appointed 85 employees, approximately 56 of these employees either transferred to other state agencies or separated from state service.

The department's turnover rate for its regular employees from July 1, 1991, to June 30, 1997, is 241 percent. This turnover rate is inordinate considering that the department's number of filled positions averaged 23 and was never more than 40 during this period. The turnover rate for the department's regular employees peaked in fiscal years 1994-95 and 1996-97. Specifically, in fiscal year 1994-95, 13, or 61 percent, of the

employees filling the department's 21.4 regular positions either separated from state service or transferred to other state agencies. The turnover rate was 50 percent in fiscal year 1996-97.

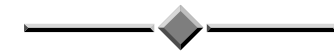
Figure 2 depicts the number of filled regular positions, the number of regular employees separating or transferring from the department, and the turnover rate for fiscal years 1991-92 through 1996-97. These numbers do not include the department's use of temporary authorization appointments (TAU) for employees such as mechanical technical occupational trainees, seasonal clerks, and student assistants or its use of retired employees. Since the TAU appointments cannot exceed 9 months within 12 consecutive months, the inclusion of these temporary employees would distort the department's turnover rate.

Figure 2
The Department Has an Inordinately Large Employee Turnover



Sources: State Controller's Office, Salaries and Wages Supplement, and the Office of Real Estate Appraisers

To obtain an understanding of why the department's employees were leaving, we surveyed all 65 former employees (49 regular and 16 temporary) who had either separated from state service or transferred out of the department between July 1, 1994, and July 31, 1997. We received responses from 22 regular employees (15 permanent and 7 limited-term) and 6 temporary employees, resulting in a 43 percent response rate for those queried.



Dissatisfaction with the working environment as well as the lack of permanency associated with the use of limited-term and temporary appointments have contributed to the turnover.



Those responding to our survey gave a variety of reasons for leaving the department. The most common reason cited by the 15 permanent employees was dissatisfaction with their working environment. Specifically, 8 employees cited either the department's lack of organization, management style, or excessive workload as their primary reason for leaving. Of the remaining 7, 2 were fired, and 5 left for personal reasons, such as relocation, retirement, or better promotional opportunities.

The most common reason cited by the seven limited-term and six temporary employees was that their limited-term or temporary appointments were expiring. Specifically, seven employees cited this as their primary reason for leaving. Of the remaining six, one cited dissatisfaction with the department's management style, two were relieved of their positions without explanation, two left to obtain permanent positions, and one was told by the department that there was not enough money for the position.

The survey results indicate that the department's lack of organization, management style, and excessive workload, as well as the lack of permanency associated with the use of limited-term and temporary appointments, have contributed to the turnover.


Vacancies in the Enforcement Division Have Contributed to the Backlog of Complaints

The department's delays in resolving complaints can be attributed in part to vacancies in the Enforcement Division, and staffing decisions made by both the department and the agency. The department did not staff the Enforcement Division until 1994, when it received approval for eight permanent appraiser/investigator positions, and began filling these positions in February 1995. By this time, the department had already accumulated 545 open complaints. Furthermore, although the department received approval for permanent positions, the agency directed the department to fill the positions with limited-term appointments. Generally, limited-term appointments are used when there is a limited-duration staffing need.

As of January 6, 1998, the department had 641 open complaints, 96 more than when it began filling these positions. At the time the agency made its staffing decision, the department was receiving approximately 300 complaints yearly. This high number of complaints does not depict a department


with a limited-duration staffing need, but illustrates a need to first stabilize the Enforcement Division with permanent staff, and then to use limited-term appointments for the excess workload.

However, of the 12 people hired to fill the vacancies for appraiser/investigators, the department initially appointed only two, property appraisers transferring in from other state agencies, as permanent employees. It filled the remaining six positions with limited-term appointees. Specifically, since February 1995, ten limited-term appointees have filled these six positions. The lack of permanency associated with limited-term appointments makes it easier for both the department and the employee to terminate these appointments when dissatisfied. For example, four former limited-term appraiser/investigators responded to our survey and cited these reasons for leaving: two were relieved of their limited-term appointments by the department without explanation, one cited dissatisfaction with the department's management style, and one left to obtain a permanent position.



The decision to fill 75 percent of its positions with limited-term appointments and employee dissatisfaction contributed to vacancies and instability in the division.

While some limited-term appointments were necessary to assist in reducing the backlog, we question the agency's decision to staff the department's Enforcement Division using limited-term appointments for 75 percent of the department's initial appointments. This staffing decision and employee dissatisfaction with the work environment have contributed to the vacancies, creating instability within the division.



The division's turnover has also prevented the department from having a well-trained and experienced staff. Our review of the training provided to appraiser/investigators by the department between February 1995 and June 1997 indicates that employees were provided a minimum of 7 hours training in appraisal issues and an average of 55 hours in investigative techniques. In addition to the investment in formal training, the department continually spends resources providing day-to-day, on-the-job training. However, as a result of the turnover in the Enforcement Division, the department has not obtained long-term benefits from the time and resources devoted to training its staff and will need to reinvest more time and resources for its future staff.

With approval from the agency, the department has subsequently made permanent appointments for six of the ten limited-term employees, three as recently as July, August, and October of 1997. As of December 31, 1997, only four of the department's eight appraiser/investigator positions were filled,


three with its most recent permanent appointments and one with a property appraiser/investigator on loan from the Licensing Division.

The Agency's Justification for the Use of Limited-Term Appointments Is Questionable

According to the agency, although it directed the department to obtain the authority to hire permanent staff, it was unsure of the department's licensing renewal rate and future revenue. In addition, the agency states that it was unsure how long it would take to manage the backlog, given the department's lack of history in handling appraisal complaints. Also, the department was developing procedures for the enforcement program consistent with the Uniform Standards of Professional Appraisal Practice guidelines.

Based upon these concerns, the agency directed the department to fill the enforcement positions with limited-term appointments until renewal revenues could be verified. The agency's justification for this decision was to avoid laying off permanent staff should future revenues not meet expenditure needs. Further, the agency approved converting some of the limited-term appointments to permanent positions when it was able to verify the department's revenues.

The agency also believed that there would be a sufficient pool of unemployed appraiser/investigators from the public sector available as limited-term appointments to the department because of the State's significant real estate recession. However, the department experienced difficulty recruiting, hiring, and retaining qualified individuals in limited-term positions. As a result, the agency eventually supported the department's request to hire employees using either limited-term or permanent appointments as the department determines best.




Despite concerns that it had insufficient funds to support permanent positions, the department's fund balance could support 2.7 years of its budgeted expenditures, including all eight appraiser/investigator positions.

Because the department was newly created and there was insufficient information to determine licensing renewal trends, we understand the agency's caution in staffing the department's Enforcement Division. However, we believe that the department had both the need and funding to make permanent appointments. For example, we noted that at the end of fiscal year 1993-94 when the agency was considering its staffing options, the department had a fund balance of \$9.3 million, an amount sufficient to cover 2.7 years of its fiscal year 1994-95 budgeted expenditures that included funding for eight

permanent appraiser/investigator positions. Therefore, the decision to staff the Enforcement Division primarily with limited-term appointments was not justified.

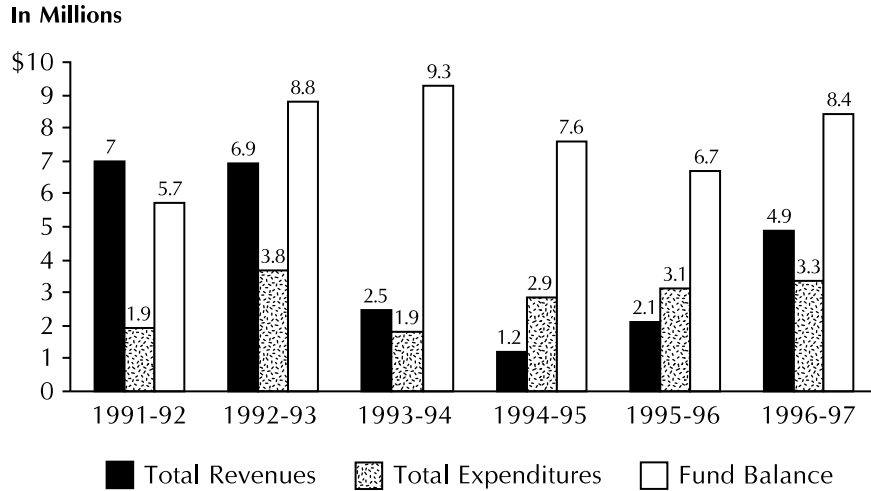
Chapter 1 demonstrates that as a result of vacancies in the Enforcement Division, partially attributable to the over-use of limited-term appointments, the department continues to experience difficulty resolving complaints promptly. According to the Enforcement Division database, the department has opened a yearly average of 330 complaints during the last 5.5 years. From July 1995 through December 1997, the only period in which the Enforcement Division was fully operational, with an average staff level equivalent to 5.8 full-time positions, the department closed an average of 309 cases per year, or approximately 53 cases per investigator, per year.


The Enforcement Division's caseload demonstrates that there has always been a need for the department to staff approximately six of its approved positions with permanent appointments.

Because the department does not always update its database with the time spent on each complaint, we were unable to obtain the actual hours spent on closing these cases. However, using the average 53 cases per investigator, per year, we estimate that eight employees would have been able to close approximately 424 cases per year. Therefore, the eight permanent appointments that the department had available would have allowed it to stay current with the approximately 330 new complaints it receives annually and reduce its backlog. The Enforcement Division's caseload demonstrates that there has always been a need for the department to staff approximately six of its approved positions with permanent appointments.

In addition, our analysis of the department's revenue, which consists primarily of licensing fees, indicates that it had sufficient revenue to cover the costs of its operations. While the revenues dropped sharply during its low licensing fiscal years of 1993-94 to 1994-95, this is to be expected for a four-year licensing cycle. Nonetheless, the fund balance of \$8.8 million accumulated during its peak licensing years of fiscal years 1991-92 and 1992-93 was sufficient to cover those losses. Figure 3 depicts the revenues received, expenditures incurred, and fund balances of the department between fiscal years 1991-92 and 1996-97.

Figure 3
The Department's Fund Balance
Averages 2.5 Years of Operating Expenses



Source: State of California Annual Report

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 Since receiving approval for the positions, the department has always included funding in its budget for all eight without creating a deficit.

Although the agency states that it was concerned about the funding for the approved positions, the department funded an average of 5.8 full-time appraiser/investigator positions for 2.5 fiscal years without resorting to layoffs and without depleting its fund balance. Furthermore, since receiving approval for the positions, the department has always included funding in its budget for all eight without creating a deficit.


We also found that the department did not prepare a comprehensive analysis of its licensing fees to support its staffing decision. Since the agency was unsure of the department's future revenue, a comprehensive analysis of licensing fees would have been useful for making staffing decisions. Although the department has analyzed a limited number of fees, its analyses have not taken into consideration the cost associated with the Enforcement Division functions. The department could prepare an analysis of its fees, including studies to support the time and costs associated with performing both licensing and enforcement functions, and compare the results against its current license and certificate issuance fees. Such an analysis would demonstrate whether current fees adequately cover the department's cost of regulating appraisers.

Despite the agency's concerns with the uncertainty of the department's licensing renewal rate and future revenue, at the time it directed the department to staff the Enforcement Division with limited-term appointments, there were adequate

resources to support permanent appointments. Thus, the agency's justification for staffing the Enforcement Division with primarily limited-term appointments was unfounded.

***The Department Did Not Always
Comply With State Personnel Board
Rules and May Have Denied Some
Employees Certain Rights***

The SPB authorizes the use of limited-term appointments for limited-duration staffing needs, such as to conduct a specific study, to fill temporary vacancies, or to replace a person who is on a training assignment. In addition, the SPB requires departments to adhere to certain standards and guidelines when appointing limited-term employees. Specifically, although the maximum duration for limited-term appointments is normally one year, departments may extend an appointment for up to two years if a permanent appointment would be likely to cause a layoff, demotion, or mandatory transfer requiring a move when the temporary job ended.


The department routinely made two-year limited-term appointments for its Enforcement Division staff without establishing that it had clearly met one of the statutory requirements to do so.

The department routinely made two-year, limited-term appointments for its Enforcement Division staff without establishing that it had clearly met one of these statutory requirements. Specifically, the agency justified limited-term appointments to prevent future layoffs. However, the department has not demonstrated that permanent appointments would likely have caused layoffs. Therefore, the department had not met the statutory requirements that would have allowed it to make two-year, limited-term appointments.

In addition, as a policy, limited-term appointments should not be used to fill positions on an ongoing basis since this practice circumvents consideration of eligible applicants interested in permanent positions. However, the department filled two of its positions on an ongoing basis with limited-term appointments, despite the SPB's policy.

Another concern is that the Enforcement Division employees appointed on a limited-term basis may have been denied rights, benefits, or privileges that would have accrued to them if they were initially appointed as permanent employees. For example, while the probationary period for the property appraiser/investigator and the senior property appraiser/investigator positions is 6 months, seven of the ten appraiser/investigators would have completed this probationary period since they were in their limited-term appointments for periods ranging between 8 and 18 months.



Additionally, one employee was in the supervising property appraiser/investigator position, which has a one-year probationary period, for 13 months. Therefore, if the employees were initially appointed as permanent, they would have completed their probationary periods and would have obtained the rights, benefits, and privileges afforded to permanent employees.

The department also made limited-term appointments for staff services analyst, program technician, and staff counsel positions. However, as of October 31, 1997, the department has converted all limited-term appointments for its existing staff to permanent appointments. Although this action provides future benefits to its existing staff, the concern remains that former and existing employees may have been denied rights, benefits, or privileges that would have accrued to them if they were initially appointed as permanent employees.

The Department's Overtime Practices Have Violated the Fair Labor Standards Act

The department has violated the recordkeeping and overtime provisions of the Fair Labor Standards Act (act). The act covers property and senior property appraiser/investigators in the Enforcement Division. According to a memorandum issued by the director of the Department of Personnel Administration (DPA), effective July 1, 1995, certain employees covered by the act, such as the department's appraiser/investigators, must be compensated in cash for all overtime worked. The use of compensating time off (CTO) is not permitted, except for CTO accumulated before June 30, 1995. As of February 3, 1998, the DPA directive was still in effect. Thus, the appraiser/investigators are required to be compensated in cash for all overtime.

Although the department's operational directive recognizes that overtime occurs when an employee works more than 40 hours in the fixed work week and that the correct hours need to be reflected on attendance records, as required by the act, the department does not adhere to these requirements. Specifically, we obtained an E-mail sent by an Enforcement Division staff member in March 1996 to the appraiser/investigators in the division, with copies sent to the chief deputy director and deputy director, stating that "time sheets are to reflect only eight hours/day. If you have worked more than eight hours in a day, eliminate excess time in categories that are not directly related to investigations." All appraiser/investigator time sheets for the period July 1995 through September 1997 reflect only eight-hour days.



We noted several situations that strongly suggest employees worked overtime without cash compensation.


Although the time sheets do not indicate that overtime was worked, we noted several situations that strongly suggest employees worked overtime without cash compensation. For example, the deputy director of the Enforcement Division in January 1997, sent an E-mail to the appraiser/investigators in the division, with copies sent to the director and chief deputy director, stating that “all investigators shall remain on-call and available to CRC on the date CRC is scheduled. Investigators shall make whatever arrangements are necessary to ensure compliance with this requirement. Investigators shall not leave the building (for lunch, the day, or otherwise) without checking with CRC first until the CRC meeting has concluded for the day. Investigators who are required by CRC to remain later than their normally scheduled work hours shall, within 24 hours, submit a request to take off within 3 weeks, as flex time, any excess time that they were required to work.” We discussed this E-mail with the deputy director and he stated that some employees may have misunderstood this E-mail. The E-mail was not intended to communicate that they were required to work if unable or unwilling to do so, and they were so notified.

In another instance, an employee was required to conduct site inspections of testing centers on two Saturdays and, according to time sheets, was not compensated.

Further, some former employees responding to our survey indicated that it was not uncommon for staff to work overtime without receiving compensation. For example, one former employee stated that “the appraiser/investigators worked 60-70 hours per week without compensation.”

Finally, a resignation letter written by a former employee stated, “I have amassed a great deal of documented, uncompensated ‘flex time’ during my employment here—approximately 1700 hours. Realizing that the Office is not in a financial position to fully compensate me, I would request that you compensate me for my flex time from June 30, 1997 through July 31, 1997. If I am provided with the flex time off for this time totaling 192 hours, I will feel that OREA’S obligation for compensation has been met.” The department granted the employee’s request for the 192 hours. It should be noted that according to the former employee, the 1,700 hours represents straight-time hours rather than the time and one-half required by the act.


The department was unable to provide any records documenting that employees used flex time in lieu of claiming overtime.

We discussed these issues with the department's management. The deputy director of Enforcement Division stated that the overtime may not be reflected on the time sheets because the employees may have used flex time. The department's flex-time policy is informal, allowing employees to work longer on a given day and shorter on a subsequent day in order to meet workload demands, with authorization from the supervisor. The deputy director also stated that he adamantly disputes the employee's claim of 1,700 hours of overtime but approved the 192 hours because she had worked that amount. However, the deputy director was unable to provide documentation to support his statement that the employee had worked the 192 hours. Further, he was unable to provide us with any records documenting the flex time other employees accumulated and used.

Although the department's operational directive indicates that it is knowledgeable of the responsibilities the act imposes on employers for computing, recording, and compensating overtime hours earned by employees, its actions, nonetheless, violated the act. Specifically, its failure to produce records documenting flex-time activity violates the act's requirement that employers are to make, keep, and preserve records regarding wages, hours, and other conditions and practices of employment. Secondly, management has asked employees to work overtime without cash compensation and without the benefit of compensation at time and one-half for those excess hours. For example, if the former employee had been compensated for the 1,700 hours of flex time, she would have received \$67,000. Finally, since management was aware of the informal flex-time policy, it had knowledge that employees were asked to work overtime without proper compensation, which in itself is a violation of the act.

Recommendations

To more effectively address its existing complaint backlog and future complaints, we recommend that the department should do the following:

- Continue to fill with permanent appointments its established permanent appraiser/investigator positions. If necessary, consider converting its four-year renewal cycle to either a one- or two-year cycle to balance out its revenue.
- Periodically perform a comprehensive analysis of licensing fees to assess their sufficiency and to support future staffing decisions.

We recommend that the State Personnel Board review the department's use of limited-term appointments and determine the extent to which it may have denied its former and current employees rights, benefits, or privileges that would have accrued to them if they were initially appointed as permanent employees.

To ensure that employees are compensated for their overtime in the future, we recommend that the department maintain accurate attendance records that document overtime hours, and compensate its employees in accordance with the act.

We recommend that the Department of Personnel Administration—Classification and Compensation Division review the department's overtime practices and determine the extent to which its former and current employees are entitled to receive compensation for any overtime worked.

Chapter 3

Some Licensing Procedures Can Be Improved To Enhance Their Effectiveness

Chapter Summary

The Office of Real Estate Appraisers (department) has established a program that ensures applicants are promptly licensed; however, certain procedures can be improved to enhance its effectiveness. Specifically, the department's present policy of requiring only initial and upgrade applicants to submit work samples does not ensure that the work of all licensed appraisers meets professional standards since most received their licenses or certificates before the policy went into effect. Also, the department's policy concerning the review of work samples does not provide clear guidance for addressing Uniform Standards of Professional Appraisal Practice (USPAP) violations and thus may allow inconsistencies in the decisions employees make regarding applicants' licenses. Finally, the department needs to promptly report test site deficiencies to its exam provider and follow up to ensure these are corrected.

Background

Individuals seeking certification or licensure as real estate appraisers in California must meet minimum education and experience requirements and successfully complete a nationally approved examination before obtaining a license.

The department provides four appraiser licensing categories: trainee, residential, certified residential, and certified general. Each category, or level, has its own minimum education and experience requirements. Depending on the license category, these requirements can range from 90 to 180 hours of prescribed education and up to 2.5 years of experience in residential and nonresidential appraisals. Trainees must obtain this experience under the direct supervision of a licensed appraiser. Additionally for each category, the department processes three application types: initial, upgrade, and renewal.

The department reviews each application packet to determine whether or not the applicant meets the minimum experience and education requirements for the requested license level. As

part of the review process, initial and upgrade applicants must submit appraisal experience logs and evidence of basic education. In addition, except for trainees, all applicants for initial or upgrade licenses are required to select and submit two appraisals, or work samples, for review. The department compares these work samples with the applicant's logs to ensure they are similar to those it would have selected itself and then reviews them for compliance with the USPAP. If the initial work samples are not of the correct type, the department selects additional samples for review. Renewal applicants are required only to provide evidence of continuing education and are not required to submit experience logs or work samples, unless specifically requested.

If an applicant has met the minimum requirements for the license, the applicant takes an exam. (Renewal applicants are not required to take an exam.) After passing this and paying all applicable fees, the applicant receives a license.

The Department Processes License Applications in Accordance With Established Guidelines

The department processed all 50 license applications we reviewed within the time allowed by regulations.

The department processed all 50 of the license applications we reviewed within the time allowed by regulations. Additionally, it generally processed these applications in accordance with relevant policies and procedures. However, as we discuss in the following sections of this chapter, some of these policies and procedures need improvement to ensure that the department licenses only qualified appraisers whose work meets professional standards.


The Department Does Not Subject the Work of All Applicants to Review

Since 1994, the department requires work samples from only initial and upgrade applicants. However, because most of its current appraisers were licensed before 1994, the department may never review the work of many renewing licensees. As a result, the department's licensing process cannot assure that the work of all licensed appraisers meets professional standards.


Prior to 1994, the department required applicants to submit an affidavit attesting that their applications, including their appraisal experience logs and log summaries, were accurate

and true. On January 1, 1994, the department began requesting samples of work experience from initial and upgrade applicants for some of the categories of experience claimed. Then, effective July 1, 1995, the department began requiring initial and upgrade applicants for residential, certified residential, and certified general licensure to submit two work samples for each category of experience claimed. By reviewing these work samples, the department ensures the applicant has performed the work claimed and the work meets professional standards.

However, since January 1994, most appraisers have not been subject to the department's review. Specifically, as of January 2, 1998, the department had approximately 10,610 licensed or certified appraisers on record. Of these, at least 8,761 (83 percent) were licensed before January 1, 1994. Since then, the department has issued, or upgraded, licenses and certifications for only 3,707 appraisers, or 35 percent. Thus, assuming that since 1994, it has reviewed work samples for all initial and upgrade applicants, the department still has not reviewed the work for 6,903, or approximately 65 percent, of all licensed appraisers.



Because it was initially not required, the department has not reviewed the work of approximately 65 percent of all licensed appraisers and the work of 31 to 63 percent may never be subject to review.



Furthermore, the work of 31 to 63 percent of its licensed appraisers may never be subject to review. For example, 3,288 appraisers, or 31 percent, reached the department's highest certification level before the policy went into effect and, therefore, are likely never to be reviewed. Additionally, of the 7,929 appraisers who have renewed their licenses to date, only 1,888 (24 percent) have upgraded their licenses since January 1, 1994, and thus been subject to review. If this trend continues for the remaining 832 appraisers who were licensed before January 1, 1994, but have not yet renewed, the work of up to 63 percent of the department's current licensees may never be reviewed.

The department's review of appraisal work samples would be more effective if the department subjected the work of all licensed appraisers to review. Given the department's limited resources, it could accomplish this by randomly selecting appraisers for review from the entire population of licensed and certified appraisers. In addition, the department could develop criteria to identify "high risk" applicants and use this criteria to select others for review. In this way, the department would be more effective in ensuring the work standards for the entire population of licensed or certified appraisers. For example, the department might consider using the following potential "red flags" to select applicants for review:

- Applicants whose hours for individual appraisals exceed currently established averages. The department may consider requesting work samples from such applicants to ensure that they are not inflating the number of hours to meet experience requirements.
- Trainees working for, or obtaining experience from, supervisors that have a history of enforcement complaints. The department may consider requesting work samples from applicants supervised by these appraisers in order to ensure that they have received proper training in industry standards and practices.
- Renewal applicants that have a history of enforcement complaints. The department may consider requesting work samples from these applicants in order to ensure they are using proper industry standards and practices.

By selecting some appraisers at random and others using “red flag” criteria, the department would more effectively use its resources and would still meet its goal of protecting the public safety by ensuring the competency and integrity of all licensed or certified appraisers.

The Department Lacks Clear Guidance for Reviewing Work Samples

The department does not provide adequate guidance to its Licensing Division staff to use when reviewing applicants’ work samples.

The department’s operational directive outlining the policies and procedures for reviewing work samples requires all samples to be complete and conform to the USPAP. The directive also instructs the Licensing Division staff appraisers on what to do when they identify minor or major violations of USPAP. For example, when work samples for federally related transactions containing major violations are identified, the Licensing Division staff appraiser is required to present the application to the Application Review Committee for referral to the Enforcement Division.

◆

The operational directive provides almost no guidance on what constitutes a minor versus a major violation of the USPAP.

◆

However, the operational directive provides almost no guidance on what constitutes a minor versus major violation. In addition, what little direction it does provide appears to conflict with the USPAP. For instance, the directive cites USPAP Rule 2-2 as an

example of a minor violation. USPAP Rule 2-2 governs the form and content of the report that communicates appraisal results to the intended users. The Appraisal Standards Board of the National Appraisal Foundation deems Rule 2-2, in its entirety, to be a binding requirement from which departure is not permitted.

The department states that the distinction between what constitutes a minor versus a major violation, is whether or not a USPAP violation is so significant in nature as to call into question an applicant's overall competency and fitness as opposed to merely denying an appropriate amount of work experience that does not fully conform with USPAP.

We agree with the department that the primary purpose of reviewing work samples should be to ensure the competency and fitness of appraisers. However, we also believe that clear guidance is essential to reconcile any apparent conflicts between department policy and the USPAP, and to ensure that every appraiser is held to the same standard of competency and fitness.

***The Department's Management
of Its Contract With the Examination
Provider Needs Improvement***


Although the department performed site visits at three of the five licensing test sites to evaluate its examination provider's performance, the department did not always promptly report its findings or conduct a timely follow-up to ensure that the exam provider had corrected deficiencies.

The department's current contract with its national examination provider has been in effect since January 1, 1996. This contract details specific exam content, procedures, and reporting requirements for the exam provider. Specifically, the exam provider is to use examinations approved or endorsed by the Appraisal Qualification Board of the Appraisal Foundation, adhere to prescribed testing procedures, and ensure security of the examination to prevent cheating or stealing.


Between June 1996 and May 1997, the department inspected three of the five contracted test sites and found significant security issues. During these site visits, the department noted that test equipment and materials were not properly secured at all three sites. For example, at one site, computer disks containing the exams were left on a table in the lobby during

check-in. The department also noted that at two sites, proctors were not stationed inside the examination room at all times, as stipulated in the test center procedures manual.

Following two of the three site visits, the department neither reported its findings to the exam provider nor followed up promptly to determine whether the exam provider had corrected these problems. Specifically, although it immediately reported its findings at one site, approximately four to five months elapsed before the department sent letters to the exam provider detailing the deficiencies at the other two sites. Another two to eight months elapsed before the department contacted the exam provider to determine what corrective action it had taken. Although the department noted that some deficiencies had been corrected, the exam provider did not ensure until July 1997 that a proctor would be present in the examination room.



Although the department found significant security issues at test sites, it did not take prompt action to ensure problems were corrected.



Good contract management requires that the department promptly notify the examination provider, in writing, of the deficiencies it noted during site visits and follow up to ensure the exam provider takes appropriate and timely corrective action. In the above instances, proper security of exam material is important in order to protect exam integrity and prevent individuals from cheating.

Conclusion

Although the department processes licensees' applications promptly, certain areas need improvement. Because most appraisers are not subject to review, the department's present policy of reviewing work samples is not effective to ensure that only qualified appraisers are licensed. Additionally, the department does not have clear guidelines in place concerning what the department considers a minor versus a major USPAP violation and, without clear guidelines, licensing decisions can lack consistency. Finally, the department does not adequately manage the contract with its present examination provider.

Recommendations

To improve its licensing process, the department should do the following:

- Subject the work of all licensed and certified appraisers to periodic review. The department can accomplish this by selecting some appraisers at random and selecting others by applying the "high risk" criteria.
- Clarify guidelines identifying the degree to which departures from specific USPAP rule violations, such as Rule 2-2, could call into question an applicant's overall competency and fitness and render an applicant unfit for licensure. Further, using this information, determine which of these violations either individually or combined would make a person unfit.
- Report the results of all licensee testing site inspections to the exam provider within 30 days and follow up with the exam provider 30 days thereafter to determine that corrective action has been taken.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



KURT R. SJOBERG
State Auditor

Date: March 17, 1998

Staff: Sylvia L. Hensley CPA, Audit Principal
Joanne Quarles, CPA
Patrick Adams
Jennifer Buck

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Appendix

Reviews Conducted by Other Entities on the Operations of the Office of Real Estate Appraisers

Summary

During 1997, the program operations and internal control policies and procedures of the Office of Real Estate Appraisers (department) were reviewed by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council and the Department of Finance, Office of State Audits and Evaluations (OSAE). The following represents a summary of the results of those reviews.

Appraisal Subcommittee of the Federal Financial Institutions Examination Council

The ASC conducted a review of the department's regulatory program in July 1997 to determine whether the department was adhering to and enforcing the standards, requirements and procedures prescribed by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The ASC found that the department's complaint investigation and resolution process required substantial improvement. Specifically, it noted that complaints were not investigated and resolved promptly. In addition, several actions were noted that indicated the need for improving administrative controls. For example, some complaints were open for more than a year without being assigned a priority rating, and numerous complaint files did not contain current information regarding contacts and other actions. Finally, the department failed to notify the ASC of disciplinary actions taken against appraisers.

The ASC recommended that the department implement a more rapid complaint and resolution program, review its administrative controls for complaint investigation and resolution, and promptly report disciplinary action taken against appraisers.

The department agreed that it needs to decrease the average time between receipt of a complaint and final disposition and plans to increase its efforts in this area. However, the department neither agreed nor disagreed with the ASC's finding on administrative controls, stating only that it has comprehensive policies and operational directives, a database for recording case activity, and hardcopy files. Further, the department stated that it has provided the ASC with information relating to its disciplinary actions.

***Department of Finance—Office of
State Audits and Evaluations***

The department requested the OSAE to conduct a risk assessment of certain accounting, administrative, and information security controls.

The OSAE noted strengths in the department's controls over revenues, expenditures, fixed assets, and information assets. However, the OSAE also identified several areas where the department could improve its controls, such as in segregating asset custody and accounting functions, recording and monitoring accounts receivable, and establishing procedures for writing off uncollectible accounts receivable.

The department concurred with the OSAE's findings and recommendations.

Agency's response to the report provided as text only:

State of California
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
980 9th Street, Suite 2450
Sacramento, 95814-2719
(916) 323-5400
FAX (916) 323-5440

Pete Wilson, Governor

March 6, 1998

Kurt R. Sjoberg
State Auditor
Bureau of State Audits
660 J Street, Suite 300
Sacramento, California 95814

Dear Mr. Sjoberg:

Enclosed is the Office of Real Estate Appraisers' (OREA) response to the audit performed by the State Bureau of Audits (SBA) of its operations.

The Business, Transportation and Housing Agency (BTH) has been working closely with OREA to address the issues the department was previously aware of and BTH will continue to work with OREA to assist it in implementing the recommendations as appropriate. BTH has reviewed OREA's plan to address the backlog issue and will continue to monitor progress and assist the department in using SBA's recommendations to obtain adequate resources to address these issues.

Thank you for your efforts to assist the department in identifying areas for improvement. Please feel free to contact me at (916) 323-5400 if you have any questions.

Sincerely,

Dean R. Dunphy

DEAN R. DUNPHY
Secretary

Enclosure

cc: William Brennan, Deputy Secretary/Special Counsel
Business, Transportation and Housing Agency
Robert J. West, Director, Office of Real Estate Appraisers

Alcoholic Beverage Control
Department of State Banking
Department of Corporations
California Highway Patrol
California Housing Finance Agency

Department of Housing &
Community Development
Department of Motor Vehicles
Department of Real Estate

Office of Real Estate Appraisers
Stephen P. Teale Data Center
Office of Traffic Safety
Department of Transportation (Caltrans)

State of California
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
OFFICE OF REAL ESTATE APPRAISERS
1225 R Street
Sacramento, 95814-5812

Pete Wilson, Governor

March 6, 1998

Dean R. Dunphy, Secretary
Business, Transportation and Housing Agency
980 Ninth Street, Suite 2450
Sacramento, California 95814

Dear Secretary Dunphy:

I would like to thank the Bureau of State Audits (SBA) for assisting the Office of Real Estate Appraisers (OREA) in identifying and recommending areas for improvement. We concur with their recommendations and have either already taken or are preparing the necessary corrective actions.

As a relatively new agency, we continue to work diligently to resolve problems that are common in start-up organizations. We are, however, proud of what we have accomplished. To date, the Licensing Division has processed over 37,100 applications and issued over 31,000 licenses. The Enforcement Division has closed 1,184 complaints, 1,290 background investigations, 179 Licensing Division referrals, 124 delinquent child support cases and 94 monitoring cases.

Summary

OREA's program was implemented on November 1, 1992, with the resources to process an estimated 8,000 real estate appraisers' applications. As a result of this significant underestimation of workload, OREA focused on processing applications for licensure to ensure the continued employment of real estate appraisers in California.

①* Many of SBA's findings and recommendations were previously identified by OREA and were already in the process of being addressed. We do, however, disagree with the implication in SBA's Summary that OREA could have established its Enforcement Division and filled positions sooner, thereby preventing the current backlog of complaint cases.

OREA, in fact, did everything possible within state mandated requirements to establish the Enforcement Division and obtain staff as quickly as possible. (See "Background, Enforcement Division" below for more information).

Regarding the initial staffing of the Enforcement Division with limited-term hires, the Business, Transportation and Housing Agency (BTH) believed that the level of continued funding for OREA was questionable at best, in light of the condition of the housing market, uncertainty over the number of appraisers that would renew, and

*California State Auditor's comments on this response begin on page 55.

absorption of the cost of implementing statutory mandates without additional funding. Therefore, these concerns led BTH to believe that OREA should hire limited-term investigative staff to avoid potential layoffs. Subsequently, as a result of improved economic conditions, the turnover in limited-term staff and enforcement workload, BTH subsequently reversed itself and authorized OREA to hire permanent staff. Nevertheless, it should be noted that the requirement of limited-term appointments did not appear to be a limiting factor in OREA's initial recruitment.

With regard to overtime, for the reasons stated above regarding concerns about OREA's fund condition, employees who desired to work longer hours were allowed to do so with the understanding they would flex their time and come in later on a subsequent date. Upon learning that such an arrangement was not appropriate, this practice was stopped. (2)

The Enforcement Division's responsibilities are multifaceted. The division investigates complaints against applicants, licensees and course providers received from the public, other appraisers and other state and federal regulatory entities; conducts background investigations of applicants and licensees who have committed criminal violations of law; investigates Licensing Division referrals of potential violations of the Uniform Standards of Professional Appraisal Practice (USPAP); and enforces child support orders pursuant to statute.

SBA acknowledged on multiple occasions that we have solid policies and procedures, that the enforcement database is an effective tool and has acknowledged that we have trained staff. To further assist in processing complaints, OREA has developed and established a new database case tracking system which interfaces with the Licensing Division's database, developed and promulgated regulations to improve and streamline the disciplinary process, developed and implemented standardized forms and templates to provide consistency in the activities of the Division and developed and implemented an Enforcement Review Committee to ensure consistency in disciplinary actions. (3)

As noted in the audit report, SBA found that OREA processes licensing applications in accordance with established guidelines, that all of the applications reviewed were processed within the time required by regulations, that the fees collected from applicants and licensees are properly accounted for and that there are no weaknesses in the process.

In addition, SBA acknowledged that we have a plan to eliminate the complaint backlog by December 31, 1998. OREA has identified the number of people we need to accomplish our plan, obtained the services of people from three different departments to assist us, entered into consultant contracts, hired temporary personnel and are currently in the process of filling the vacant positions with a newly established civil service list. We have also made procedural changes to streamline our process. Therefore, with the streamlined process and the filled positions, OREA will be able to eliminate its backlog by the end of the calendar year. (4)

Response to SBA's Recommendations

Below are our responses to SBA's recommendations. We concur with their recommendations and have either already taken or are preparing the necessary corrective actions.

Develop a method to assess process efficiency and to then determine the number of appraiser/ investigators needed to meet its current workload and eliminate the backlog. Then, fully staff the Enforcement Division to meet current workload and consider appointing temporary staff or contracting out to eliminate the backlog.

- ④ We concur. OREA has already developed a plan to eliminate the backlog. We have identified the number of additional staff that are needed and are in the process of filling the vacant positions with a newly established list.

In 1996, OREA streamlined the enforcement process, revised policies and procedures and provided staff with additional specialized training. In 1997, OREA entered into interagency agreements with three other state departments, obtained approval and hired a criminal intelligence specialist to handle background investigation cases, implemented a continuous examination for property appraiser investigators and continued to streamline its enforcement processes.

Prioritize all existing and new complaints promptly.

- ⑤ We concur. The cases identified have been prioritized.

- ⑥ It is important to note, however, that cases were timely reviewed for potential harm to the public and given expedited processing when warranted.

Identify those complaints outside its jurisdiction and recommend other possible courses of action complainants may take. In addition, promptly forward the complaints to another authority if necessary.

We concur. While jurisdictional determinations cannot always be made without first conducting significant investigation, we will increase our efforts to refer cases as soon as possible in conformance with existing policies.

Develop and implement a retraining program to ensure staff maintain documentation such as checklists, reports, summaries and completed activity logs of investigations and appraisal reviews in the complaint files.

We concur. We recognize the need to redouble our efforts to ensure that policies and procedures are followed and are developing a retraining program. Training will be conducted to ensure that staff comply with the documentation requirements already contained in OREA's policies and procedures.

In addition, our new database system was developed with checks and balances to ensure input of required data by not allowing users to exit a document without inputting the required information, alerts have been programmed to identify required action and additional management reports are being developed to ensure that required action is promptly performed. (3)

Continue to identify and correct errors in its Enforcement Division database.

We concur. The Enforcement Division will continue to identify and correct errors in the database and take steps to ensure data is accurately maintained. In addition, OREA's new enforcement database has been designed not to accept input of faulty data wherever possible.

With respect to establishing specific disciplinary criteria, the department intends to develop more specific criteria once sufficient experience with the wide variety of individual circumstances and factors that affect such decisions is obtained. As noted by SBA, OREA already has disciplinary guidelines in place similar to those used by all California judges pursuant to the California Rules of Court. The department's guidelines specify the circumstances in aggravation and mitigation the department considers in determining the appropriate level of discipline based on the facts and gravity of the offense, the intent and prior history of the offender and factors indicative of the offender's rehabilitation. We disagree, however, that there have been inconsistencies in the application of these guidelines. Such a determination cannot be made without knowledge of the unique circumstances affecting each and every case. (7)

We also concur that we must ensure that enforcement costs imposed on respondents are accurately recorded. OREA previously implemented a requirement that investigators submit sworn affidavits of time spent on cases where disciplinary costs are imposed and will continue to do so. In addition, OREA's new enforcement database requires that time spent on a case be entered before the user can exit the document.

With regard to the refund of monies, OREA has already taken appropriate action to refund the costs through the State Controller's Office.

Continue to fill its established permanent appraiser/investigator positions with permanent appointments. If necessary, consider converting its four year renewal cycle to either a one or two year cycle to balance out its revenues.

We concur. All current investigators are in permanent positions, and we are currently recruiting additional permanent staff. OREA will continue to fill established permanent appraiser/investigator positions for ongoing workload with permanent positions.

We also concur that a two year cycle would assist in balancing out revenues and have discussed this issue with the industry on several occasions. At this time, however, industry representatives remain opposed to a change in the four year cycle.

Perform a comprehensive periodic analysis of licensing fees to assess the sufficiency of current fees and to support future staffing decisions.

- ⑧ We concur. We have conducted periodic analyses of licensing fees in the past and will continue to do so in the future.

We welcome a review by SPB and DPA of the department's use of limited-term appointments and overtime practices to assist us in ensuring full conformance with all appropriate requirements.

We also concur that the department must maintain accurate attendance records. We will continue to ensure that employees only work approved overtime and receive appropriate compensation.

Subject the work of all licensed and certified appraisers to periodic review. The department can accomplish this by selecting some appraisers at random and selecting others by applying the "high risk" criteria.

- ⑨ We concur. OREA has commenced development of a plan to audit individuals previously licensed under the affidavit process. An "audit" check box created in OREA's database system in 1995 is used to identify potential "high risk" applicants for future audit. OREA plans to begin auditing identified licensees at the completion of the current licensing renewal cycle, when resources become available.
(See "Background, Licensing Division" below for more information).

Clarify guidelines identifying the degree to which departures from specific USPAP rule violations, such as Rule 2-2, could call into question an applicant's overall competency and fitness and render an applicant unfit for licensure. Further, using this information, determine which of these violations either individually or combined would make a person unfit.

We concur in part. Although USPAP constitutes the national standards for ethics and competency for appraisers, virtually every appraisal is unique due to varying property types, real estate markets, available data, etc., and the consequences and severity of a deviation from USPAP can often only be ascertained as a result of a technical review of the individual appraisal.

Therefore, as in enforcement actions, it is extremely difficult to develop a list of USPAP violations which can be consistently identified as major or minor for all appraisal reports. Instead, the significance or severity of a violation USPAP in a specific instance requires a case-by-case determination.

As with enforcement actions, the department will nevertheless continue to examine its process and procedures to determine if more specific guidelines are feasible.

Report the results of all licensee testing site inspections to the exam provider within 30 days and follow up with the exam provider to 30 days thereafter to determine that corrective action has been taken.

We concur. Written reports on the results of site inspections of exam providers should be made within 30 days and that follow up occur to ensure that corrective action has been taken. (See “Background, Exam Providers” below for more information).

It should be noted that at no time was security of the examination in question.

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Background

Licensing Division

The Licensing Division ensures that each individual applying for a license meets the minimum qualification criteria as prescribed by the Appraiser Qualifications Board of The Appraisal Foundation. This is accomplished, as of January 1, 1994, by reviewing an applicant’s overall qualifications prior to issuing a license, including reviewing his or her work samples to ensure conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), which are the national standards for ethics and competency for appraisers.

When OREA was originally created, it was estimated that there would be a total of only 8,000 licensees in California. As a result, OREA was allocated a level of resources believed to be sufficient to process the corresponding workload. To date, however, OREA has processed over 37,000 applications for licensure. This significant underestimation of workload resulted in OREA’s need to expedite the application review process to allow California appraisers continued employment in the state, as well as to meet federally mandated deadline.

Given the time and resource constraints mentioned above, the only method originally deemed feasible to meet the demand for California real estate appraiser licenses was to allow applicants to report experience via an affidavit process. Once OREA was able to hire qualified appraisers, however, it began requiring applicants to submit appraisals for review.

OREA has reviewed work samples of licensees who were licensed under the affidavit process. Licensees are required to submit work samples for review when they apply to upgrade their license. In addition, if violations are found during a licensing review and the work sample was cosigned by another licensee, the cosigner is required to submit work samples for review. As a result, the work samples of a number of licensees who became licensed under the affidavit process have already been reviewed by OREA.

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As noted in the audit report, SBA found that OREA processes licensing applications in accordance with established guidelines, that all of the applications

reviewed were processed within the time required by regulations, that the fees collected from applicants and licensees were properly accounted for and that there were no weaknesses in the process.

Enforcement Division

The Enforcement Division's responsibilities are multifaceted. The division investigates complaints against applicants, licensees and course providers received from the public, other appraisers and other state and federal regulatory entities, conducts background investigations of applicants and licensees who have committed criminal violations of law, investigates Licensing Division referrals of potential violations of the Uniform Standards of Professional Appraisal Practice (USPAP), and enforces child support orders pursuant to statute.

① OREA did everything it could within state mandated requirements to establish the Enforcement Division as quickly as possible. Federal policies and guidelines for implementation of an enforcement program were not issued until August 1993. In the same month they were issued, OREA submitted a budget change proposal (BCP) to establish the enforcement function, which was approved by BTH and submitted to the Department of Finance (DOF), with a second BCP for staffing to eliminate the backlog, in October 1993. Only the first BCP was ultimately approved in the final budget and became effective when the budget was signed.

Meanwhile, in November 1993, OREA submitted the necessary paperwork to establish the Property Appraiser Investigator series classifications to the State Personnel Board (SPB), which was approved in January 1994. Once approved, OREA contracted with SPB to conduct the examination and establish the necessary civil service lists. The examinations were completed and the lists established in November 1994. OREA then immediately began to recruit and interview candidates for the investigative positions. While waiting for the examination process to be completed, in February 1994, OREA contracted with private appraisers to perform field reviews of appraisals in complaint cases.

In summary, OREA did everything it could within state mandated requirements to establish the Enforcement Division as quickly as possible, including implementing interim measures to assist with the workload.

With respect to positions remaining vacant, OREA made every effort available to quickly recruit competent personnel. In addition, OREA borrowed staff from the Licensing Division, entered into interagency agreements with three other state agencies, hired retired annuitants, made temporary appointments, hired student assistants and contracted for temporary help with private entities to assist with the enforcement workload.

Secretary Dean R. Dunphy
March 6, 1998
Page 8

Exam Providers

With regard to site inspections of exam providers, OREA inspected all five of the current test center sites in California, as well as a sixth site which is no longer being utilized. With respect to the three sites identified in SBA's report, in each instance the exam provider was verbally notified of OREA's findings within one week of the date of inspection and follow up reviews determined that the exam provider had taken corrective action. At no time was security of the examination in question. (12) (10)

Regarding the remaining three test center sites not included in SBA's report, the exam provider was verbally notified of OREA's findings within 48 hours of the date of inspection and formal written notices of findings were issued within five weeks of the inspection. In each instance, the exam provider issued a written response within 10 days of OREA's notice, informing OREA of the corrective action being taken. Again, at no time was security of the examination in question.

I would like to again thank SBA for its assistance and recommendations for improvement. I look forward to their implementation and to continuing to improve our service to the people of California.

Please feel free to contact me at (916) 322-0097 if you have any questions.

Sincerely,

Robert J. West

Robert J. West
Director

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Comments

California State Auditor's Comments on the Response From the Office of Real Estate Appraisers

To provide clarity and perspective, we are commenting on the Office of Real Estate Appraisers' (department) response to our audit report. The numbers correspond to the numbers we have placed in the response.

- ① We neither state nor imply that the department was responsible for the delay in establishing the Enforcement Division. Nonetheless, this delay was one of the factors that contributed to the backlog. As we state on page 25, by the time the division was established in February 1995, the department had already accumulated 545 open complaints.
- ② After we told the department its informal flex-time policy violated state and federal rules, it stopped this practice in October 1997. By this time over 2.5 years had elapsed where employees were asked to work without proper compensation. Before implementing the informal flex-time policies, the department should have determined whether this arrangement was appropriate.
- ③ If properly maintained, databases can be useful management tools. However, contrary to the department's statement, on page 16 we conclude that because of errors, the enforcement database cannot be relied on as a tool for managing the department's complaints. The department was preparing to convert its database when we completed our fieldwork. Thus, we have not reviewed the new system to determine whether it will prevent the types of errors and omissions we noted.
- ④ As we state on page 9, the plan the department provided us was inadequate because, among other things, it did not address the staffing needed to eliminate the backlog. We first requested the department's plan to eliminate the backlog on August 27, 1997; as recently as February 23, 1998, the plan still did not identify the number and type of staff needed. Although we are pleased the department has determined the staffing it needs, we were not given an opportunity to review the plan that it states

contains the number of people needed to accomplish the plan. Thus, we do not know whether it is adequate to clear the backlog.

- ⑤ As recently as February 23, 1998, the department did not plan to assign priority levels to the 228 complaints we identified on page 15. Nonetheless, we are pleased the department has reversed its position and prioritized these complaints.
- ⑥ Although the department claims that all cases are promptly reviewed for potential harm to the public and given expedited attention, the examples cited on pages 12 and 14 indicate that this is not always the case. Further, given the sheer number of open complaints, 641, we question whether it is possible to keep track of those that warrant special attention without using the formal system in place to do so.
- ⑦ We have added the word “apparent” to the first sentence under the heading “The Department Lacks an Established Set of Disciplinary Guidelines” on page 17 because we agree that such a determination cannot be made without knowledge of the unique circumstances affecting each and every case. In fact, as we point out on page 18, because the department does not record how it bases its decisions, we could not substantiate those decisions. However, as we also state on page 18, without specific guidance and documentation of prior cases to make disciplinary decisions, the department cannot ensure it treats all appraisers equitably.
- ⑧ As we state on page 29, although the department has analyzed a limited number of fees, it has not prepared comprehensive analyses that take into consideration the cost associated with the Enforcement Division functions. Future analyses by the department should include the costs associated with performing both licensing and enforcement functions.
- ⑨ Although we appreciate the department’s efforts to identify potential “high risk” applicants, this will not ensure that all applicants are subject to review. As we state on page 37, the review of “high risk” applicants should be coupled with random sampling. In this way, the department can immediately begin to subject the work of all applicants to review without increasing the resources needed to do so. Further, we must question the prudence of licensing “high risk” applicants if the department has not first reviewed their work and determined that it meets professional standards.

- ⑩ On page 39, we note the deficiencies that jeopardize the integrity of the exam process. Furthermore, contrary to its current statement, in its letters to the exam provider, the department acknowledged that the level of security needed to be increased to ensure the integrity of the exam.
- ⑪ As we state on page 37, only 1,888, or 24 percent, of the appraisers who have renewed their licenses to date have also upgraded their licenses since January 1, 1994, and thus been subject to review. Additionally, although the department's operational directives require certain applicants to submit work samples for review, no such requirement exists for cosigners. Thus, it cannot ensure this procedure is performed routinely. Finally, the department was unable to provide any statistics showing how many reviews it has conducted since January 1, 1994.
- ⑫ We reviewed all site visits conducted during the most recent contract term. As stated on page 39, these three site visits occurred between June 1996 and May 1997. In a letter to its exam provider dated July 8, 1997, the department noted that although some corrective action has been taken, it still had concerns that proctors had not been placed in exam rooms. It was not until July 29, 1997, or 8 and 13 months after the respective site visits, that the exam provider reported that this deficiency had been corrected.

cc: Members of the Legislature
Office of the Lieutenant Governor
Attorney General
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps