

Comments of the Independent Regulatory Review Commission



State Board of Certified Real Estate Appraisers Regulation #16A-7020 (IRRC #3025)

Biennial License Fee for Licensed Appraiser Trainees

December 4, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the October 5, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Certified Real Estate Appraisers (Board) to respond to all comments received from us or any other source.

1. Communication with the regulated community. – Reasonableness.

Governor's Executive Order 1996-1

Regulatory Analysis Form (RAF) 14 asks the Board to describe the communications with the regulated community and list the specific groups involved. The Board responded:

Because the reconciliation of the Board's revenues and expenses is an administrative matter, the Board did not solicit input from the public, any advisory group or organization representing small businesses in the development of this proposal. Rather the Board consulted with the Bureau of Finance and Operations to determine the fee. However, the matter was discussed by the Board during public meetings on December 13, 2012, and January 10, 2013, which are routinely attended by representatives of the regulated community and their professional associations.

Governor's Executive Order 1996-1 requires that "regulations shall be drafted and promulgated with early and meaningful input from the regulated community." In addition, this order states in Section 3 (Pre-Drafting and Drafting Guidelines) that "agencies, where practical, shall undertake extensive public outreach to those who are likely to be affected by the regulation." See Governor's Executive Order 1996-1, Sections 1.h. and 3.a.

We strongly disagree that raising fees by regulation is an administrative function that does not require communications with the regulated community. We ask the Board to explain how the process it used to develop the proposed regulation complies with the directives in Governor's Executive Order 1996-1.

2. Consistency with statute; Reasonableness; Need for the regulation; Whether the regulation is supported by acceptable data.

We agree with the Board's objective that all license classifications should share proportionately in the costs of operating the Board. However, the addition of this fee raises concerns because the supporting information does not establish how this new fee relates to the overall revenues and expenditures of the Board. We ask the Board for further information so that we can determine whether this regulation is in the public interest.

Board revenues compared to its expenditures

The Board cites 63 P.S. §§ 457.5(6) and 457.9 of the Real Estate Appraisers Certification Act (Act) as authority for this regulation. The Board clearly has authority to charge fees to those entities it regulates. Section 457.9(a) of the Act also provides the following directive:

Imposition and increases. – . . . If the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.

We note that the response to RAF Question 23a shows that expenditures have decreased from \$674,000 in fiscal year 2009 – 2010 to \$594,000 in fiscal year 2012 – 2013. However, concerning revenues, the RAF provides information on the impact of the individual fee of \$150, but does not provide overall revenue information to establish that “revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a two-year period.” We ask the Board to establish in the final-form regulation submittal that the revenues raised by fees, fines and civil penalties currently are not sufficient to meet expenditures over a two-year period.

Consideration of appraisal management company fees

The Board provides the following statement in response to RAF Question 18:

The Board had been considering a general fee increase, however the addition of the appraisal management company license with its related increase in revenue from applications and renewals is expected to negate the need for a fee increase. However, the Board believes that all license classifications should share proportionately in the costs of operating the Board, including trainees.

We have two concerns relating to this response.

First, we note that 63 P.S. § 457.26(a) states that “The fee to file an application for registration or renewal of a registration under this act shall be \$1,000 **or such other amounts as are set by the rules and regulations of the board.**” [Emphasis added.] Does this \$1,000 fee reflect the costs to the Board of processing these registrations and renewals, or should it be adjusted? Does this fee, imposed on appraisal management companies, cross-subsidize the Board's other classifications of certifications and licenses? Is the Board considering another rulemaking to examine the appraisal management company fee?

Second, how much has the Board's revenue increased since the implementation of the \$1,000 fee established by 63 P.S. § 457.26(a)? Is the estimated \$45,000 of additional revenue that would be provided by the fee for biennial renewal of licensed appraiser trainee licenses needed for the Board to meet its expenditures?

Licensed appraiser trainee fee in relation to other fees

We have two concerns relating to the supporting documentation for the new \$150 fee.

First, what is the basis for the amount of the \$150 fee for renewal of licensed appraiser trainee licenses? Why is the biennial renewal fee for licensed appraiser trainees \$150, when all of the other biennial renewal fees in existing 49 Pa. Code § 36.6 were set at \$225?

Second, the Board has experienced several changes through legislation that created licensed appraiser trainees and appraisal management company licenses. Also, based on our research, several fees in 49 Pa. Code 36.6 appear to have been last increased by Regulation #16A – 7013, which became effective in 2003. Has the Board determined whether all of the fees it charges to its regulated community accurately reflect the current costs the Board incurs to perform the tasks associated with the fee, or is a general review of the fees in 49 Pa. Code § 36.6 needed?