

HB

278

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278</SUBJECT><COMM>HL&C30</COMM></TARGET>

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

MEMORANDUM

Date: January 25th, 2018
To: Representative Kito, Chair
House Labor and Commerce
From: Representative Josephson *AV*
Re: Hearing Request for House Bill 278

Please accept this hearing request for House Bill 278, entitled "*An Act extending the termination date of the Board of Certified Real Estate Appraisers.*"

The purpose of this bill is to extend the termination date of the Board of Certified Real Estate Appraisers for a full eight years, as suggested by the most recent audit. The Board of Real Estate Appraisers serves an important function for the state of Alaska, in the oversight and regulation of licensees, and therefore should receive the recommended eight-year extension.

Find attached a copy of the bill, sponsor statement, and 2017 audit. Please feel free to contact my office at 465-4939 with any questions and I urge you to support this legislation.

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

Sponsor Statement

House Bill 278: Extending the Board of Certified Real Estate Appraisers

House Bill 278 extends the termination date for the Board of Certified Real Estate Appraisers until June 30th, 2026.

Per statute, this board is scheduled to sunset on June 30th, 2018 with a one-year wind down if the legislature does not pass legislation extending it. After this date, administrative functions of the board would transfer to the department.

Legislative Audit reviewed the board's operations and determined that it is in the best interest of the state to extend this board. The audit makes two recommendations and recommends a full eight-year extension with a new termination date of June 30th, 2026.

The recommendations are as follows:

1. The Division of Corporations, Business, and Professional Licensing's director should continue to improve administrative support to the board.
2. The Division of Corporations, Business, and Professional Licensing's director, in consultation with the board, should reduce fees to address the surplus.

After the housing market crash in the early 2000's, federal legislation mandated the certification of appraisers nationwide. The Board of Certified Real Estate Appraisers was formed briefly after this to comply with the mandate, regulating appraisers, training appraisers, and enforcing licenses with their investigator.

The continuation of the Board of Real Estate Appraisers provides an important function in protecting the public interest of Alaskans by licensing appraisers and enforcing established standards.

I invite you to discuss this issue with me further and urge you to support this legislation.

Please contact my staff Megan Holland with any questions: 465-4939,
megan.holland@akleg.gov

Report Highlights

Why DLA Performed This Audit

The purpose of the audit was to determine if there is a need for the board's continued existence and whether its termination date should be extended. The board is set to sunset June 30, 2018, and will have one year from that date to conclude its administrative operations.

What DLA Recommends

1. Division of Corporations, Business, and Professional Licensing's (DCBPL) director should continue to improve administrative support to the board.
2. DCBPL's director, in consultation with the board, should reduce fees to address the surplus.

A Sunset Review of the Department of Commerce, Community, and Economic Development, Board of Certified Real Estate Appraisers (board)

June 13, 2017

Audit Control Number 08-20106-17

REPORT CONCLUSIONS

The audit concludes the board is serving the public's interest by certifying and licensing real estate appraisers. The board monitored certificate holders and licensees, and worked to ensure only qualified individuals were issued certificates and licenses in Alaska. Furthermore, the board developed and adopted regulations to comply with federal requirements, improve the real estate appraisal industry, and better protect the public.

In accordance with AS 08.03.010(c)(20), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2026.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@akleg.gov

August 7, 2017

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Certified Real Estate Appraisers (board) and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF CERTIFIED REAL ESTATE APPRAISERS
SUNSET REVIEW

June 13, 2017

Audit Control Number
08-20106-17

The audit was conducted as required by AS 44.66.050(a). Per AS 08.03.010(c)(20), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2026.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in black ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

AAC	Alaska Administrative Code
ACN	Audit Control Number
AMC	Appraisal Management Companies
AQB	Appraiser Qualifications Board
AS	Alaska Statute
ASB	Appraisal Standards Board
ASC	Appraisal Subcommittee
board	Board of Certified Real Estate Appraisers
CISA	Certified Information Systems Auditor
CPA	Certified Public Accountant
DCBPL	Division of Corporations, Business, and Professional Licensing
DCCED	Department of Commerce, Community, and Economic Development
DLA	Division of Legislative Audit
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act
FY	Fiscal Year
SB	Senate Bill

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ORGANIZATION AND FUNCTION

Board of Certified Real Estate Appraisers

As shown in Exhibit 1, AS 08.87.010 establishes the Board of Certified Real Estate Appraisers (board) as a five member board with four of the five members designated as follows: a certified general real estate appraiser, a certified residential real estate appraiser, a mortgage banking executive, and a member of the general public. The fifth board position is undesignated in Alaska Statutes and is commonly referred to as the “at large” position.

Alaska Statute 08.87.020 defines the board’s authority, purpose, and scope of work. Under this statute, the board shall:

1. Establish examination specifications for certifications as real estate appraisers;
2. Adopt rules of professional conduct to establish and maintain high integrity standards in the real estate appraisal profession; and
3. Adopt regulations necessary to carry out the statutory purposes, including those necessary to comply with the requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,¹ as amended by Dodd-Frank Wall Street Reform and Consumer Protection Act.²

¹12 U.S.C. 3331–3351.

²12 U.S.C. 5301–5641.

Exhibit 1

Board of Certified Real Estate Appraisers Members as of June 2017

David Derry, Chair
Certified General Real Estate Appraiser

Donald Faulkenburry
Public

Alfred Ferrara
*Certified General Real Estate Appraiser,
Member at Large*

Renee Piszczek
Mortgage Banking Executive

Robert Tracy
Certified Residential Real Estate Appraiser

Source: Office of the Governor, Boards and Commissions website.

**Department of Commerce,
Community, and
Economic Development**

The board is authorized to certify general, residential, and institutional real estate appraisers. The board also certifies appraiser trainees and supervisors, and issues courtesy licenses to real estate appraisers who are certified or licensed in other states but are temporarily practicing in Alaska.

The Department of Commerce, Community, and Economic Development's Division of Corporations, Business, and Professional Licensing (DCBPL) provides administrative support to the board. Administrative assistance includes budgetary service and functions such as collecting fees, maintaining files, receiving application forms, publishing notices for meetings, and assisting with board regulations.

Alaska Statute 08.01.087 gives the DCBPL authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person is engaged or about to engage in a prohibited professional practice.
2. Bring an action in Superior Court to enjoin the act.
3. Examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010.
4. Issue subpoenas for the attendance of witnesses and records.

Alaska Statute 08.01.065 requires the department to adopt regulations that establish the amount and manner of payment of application, certification, and license fees.

BACKGROUND INFORMATION

Appraisal Overview

An appraisal is a decision-making tool used to facilitate a real estate transaction. The primary purpose of appraisals in the loan underwriting process is to provide evidence that the collateral value of the property is sufficient to avoid losses on loans if the borrower is unable to repay the loan.

In 1986, the U.S. House Committee on Government Operations issued a report concluding that faulty and fraudulent appraisals contributed significantly to the losses that the federal government incurred during the savings and loan crisis.³ In response to the crisis, Congress passed the 1989 *Financial Institutions Reform, Recovery, and Enforcement Act* (FIRREA). Congress set out provisions in Title XI of FIRREA that were intended to ensure federally related transactions had appraisals that were performed by real estate appraisers who met minimum qualification criteria, and were conducted in compliance with uniform standards. The primary intent of federal statutory appraisal reform was to protect the federal deposit insurance funds – and by extension, mortgage lenders – from avoidable losses.⁴

The 2008 financial crisis renewed questions about real estate appraisals, including conflicts of interest in the appraisal process and perceptions that appraisal quality had diminished. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), enacted by Congress in July 2010, amended Title XI and contained provisions designed to address these concerns.

Title XI creates a complex appraiser regulatory oversight structure comprised of private, state, and federal entities as described below.

³Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market, H.Rep. 99-891 at 4-6 (Sept. 25, 1986), House Committee on Government Operations, 99th Congress, 2nd session.

⁴Source: GAO-03-404, Real Estate Appraisal Industry Oversight.

Private Entity: the Appraisal Foundation

The Appraisal Foundation is a not-for-profit corporation, which sets the congressionally-authorized standards and qualifications for real estate appraisers. The foundation is comprised of the following three independent boards:

- Appraisal Standards Board (ASB) establishes, updates, and promotes the Uniform Standards of Professional Appraisal Practice (the congressionally-authorized standards for real property appraisers and the generally recognized standards for personal property and business valuation appraisers).
- Appraiser Qualifications Board (AQB) establishes the qualification criteria for state licensing, certification, and recertification of real property appraisers. According to Title XI, all state licensed and certified appraisers must meet the minimum education, experience, and examination requirements put forth by the board.
- Appraisal Practices Board issues voluntary guidance on recognized valuation methods and techniques in the form of Valuation Advisories. Valuation Advisories are developed on specific topic areas in which appraisers and users of appraisal services have sought guidance.

State Entity: Board of Certified Real Estate Appraisers

Title XI relies on states to certify and license real estate appraisers and appraisal management companies, and to monitor appraisers' compliance with requirements. In 1990, the Alaska State Legislature created the Board of Certified Real Estate Appraisers, which establishes education and experience requirements, certifies and licenses appraisers, and monitors and enforces compliance.

Federal Entities: Federal Financial Institution Regulatory Agencies Group and the Appraisal Subcommittee

Title XI of FIRREA placed responsibility for regulating appraisals with the federal financial institution regulatory agencies group⁵ including the National Credit Union Administration, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Reserve. Additionally, the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council⁶ was established by Title XI for monitoring the real estate appraisal industry and enforcing the standards. The ASC:

- Monitors the requirements established by states for the certification and licensing of appraisers and appraisal management companies. The ASC reviews each states' compliance with the requirements of Title XI and is authorized by Title XI to take action against non-complying states.
- Monitors the requirements established by the federal agencies regarding appraisal standards.
- Maintains a national registry of state licensed and certified appraisers and appraisal management companies who may perform appraisals in connection with federally related transactions.
- Monitors and reviews the practices, procedures, activities, and organizational structure of the Appraisal Foundation. The ASC is also authorized to grant funds to the foundation to support Title XI-related activities of the AQB and ASB.

⁵12 U.S.C. 3339.

⁶The council is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions.

Appraisal Management Companies

Appraisal Management Companies (AMC) are external third party entities that within a given year oversee a panel of 25 or more certified or licensed appraisers nationally, or more than 15 in a state. AMCs recruit or contract with appraisers to perform appraisal assignments, manage the appraisal process, and review and verify the completed work.

The Dodd-Frank Act requires federal financial institutions' regulatory agencies to establish minimum requirements to be applied by states in the registration of AMCs. The act⁷ requires AMCs to:

- Register with and be subject to supervision by a state appraiser certifying and licensing agency in each state in which such company operates;
- Verify that only licensed or certified appraisers are used for federally related transactions;
- Require appraisals coordinated by an appraisal management company to comply with the Uniform Standards of Professional Appraisal Practice; and
- Require appraisals to be conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

⁷12 USC 3353.

REPORT CONCLUSIONS

In developing our conclusions regarding whether the Board of Certified Real Estate Appraisers' (board) termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A of this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

Overall, the audit concludes the board is serving the public's interest by certifying and licensing real estate appraisers. The board monitored certificate holders and licensees, and worked to ensure only qualified individuals were issued certificates and licenses in Alaska. Furthermore, the board developed and adopted regulations to comply with federal requirements, improve the real estate appraisal industry, and better protect the public.

In accordance with AS 08.03.010(c)(20), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2026.

Detailed report conclusions are as follows.

The board generally operated in the public interest and did not duplicate efforts of other entities.

Board operations were generally conducted in an effective manner. The audit found that from July 1, 2014, through March 31, 2017, the board held 11 meetings, which exceeded the minimum number required by statute. The board's workload supported the number of meetings held and meetings allowed time for public comment. For three of the 11 meetings, Division of Corporations, Business, and Professional Licensing (DCBPL) staff were unable to provide evidence to show that the meetings were publicly noticed. (Recommendation 1)

The public member seat was vacant for over two years because neither the board nor Office of the Governor staff could find an interested party independent of the regulated industry. The board continued to maintain a quorum for conducting business during

this period and actively searched for a candidate to fill the vacancy. In May 2017, a public member was appointed by the governor.

A review of board investigative activity identified that 20 complaints resulted in eight investigations open or opened between July 2014 and March 2017. Seven of the eight investigations were closed during the audit period. A review of five investigative files found that three had periods of inactivity ranging from 130 to 203 days. (Recommendation 1)

The board is required to report certificate holders and licensees in the Appraisal Subcommittee (ASC) national registry, which provides information to lending institutions about the validity of appraisers' credentials. Auditors' review of the 261 active certification holders and licensees found three errors in the ASC registry regarding active status. (Recommendation 1)

Effective June 19, 2014, the legislature made five statutory changes affecting the board and the appraiser profession. Statutory changes were implemented to facilitate updating the Alaska certification requirements for compliance with the Title XI, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Under Title XI, requirements established by states for certified real estate appraisers should meet minimum Appraiser Qualifications Board (AQB) requirements. Alaska's certification requirements were less stringent than required by AQB; thus, the statutes were changed to:

- Establish authority for the board to regulate certified appraisers per Title XI as amended by Dodd-Frank Act⁸ and establish a licensing pathway for appraiser reciprocity to achieve compliance with Title XI;
- Require retention of appraisal reports and supporting documentation for five years after submittal or after litigation commences; and

⁸The AQB periodically updates requirements with the latest version being effective January 1, 2015. If these requirements are published in statutes, the statutes would have to be periodically updated for the latest AQB version. Thus, it was determined that allowing the board to include the requirements in regulations would enable the board to respond to AQB changes more timely and effectively.

-
- Provide authority to allow for a background check of certificate holders.

After the statutory changes were published, the board replaced, updated, or adopted 13 regulations, effective June 28, 2015. Four of 13 regulations (12 AAC 70.100, 12 AAC 70.105, 12 AAC 70.107, and 12 AAC 70.125) were repealed and readopted to update the format and verbiage, and to include the requirement for reporting personal identification information by certificate applicants.

Several other regulations were changed to ensure Alaska certification requirements comply with the AQB criteria and Title XI. Most changes were to address the Appraisal Subcommittee (ASC) compliance review findings. After publishing the regulations, the board received a “good” rating and ASC’s compliance reviews changed from an annual to a biennial cycle. Specific changes included:

- 12 AAC 70.106 was amended to provide the mechanism for appraisers who are licensed outside of the state to obtain reciprocal licensure in Alaska. This provision increases the pool of qualified appraisers available to the public.
- 12 AAC 70.115 was amended to require appraisers to have a bachelor’s degree, which improves the professional standards.
- Three regulations (12 AAC 70.125, 12 AAC 70.126, and 12 AAC 70.935) established and clarified requirements for trainee and supervisor appraisers. The change in requirements ensures that registered trainees working under registered supervisors will get qualified work experience for the general or residential real estate appraiser certificate. The requirements protect trainees from incurring work experience that does not meet certification requirements.
- Four regulations related to continuing education (12 AAC 70.140, 12 AAC 70.210, 12 AAC 70.215, and 12 AAC 70.220) were changed to meet AQB criteria and streamline the approval process.

Streamlining the process for approving the continuing education courses that were already reviewed and approved by the national bodies improves the efficiency of board operations.

Based on the regulatory activity discussed above, the audit concluded the board was active in adopting, amending, or supporting regulatory changes. The audit also determined that the board does not duplicate the efforts of another governmental agency or the private sector. While there are multiple entities involved in the appraisal oversight structure, including the Appraisal Foundation and the ASC, each entity has its specific purpose. No entities duplicate the board's efforts.

There are several private organizations offering real estate appraisal related education and certifications, including the American Society of Appraisers, American Society of Farm Managers and Rural Appraisers, National Association of Independent Fee Appraisers, and the Alaska Chapter of Appraisal Institute. These organizations provide additional credentials that certificate holders and licensees may choose to pursue. However, because these credentials are not mandatory for appraisers to provide services in federally related transactions, the audit concluded that the board's activities are not duplicated by these other organizations.

The board certified and licensed individuals according to statutes and regulations.

The board operated in the public's interest by certifying and licensing individuals in accordance with state statutes and regulations. A random sample of 11 certifications and licenses issued during the audit period was tested. All were found to have been issued in compliance with statutes and regulations.

As shown in Exhibit 2, from July 2013 through June 2016, the board issued 137 new certifications and licenses. As of March 31, 2017, there were a total of 261 certification holders and licensees, which represents a two percent decrease when compared to the 2013 sunset audit.⁹

⁹The prior sunset audit identified 266 total certifications and licenses as of March 2013 (ACN 08-20084-13).

Exhibit 2

**Board of Certified Real Estate Appraisers
Licensing and Certification Activity
FY 14 through March 31, 2017**

	New Issued (Exclusive of Renewals)			Total Active as of March 31, 2017
	FY 14	FY 15	FY 16	
Certified General Real Estate Appraiser	3	5	10	113
Certified Institutional Real Estate Appraiser	1	-	-	1
Certified Residential Real Estate Appraiser	7	7	1	127
Real Estate Appraiser Courtesy License	23	43	29	11
Registered Trainee	5	2	1	9
Total	39	57	41	261

Source: DCBPL licensing database.

DCBPL management did not complete the board's license fee analysis in a timely manner.

The board receives most of its revenue from certification, licensing, and renewal fees. Renewals are conducted on a biennial basis, creating a two-year cycle in board revenues. As shown in Exhibit 3, the board had a surplus of \$165,609 at the end of March 2017 and the surplus is expected to be higher after the June 2017 renewal period. The review of the meeting minutes shows that the board requested DCBPL management complete a fee analysis at four board meetings between March 2015 and April 2017 to ensure fees were adjusted to address the surplus. DCBPL management did not provide a fee analysis to the board during this period and fees were not adjusted for the June 2017 renewal. Exhibit 4 presents a schedule of fees from FY 14 through FY 17. (Recommendation 2)

Exhibit 3**Board of Certified Real Estate Appraisers
Schedule of Revenues and Expenditures
FY 14 through March 31, 2017
(Unaudited)**

	FY 14	FY 15	FY 16	July 1, 2016 - March 31, 2017
Revenues				
Licensing Fees	\$56,250	\$279,525	\$ 49,440	\$ 35,585
Other Sources	1,499	-	-	2,995
Total Revenues	<u>57,749</u>	<u>279,525</u>	<u>49,440</u>	<u>38,580</u>
Direct Expenditures				
Personal Services	34,915	53,294	44,158	11,149
Travel	2,920	2,217	12,596	8,871
Contractual	14,955	33,616	3,008	3,312
Supplies	24	42	22	-
Total Direct Expenditures	<u>52,814</u>	<u>89,169</u>	<u>59,784</u>	<u>23,332</u>
Indirect Expenditures	<u>20,937</u>	<u>33,105</u>	<u>21,626</u>	<u>16,220*</u>
Total Expenditures	<u>73,751</u>	<u>122,274</u>	<u>81,410</u>	<u>39,552</u>
Annual Surplus (Deficit)	<u>(16,002)</u>	<u>157,251</u>	<u>(31,970)</u>	<u>(972)</u>
Beginning Cumulative Surplus (Deficit)	<u>57,302</u>	<u>41,300</u>	<u>198,551</u>	<u>166,581</u>
Ending Cumulative Surplus (Deficit)	<u>\$41,300</u>	<u>\$198,551</u>	<u>\$166,581</u>	<u>\$165,609</u>

Source: DCCED management.

*Indirect expenditures were estimated based on prior year actuals.

Exhibit 4

**Board of Certified Real Estate Appraisers
License and Registration Fees
(FY 14 through FY 17)**

Nonrefundable application fee for initial certification, license, or registration	\$450
Certification fee for all or part of the initial biennial certification period	1,050
Biennial certification renewal fee	1,050
Real estate appraiser trainee registration fee	450
Real estate appraiser trainee renewal fee	450
Courtesy license fee	150
Course approval fee	400
Annual federal registry fee	40

Source: DCBPL Regulations.

Frequency of federal reviews has decreased due to improved board and division compliance.

Per Title XI, ASC conducts periodic on-site compliance reviews of the board and DCBPL operations. The compliance reviews focus on three key components of Title XI:

- Complying with Title XI mandates and requirements of ASC Policy Statements;
- Maintaining a strong regulatory program; and
- Limiting overall risk of program failure.

Board members reported that DCBPL's staff time necessary to address compliance review inquiries, findings, and recommendations strained board resources. Until 2015, the board was subject to annual and follow-up reviews due to a high number of noncompliance issues. In 2015, Alaska's compliance improved and the board was moved to a two-year review cycle. The next review is scheduled for July 2017.

The board plans to move forward with regulating Appraisal Management Companies.

In the prior sunset audit report,¹⁰ we recommended the board's termination date be extended only four years, which is half of the maximum allowed in state law. The reduced extension was partially in recognition of the increase in the board's federally mandated responsibilities related to regulation of Appraisal Management Companies (AMC) established by the Dodd-Frank Act.

In August 2015, the final ruling for AMCs' standards was published in the federal register. Per the ruling, the Dodd-Frank Act neither requires states to establish an AMC registration and supervision program nor imposes a penalty on states for not doing so. However, in a state that has not adopted the AMC minimum requirements, AMCs are barred from providing appraisal management services for federally related transactions (unless the AMCs are owned and controlled by a federally regulated depository institution). Thus, appraisal management services may still be provided for federally related transactions by individual appraisers, AMCs that are below the minimum statutory panel size threshold,¹¹ and federally regulated AMCs.

Per meeting minutes, the board plans on promulgating AMC regulations in the near future. Alaska Statute 08.87.020(3) provides authority to the board for adopting regulations necessary to carry out the purposes of Title XI, as amended by the Dodd-Frank Act, which includes the AMC requirements. If implemented, the AMC's registration and supervision will increase DCBPL and the board duties that will be subject to ASC's oversight.

¹⁰ACN 08-20084-13.

¹¹AMCs that oversee a network or panel of less than 15 certified or licensed appraisers in a state or less than 25 nationally within a given year are not required to be registered.

FINDINGS AND RECOMMENDATIONS

The prior 2013 sunset audit made two recommendations:

- Division of Corporations Business, and Professional Licensing's (DCBPL) director should continue efforts to improve the investigative case management system's integrity and confidentiality.
- DCBPL's director should take steps to improve administrative support to the Board of Certified Real Estate Appraisers (board).

The prior audit recommendation to improve the investigative management system has been partially addressed, and the outstanding issues are not significant enough to warrant restating the recommendation. DCBPL has addressed a number of the investigative case management system deficiencies by improving system processes to reduce lost work and increase the reliability of reported information; however, security issues related to case confidentiality remain. All investigators continue to have the ability to view and update case information for any case regardless of the business need. DCBPL management is aware of the security risk and feels the risk is justified to facilitate workload assignments.

The prior audit recommendation to improve administrative support to the board has been partially addressed. During the audit scope period, fiscal information was consistently provided during board meetings and there was better continuity in the licensing examiner position. An electronic dashboard was created to monitor the investigative case resolution progress, and investigative procedures and goals were updated. However, additional improvements are necessary. The deficiencies in the board's administrative support are discussed in Recommendation 1.

This audit makes two recommendations.

Recommendation 1:

DCBPL's director should continue to improve administrative support to the board.

The audit found inadequate board support by DCBPL staff in the following areas:

1. Due to general oversight, three certificate holders were incorrectly reported in the Appraisal Subcommittee (ASC) national registry, which is required by federal and state laws. Upon identification by auditors, the errors were promptly corrected by DCBPL staff. Incorrect status in the registry may result in financial institutions rejecting qualified appraisers or selecting unqualified appraisers. Additionally, noncompliance with federal requirements puts the board at risk of more frequent ASC reviews that may increase board administrative costs.
2. Auditors reviewed five investigative cases over 180 days old, and identified three cases with periods of inactivity without justification ranging from 130 to 203 days. Management reported that investigators have varying caseloads, priorities, and case management and investigative skills that affected timeline goals. Alaska Statute 08.01.050(a)(19) requires the department to provide inspection, enforcement, and investigative services to the boards. Cases that are not actively investigated increase the risk of incompetent or unlawful licensees providing services to consumers.
3. Due to staff turnover, DCBPL management could not provide evidence that three of 11 board meetings held between July 1, 2014, and March 31, 2017, were public noticed. Alaska Statute 44.62.310(e) requires board meetings be publicly noticed and AS 08.01.050(a)(6) requires the department to provide administrative and budgetary services to the board, which includes noticing board meetings. Failure to publish meeting dates may limit public participation in board proceedings.

We recommend DCBPL's director continue to improve administrative support to the board.

Recommendation 2

DCBPL's director, in consultation with the board, should reduce fees to address the surplus.

DCBPL management did not conduct a fee analysis after four requests by board members. The board had a surplus of \$165,609 at the end of March 2017, which is expected to be higher after the June 2017 renewal period. DCBPL management reported that the fee analysis was not completed due to other priorities.

Alaska Statute 08.01.065 requires the department to annually review fees to determine whether regulatory costs of each occupation approximately equal fees collected. If fees and costs do not equal, fees should be adjusted. Board members expressed concern that certificate holders and licensees were paying higher than justified fees.

We recommend DCBPL's director, in consultation with the board, reduce fees to address the surplus.

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Certified Real Estate Appraisers (board) to determine if there is a demonstrated public need for its continued existence.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, under AS 08.03.010(c)(20), the board will terminate on June 30, 2018, and will have one year from that date to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public's interest.
3. To determine the status of recommendations made in the prior sunset audit.

Scope

The assessment of operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board. We reviewed the board's activities from FY 15 through March 31, 2017. Financial information is presented, unaudited, from FY 14 through March 31, 2017.

Methodology

During the course of our audit, we reviewed and evaluated the following:

- The prior sunset audit report (ACN 08-20084-13) to identify issues affecting the board and to identify prior sunset audit recommendations.

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-
- Applicable statutes and regulations to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.
 - The State's online public notice system to verify the board meetings were adequately public noticed.
 - Board meeting minutes and annual reports to gain an understanding of board proceedings and activities, the nature and extent of public input, whether a quorum was maintained, and whether board vacancies impeded operations.
 - Expenditures, revenues, and fee levels for the board to determine whether fee levels covered the costs of operations.
 - Investigation data of the board for cases open six months or longer during the audit period to determine whether complaints were actively investigated.
 - Various state and news-related websites to identify complaints against the board or other board related concerns.
 - Federal regulations, Appraisal Subcommittee information, Appraisal Foundation documents, and Government Accountability Office reports to gain an understanding of the regulatory framework in which the appraisal profession operates.
 - Internal controls over the licensing database and investigative case management system were assessed to determine if controls were properly designed and implemented.
 - Websites of the national real estate appraisal organizations to evaluate possible duplication of efforts.

To identify and evaluate board activities, we conducted interviews with Division of Corporations, Business, and Professional Licensing staff, board members, and the federal Appraisal Subcommittee representative. Specific issues of inquiry included board operations, regulations, duplication of effort, fee levels,

complaints, and compliance with federal requirements.

A random sample of 11 certifications and licenses was selected from 261 certifications and licenses that were active as of March 31, 2017. Applications were assessed for statutory and regulatory compliance. The sample size was based on low control and inherent risk and high audit risk. Testing results were projected to the population.

The 261 certifications and licenses active as of March 31, 2017, reported in the State's licensing database were matched with the same data in the Appraisal Subcommittee's national registry to determine if the state information was correctly reported.

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APPENDIX SUMMARY

In developing our conclusion regarding whether the Board of Certified Real Estate Appraisers' termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c). Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

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APPENDIX A

Analysis Of Public Need Criteria (AS 44.66.050(c))

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

- (1) the extent to which the board or commission has operated in the public interest;
- (2) the extent to which the operation of the board or commission has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;
- (3) the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
- (4) the extent to which the board or commission has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided;
- (5) the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
- (6) the efficiency with which public inquiries or complaints regarding the activities of the board or commission filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;
- (7) the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

-
-
- (8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or commission to its own activities and the area of activity or interest;
 - (9) the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;
 - (10) the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and
 - (11) the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

Agency Response from the Department of Commerce, Community, and Economic Development



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

OFFICE OF THE COMMISSIONER

P.O. Box 110800
Juneau, AK 99811-0800
Main: 907.465.2500
Fax: 907.465.5442

September 22, 2017

RECEIVED

SEP 22 2017

LEGISLATIVE AUDIT

Kris Curtis, CPA, CISA
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RE: Confidential Preliminary Audit Report, Department of Commerce, Community, and Economic Development, Board of Certified Real Estate Appraisers, June 13, 2017

Dear Ms. Curtis:

Thank you for the opportunity to comment on Confidential Preliminary Audit Report regarding the Board of Certified Real Estate Appraisers. I am pleased to know that you are recommending a full extension of this board to June 30, 2026.

Recommendation No. 1 – DCBPL's director should continue to improve administrative support to the board.

1. The department concurs that these three certificate holders should have been correctly reported to the National Registry. This 1.2% error rate has already been rectified. The division's strong improvement in all areas of compliance was recognized by ASC representatives during the division's regularly scheduled 2017 audit, and no additional expense to the program is expected for this purpose.
2. The Division concurs with the audit finding that while some progress on timely investigation of complaints has been made; there is still room for improvement. Two of the three investigative actions that effect the assessment of case age include actions documenting continuing education requirements, worked by the Division's Paralegal who began reporting to the Chief Investigator in July 2016. There is not currently a Standard Operating Procedure (SOP) for the processing of these actions and no establish time standards for completion or timeliness throughout the inquiry. The Division's Chief Investigator will redress this lack of structure and guidance by authoring an SOP on the subject matter of Continuing Education Audits by December 2017.

Additionally, Investigative staff will be required to enter case notes explaining any gaps between meaningful investigative activities greater than sixty days. While there are times when investigations cannot progress due to factors outside investigators control (i.e. Board

Kris Curtis, CPA, CISA
Division of Legislative Audit
September 22, 2017
Page 2

Member or Expert Review, Litigation and / or opposing counsel response to settlement offers) we will make strong effort to explain why the action is not moving forward in order to make the record reflective of those challenges.

Lastly, each member of staff is held accountable for the timeliness of their investigative actions. Employees who fail to meet the unit goals are actively coached, closely supervised and when necessary counselled for their failure to achieve this unit goal. We feel that timeliness of investigations are important to protecting public safety, to addressing consumer concerns and to decreasing stress on those licensees who may find themselves the subject of an specious or unfounded allegation; and the Division constantly seeks to improve and speed processes to resolves allegations completely and quickly.

3. DCCED concurs that additional training and oversight are needed to ensure that meetings are properly public noticed. In January 2015, the division's policies and procedures pertaining to board meeting management were updated to include additional guidance and checklists to ensure these standards are met.

Recommendation No. 2 – DCBPL's director, in consultation to the board, should reduce fees to address the surplus.

Due to competing priorities, staff shortages, and the new IRIS financial system, a current and accurate FY2016 year-end revenue and expenditure report was not made available in sufficient time to conduct a thorough and complete fee analysis in adequate time for review with the board and to conduct the necessary steps to change fees prior to the program renewal period. .

The Division Director has since consulted with the board and together they have determined the appropriate amount of fee reductions necessary. The Director is finalizing the next step in the process for proposing a fee regulations project.

Again, thank you for the opportunity for the DCCED to provide input on this matter. Should you have any questions about the contents of this letter, please do not hesitate to contact me at 907-465-2500.

Sincerely,



Chris Hladick
Commissioner

cc: Janey Hovenden, Director, Division of Corporations, Business and Professional Licensing
Micaela Fowler, Legislative Liaison, DCCED

Agency Response from the Board of Certified Real Estate Appraisers



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

BOARD OF CERTIFIED REAL ESTATE APPRAISERS

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OCT 13 2017

LEGISLATIVE AUDIT

October 9, 2017

Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

Attn.: Ms. Kris Curtis, CPA, CISA
Legislative Auditor

RE: **Confidential Preliminary Report**
DCCED, Board of Certified Real Estate Appraisers
Audit Control No. 08-20106-17
June 13, 2017

Dear Ms. Curtis:

Our Board met in executive session on October 5 to review the referenced Preliminary Report and authorized me as chair to respond. We are pleased that you are recommending an extension of the sunset provision to the maximum allowed under state law. This Board has worked hard to resolve prior board deficiencies, achieve a "Good" rating from the Appraisal Subcommittee auditors, be responsive to our peers in the appraisal profession, and maintain public trust in our credentialed member's work.

First, the Board has made very significant progress by improving our conformance with applicable federal appraiser certification requirements, determined by Appraisal Subcommittee (ASC) audits. The result was moving the Board from annual and semi-annual audits to a biennial schedule and a "Good" rating in our 2015 audit. Staff turnover has been reduced and administrative support increased to accomplish this. We credit the Division staff, specifically Sarah Chambers, Laura Carrillio, and Aiko Zaguire for achieving this. This has been a goal of the Board since those of us currently serving were appointed. A direct benefit and somewhat selfish objective here is the staff time expense savings from the less frequent audits. As a footnote to the ASC audits, we had our 2017 audit in July and the preliminary report from the auditors is that we will maintain the biennial audit schedule. We were disappointed that we didn't achieve an "Excellent" rating due to a technical regulation deficiency, but we anticipate a "Good" rating in the final report due in November. Since the audit we have made the necessary regulation change.

Both of the recommendations from the **2013 sunset audit** (pg. 15) are identified as "partially addressed".

- The issue of confidentiality in the **investigative process** is extremely important to the appraisal profession and the Board, and we feel that we have made great progress on this also. Our peers recognize and appreciate the confidential process now being

followed by the Board. At one time (several years ago) there was a reluctance to file a complaint because common knowledge among our peers was that if an individual filed a complaint, it soon became public knowledge of who the complaint was filed by and against whom. Not anymore. So the point addressed from the 2013 audit (1st paragraph) seems to reference internal security issues within the investigative branch which we as the Board are not aware of occurring. Our understanding is this relates to some interchange between investigators within the branch and not any breach of confidentiality. We understand that due to staff workload some interchange may be necessary. If however confidentiality is compromised we consider that very serious and in need of immediate correction.

- The second paragraph recommendation regarding administrative support is addressed as Recommendation 1, with my response following.

Recommendation 1

As stated earlier we feel that the Division has made remarkable progress to date in improving administrative support. Three specific issues are cited:

1. Three certificate holders were incorrectly reported to the ASC national registry. As a Board we were not aware of this occurring nor was it cited in the 2015 or 2017 ASC audit. While we would agree correct reporting is important, this does not appear to be a significant issue. We would however agree that administrative attention to detail is necessary.
2. Timeliness of investigations is important and we would agree with the recommendation. However we have no authority or ability to expedite the process. We are somewhat disappointed in the staff turnover of investigators assigned to our board. We are now working with the third investigator within the last year. Since investigations relate to our detailed professional appraisal standards (Uniform Standards for Professional Appraisal Practice-USPAP) we have encouraged and paid for each investigator to take the education class. Most important is the time lag for an investigator to become competent with appraisal standards.
3. The inability of staff to produce verification of public notice for 3 board meetings is certainly due to prior staff turnover. I am confident that public notice was actually made but the records are just misfiled or lost. Regardless, we agree that confirmation of public notice should be maintained.

The closing statement recommends that "DCBPL'S director continue to improve administrative support to the board". We certainly agree and are disappointed that both Laura Carrillio and Aiko Zaguirre have moved to other positions with the State. Anything the division can do to stabilize staff turnover is appreciated.

Recommendation 2

As noted in the recommendation we have been requesting a fee analysis and reduction in our fees since the 2015 biennial certification renewal. We were assured that a fee analysis would be done at the end of 2016, and it was on our agenda for each meeting after that. Nothing was ever provided, but we were told it would be provided. Then in the absence of the analysis, and the impending renewal date approaching, at our April board meeting we

Division of Legislative Audit
October 9, 2017
Page 3

unanimously passed a motion to reduce fees 50%. Following that, we were informed that it was too late to change the fees and the same fee would be levied for 2017 as previously charged in 2015. We were finally provided a "draft" fee analysis at our June meeting, which showed that the Board recommended fee was the same as 2015 and that the fee analysis had been submitted to the Board at the 4/14 meeting. Of course neither of these points was true.

Recertification renewal came and went, with everyone paying the unsupported extremely high fee. The result is a huge surplus in our fund. Finally at our July meeting, Director Hovenden came, presented the Board with her fee analysis and through discussions agreed to a fee of \$350 for the next renewal, 2019. While this results in a future reduction, it does nothing now to compensate our peers for the onerous fees they were forced to pay, particularly during this Alaska recessionary time.

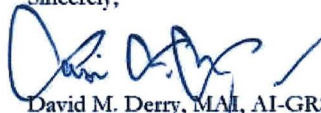
After this process and considering the surplus, we have the following **addendum related to Recommendation 2:**

1. A refund should be allowed to reimburse all credentialed appraisers for the overcharge in the 2017 recertification fee. Subsequent to a vote by the Board we were informed that Alaska Statutes do not allow refunds.
2. Some penalty or leverage is provided to the Board to assure us that we actually get an annual fee analysis. Since my appointment to the Board we have never had a fee analysis presented.

Subsequent legislative issue

As discussed on page 14, we plan to move ahead with Appraisal Management Company regulations. However we have received an opinion from the Attorney General's office that our enabling statute (AS 08.87.020(3)) does not grant the Board authority to enact the necessary regulations. Accordingly we will be asking the legislature for an amendment to the statute for the necessary authority.

Sincerely,



David M. Derry, MAI, AI-GRS
Chair
Alaska Board of Certified Real Estate Appraisers

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Legislative Auditor's Additional Comments

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
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October 20, 2017

Members of the Legislative Budget
and Audit Committee:

We reviewed the Board of Certified Real Estate Appraisers' (board) response to the audit report. Nothing contained in the response causes us to revise or reconsider the report conclusions and recommendations. However, there is a section of the board's response that we believe warrants further comments. Per the board's response, the board's enabling statute does not grant the board authority to enact regulations to govern the appraisal management companies (AMCs). We do not agree with this statement. While we agree that federal law, 12 U.S.C. 3353, which outlines minimum AMCs' requirements, is outside the range of federal code referenced in AS 08.87.020, the audit noted that 12 U.S.C. 3346 states that the duties of a State appraiser certifying and licensing agency may include the AMCs' registration and supervision and the addition of the AMCs to the national registry.

It can be argued that because 12 U.S.C. 3346 is within the range of federal code referenced in AS 08.87.020, the board has the authority to establish regulations for the management of AMCs. The audit further noted that per state statutes, the regulations adopted by the board may not be more stringent than the corresponding minimum requirements of 12 U.S.C. 3331-3351 or other federal law. "Other federal law" would encompass 12 U.S.C. 3353.

In summary, we reaffirm the report conclusions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

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