



ARIZONA BOARD OF APPRAISAL

1400 West Washington, Suite 360
Phoenix, Arizona 85007
(602) 542-1539 Fax (602) 542-1598
Email: appraisal@appraisal.state.az.us
Website: www.appraisal.state.az.us

MEMORANDUM

TO: Eileen I. Klein
Deputy Chief of Staff, Finance
Director, Office of Strategic Planning and Budgeting

FROM: Deborah G. Pearson, Executive Director

DATE: October 9, 2009

RE: 15% Fiscal Year 2010 Budget Reduction

First, let me acknowledge that you have a huge task in front of you in making necessary budget adjustments for FY 2010 and there many difficult decisions to be made. The proposed 15% budget reduction to the Board's Fund and eventual sweep to the State's General Fund creates an excessive negative impact on the Arizona Board of Appraisal and its mission to protect the public.

The Board's fund was swept in the amount of \$539,700 for FY 2008, and again in the amount of \$30,000 for FY 2009. As a result of the fund sweeps, the Board's fund was depleted to the extent that the planned supplemental budget request to cover the necessary expenditures to the Board's operating budget for regulation/enforcement was not possible.

The inability to supplement the Board's operating budgets in FY 2008 and FY 2009 resulted in the Board having to holding 24 investigations until FY 2009; and having to hold an additional 20 investigations until FY 2010. The held investigations created additional stress to the operating budget of the fiscal year to which they were processed.

In addition to the 20 investigations held until FY 2010, the Board has referred 18 complaints to investigation to date in FY 2010. The Board has completed or has pending a total of seven formal hearings through December of FY 2010. The costs for the hearings are based on services by investigators as expert witnesses, the Office of Administrative Hearings, the court reporter, and the assistant attorney general (through an Interagency Service Agreement).

Because of the numerous complaints received by the Board, which require legal assistance, such as drafting and negotiating of consent agreements and orders, settlements, representation on behalf of the State at formal hearings, and general legal advice, it is necessary that the Board enter into an Interagency Service Agreement with the Attorney General's office for 55% of an assistant attorney's general time.

To date in FY 2010, the Board has opened 122 complaints against appraisers. The Board is an active member of the Arizona Mortgage Fraud Task Force working directly with the FBI, the DFI, the Department of Real Estate, Freddie Mac, FHA, as well as county and city law enforcement in investigations and revocation of appraisers involved in mortgage fraud schemes. Of the complaints opened in FY 2010, 40% involve potential mortgage fraud, which may require investigations:

- 24 Arizona Mortgage Fraud Task Force
- 15 Lenders
- 10 HUD

Based on the increased number of complaints received by the Board, it is anticipated that the number of such complaints will rise in the next several years.

Because of the Savings and Loan Crisis in the late 1980's, Congress passed legislation subjecting the real estate appraisal profession to Federal oversight. The Board was created under that legislation, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended ("Title XI"). The Board's regulatory/enforcement authority is found at Arizona Revised Statutes, Chapter 36, Article 3, Regulation, and Arizona Administrative Code, Title 4, Chapter 46, Article 3. The Board's Mission is "to promote quality real estate appraisal in Arizona that protects the health, safety and welfare of the public."

The budget reduction and fund sweep will have extremely harmful effects on Arizona's appraiser regulatory functions. Title XI, among other things, established the Appraisal Subcommittee ("ASC"). The ASC is a Federal agency that oversees the operations of all State appraiser regulatory agencies ("State agencies"), including the Board, to ensure that they conform to Title XI. Adequate funding is essential to the Board performing its enforcement duties consistent with Title XI and ASC Policy Statement 10. And, adequate funding is particularly important today in view of the difficulties in the nation's housing market and the high incidence of mortgage fraud. ASC Policy Statement 10 sets out the ASC's standards regarding the regulation/enforcement by State agencies. ASC Policy Statements are the ASC's formal interpretations of Title XI and serve as the ASC's framework for overseeing State appraiser regulatory functions. Policy Statement 10, in pertinent part, states:

Each State agency must ensure that its entire system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner. For the purposes of this paragraph, "well-documented" means that relevant documentation pertaining to a matter exists, and it will enable ASC investigators to understand the facts and determinations in the matter and the reasons for those determinations. Absent special documented facts or considerations, substantially similar cases must result in similar dispositions. State agencies must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint. Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal, appraisal methodology, and USPAP.

Dismissal of an alleged USPAP violation due to an "absence of harm to the public" is inconsistent with Title XI's purpose. That purpose "is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed . . . in accordance with uniform standards, by individuals

whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." Financial loss or the lack thereof is not an element in determining whether there is a USPAP violation; the extent of such loss, however, should be a factor in determining the appropriate level of discipline. It is critical that State agencies investigate allegations of USPAP violations, and, if allegations are proven, take appropriate disciplinary or remedial action.

State agencies need to process complaints of appraiser misconduct or wrongdoing on a timely basis. Absent special documented circumstances, final State agency administrative decisions regarding complaints should occur within one year of the complaint filing date.

Should the ASC find a State in noncompliance with Title XI, after notice and hearing, the ASC could issue a "nonrecognition" order instructing all federally insured banks, thrift institutions, credit unions, Fannie Mae, Freddie Mac, and the U.S. Department of Housing and Urban Development, among others, not to use Arizona licensed and/or certified appraisers. For more information, *see* 12 U.S.C. 3347.

It is imperative that the Board's operating budget for FY 2010 not be reduced by 15%. If the budget is reduced, it will force the Board to continue to accept complaints, but literally shut down any regulation/enforcement. There would be no funds for investigations, formal hearings, court reporters, or the current ISA with the Attorney General. Again, the deleterious effect could be that Arizona is the subject of an order by the ASC instructing all federally insured banks, thrift institutions, credit unions, Fannie Mae, Freddie Mac, and the U.S. Department of Housing and Urban Development, among others, not to use Arizona licensed and/or certified appraisers.

Based on the foregoing information, the proposed FY 2010 budget reductions and fund sweep must be eliminated to allow the Board to fulfill its mission to protect the public.

Les Abrams, Board Chairperson; Debbie Rudd, Vice Chairperson; and I would be happy to meet with you to further discuss the negative effect of the fund reduction and fund sweep, as well as answer any questions you may have.

Attachments

**FY 2010 BUDGET REDUCTIONS - SUMMARY OF ISSUES
ARIZONA BOARD OF APPRAISAL**

BOARD OF APPRAISAL FUND 2270

FY 2010 All Non-General Funds Budget (less Federal Funds) 624,200

AGENCY REDUCTION TARGET - ALL NON-GENERAL FUNDS (w/o Federal Funds) \$93,630

Priority	Issue Title¹	Reductions Amount
1	Regulation/Enforcement	\$93,630
	Issue Total	\$93,630

Fund Total as a Percentage of Non-General Fund Reduction Target 100%

¹ Please complete the attached Description and Impact Statement for each issue.

**STATE OF ARIZONA
FY 2010 BUDGET REDUCTIONS - ISSUE DESCRIPTIONS**

Arizona Board of Appraisal

Issue Title: Regulation/Enforcement

Issue Priority: 1

Reduction Amounts:

Board of Appraisal Fund	
Investigations	\$47,200
Formal Hearings	\$15,200
ISA with Attorney General:	\$31,230

Amount: \$93,630

Issue Description and Statement of Effects

If the budget is reduced, it will force the Board to continue to accept complaints, but will literally shut down any regulation/enforcement. There would be no funds for investigations, formal hearings, or the current Interagency Service Agreement with the Attorney General.

More complicated complaints are referred to investigation. Investigations are performed by Board investigators under the Board's investigator contract through State Procurement. The reduction and sweep of the Board's Fund would result in no further investigations in FY 2010. It is anticipated that at least 40 investigations would not be performed in FY 2010 as a result of the budget reduction and fund sweep of the Board's Fund.

Generally, the most egregious complaints are referred to formal hearing where if the allegations are proven; the result is suspension or revocation. The reduction and sweep of the Board's Fund would result in no further formal hearings before the Office of Administrative Hearings in FY 2010. Although the Board does hold some formal hearings without referral to the Office of Administrative Hearings, it is not feasible for the Board to hold the more complicated formal hearings. The Board would not be able to continue its Interagency Service Agreement with the Office of Administrative Hearings; would not be able to pay for the testimony of contract investigators as expert witnesses; and would not be able to pay for the services of court reporters in connection with the formal hearings. It is anticipated that at least six formal hearings that could ultimately result in suspension or revocation would not be held in FY 2010 as a result of the budget reduction and fund sweep of the Board's Fund.

The Board has entered into an Interagency Service Agreement with the Attorney General to ensure compliance with all regulations, rules and open meeting laws, and to ensure that all of the legal work is timely performed on behalf of the Board. The assigned assistant attorney general drafts letters of concern, letters of remedial action, due diligence consent letters and consent agreements and orders providing for probation, mentorship, education, voluntary suspension and voluntary surrender. In addition, the assistant attorney general negotiates settlement agreements and provides general legal advice to the executive director as necessary and to the Board and its Committees at their monthly meetings. The reduction and sweep of the

October 9, 2009

Board's Fund would result in an approximate 40% reduction of time spent by its designated assistant attorney general in FY 2010.

As a 90/10 agency, the Board receives no funding from the General Fund and all of the Board's expenses must be paid through the fees it collects. The Board contributes 10% of the fees it collects to the General Fund and actually contributes toward the solvency of the General Fund.

As a result of the reduction and sweep of the Board's Fund in FY 2010:

- The Board would not be able to perform its mission of protecting the public, which is particularly important today in view of the difficulties in the nation's housing market and the high incidence of mortgage fraud.
- The State of Arizona could become the subject of an order by the Appraisal Subcommittee, who has federal oversight over the Board, instructing all federally insured banks, thrift institutions, credit unions, Fannie Mae, Freddie Mac, and the U.S. Department of Housing and Urban Development, among others, not to use Arizona licensed and/or certified appraisers.
- Those persons regulated by the Board would ultimately pay an additional tax.

It is imperative that the Board's operating budget for FY 2010 not be reduced and swept.