



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit

Arizona Board of Appraisal

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Debra K. Davenport
Auditor General

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April 15, 2013

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor

Mr. Kevin R. Yeanoplos, Chair
Arizona Board of Appraisal

Ms. Debra J. Rudd, Executive Director
Arizona Board of Appraisal

Transmitted herewith is a report of the Auditor General, *A Performance Audit of the Arizona Board of Appraisal (Board)*. This report is in response to Arizona Revised Statutes (A.R.S.) §32-3604(J) and was conducted under the authority vested in the Auditor General by A.R.S. §41-1279.03. I am also transmitting within this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Board agrees with all of the findings and plans to implement all of the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Debbie Davenport
Auditor General

Attachment

cc: Arizona Board of Appraisal Members

REPORT HIGHLIGHTS PERFORMANCE AUDIT

Board should improve its complaint resolution process

Our Conclusion

Created in 1990, the Arizona Board of Appraisal (Board) regulates real estate appraisal in Arizona by licensing and certifying appraisers, registering appraisal management companies (AMCs) and property tax agents, investigating complaints, and issuing discipline for violations of board statutes and rules. The Board's complaint resolution process has several weaknesses that contribute to potentially untimely and/or inappropriate complaint resolution, such as insufficient documentation regarding some board decisions, delays in assigning complaints for contract investigations, and inadequate monitoring of complaints to ensure timely resolution. Although the Board has taken steps to improve its process, it should develop and implement policies and procedures to address these weaknesses. The Board should also comply with statutory requirements for registering AMCs and develop and implement policies and procedures for providing timely and complete complaint and disciplinary information to the public.



2013

Board resolves complaints—The Board is responsible for investigating complaints against appraisers, AMCs, and property tax agents and taking appropriate action, if necessary. This audit focused on complaints against appraisers, of which there were 163 in fiscal year 2012. After a complaint is received, the appraiser is notified and asked to respond to the complaint. The Board then conducts an initial review of the complaint to determine whether there has been a violation of board statutes or rules or whether additional investigation by a contract investigator is needed. The Board may also hold informal or formal hearings to resolve complaints. The Board may dismiss complaints if no violations have been found or take nondisciplinary or disciplinary action depending on the severity of the violations.

Complaint resolution process has weaknesses—We identified several weaknesses in the Board's complaint resolution process that contribute to potentially untimely and/or inappropriate complaint resolution:

- **Some board decisions not explained**—Under the Board's initial review process, all board members are responsible for reviewing the complaint and associated information. However, the Board does not generate documentation, such as an investigative report or detailed meeting minutes, that supports or explains the Board's decisions to proceed with additional investigation or move to resolve the complaint.
- **Complaints not assigned to contract investigators in a timely manner**—Board staff estimated that the Board referred about 30 to 40 percent of complaints to contract investigators for additional investigation. We reviewed 13 such complaints and found that it took a median time of 252 days to assign them to contract investigators. Although board staff said funding reductions and staff vacancies caused the delays, these reasons may not account for all of the delays.
- **Concerns regarding quality of some contract investigations raised**—Both the public and board members have raised concerns at board meetings about the quality of some investigative reports prepared by contractors. Additionally, concerns regarding investigation quality were raised by appraisers and/or the Board in 2 of the 13 complaints we reviewed that were referred for contract investigation.
- **Execution of consent agreements and nondisciplinary letters sometimes untimely**—The Board may offer consent agreements or issue nondisciplinary letters, which appraisers sign to demonstrate acceptance of proposed disciplinary or nondisciplinary terms without going to a formal hearing. However, it can sometimes take several months for the Board to execute an agreement or letter.
- **Complaint resolution timeliness not adequately monitored**—The Board monitors complaints that have not been resolved within 12 months, the time frame recommended for resolving complaints by the Appraisal Subcommittee, a federal organization that reviews states' compliance with federal appraisal laws and regulations. However, the Board does not monitor complaint timeliness prior to that point, and the Appraisal Subcommittee's 2010 and 2012 compliance reviews found that the Board did not resolve all complaints within 12 months. Additionally, 12 of the 28 complaints we reviewed were not resolved within that time frame.

Board inappropriately dismissed two complaints—The Board took nondisciplinary or disciplinary action when it found violations in most of the 28 complaints we reviewed, but it inappropriately dismissed 2 related complaints where minor violations were found. These dismissals were not consistent with board rules, which require the Board to take nondisciplinary or disciplinary action if violations are found.

Board taking steps to improve, but additional action needed—In December 2012, the Board began using one of its contract investigators to investigate complaints and prepare investigative reports prior to the Board's initial review. Although this change helps address some weaknesses in its complaint resolution process, the Board should develop and implement policies and procedures to address the various process weaknesses.

Recommendations

The Board should:

- Develop and implement policies and procedures to address the various weaknesses in its complaint resolution process, and
- Ensure appropriate nondisciplinary or disciplinary action is taken when violations are found.

Board should comply with statutory requirements for registering AMCs

Statute requires AMC owners and officers to submit to a background investigation when applying for registration. However, the Board is not enforcing this requirement because the Federal Bureau of Investigation and the Arizona Department of Public Safety declined to process fingerprint cards for the background investigations since statute does not authorize the Board to receive criminal history reports for AMC applicants. The Board has proposed legislation during the 2013 legislative session to address this issue.

In addition, statute requires each AMC to annually certify that it has systems in place to verify that appraisers are licensed or certified, review the quality of appraisals, train AMC staff in selecting appropriate appraisers, and maintain records for each appraisal request. Although the Board requires these certifications at the biennial registration, it does not require them annually. The Board intends to seek legislation that would revise statute to require the certifications to be made consistent with the renewal period rather than annually.

Recommendations

The Board should:

- Require new AMC applicants and existing AMC registrants to submit to background investigations if the Legislature revises statute to authorize the Board to receive criminal history reports, and
- Require AMCs to file annual certifications until statutory changes permit this to be done only at renewal.

Board should provide timely and complete complaint and disciplinary information

Although the public should have access to timely and complete information regarding an appraiser's complaint and disciplinary history, board staff responses to our requests for such information were not timely and/or complete. Board staff lack adequate procedures that would assist in providing this information. Therefore, we recommended that the Board develop policies and procedures and train staff accordingly.

Recommendations

The Board should develop and implement written policies and procedures to provide timely and complete information and train staff on the new policies and procedures.

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INTRODUCTION

Scope and Objectives

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Appraisal (Board) pursuant to Arizona Revised Statutes (A.R.S.) §32-3604(J). This audit was conducted under the authority vested in the Auditor General by A.R.S. §41-1279.03.

The Board promotes quality real estate appraisal in Arizona by licensing or certifying appraisers, registering appraisal management companies (AMCs) and property tax agents, investigating complaints, issuing discipline for violations of board statutes and rules, and providing information to the public. This performance audit addresses the Board's complaint resolution process, AMC registration, provision of public information, and compliance with the State's open meeting law.

Board regulates appraisers and appraisal management companies

Board mission and history

Created in 1990, the Board's mission is to promote quality real estate appraisal in Arizona that protects the health, safety, and welfare of the public. The Board accomplishes this mission by ensuring that all Arizona appraisers meet national education, experience, and examination requirements and by regulating appraisers, appraisal management companies (AMCs), and property tax agents (see textbox). The Board's regulatory activities include licensing or certifying appraisers, registering AMCs and property tax agents, investigating complaints, and issuing discipline for violations of board statutes and rules.

Board-regulated entities

State-licensed or state-certified appraiser—A person who develops and communicates appraisals and who holds a valid board-issued license or certificate. An appraisal is an independently prepared opinion as to the market value of real property as of a specific date that is supported by the presentation and analysis of relevant market information.

AMC—A business entity that receives requests for appraisal services from clients and contracts with one or more independent appraisers to perform the requested services.

Property tax agent—An individual who is designated to act on behalf of a person who owns, controls, or possesses property valued by a county assessor and who is paid to analyze assessed property valuations.

Source: Auditor General staff analysis of A.R.S. §§32-3601 and 32-3661.

The Board was created in response to changes in federal banking regulations passed by the U.S. Congress through the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). This law requires that all appraisals conducted in connection with federally related transactions be performed by state-certified or licensed appraisers, and all 50 states have established agencies to regulate the appraisal industry.¹ FIRREA also requires appraisers to operate within defined standards of professional practice

¹ A federally related transaction means any real estate-related financial transaction that (1) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (2) requires the services of an appraiser. The term "federal financial institutions regulatory agency" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.

developed by a nonprofit organization called the Appraisal Foundation. These standards, known as the Uniform Standards of Professional Appraisal Practice (USPAP), guide all real estate appraisers in the United States. Arizona has adopted these standards in statute and rule. USPAP requires, in part, that appraisers act independently to determine the value of real property, use appropriate valuation methods, and retain all materials used to support the appraiser's analyses, opinions, and conclusions for at least 5 years following an appraisal's preparation.

FIRREA also established the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The Appraisal Subcommittee is responsible for reviewing each state appraisal regulatory agency's compliance with federal laws and standards either every 2 years or every year, depending on the agency's level of compliance. The Appraisal Subcommittee conducted its most recent review of the Board in April 2012. This review found that the Board was not in substantial compliance with federal laws and standards because the Board did not resolve all complaints against appraisers within 12 months, the standard recommended by the Appraisal Subcommittee (see Finding 1, pages 9 through 18, for more information on the Board's compliance with complaint resolution time frames). In addition, the Appraisal Subcommittee reported areas of concern regarding (1) statutory requirements for reinstating a revoked credential, (2) board rules regarding requirements for USPAP instructors, and (3) expiration dates for approved appraisal courses. As of January 2013, the Board had addressed two of the three concerns, but reported that it had not yet revised board rules to address the concern regarding USPAP instructor requirements.

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), which established additional regulations to help ensure that appraisal services provided through AMCs comply with USPAP and are conducted independently and free from inappropriate influence and coercion. This Act requires AMCs to register with and be subject to supervision by state appraisal regulatory agencies and allows such agencies to register and supervise AMCs. Arizona adopted state laws for the regulation of AMCs in 2010.

Licensure, certification, and registration

The Board is responsible for licensing or certifying qualified appraisers and registering AMCs and property tax agents. Specifically:

- **Appraisers**—As shown in Table 1 (see page 3), the Board licenses or certifies three types of appraisers whose scope of practice and minimum requirements for licensure or certification are established by the Appraiser Qualifications Board of the Appraisal Foundation and adopted in Arizona statute and rule. General requirements for licensure or certification are similar across all three appraiser types and include: (1) completing a degree and/or specific number of

**Table 1: Appraiser types, number of appraisers, scope of practice, and minimum education and experience requirements for licensure or certification¹
As of November 2012
(Unaudited)**

Appraiser type	Number of appraisers	Scope of practice	Minimum education and experience requirements ²
Licensed real estate appraiser	292	Noncomplex property of one to four residential units valued under \$1 million and complex property of one to four residential units valued under \$250,000 ³	150 hours of qualifying education 2,000 hours of experience in not less than 18 months
Certified residential real estate appraiser	1,117	Property of one to four residential units without regard to value or complexity	Associate degree and 200 hours of qualifying education 2,500 hours of experience in not less than 24 months
Certified general real estate appraiser	<u>772</u>	All types of real property	Bachelor's degree and 300 hours of qualifying education 3,000 hours of experience in not less than 30 months
Total active appraisers	<u>2,181</u>		

¹ In addition to education and experience requirements, appraisers must also pass a professional exam endorsed by the Appraiser Qualifications Board of the Appraisal Foundation, a nonprofit organization that develops national appraisal standards and appraiser qualification criteria.

² Instead of earning an associate's or bachelor's degree for the certified residential or certified general classifications, an applicant can complete a specific number of college-level credit hours on specific subjects.

³ Complex property means property that is atypical for the marketplace because of factors such as architectural style, age or size of improvements, and potential environmental hazard liability.

Source: Auditor General staff analysis of A.R.S. §§32-3601 and 32-3612, the Board's appraiser application forms, and licensing data as of November 2012 provided by board staff.

hours of qualifying education, (2) passing an approved examination, and (3) obtaining a specific level of experience. However, as shown in Table 1, a licensed appraiser's scope of practice is limited by a property's value and complexity, whereas a certified appraiser's scope of practice is not. Licenses and certifications must be renewed every 2 years, and licensed and certified appraisers must complete at least 28 hours of continuing education and a 7-hour national USPAP update course during every renewal period. The Board also provides temporary licenses and certifications for out-of-state appraisers to conduct appraisals in Arizona and, according to its Web site, has reciprocal agreements with 36 states to allow nonresident licensed and/or certified appraisers in those states to more easily apply for the same appraiser classification in Arizona. According to board records, the Board had 2,181 licensed or certified appraisers as of November 2012.

Under board rules, the Board has 90 days to either approve or deny a candidate's application and must issue licenses or certifications only to qualified applicants.

In addition, according to Appraisal Subcommittee policy, the Board has 5 business days to issue a temporary license or certification or to notify the applicant regarding the status of his/her application. Auditors reviewed 30 licensing/certification applications, including 12 temporary certifications, and found that the Board issued licenses and certificates within the required time frames and to qualified applicants in these cases.

- **AMCs**—Since July 2010, the Board has also been responsible for registering AMCs. Federal law requires that all AMCs that do business in Arizona register with the Board, hire only licensed or certified appraisers for federally related transactions, comply with USPAP standards for their appraisals, and conduct appraisals independently and free from inappropriate influence and coercion. Additionally, each owner and controlling person of an AMC shall be of good moral character, submit to a background investigation, show proof of a surety bond of \$20,000, and certify to the Board that he/she has never had any financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, revoked, or voluntarily surrendered in Arizona or any other state. Initial registration for AMCs is for 1 year, and then they must renew every 2 years. According to board records, the Board had 153 registered AMCs as of September 2012.

Although the Board has not established time frame rules for processing AMC registration applications, auditors reviewed initial and/or renewal registrations applications for five AMCs and found that the Board issued registrations within 90 days. These applicants met most statutory requirements for registration. However, the Board has not enforced the statutory requirements that applicants submit to a background investigation and that AMCs that have renewed their registrations make annual certifications regarding their appraisal services (see Finding 2, pages 19 through 22, for additional information).

- **Property tax agents**—Lastly, the Board is responsible for registering property tax agents. Arizona statutes require property tax agent applicants to submit an application with initial registration fee and disclose a criminal conviction of any felony or misdemeanor involving dishonesty or moral turpitude within the last 10 years. Registration is valid for 2 years and may be renewed for 2-year periods. According to board records, the Board had 384 registered property tax agents as of November 2012.

Complaint investigation and discipline

The Board is also responsible for investigating complaints and taking appropriate nondisciplinary or disciplinary action, if necessary. Specifically:

- **Appraisers**—A.R.S. §32-3631 authorizes the Board to investigate complaints against licensed or certified appraisers for several reasons, including alleged

violations of appraisal standards; negligence or incompetence; dishonesty, fraud, or misrepresentation; criminal convictions substantially related to appraisal work or for crimes involving moral turpitude; and failing to meet minimum appraiser qualifications established by law. Complaints may be submitted in writing by the public or opened by the Board. According to board staff, about half of the complaints received from the public come from individuals who are buying or selling a house, and the other half come from lenders. According to board records, the Board received or opened 163 complaints involving appraisers in fiscal year 2012.

Based on the results of its investigation, the Board may dismiss complaints or take nondisciplinary or disciplinary action, as appropriate (see textbox). The Board may take nondisciplinary action against an appraiser for concerns or minor violations that do not warrant disciplinary action. Disciplinary action may be offered through a consent agreement. The Board uses a disciplinary matrix to help ensure that the Board imposes appropriate and consistent discipline based on the severity of violations identified. In addition, the Board considers mitigating or aggravating circumstances, such as prior disciplinary history, when determining discipline and imposes more severe discipline for appraisers who do not comply with their consent agreements for prior violations. For example, in February 2011, the Board escalated the discipline for an appraiser who did not complete the education outlined in her consent agreement from a prior complaint, which resulted in the appraiser voluntarily surrendering her license. However, as discussed in Finding 1 (see pages 9 through 18), the Board needs to take additional actions to improve its complaint resolution process.

Board's nondisciplinary options and disciplinary options for appraisers

Nondisciplinary options:

- Issue a letter of concern
- Issue a letter of remedial action

Disciplinary options:

- Offer a letter of due diligence
- Impose terms of probation, such as training or education, supervision or mentor review, and restrictions on the nature and scope of an appraiser's practice
- Suspend, revoke, or deny renewal licensure

Source: Auditor General staff review of Arizona Administrative Code (AAC) R4-46-101 and R4-46-301.

- **AMCs**—A.R.S. §32-3678 authorizes the Board to take disciplinary action against any AMC for several reasons, including violating board rules, knowingly making a false representation of fact to the Board, suppressing or withholding any applicant information from the Board that would have resulted in the applicant being ineligible for registration, and violating FIRREA. The Board's disciplinary options include censure, suspension or revocation of registration, and civil penalties not to exceed \$15,000 per violation.

As of May 2012, the Board had received a total of 63 complaints against 28 AMCs. Appraisers filed most of the complaints against AMCs for failure to pay for their appraisal services. Notably, the Board revoked the registration for a

California-based AMC in July 2012 and ordered it to pay civil penalties of \$855,000 for failure to pay Arizona appraisers for 171 appraisals.

- **Property tax agents**—A.R.S. §32-3654 requires the Board to investigate complaints against property tax agents. If the Board finds a violation, it may issue a letter of concern, but statute requires the Board to suspend or revoke an agent's registration for certain violations such as securing registration by fraud or deceit or committing a fraudulent act with the intent to benefit. For these violations, statute requires the Board to suspend an agent's registration for at least 6 months on the first finding of a violation, suspend an agent's registration for at least 12 months on the second finding of a violation, and revoke the agent's registration on the third or subsequent finding of a violation. According to board staff, the last complaint the Board adjudicated against a property tax agent was at its January 2011 board meeting.

Providing information to the public

The Board provides the public with some information about appraisers on its Web site, but disciplinary information can be obtained only by contacting the Board's office. The Web site provides appraisers' license or certification type, number, issue date, and expiration date. To obtain specific disciplinary history for an appraiser, the public needs to contact the Board's office. The Board is also required to submit to the Appraisal Subcommittee's National Registry at least monthly a list of individuals receiving a license or certificate. The National Registry provides information for appraisers across the country. However, as discussed in Finding 3 (see pages 23 through 25), the Board should take steps to improve its provision of information regarding appraisers' complaint and disciplinary histories to the public.

Organization and staffing

A.R.S. §32-3604 establishes a Board consisting of nine governor-appointed members, including a certified general appraiser, a certified residential appraiser, a licensed appraiser, an additional certified or licensed appraiser, a registered property tax agent, an employee of a lending institution who is not a certified or licensed appraiser, and three public members. Board members are eligible to serve two consecutive 3-year terms. As of March 2013, the Board had two vacant positions, including a certified general appraiser member position and the lending institution member position.

The Board employed 5.5 full-time equivalent (FTE) and 1 temporary staff as of March 2013, including an executive director, a licensing and education administrator, an appraiser regulatory compliance officer, an AMC regulatory compliance officer, an

accounting and human resources specialist, a part-time secretary, and a temporary employee who serves as a compliance secretary. The Board did not have any staff vacancies. The Board also has contracted with investigators to perform complaint investigations as needed (see Finding 1, pages 9 through 18, for additional information about contract investigations).

Budget

The Board does not receive any State General Fund monies. Rather, the Board's revenue comes primarily from application, renewal, and registration fees. The Board's initial application fee for licensed or certified appraisers is \$400, and the biennial renewal application fee is \$425. The initial registration fee for property tax agents is \$200, and the biennial renewal application fee is \$100. The fee for AMC registration and renewal, which the Board began collecting in fiscal year 2011, is \$2,500. Although the Board's revenues fluctuate because licenses and certifications are renewed biennially, the addition of the AMC registration fee contributed to an increase in the Board's net revenues between fiscal years 2010 and 2012, which increased from approximately \$493,430 in fiscal year 2010 to \$767,590 in fiscal year 2012, as shown in Table 2 (see page 8). In addition, to fund the Appraisal Subcommittee's activities, FIRREA requires states to collect and transmit to the Federal Financial Institutions Examination Council an annual registry fee of not more than \$40 from individuals who are licensed or certified.¹

The Board is also required to remit 10 percent of all its revenues to the State General Fund, excluding all revenues from national registry fees. As shown in Table 2, during fiscal year 2012, the Board received approximately \$910,000 in gross revenues and remitted approximately \$86,400 to the State General Fund. Its estimated fiscal year 2013 gross revenues are \$843,800. Further, the Board's expenditures increased from approximately \$610,900 in fiscal year 2010 to approximately \$700,900 in fiscal year 2012. According to board staff, the increase in expenditures was due to hiring additional staff. The Board's expenditures are estimated to total \$746,000 in fiscal year 2013. Finally, the Board's end-of-year fund balance has increased by nearly one-third since fiscal year 2010, from approximately \$200,100 to nearly \$294,800 at the end of fiscal year 2012. However, the Board estimates that its fund balance will decrease to approximately \$223,700 by the end of fiscal year 2013.

¹ The Board charges an \$80 biennial registry fee to meet this requirement.

**Table 2: Schedule of revenues, expenditures, and changes in fund balance
Fiscal years 2010 through 2013
(Unaudited)**

	2010 (Actual)	2011 (Actual)	2012 (Actual)	2013 (Estimate)
Revenues				
Licenses	\$ 547,940	\$ 746,675	\$ 865,045	\$ 800,500
Charges for sales of goods and services	42,642	44,158	44,960	43,300
Other		363	1	
Gross revenues	<u>590,582</u>	<u>791,196</u>	<u>910,006</u>	<u>843,800</u>
Remittances to the State General Fund ¹	(53,098)	(72,061)	(86,411)	(84,400)
Remittances to the Appraisal Subcommittee ²	<u>(44,050)</u>	<u>(73,575)</u>	<u>(56,005)</u>	<u>(74,000)</u>
Net revenues	<u>493,434</u>	<u>645,560</u>	<u>767,590</u>	<u>685,400</u>
Expenditures and transfers				
Personal services and related benefits	318,588	334,707	406,934	425,500
Professional and outside services	142,460	151,274	196,356	226,700
Travel	3,066	12,153	17,227	23,200
Other operating	146,806	70,879	73,572	70,500
Equipment		19,669	6,773	100
Total expenditures	<u>610,920</u>	<u>588,682</u>	<u>700,862</u>	<u>746,000</u>
Transfers to the State General Fund ³	400	12,100	8,000	
Transfers to other agencies ⁴	<u>3,890</u>	<u>3,095</u>	<u>5,703</u>	<u>10,500</u>
Total expenditures and transfers	<u>615,210</u>	<u>603,877</u>	<u>714,565</u>	<u>756,500</u>
Net change in fund balance	(121,776)	41,683	53,025	(71,100)
Fund balance, beginning of year	<u>321,836</u>	<u>200,060</u>	<u>241,743</u>	<u>294,768</u>
Fund balance, end of year	<u>\$ 200,060</u>	<u>\$ 241,743</u>	<u>\$ 294,768</u>	<u>\$ 223,668</u>

¹ As required by A.R.S. §32-3608, the Board remits 10 percent of all revenues, except national registry fees, to the State General Fund.

² In accordance with A.R.S. §32-3607, the Board collects and remits a 2-year national registry fee to the Appraisal Subcommittee, a subcommittee of the Federal Financial Institutions Examination Council.

³ Amount consists of transfers to the State General Fund in accordance with Laws 2010, 7th S.S., Ch. 1, §148, and Laws 2011, Ch. 24, §§108, 129, and 138, to provide support for state agencies.

⁴ Amount primarily consists of transfers to the Office of Administrative Hearings.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2010 through 2012; the AFIS Management Information System *Status of General Ledger-Trial Balance* screen for fiscal years 2010 through 2012; and board-provided estimates for fiscal year 2013.

FINDING 1

The Arizona Board of Appraisal (Board) should improve its complaint resolution process. The Board is responsible for investigating complaints against licensed and certified appraisers and taking appropriate nondisciplinary or disciplinary action, if necessary. However, the Board's complaint resolution process has several weaknesses that contribute to untimely or inappropriate complaint resolution, potentially affecting its protection of the public. In addition, auditors found that the Board did not comply with its rules when it dismissed two complaints with minor violations instead of taking the action required by rule. Although the Board has taken steps to improve its complaint resolution process, additional actions are needed. The Board should continue revising and/or develop and implement policies and procedures regarding initial complaint review, contract investigations, timely execution of board nondisciplinary and disciplinary actions, and monitoring complaint resolution timeliness. In addition, the Board should ensure that it takes appropriate nondisciplinary or disciplinary action against appraisers who have violated board statutes or rules.

Board should improve complaint resolution process

Board investigates complaints

As discussed in the Introduction (see pages 1 through 8), the Board is responsible for investigating complaints against licensed and certified appraisers and taking appropriate nondisciplinary or disciplinary action, if necessary.¹ The Board's complaint resolution process is prescribed by statute and rule and includes the following steps:

- **Verify complaint and notify appraiser**—Upon receipt of a complaint, board rules require board staff to review the complaint to determine whether the complaint is within the Board's jurisdiction and, within 14 days, notify the appraiser of the complaint.
- **Appraiser response**—The appraiser then has 30 days to provide board staff with a written response that includes the appraisal(s) at issue and associated work file(s).²
- **Initial board review**—Once the appraiser's response is received, the Board has 75 days to conduct an initial review of the complaint. As part of the initial review, board members are responsible for reviewing the complaint and appraiser's response to determine whether there has been a violation of board statutes or rules.
- **Additional investigation**—If necessary, the Board may request additional investigation by a contract investigator. A contract investigation generally entails a contracted investigator conducting an analysis of the complaint and the appraiser's response, an examination of the appraisal work file, and an inspection of the appraised property and comparable properties used in the appraisal. The contract investigator drafts an investigative report indicating whether or not the appraiser violated any appraisal standards for the appraisal being reviewed. The Board then decides whether to adopt any or all of the findings of violations identified by the investigator.

¹ Although the Board also investigates complaints against appraisal management companies (AMCs) and property tax agents, this finding focuses on complaints against appraisers. See the Introduction (pages 1 through 8) for information about complaint resolution and disciplinary options for AMCs and property tax agents.

² Upon an appraiser's request, the Board may grant a single extension of up to 30 days for the appraiser to submit the written response.

- **Informal and formal hearings**—Based on either its initial review or the contract investigation, the Board may request a voluntary informal hearing with the appraiser to further question the appraiser and/or any witnesses. Additionally, the Board may hold a formal hearing or refer the complaint to an administrative law judge to conduct a formal hearing if, after an informal hearing or an investigation, the Board determines that suspension or revocation may be warranted, the appraiser refuses to sign a letter of due diligence or consent agreement, or the appraiser is aggrieved by the Board’s decision in an informal hearing.
- **Board adjudication**—At any point during or following initial review, the Board may (1) dismiss the complaint if no violations have been found; (2) take nondisciplinary action against the appraiser, such as issuing a letter of concern or letter of remedial action, if the Board determines that violations were committed but that they did not materially impact the final conclusion of the appraisal and did not involve ethics or competency; or (3) offer the appraiser a consent agreement that includes disciplinary terms of probation such as additional training or education, supervision, or restrictions on the appraiser’s practice if violations have been found. The Board may also suspend or revoke an appraiser’s license or certification if violations have been found, but only through a formal hearing.

Complaint resolution process weaknesses may affect protection of public

The Board’s complaint resolution process has several weaknesses that contribute to potentially untimely and/or inappropriate complaint resolution, which could affect the Board’s ability to adequately protect the public. These weaknesses include initial review procedures that lack transparency, untimely assignment of complaints to contract investigators, quality issues with some contract investigations, untimely execution of some consent agreements and nondisciplinary letters, and inadequate monitoring of complaints to ensure timely complaint resolution.

Initial review process lacks transparency—The Board’s initial complaint review procedures do not ensure adequate documentation of the Board’s rationale for decisions regarding complaints resolved through its initial review. At the time of the Office of the Auditor General’s 2003 performance audit (Report No. 03-06), the Board’s initial review procedures involved assigning each complaint to an individual board member, who would conduct an in-depth review of the complaint and identify potential statute or rule violations supported by the evidence. The board member would then present this information to the full Board at a public meeting and recommend whether to dismiss the complaint or refer it for further investigation. Since then, the Board has changed its initial review procedures so that all board members are responsible for reviewing each complaint and apprais-

er response. Board members then discuss at a public meeting the potential violations based on the evidence. Based on this discussion, the Board may request additional investigation by a contract investigator or an informal hearing, or move to resolve the complaint by dismissing it, issuing a nondisciplinary letter, or offering a consent agreement.

However, complaints that the Board resolves under these revised initial review procedures lack transparency. Specifically, based on auditors' observation of board meetings and review of meeting minutes and complaint files, the Board does not generate documentation, such as an investigative report or detailed meeting minutes, that supports or explains its complaint resolution decisions. By contrast, when the Board refers a complaint for additional investigation, the contract investigator produces an investigative report that outlines the complaint allegations and any violations substantiated by the investigation. This report becomes a public document once the complaint is resolved. Without similar documentation for complaints resolved through its initial review, the Board cannot ensure the complainant or the public that it has addressed each complaint allegation and has taken appropriate action to resolve the complaint, including either dismissing the complaint or taking nondisciplinary or disciplinary action to address substantiated violations. Further, one board member stated that having an investigative report or similar document prior to the Board's initial review may facilitate board members' complaint review by helping them be more informed.

For complaints resolved at initial review, the Board does not generate documentation that supports or explains its decisions.

Complaints not assigned to contract investigators in a timely manner—Board staff estimated that the Board referred approximately 30 to 40 percent of the complaints it reviewed for additional investigation by contract investigators. According to board records, the Board paid contract investigators to perform 57 complaint investigations in fiscal year 2012. Contract investigators include both individual appraisers and appraisal firms, and the Board used seven contractors in fiscal year 2012. Once the Board has referred a complaint for additional investigation, board staff are responsible for notifying the appraiser under investigation of the pending investigation and assigning the complaint to a specific contract investigator.

However, board staff did not assign complaints auditors reviewed to contract investigators in a timely manner. Auditors reviewed 13 complaints that the Board referred to contract investigators for investigation between January 2009 and October 2011.¹ For these complaints, it took a median time of 252 days from when the Board referred complaints for additional investigation until when the investigation contracts were signed. Specific times ranged from 72 to 378 days. According to board staff, staff vacancies and funding reductions accounted for at least some of this delay. Specifically, board staff reported that staff positions responsible for assigning contract investigations were vacant between September and December

¹ Auditors reviewed 28 complaints received between fiscal years 2009 and 2012, of which 19 were closed and 9 were open as of June 30, 2012 (see Appendix A, page a-1, for auditors' method for selecting this sample). The Board referred 14 of the 28 complaints for contract investigations; however, auditors analyzed only 13 of these 14 complaints because one of the complaints was referred for investigation in May 2012 and had not yet been investigated at the time of auditors' analysis in June 2012.

2009, which led to a backlog of complaints that needed to be assigned to an investigator in 2010. Board staff also reported that funding reductions in fiscal years 2008 and 2009 led to delays in assigning contract investigations through fiscal year 2010. Still, staff vacancies and funding reductions may not account for all of the delays in assigning complaints to contract investigators. Board staff took a median time of approximately 118 days to execute the contracts for 5 of the 13 complaints auditors reviewed that were referred for investigation in 2011 when board staff reported that there were no vacancies in the staff positions responsible for assigning contract investigations and that funds were available to pay for contract investigations.

Quality of some contract investigations questioned—Although board rules require the Board to assign competent investigators to complaint investigations, the quality of some investigations has been questioned. Specifically, the Board’s rules state that board staff shall assign investigators to complaints based on their experience, expertise, contract terms, and availability, and shall select an investigator who does not have a business or familial relationship with the appraiser under investigation.¹ However, both the public and board members have raised concerns about the quality of some investigative reports prepared by contractors. For example, during a call to the public at the February 2012 board meeting, an appraiser questioned the quality of two complaint investigations. Board members also raised concerns about the quality of some contract investigations at a September 2012 board meeting.

Additionally, concerns regarding investigation quality were raised in 2 of the 13 complaints auditors reviewed that were referred to contract investigators. Such concerns can undermine the credibility of the investigation process. Specifically:

- One complaint alleged that the comparable sales used in the appraisal report were distant from the property and that the appraised value was too high. The contract investigator identified six violations in the investigative report, including that the analysis of comparable sales was not sufficient or credible. Although the Board had previously accepted the investigative report, it passed a motion to find no violations and dismissed the complaint after the appraiser and his attorney argued that the investigative report contained several errors. They alleged that the investigator failed to interview the appraiser and was not sufficiently familiar with the area surrounding the appraised property. However, the Board’s decision was not unanimous, and the board meeting minutes do not clearly explain why the Board made its decision. For example, the minutes do not explicitly state whether the Board agreed with the appraiser’s and lawyer’s criticism of the investigation or had other specific reasons for dismissing the complaint.
- The second complaint involved an appraisal conducted for refinancing a property and alleged several violations of appraisal standards, including that

¹ Arizona Administrative Code (AAC) R4-46-301(B)(5).

Both the public and board members have raised concerns about the quality of some contract investigations.

the appraiser failed to analyze a prior sale of the property and reconcile differences between comparable properties used in the appraisal. The Board initially offered a nondisciplinary letter of remedial action to the appraiser, which would have required the appraiser to complete additional education. However, the appraiser sent the Board a letter countering this offer, stating that having to take additional education would create a financial hardship and that she disagreed with some of the alleged violations. For example, the appraiser disagreed with the investigator's opinion that the appraised property's street access was private and not public, and provided evidence to support her appraisal report. After reviewing the appraiser's counteroffer, the Board determined that there were some errors in the investigative report and, as a result, reduced the resolution from a letter of remedial action to a letter of concern, which did not require any corrective action.

Execution of consent agreements and nondisciplinary letters sometimes untimely—As discussed previously, the Board may offer consent agreements or issue nondisciplinary letters, which appraisers sign to demonstrate acceptance of the disciplinary or nondisciplinary action offered by the Board without going to a formal hearing. The terms of a consent agreement or letter are dictated by the Board. Once the letter or agreement is drafted and provided to the appraiser, the Board typically allows the appraiser 30 days to respond either by accepting the offered consent agreement or letter, or by making a counteroffer.

However, it can sometimes take several months for the Board to execute a consent agreement or letter, which can contribute to untimely complaint resolution. Twenty-one of the 28 complaints auditors reviewed resulted in an offer of consent agreement or nondisciplinary letter, including 9 complaints still open as of June 30, 2012, and 12 closed complaints. Five of the 9 open complaints had been open longer than 1 year. For these 5 complaints, 4 complaints were still open 73 days and 1 complaint was still open 169 days after the Board's decision to offer a consent agreement or nondisciplinary letter. Although the Board resolved most of the 12 closed complaints within 1 year, it took between 199 and 638 days to execute agreements for 3 complaints that took 2 to 3 years to close. For example, it took the Board 199 days to execute the agreement in the second complaint discussed on pages 12 through 13. The Board initially offered the appraiser a letter of remedial action in December 2011. As stated previously, the appraiser did not agree to the offer because of disagreements with the investigative report and made a counteroffer for a letter of concern that the Board accepted in February 2012. However, board staff did not mail the letter of concern to the appraiser until 3 months later—May 2012—and the appraiser signed the letter in June 2012.

The Board can sometimes take several months to execute a consent agreement or nondisciplinary letter.

Board does not adequately monitor complaint resolution timeliness—In addition, the Board does not adequately monitor complaint timeliness throughout the complaint resolution process, including both the time to investigate and adjudicate the complaint. The Appraisal Subcommittee, which reviews state appraisal regulatory agencies' compliance with federal laws and standards, recommends that

The federal Appraisal Subcommittee's two most recent compliance reviews found that the Board had not resolved all complaints within the recommended 12 months.

complaints be resolved within 12 months absent special documented circumstances. However, the Appraisal Subcommittee's two most recent compliance reviews found that the Board had not resolved all complaints within 12 months.¹ Further, many of the complaints that auditors reviewed also had not been resolved within 12 months. Specifically, the Board took longer than 12 months to resolve 7 of the 19 closed complaints auditors reviewed. The median time to resolve these 7 complaints was 782 days. In addition, 5 of the 9 open complaints auditors reviewed had been open for longer than 12 months; the median time these 5 complaints had been open was 626 days.

Several reasons contribute to the untimely complaint resolution. First, untimely complaint resolution is brought on in large part by the various weaknesses discussed previously. Second, although board rules require the Board to review at each board meeting any complaints that have not been resolved within 12 months of receiving an appraiser's response to a complaint, the Board does not effectively monitor complaint resolution timeliness prior to this 12-month review, which does not help the Board ensure that complaints are resolved within the Appraisal Subcommittee's recommended time frame. Finally, board staff reported that they waited for appraisers to provide information throughout the process instead of proactively requesting it when it was untimely.

Complaint resolution process weaknesses contribute to untimely and potentially inappropriate complaint resolution—Collectively, the weaknesses in the Board's complaint resolution process contribute to untimely and/or potentially inappropriate complaint resolution, which could affect the Board's protection of the public. Appraisers alleged to have violated board statutes and rules can continue to practice while under investigation, even though they may be unqualified to do so or may need supervision. In such instances, the public may not be protected from bad appraisals because of delayed board actions, such as a delay in suspending or revoking a license. The following is an example of a complaint that took the Board over 3 years to resolve and that exhibits many of the process weaknesses discussed previously:

- The Board received two separate complaints in August 2009 involving the same certified residential appraiser. One complaint alleged that an appraisal of the complainant's property performed by the appraiser contained incorrect information and several discrepancies. The other complaint alleged that an appraisal of another property performed by the appraiser contained so many mistakes that it was not credible. The Board bundled these complaints throughout the complaint resolution process and conducted its initial review of the complaints in January 2010, where the Board scheduled an informal hearing with the appraiser for May 2010. The Board actually held the informal hearing in July 2010 because the appraiser requested a continuance. At the informal hearing, the Board referred the complaints for additional investigation by a contract investigator. Board staff then took approximately 10 months to

¹ These compliance reviews were conducted in November 2010 and April 2012.

assign the complaints to an investigator, and the investigations started in May 2011.

The investigations were completed in August 2011 and reviewed and accepted by the Board in October 2011. The investigator found that both appraisal reports contained numerous errors affecting their credibility. For example, in one appraisal report, the appraiser omitted an entire wing of the house from the property sketch, which affected the living area calculations and the appraised property value. The Board then scheduled another informal hearing for December 2011, but the hearing was delayed until January 2012 at the request of the appraiser's attorney. At the hearing, the Board offered the appraiser a consent agreement that included 6 months' minimum probation, during which time the appraiser would need to complete additional education and work under the supervision of a mentor. The appraiser eventually responded in writing to the offer through his lawyer in July 2012. The response stated that, although the appraiser was willing to accept the terms of the consent agreement offer, he wanted the Board to considerably reduce the severity level of the violations stated in the offer because he felt that it would affect his ability to work. The Board discussed the counteroffer at its August 2012 meeting and agreed to slightly reduce the severity level and modify the consent agreement offer because the appraiser had completed additional education and work experience during the complaint resolution process. The Board ultimately offered a consent agreement of 6 months' minimum probation under the supervision of a mentor, which the appraiser signed in November 2012. Based on a letter from the appraiser's attorney to the Board, the appraiser completed hundreds of appraisal reports while the complaints were in the resolution process.

Conversely, if complaints turn out to have no merit, appraisers themselves can be affected by a lengthy resolution process. For example, in one complaint that the Board took more than 2 years to dismiss, the appraiser stated in a board meeting that the resolution process had been very stressful for him, given his "clean record" and the length of time it took for the Board to make a decision.

Board inappropriately dismissed two complaints

The Board did not adjudicate two complaints in accordance with board rules. Although the Board generally took nondisciplinary or disciplinary action when it found violations of statute or rule in the 28 complaints auditors reviewed, the Board inappropriately dismissed 2 related complaints in its April 2012 board meeting.¹ These complaints involved two separate appraisals of a Prescott property that were completed within 2 weeks of each other and reported estimated market values of \$134,000 and \$80,000,

¹ Nine of the 28 complaints auditors reviewed were still open as of June 30, 2012. As of that date, the Board had found violations in all of these cases and had offered nondisciplinary letters or consent agreements to the appraisers that had not yet been executed.

a difference of \$54,000. The Board referred the complaints for additional investigation, and both appraisers were investigated through a single contract investigation. At the board meeting, the Board accepted the investigative report, which identified that both appraisers had violated appraisal reporting standards—a violation of board statutes. Specifically, neither appraiser properly documented his/her decision to make or not make an adjustment to the property's estimated value based on whether the property was or was not in a historic district. Instead of taking action against the licensees as required by the Board's rules, the Board dismissed both complaints. According to the audio recording for the April 2012 board meeting, the Board apparently dismissed these complaints because the violations were minor. However, these dismissals are not consistent with AAC R4-46-301(D)(4), which states that if the Board finds a violation of statutes or rules, but the violation is not of sufficient seriousness to merit suspension or revocation, the Board must either issue a letter of concern, issue a letter of remedial action, offer a letter of due diligence, or offer a consent agreement and require reasonable measures designed to protect the public and educate the respondent.

Additional action needed to improve complaint resolution process

Although the Board has taken steps to improve its complaint resolution process, additional action is needed. In September 2012, the Board held a special meeting to discuss its duties and responsibilities and to determine how it could better protect the public. This meeting included a discussion of the Board's need to improve its contract investigations and adjudicate complaints more quickly. Board members indicated that the complaint resolution process could be improved by hiring an additional staff position that would be in charge of all investigations, which the Board included in its fiscal year 2014 budget request. Specifically, board members indicated that this position would be able to conduct a majority of the Board's complaint investigations and that the Board would only use contract investigators as needed.

The Board is also piloting changes to its initial review and investigative processes. Specifically, in December 2012, the Board began using one of its contract investigators to investigate complaints prior to the Board's initial review and to perform other investigative duties. For each complaint received, the contract investigator reviews the appraisal work file for compliance with appraisal standards and statute, and prepares a report that summarizes the complaint, the appraiser's response to the complaint, and the results of the contract investigator's review.¹ This summary report is provided to board members along with the complaint, appraiser's response, appraisal report, and appraisal work file. To promote transparency in the complaint resolution process, the summary of each complaint and appraiser's

¹ The Board reported that some complaints, such as board-initiated complaints, may not require review by the contract investigator. In addition, the Board reported that it may still need to use other contract investigators for various reasons such as time constraints or conflicts of interest.

The Board is piloting changes to its initial complaint review and investigative processes.

response are read in to the board meeting minutes. According to the Executive Director, the first summary reports were provided to the Board for its February 2013 meeting.

Although this pilot helps address some weaknesses in its complaint resolution process, the Board lacks written policies and procedures for several aspects of the process and should take the following additional actions:

- **Continue revisions to initial review procedures**—The Board should continue its pilot efforts to investigate complaints and distribute investigative reports to board members prior to their initial review. The investigative report should (1) summarize each complaint allegation, (2) summarize any findings of fact or violations related to each allegation, and (3) recommend appropriate action, such as dismissing the complaint or taking nondisciplinary or disciplinary action. If the staff investigator position requested by the Board is not approved by the Legislature, the Board should continue to use a contract investigator or qualified board staff, such as the Executive Director, to conduct the investigations. The Board could potentially use an appraiser board member as well, similar to the Board's initial review procedures at the time of the 2003 audit. The Board should then develop and implement written policies and procedures that reflect its revised procedures.
- **Ensure timely and quality contract investigations**—The Board should develop and implement written policies and procedures to ensure the timeliness and quality of its contract investigations. The Board reported that its pilot procedures will ensure timely complaint investigations because the contract investigator now reviews complaints prior to the Board's initial review. Further, the Board expressed confidence in the quality of its contract investigator's work. However, the Board indicated that other contract investigators may be used occasionally. The Board's written policies and procedures should address this work as well.
- **Ensure timely execution of nondisciplinary and disciplinary actions**—The Board should develop and implement written policies and procedures to help ensure the timely execution of nondisciplinary letters and consent agreements. This could be done by limiting the amount of time or number of opportunities an appraiser has to respond to an offer before moving the complaint to the next phase of the process, such as an informal or formal hearing. For example, similar to the Arizona Board of Physical Therapy, the Board could require appraisers to sign drafted nondisciplinary letters or consent agreements within a specified period of time, such as 30 days, or move the complaint to an informal or formal hearing. In addition, the Board could negotiate agreement terms prior to the Board's initial review in cases that will likely result in nondisciplinary or disciplinary action. For example, the Arizona Medical Board uses a committee including an assistant attorney general and its chief medical consultant to review the investigation and make a recommended decision. If the recommendation includes discipline, the legal coordinator will use the recommendation to draft an initial consent agreement and attempt to have the licensed doctor sign it before the case goes to the Arizona Medical Board for review. In its board meeting, the

Arizona Medical Board will then either accept or reject the signed consent agreements.

- **Monitor complaint resolution timeliness**—The Board should develop and implement written policies and procedures for monitoring complaints throughout the resolution process to help ensure that they are resolved within 12 months and that board staff are proactively moving complaints through the resolution process. The Board is in the process of acquiring a new licensing and complaint database that, according to board staff, will help the Board better monitor complaints. Once implemented, the database could be incorporated into the Board's monitoring policies and procedures. According to the Board's Executive Director, the database should be implemented by December 2013.
- **Ensure action taken when violations found**—Finally, the Board should comply with its rules and ensure that nondisciplinary or disciplinary action is taken against appraisers who are found to have violated board statutes or rules.

Recommendations:

- 1.1 In conjunction with piloting its revised initial review procedures, the Board should develop and implement policies and procedures to investigate complaints and distribute investigative reports to board members prior to their initial review. The investigative report should (1) summarize each complaint allegation; (2) summarize any findings of fact or violations related to each allegation; and (3) recommend appropriate action, such as dismissing the complaint or taking nondisciplinary or disciplinary action.
- 1.2 To help improve its complaint resolution timeliness, the Board should develop and implement written policies and procedures to ensure that:
 - a. Contract investigations are completed in a timely manner and are of sufficient quality;
 - b. Nondisciplinary letters and consent agreements are executed in a timely manner; and
 - c. Complaints are monitored throughout the resolution process to help ensure that they are resolved within 12 months and that board staff are proactively moving complaints through the resolution process.
- 1.3 The Board should comply with its rules and ensure that nondisciplinary or disciplinary action is taken against appraisers who are found to have violated board statutes or rules.

FINDING 2

The Arizona Board of Appraisal (Board) should take steps to ensure that it complies with statutory requirements for appraisal management companies (AMCs). Specifically, the Board does not perform background investigations of applicants for AMC registration as required by state laws. Although board staff attempted to implement this requirement, the Federal Bureau of Investigation (FBI) and the Arizona Department of Public Safety (DPS) declined to process the fingerprint cards because statute does not authorize the Board to receive criminal history reports for AMC applicants. The Board has proposed legislation during the 2013 legislative session that revises statute to address this issue. If the legislation passes, the Board should require applicants and existing registrants to submit to background investigations accordingly. In addition, the Board does not ensure that AMCs that have renewed their registrations make annual certifications regarding their appraisal services as required by state law, and it should implement procedures for doing so.

Board should ensure compliance with statutory requirements for AMCs

Board does not request background investigations before registering AMCs

The Board does not request background investigations of applicants for AMC registration as required by state laws. Background investigations protect the public by ensuring registrants do not have serious criminal histories that could include fraud, theft, or forgery. The Dodd-Frank Wall Street Reform and Consumer Protection Act requires each person who owns at least 10 percent of an AMC to submit to a background investigation carried out by a state appraisal regulatory agency. The Legislature adopted this requirement in May 2010 by enacting Arizona Revised Statutes (A.R.S.) §32-3668, which requires that owners and officers of and others with a financial interest in an AMC to “submit to a background investigation as determined by the Board.” A.R.S. §32-3669 similarly requires a background investigation for a controlling person who is designated as the main contact between the Board and an AMC.

Despite these requirements, the Board has not been able to conduct these background investigations because statute does not adequately authorize the Board to receive criminal history information for AMC applicants. The Board’s draft AMC registration rules require AMC applicants to submit to a background investigation by the Federal Bureau of Investigation (FBI) and the Arizona Department of Public Safety (DPS), and board staff reported that, beginning in December 2010, they initially required applicants to submit fingerprint cards that the Board would then send to the FBI and DPS for processing.¹ However, the FBI declined to process these cards because statute does not specify that the Board has authority to receive the criminal history reports for AMC applicants. According to DPS staff, DPS also declined to process the fingerprint cards because the FBI would not process them. As a result, the Board stopped requiring applicants to submit fingerprint cards for background investigations.

The Board proposed legislation during the 2013 legislative session to address this issue. Specifically, Senate Bill 1316 proposes revised statutory language that is similar to statute authorizing the Board to collect fingerprint cards from appraiser applicants and receive criminal history reports after they are

¹ The Board’s AMC registration rules have not been finalized. The Board opened a docket with the Secretary of State in October 2010 to begin the process of rulemaking for the AMC statutes. Although the Board was successful in adding a rule that would allow it to collect registration application fees, the remainder of the draft rules expired on the docket. The Board finished another draft of the AMC rules in August 2011, but a docket has not been opened for it.

processed. As of March 2013, the bill had passed the Arizona State Senate and was being reviewed by the Arizona State House of Representatives.

If the legislation passes, the Board should then require new applicants to submit to background investigations.¹ It should also require existing registrants to submit to a background investigation during the next renewal cycle but plan additional notification time to allow applicants to comply with the background investigation requirement. Finally, the Board should finalize the AMC registration rules with the Secretary of State.

Board does not enforce annual certifications required by statute

The Board does not ensure that AMCs that have renewed their registrations make annual certifications regarding their appraisal services as required by statute. Specifically, A.R.S. §32-3672 requires AMCs seeking registration to certify to the Board on an annual basis the following:

- That the AMC has a system in place to verify that persons added to its appraiser panel hold a license or certificate in good standing in this State.
- That the AMC has a system in place to review the quality of appraisals of all independent appraisers that are performing real property appraisal services for the AMC on a periodic basis to confirm that the services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.
- That the AMC maintains a detailed record of each service request that it receives and the name of the independent appraiser that performs the real property appraisal services.
- That the AMC has a system in place to train those who select individual appraisers for real property services in this State to ensure that the selectors have appropriate training in placing appraisal assignments.

The Board requires applicants to make these certifications on its AMC registration application form, which is used for both initial registrations and renewals. Although initial registrations are valid for 1 year, renewals are valid for 2 years, and the Board does not have procedures for ensuring that AMCs that renew their registrations make these certifications for the second year of the 2-year renewal period as required by statute. Board staff indicated that they intend to seek legislation, possibly during the 2013 legislative session, that would revise statute to require the certifications to be

¹ To finalize its AMC registration rules, the Board will need to obtain written approval from the Office of the Governor, pursuant to Executive Order 2012-03, which continued the Governor's rulemaking review and moratorium process.

made consistent with the renewal period rather than on an annual basis. Until this statutory revision is made, the Board should implement procedures for obtaining annual certifications as required by statute.

Recommendations:

- 2.1 If the Legislature revises statute to authorize the Board to receive criminal history reports for AMC applicants, the Board should:
 - a. Require new applicants for AMC registration to submit to background investigations, and
 - b. Require existing AMC registrants to submit to background investigations at the time of their next renewal.
- 2.2 The Board should finalize its AMC registration rules with the Secretary of State.
- 2.3 The Board should implement procedures for obtaining annual certifications regarding their appraisal services from AMCs that have renewed their registrations as required by statute.

FINDING 3

The Arizona Board of Appraisal (Board) does not provide the public with timely or complete complaint and disciplinary information. Although the public should have access to timely and complete information about appraisers' complaint and disciplinary histories, board staff lack adequate procedures that would assist in providing this information. Therefore, the Board should develop and implement written policies and procedures for providing complete and timely information to the public and train staff on those policies and procedures. Completion of a new licensee database will assist the Board in providing information to the public.

Board should provide timely and complete complaint and disciplinary information

Public not provided with timely or complete complaint and disciplinary information

Board staff do not provide timely or complete information regarding appraisers' complaint and disciplinary histories in response to public requests. Access to timely and complete information regarding an appraiser's complaint and disciplinary history is important for the public's ability to assess an appraiser's competence in providing appraisal services. However, the Board's process for handling public information requests is not conducive to the timely provision of information, and staff did not always provide complete information. Specifically:

- **Provision of information not timely**—At the time of the Office of the Auditor General's 2003 performance audit (Report No. 03-06), the Board accepted and responded to requests for appraisers' complaint histories over the phone. During this audit, auditors found that board staff no longer followed that procedure and instead required public information requests to be submitted in writing. Board staff would then respond to the request in writing. According to board staff, this procedure was adopted because of low staffing levels and to ensure that information provided to the public was not misconstrued by the requestor. However, this procedure did not ensure that information was provided in a timely manner. Auditors submitted four written requests for information about specific appraisers in June and July 2012. Of the four requests, board staff did not respond to one request and took between 1 and 7 business days to respond to the other requests.¹

Based on discussions with auditors regarding this issue, board staff agreed to revise their procedure and begin providing information over the phone. Under the revised procedure, staff answering the phone should provide licensing information upon request but direct requests for information on complaint and disciplinary history to the Board's appraiser regulatory compliance officer. However, after the procedural change, auditors made three phone calls to request information about specific appraisers but were told to submit written requests or were forwarded to the compliance officer's voice mail because the compliance officer was

¹ Auditors waited approximately 2 months before informing board staff that they failed to respond to one of the requests, at which point it became no longer necessary for the Board to respond.

not in the office. As a result, this revised procedure still does not ensure the timely provision of information.

- **One response incomplete**—In addition, one of the responses to auditors' initial written requests did not provide complete information. Specifically, although board staff provided licensing information about an appraiser, staff did not provide information regarding a complaint filed against the appraiser that was resolved through nondisciplinary action. Auditors did not explicitly inquire about complaint history in their requests, but this information should still have been provided. The public may not realize the distinction between complaint history and licensing status in inquiring about an appraiser, and the Board should provide all nonconfidential information to ensure the public has complete information, including the disposition of closed complaints, dismissals, disciplinary or nondisciplinary actions, and the existence of open complaints.

Further, the Board has a history of providing incomplete complaint and disciplinary information and lacks policies and procedures for ensuring that complete information is provided. Specifically, the Office of the Auditor General's 1998 performance audit (Report No. 98-6) found that the Board provided incomplete and inaccurate information in response to auditors' requests, in part due to a lack of written policies and procedures. The Auditor General's 2003 performance audit found that, although the Board had implemented written public information policies and procedures, which required that the public receive information on the nature of the complaint and contained examples of what information could be given regarding the nature of the complaint, board staff still provided incomplete information to some auditors' requests. As of this audit, the Board no longer had written policies and procedures for providing information to the public.

Additional action needed to ensure timely and complete information provided

To ensure that timely and complete complaint and disciplinary information is provided to the public, the Board should develop and implement written public information policies and procedures and train staff accordingly. These policies and procedures should allow for information to be provided over the phone and should identify what types of complaint information should be provided to the public and what should remain confidential. New policies and procedures would help ensure that all board staff can provide complete and accurate complaint information over the phone, even if the regulatory compliance officer is not in the office. Once the policies and procedures are in place, the Board should ensure that it trains all staff on the new policies and procedures. In addition, as new staff are hired, the Board should ensure that they fully understand the policies and procedures regarding public information and their role in providing that information.

The Board lacks policies and procedures for ensuring that complete complaint and disciplinary information is provided to the public.

As mentioned in Finding 1 (see page 18), the Board plans to implement a new database that will assist board staff in providing public information. The Board reported that it was in the process of acquiring a new database to be implemented by December 2013 that would store appraisers' licensing and complaint history. Board staff reported that if information from the database were available to the public on its Web site, similar to information from other licensing boards' databases, then the public would have immediate access to license and complaint information. This would likely reduce the staff resources needed to respond to public requests for information.¹ Once the database is implemented, the Board should ensure that it is used to provide only appropriate information on its Web site. Specifically, A.R.S. §32-4404 prohibits nonhealth regulatory boards from reporting dismissed complaints and complaints that resulted in nondisciplinary action against a licensee or certificate holder on their Web sites, but also requires the boards to post a notice on their Web sites stating that the public may contact the boards to request this information.

Recommendations:

- 3.1 The Board should improve the timeliness and completeness of the information it provides to the public by:
 - a. Developing and implementing written policies and procedures that allow for information to be provided over the phone and identify what types of complaint and disciplinary information should be provided to the public and what should remain confidential. The new policies and procedures should also ensure that additional staff can provide complete complaint and disciplinary information over the phone if the regulatory compliance officer is not in the office.
 - b. Training all staff on the new policies and procedures.
- 3.2 Once the Board's new database is implemented, the Board should use the database to provide information to the public in accordance with state law.

¹ The Board maintains a directory of active licensees and certificate-holders on its Web site. Although this directory includes name, contact information, type of license, and dates of credential, it does not provide disciplinary history.

FINDING 4

The Arizona Board of Appraisal (Board) was not fully compliant with the State's open meeting law but came into compliance during the audit. In three instances, the Board failed to properly notice meetings due to technical issues or board staff error. Proper notification of board meetings helps to ensure the transparency and legal validity of board decisions. Although the Board came into compliance with all provisions of open meeting law during the audit, it should develop and implement policies and procedures and train its staff accordingly to help ensure it remains in compliance with these laws.

Board should ensure it continues to comply with open meeting law

The Board was not fully compliant with the State's open meeting law, although it became compliant during the audit. From June 2012 to September 2012, the Board held 7 public meetings and 12 committee meetings and was in compliance with most open meeting law provisions for these meetings. For example, the Board provided written draft minutes or audio recordings of public meetings upon request within 3 business days after a meeting, published meeting agendas at least 24 hours in advance on its Web site, conducted only business specified on the agendas, and used executive sessions appropriately.

However, the Board was not always in compliance with the secondary notice posting provision of open meeting law. For example, the Board did not publish an accurate statement on its Web site that advised the public of where it could find posted meeting notices. In addition, three meetings were not properly noticed because of technical issues or staff error. Specifically, board staff use a posting system administered by the Arizona Department of Administration that displays state boards' and agencies' meeting notices on an electronic kiosk in the lobby of the Executive Tower building. Auditors found that the kiosk was malfunctioning, which caused two committee meetings to not be properly noticed. Further, board staff failed to submit notice of an additional board meeting to the kiosk system so that it could be posted 24 hours prior to the meeting time.¹

The Board took steps during the audit to correct these issues. For example, in June 2012, board staff revised its Web site to reflect the correct location at which it posted meeting notices. Further, in August 2012, board staff added an additional notice posting location to its Web site that does not rely on the kiosk. Since then, auditors observed that the Board properly noticed 13 subsequent board and committee meetings.

Although the Board's actions have brought it into compliance with this provision during the audit, additional steps are needed to help ensure continued compliance. Specifically, the Board does not have written policies and procedures in place directing compliance with the State's open meeting law, and it has not provided any specific training to its staff that would help ensure board staff know what steps to take. The Board's noncompliance with some provisions of open meeting law appeared to result from a lack of staff knowledge regarding these laws. Complying with open meeting law, including

¹ To address potential issues related to this failure, the Board opted to ratify the decisions made at the meeting during a subsequent meeting that was properly noticed.

the proper posting of public notices, is important because these laws help ensure the transparency of board actions. Failure to comply with these laws may affect the validity of and may result in legal challenges to decisions made at these meetings. Therefore, to ensure that it remains in compliance with open meeting law, the Board should develop and implement policies and procedures and train all board staff accordingly.

Recommendations:

- 4.1 The Board should develop and implement policies and procedures to ensure compliance with all aspects of the State's open meeting law.
- 4.2 The Board should ensure all staff are fully trained on how to comply with all aspects of the State's open meeting law.

APPENDIX A

Methodology

This appendix provides information on the methods auditors used to meet the audit objectives.

We conducted this performance audit 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.

The Auditor General and staff express appreciation to the Arizona Board of Appraisal (Board), its Executive Director, and staff for their cooperation and assistance throughout the audit.

Auditors used various methods to study the issues in this report. These methods included reviewing board statutes, rules, policies and procedures, and board records; interviewing current and former board members, staff, and various stakeholders; and reviewing information from the Board's Web site.

In addition, auditors used the following specific methods to meet its audit objectives:

- To determine whether the Board's processes and practices helped ensure that complaints are resolved appropriately and in a timely manner, and that discipline is administered in accordance with statute and rule, auditors reviewed a sample of 28 complaints that the Board received between September 2008 and January 2012.¹ In addition, auditors reviewed meeting minutes from several board meetings in 2011 and 2012 and the Appraisal Subcommittee's November 2010 and April 2012 compliance reviews of the Board. Further, auditors reviewed the Arizona Board of Physical Therapy's consent agreement practices.
- To determine whether the Board's processes and practices helped ensure that new licenses and registrations are issued in a timely manner to qualified applicants, auditors reviewed a sample of 30 licensing/certification applications that the Board issued between January and July 2012.² Auditors also reviewed initial and/or renewal registrations applications for five appraisal management companies received between August 2010 through July 2012, and reports submitted to the Governor's Regulatory Review Council for fiscal years 2007 through 2011 regarding the Board's timeliness in approving or denying licenses.³ In addition, auditors interviewed officials from the U.S. Federal Bureau of Investigations and the Arizona Department of Public Safety to gather information regarding the Board's statutory requirement that owners and officers of and others with a financial interest in an appraisal management company submit to a background investigation.
- To assess whether the Board shares appropriate information regarding licensees with the public, auditors submitted four anonymous written requests for information about four licensees to board staff in June and

¹ Auditors selected the 28 complaints to represent different violation-severity levels and adjudication outcomes, including dismissal and nondisciplinary and disciplinary action.

² Auditors selected 30 licensing/certification applications out of 102 licenses that the Board issued between January and July 2012 to represent different licensing categories, including certified general and residential, licensed residential, and temporary certified general.

³ Auditors selected the 5 AMCs out of the 153 registered AMCs as of September 2012.

July 2012 and placed three anonymous phone calls for information about three other licensees to board staff in August 2012, and compared the information provided to information in the Board's complaint files and meeting minutes. Auditors also reviewed licensing and complaint history information about specific licensees on the Board's Web site and assessed whether the information provided was consistent with statutory requirements.

- To assess the Board's compliance with provisions of the State's open meeting law, auditors performed the following activities, including observing board meetings, testing whether the Board properly noticed and agendized board and committee meetings, and reviewing board meeting minutes between June 2012 through September 2012.
- To obtain information used in the Introduction section, auditors compiled and analyzed unaudited information from the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2010 through 2012 and the AFIS Management Information System *Status of General Ledger—Trial Balance screen* for fiscal years 2010 through 2012, and analyzed estimated fiscal year 2013 revenues and expenditures provided by board staff. In addition, auditors reviewed the Board's organizational chart, reviewed information from the Appraisal Subcommittee's Web site, and reviewed board reports regarding the number of active licenses by license type.
- Auditors' work on internal controls included reviewing the Board's policies and procedures for ensuring compliance with board statutes and rules. For example, auditors reviewed policies and procedures and tested the Board's compliance with various policies and procedures and/or board statutes and rules for complaint resolution, appraiser licensing/certification, appraisal management company registration, providing information to the public, and compliance with the State's open meeting law. In addition, auditors conducted data validation work to assess the reliability of the Board's data. Specifically, auditors interviewed board staff and reviewed policies and procedures. Through this validation work, auditors found that the Board's electronic data was limited, and auditors instead relied on file reviews to assess the Board's complaint resolution and licensing processes. Auditors' conclusions on these internal controls are reported in the Introduction and Findings 1 through 4.

AGENCY RESPONSE



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April 9, 2013

Ms. Debra K. Davenport, CPA
Auditor General
Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Re: **Auditor General's Report for the AZ Board of Appraisal**

Dear Ms. Davenport:

The Members of the Arizona Board of Appraisal express their gratitude for the opportunity to respond to the preliminary report draft performance audit, dated April 2, 2013. Overall, they are in agreement with the findings of the Auditor General. Specifically, each recommendation is addressed as requested.

Finding 1: Board should improve complaint resolution process by

- **Developing and implementing policies and procedures to address the various weaknesses in its complaint resolution process; and**
- **Ensure appropriate non-disciplinary or disciplinary action is taken when violations are found.**

The finding of the Auditor General is agreed to and the audit recommendations are agreed to. Recommendation 1.1 has already been implemented - the summarization of each complaint allegation; the findings of fact or violations (as noted by the investigator) related to each allegation being given to the board members prior to the initial review. The recommendation that the investigator recommend appropriate action for the board to take will be implemented as well.

The recommendation shown as 1.2 for written policies and procedures will be implemented within the next six months.

The recommendation shown as 1.3 that the Board should comply with its rules is agreed to and will be implemented. The Board agrees with the two instances that the Auditor General found and would note that the instances represent isolated incidents rather than widespread non-compliance. The Board will continue to ensure it complies with its rules.

Finding 2: Board should ensure compliance with statutory requirements for AMC's

- **Board does not request background investigations before registering AMC's**
- **Board does not enforce annual certifications required by statute**

Auditor General Response

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The finding of the Auditor General is agreed to and the audit recommendations are agreed to. The recommendations 2.1 (a & b) will be implemented contingent upon Legislative enactment.

Recommendation 2.2 will be implemented within the next 15 months. The Rules Committee for the board will reconvene in the next three months to begin this process again.

Recommendation 2.3 regarding the annual certification enforcement will be implemented within the next 6 months.

Finding 3: Board should provide timely and complete complaint and disciplinary information

The finding of the Auditor General is agreed to and the audit recommendations are agreed to. The recommendations shown as 3.1 a & b will be implemented within the next six months.

The recommendation shown as 3.2 for the computer database program will be implemented as soon as possible.

Finding 4: Board should ensure it continues to comply with open meeting law

The finding of the Auditor General is agreed to and the audit recommendations are agreed to. The recommendation shown as 4.1 for policies and procedures to be written will be implemented within the next six months.

The recommendation shown as 4.2, training to ensure all staff complies with all aspects of the State's open meeting law is currently underway.

The Board again expresses its gratitude for the Auditor General's consideration during this audit. The changes in staff this past year incident to the passing of its former Executive Director, including hiring an Interim Executive Director, and new Executive Director, have presented challenges for the Board and its staff. Going forward, the Board looks forward to implementing the Auditor General's recommendations within the time frames, set forth in this response.

Yours truly,

Debra Rudd
Executive Director

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11-03	Arizona Department of Veterans' Services—Fiduciary Program	12-01	Arizona Health Care Cost Containment System—Coordination of Benefits
11-04	Arizona Medical Board	12-02	Arizona Health Care Cost Containment System—Medicaid Eligibility Determination
11-05	Pinal County Transportation Excise Tax	12-03	Arizona Board of Behavioral Health Examiners
11-06	Arizona Department of Veterans' Services—Veteran Home	12-04	Arizona State Parks Board
11-07	Department of Corrections—Oversight of Security Operations	12-05	Arizona State Schools for the Deaf and the Blind
11-08	Department of Corrections—Sunset Factors	12-06	Arizona Health Care Cost Containment System—Medicaid Fraud and Abuse Prevention, Detection, Investigation, and Recovery Processes
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11-10	Arizona Department of Veterans' Services and Arizona Veterans' Service Advisory Commission—Sunset Factors	13-01	Department of Environmental Quality—Compliance Management
11-11	Arizona Board of Regents—Tuition Setting for Arizona Universities		
11-12	Arizona Board of Regents—Sunset Factors		
11-13	Department of Fire, Building and Life Safety		

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