

NOTICE PUBLICATION/REGULATIONS SUBMISSION

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STD. 400 (REV. 01-2013)

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| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2016-0606-01 | REGULATORY ACTION NUMBER | EMERGENCY NUMBER |
| For use by Office of Administrative Law (OAL) only | | | |
| RECEIVED DATE | | PUBLICATION DATE | |
| JUN 06 '16 | | JUN 17 '16 | |
| Office of Administrative Law | | | |
| NOTICE | | REGULATIONS | |
| AGENCY WITH RULEMAKING AUTHORITY Bureau Of Real Estate Appraiser | | | AGENCY FILE NUMBER (if any) |

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

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|---|--|---|----------------------------------|--|
| 1. SUBJECT OF NOTICE Disciplinary Guidelines | | TITLE(S) 10 | FIRST SECTION AFFECTED 3733 | 2. REQUESTED PUBLICATION DATE June 17, 2016 |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON Kyle Muteff | TELEPHONE NUMBER 916-341-6126 | FAX NUMBER (Optional) |
| OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER | PUBLICATION DATE | |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

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| 1a. SUBJECT OF REGULATION(S) | | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) | | |
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | | | | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT | | | |
| | AMEND | | | |
| | REPEAL | | | |
| 3. TYPE OF FILING | | | | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) | |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only | |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | <input type="checkbox"/> Other (Specify) _____ | | | |
| 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) | | | | |
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) | | | | |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> \$100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) _____ | |
| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | | | |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM 56660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal | | |
| <input type="checkbox"/> Other (Specify) _____ | | | | |
| 7. CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) | |

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

For use by Office of Administrative Law (OAL) only

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| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE |
| TYPED NAME AND TITLE OF SIGNATORY | |

Notice of Proposed Action

Title 10: Bureau of Real Estate Appraisers

NOTICE IS HEREBY GIVEN that the Bureau of Real Estate Appraisers (“Bureau” or “BREA”) is proposing to take the action described in the informative digest below. Any interested person may present statements or arguments relevant to the action proposed, orally or in writing, at a hearing to be held at:

Department of Consumer Affairs
1747 North Market Blvd.
1st Floor Hearing Room
Sacramento, CA 95834

Date: August 3, 2016
Time: 1:00 p.m.

Written comments including those sent by mail, facsimile, or email to the address listed under “Contact Person” in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on August 3, 2016 or must be received by the Bureau at the hearing.

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 11313 and 11314 of the Business and Professions Code; and Section 11425.50, Government Code, and to implement, interpret or make specific Sections 11310.1, 11315.5, and 11320 of the Business and Professions Code; and Section 11425.50(e), Government Code, the Bureau is considering adding Section 3733 to Title 10 of the California Code of Regulations as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This proposal will establish disciplinary guidelines for parties to use when evaluating appropriate discipline to be imposed. This document will be most helpful for administrative law judges to use when deciding discipline to be imposed after an administrative hearing. The guidelines detail each violation and assign that violation a minimum and maximum discipline. The guidelines also identify many mitigating and aggravating factors to assist the reader in determining if the

minimum, maximum or some discipline in between should be applied to the respondent. The guidelines are being incorporated by reference.

ANTICIPATED BENEFITS

The guidelines will provide consistent discipline for similar violations. The guidelines will also make the administrative law judge's job much easier by providing the terms for probation if probation is necessary to protect the public.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations, the Bureau has conducted a search of any similar regulations on this topic and has determined that there is no reasonable interpretation of any state regulation that is inconsistent or incompatible with the proposed action.

DOCUMENT INCORPORATED BY REFERENCE

A Manual of Disciplinary Guidelines and Model Disciplinary Orders (Rev. 2015)

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to, or mandate imposed on, any Local Agency or School District for Which Government Code Section 17500-17630 Require Reimbursement: None

Business Impact: The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. As part of its Economic Impact Analysis, BREa has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services. Instead, it will simply provide guidance regarding the amount of discipline to be imposed.

Impact on Jobs/New Businesses: None

Cost Impact on Representative Private Person or Business: None

Effect on Housing Costs: None

Effect on Small Businesses: The Bureau has determined that the proposed regulations will not affect small businesses. This proposal does not change whether a licensee or registrant is subject

to discipline. Instead, the proposed regulation will only provide guidance when a licensee or registrant is subject to discipline

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Impact on Jobs/New Businesses: The Bureau has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, new or existing businesses, or the expansion of businesses in the State of California.

Benefits: BREa has made an initial determination that the proposed regulatory action will have the following benefits to the health and welfare of California residents:

The proposal will increase consumer protection from incompetent behavior of licensees and registrants. The appraisal industry will be put on notice that the violations of statutes and regulation enforced by BREa could lead to imposing of appropriate administrative discipline, and potentially deterring dishonest behavior.

Occupations/Businesses Impacted: The proposed regulation will not have an occupational/business impact.

Reporting Requirements: The proposed regulation does not set forth any new reporting requirements.

Comparable Federal Regulations: None

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative considered by the Bureau or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action containing information upon which the proposal is based.

The proposed text, this notice, the statement of reasons, and any other relevant documents are on the Bureau's website at www.brea.ca.gov. Click the "Laws" tab at the top of the page. Under

the heading “Rulemaking Notifications” find the docs associated with this rulemaking subject: “License Application Processing.”

AVAILABILITY AND LOCATON OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. As of the date this notice is published in the Notice of Register, the rulemaking file consists of this notice, the proposed text of the regulation and the initial statement of reasons. Copies may be obtained by contacting person named below or by accessing the website as provided above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, BREA may adopt the proposed regulation substantially, as described in this notice. If BREA makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before BREA adopts the regulations as revised. Please send requests for copies of any modified regulation to the attention of the contact person named below. BREA will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Kyle Muteff, Legal Counsel
1102 Q Street, Suite 4100
Phone: 916-341-6126
FAX: 916-440-7406
kyle.muteff@orea.ca.gov

The backup person is:
Thu Tran
1102 Q Street, Suite 4100
Phone: 916-440-7876
FAX: 916-440-7406
Thu.Tran@orea.ca.gov

**Bureau of Real Estate Appraisers
Initial Statement of Reasons**

Hearing Date: August 3, 2016

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section Affected: Add Section 3733 to Title 10 of the California Code of Regulations

Background/Problem Addressed

This rulemaking seeks to promulgate a Manual of Disciplinary Guidelines and Model Disciplinary Orders (“Guidelines”) applicable to enforcement actions conducted by the Bureau of Real Estate Appraisers (“BRE”). BRE conducts many disciplinary actions each year. Such actions include statement of issues for license denials and accusations for licensee who commit major violations. Hearings are before an Administrative Law Judge (“ALJ”) and BRE is represented by the Attorney General’s Office. Licensees may obtain an attorney or represent themselves at the hearing. The term “licensee” which includes entities who are registrants with BRE such as Appraisal Management Companies (“AMCs”).

Substantially similar cases should result in similar dispositions. The purpose of the proposed Guidelines is to provide for consistent and equitable disciplinary enforcement.

Factual Basis/Rationale

Business and Professions Code Section 11314 requires BRE to comply with all applicable federal laws, including the requirement to comply with mandates set forth by the Appraisal Subcommittee a federal agency.¹ The Appraisal Subcommittee’s policy regarding “consistent and equitable enforcement” provides: “Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.”²

Thus, in concordance with state and federal law, and in independent consideration of good public policy, BRE proposes these uniform Guidelines to establish consistent and equitable disciplinary enforcement.

Specific Purpose of Each Adoption

I. Introduction

¹ Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989 mandates the Appraisal Subcommittee to oversee all State appraiser licensing regulatory agencies to ensure compliance with federal real estate appraiser law. (12 U.S.C. 3331-3351).

² Appraisal Subcommittee Policy Statement seven 7, subpart (B)(3).

Proposed Change: The introduction informs the reader who the Guidelines are intended to assist and why the Guidelines are necessary. The introduction also states that the decision maker is not bound by the Guidelines, but can deviate when there is mitigating or aggravating factors.

Problem: Without an introduction, the reader may not know how or why to use the Guidelines.

Anticipated Benefits: The introduction will provide the reader a good starting point for how and why to use the Guidelines.

II. General Considerations

Proposed Change: This section is primarily for the Administrative Law Judges (“ALJs”) to inform them of what BREa wants to be included in a proposed decision.

Problem: This section needs to be included so ALJs know what BREa wants in the proposed decisions. The ultimate decision maker is the Chief of BREa. Therefore, BREa wants to ensure all information is provided in the proposed decision so the Chief can make the best decision possible.

Anticipated Benefits: Reduce the amount of non-adopted decisions and increase the amount of reasoning in proposed decisions.

Factors in Aggravation and Mitigation:

Proposed Change: The fact patterns for disciplinary actions typically have aggravating and mitigating factors. These factors need to be considered when making a decision. The Guidelines include violations with their corresponding minimum and maximum discipline. Aggravating and mitigating factors assist in deciding whether to impose the maximum or minimum discipline or something in between.

Problem: It is difficult to determine the appropriate level of discipline without considering mitigating and aggravating factors.

Anticipated Benefits: The factors provide the ability to go through a list to ensure all factors were considered. The factors selected include the most common evidence of mitigation and aggravation.

III. Factors in Aggravation

Respondent's violation was intentional. An intentional violation is an aggravating factor because the licensee made the decision to commit the violation. This demonstrates a reckless attitude toward the practice of appraising and an inability or unwillingness to follow the rules.

Respondent induced a trainee to commit or assist in the commission of a violation. Supervising appraisers have leverage over trainees because trainees need supervisors to get licensed as an appraiser. Inducing a trainee to commit or assist in the commission of a violation shows intent to

commit a violation, a disregard for others, and abuse of power. Thus, such action will be viewed as an aggravating factor against the supervisor.

Respondent has a history of prior discipline, particularly where the prior discipline involved the same or similar type of conduct. A good predictor of future action is past action. A licensee who has previously been disciplined, especially for similar conduct, and commits another violation should receive increased discipline due to the aggravating factor of repeat violations.

Respondent's action could have or did result in financial damage to his/her clients or other consumers. The amount of loss may be an additional aggravating factor. Appraisers play an important role in the real estate market. They provide an unbiased professional opinion for their clients. Typically, their clients are lending institutions that make lending decisions based partly on the market value of the real property. A client can suffer a significant financial loss if the appraiser violates the rules and does not provide a proper appraisal. The larger the financial damage the larger the harm. Therefore, the financial harm caused from the appraiser's violations should be considered as an aggravating factor.

Respondent violated conditions of a BREA stipulation or final order. Licensees on probation should be demonstrating the utmost care in their practice to ensure compliance. Failure to obey the rules while on probation shows an inability or unwillingness to practice within the law.

Respondent failed to acknowledge responsibility for the violation. A licensee who fails to acknowledge his or her mistake is bound to repeat them. Thus, this should be viewed as an aggravating factor.

Respondent failed to cooperate with BREA. Business and Professions Code section 11328 requires licensees cooperate with BREA. Failure to cooperate is not only a violation of section 11328, it slows enforcement, delays discipline, and demonstrates an inability to follow the rules.

Respondent's acts or omissions are numerous. Multiple violations demonstrate a deficit in education, workmanship, or ethics. In any event, multiple violations warrant enhanced discipline.

Respondent took advantage of his/her client for personal gain (i.e., respondent was able to take advantage due to the ignorance, age or lack of sophistication of the client). Ethical violations are the most difficult to remedy because it is a character not educational issue. As such, such an ethical violation should be viewed as an aggravating factor.

Submission of false statements or evidence, or other deceptive practice (e.g., modifying work file after complaint filed). Similar to taking advantage of clients, submitting false statements or other deceptive acts are ethical violations. These violations are particularly troubling because after the cause for misconduct was identified, the licensee committed further misconduct by attempting to cover up the original misconduct. This is intentionally deceptive and also shows lack of responsibility. Therefore, such an act is an aggravating factor.

Intimidation of or threats to witnesses or others involved with the investigation. Again, such actions demonstrate an ethical deficiency. It is particularly disturbing if a licensee intimidates or

threatens a witness because it interferes with BREAs mission of consumer protection and endangers the witness. Such brazen actions warrant increased discipline.

IV. Factors in Mitigation

Respondent's violation was unintentional. An unintentional violation is a mitigating factor because the Respondent did not deliberately commit a violation. An unintentional violation demonstrates neglect or a mistake, but it does not show an intentional disregard for the law.

Respondent was induced by others to participate, was a passive participant, or played a minor role in the violation (i.e., trainee, company policy). Investigations into possible violations can reveal related, but not as significant violations from other licensees. These secondary licensees may have been induced to participate, were passive participants, or played minor roles in the violation. If so, these factors mitigate the discipline imposed.

Respondent's violation was committed because of an unusual circumstance which is unlikely to recur. Occasionally, a licensee will take on an unusual assignment or be involved in an unusual situation that may result in violations. In such cases, the uniqueness may demonstrate an unlikelihood to reoccur that warrants lesser discipline.

Respondent made technical errors that did not result in financial damages. Technical errors without financial damages are the lowest level violations. Therefore, those violations should receive minimum discipline.

Respondent made reasonable and diligent efforts to comply with applicable laws and regulations. Reasonable and diligent effort to comply with the law demonstrates a willingness and desire to follow the law. However, even reasonable and diligent efforts can result in violations. When reasonable and diligent efforts to comply are made by respondent such efforts should be viewed as a mitigating factor.

Respondent demonstrated remorse and a willingness to take corrective action. Remorse and willingness to take corrective action are good indicators that the violation will not reoccur. Therefore, such demonstration is a mitigating factor.

Respondent was cooperative during the investigation. Cooperation shows that the respondent is willing to work with BREAs to resolve their deficiencies. Therefore, cooperation should result in reduced discipline.

The passage of considerable time since the violation occurred with no evidence of recurrence or evidence of any other violations. The ability to practice without violating the law is the expectation of all licensees. However, this also demonstrates the licensee has corrected their errors and is now practicing within the law. Thus, it is a mitigating factor.

The assignment was difficult/complex. A difficult or complex assignment can mitigate the discipline because complex assignments are more subjective and have an increased likelihood of variable and scarce data. Therefore, more leeway is granted to those assignments and the discipline should be reduced.

License level at the time of the violation. There are four license levels: trainee; residential; certified residential; and certified general. The license levels mentioned above are in ascending order of education and experience. Therefore, less education and experience is a mitigating factor.

Respondent was under the supervision of another licensee at the time of any violation (e.g., trainee). Trainees work under the supervision of a residential or certified level appraiser. The purpose of a trainee license is for the trainee to learn about proper appraisal practice. During this learning period there may be violations. However, the supervisor should correct these violations before the violations cannot be corrected (i.e. submission of the appraisal). When a supervisor fails to properly supervise and the trainee violates the law, the trainee should receive lesser discipline.

V. Grounds for Disciplinary Action and Disciplinary Guidelines

Proposed Change: One of the main features of the Guidelines is listing out each violation and assigning it a maximum and minimum discipline. This promotes consistent discipline for the same violation.

Problem: Currently, there are no guidelines to ensure similar disposition of cases for similar violations. To remedy is problem, BREa has listed statutory and regulatory violations and placed a disciplinary maximum and minimum to each violation.

Anticipated Benefits: The Guidelines will create continuity among violations with variances for mitigating or aggravating factors.

Business and Professions Code (B&P)

All guidelines follow the same format with the statutory code section preceded by the common name for the violation. This provides the direct authority for the common name violation.

1. B&P 11318. Failure to Notify BREa of Felony Charge, Conviction, Discipline

The statute requires licensees, applicants, and course providers report to BREa felony charges, criminal convictions, and discipline from any government or regulatory entity within 30 days. Failing to report an event deprives BREa of information it needs to assess whether discipline should be taken. This deprivation of information warrants discipline. Depending on how late the report was made and whether the omission was intentional or unintentional determines if the maximum discipline of license revocation, full cost recovery and payment of a fine is imposed or the minimum discipline of a fine (optional term 12) is imposed.

2. B&P 11319. USPAP – Minimum Standard

The Uniform Standards of Professional Appraisal Practice (“USPAP”) are the minimum professional standard for licensed appraisers. All appraisers must study USPAP before receiving

a license and enroll in USPAP courses as part of their continuing education. It is a serious offense to violate USPAP. As such, the maximum discipline to be imposed for violating USPAP is revocation, full cost recovery and payment of a fine. This is the most discipline that can be imposed against a licensee. The minimum discipline recommended is revocation stayed, one year probation, standard conditions of probation 1-8 and optional probation conditions 10 through 12. The minimum represents considerable discipline, but allows the licensee to maintain their license with different conditions to ensure public protection. This will ensure public protection, but allow less serious violators to maintain their license.

3. B&P 11320 and 11320.5. Practice Without a License

Practicing without a license is a serious violation. Licensees may let their license lapse or have their license suspended and continue to practice. If so, the licensee must be disciplined. The maximum discipline to be imposed for practicing without a license is revocation with full cost recovery and payment of a fine. This is the most discipline that can be imposed. Revocation with full cost recovery and payment of a fine may be referred to hereinafter as “maximum discipline available.” The minimum discipline recommended is revocation stayed, one year probation, standard conditions of probation 1-8 and optional probation conditions 9 and 12. The minimum represents a considerable discipline, but allows the licensee to maintain their license with different conditions including actual suspension and a fine. This will ensure public protection, but allow less serious violators to maintain their license.

4. B&P 11321. Unauthorized Use of Title

Unauthorized use of title is when a licensee holds themselves out as licensed when they are not licensed. This misrepresentation is a serious ethical violation. Therefore, the maximum discipline to be imposed is revocation, full cost recovery and payment of a fine. The minimum discipline recommended is revocation stayed, one year probation, standard conditions of probation 1-8 and optional probation conditions 9 and 12. The minimum represents a considerable discipline, but allows the licensee to maintain their license with different conditions including actual suspension and a fine. This will ensure public protection, but allow less serious violators to maintain their license.

5. B&P 11323. Conflict of Interest – Compensation Dependent on Value Conclusion

The foundation of appraising is impartiality. This is critical to determine the fair value of real property. A violation of section 11323 is when a licensee’s compensation is dependent on the value determined. This is a cardinal violation because the client essentially determines the value and the appraiser supports the value in order to obtain compensation. A violation of this section warrants the maximum discipline of revocation, full cost recovery, and a fine. However, there may be some mitigating factors involved to reduce the discipline to revocation stayed, three years probation, standard terms 1-8, and optional terms 10 through 14. The inclusion of a three year probation and all optional terms is needed to reflect the seriousness of the violation. BRE

needs to be able to monitor the licensee for an extended period of time and the licensee needs all optional terms to ensure public and trainee protection.

6. B&P 11328. Failure to Provide Copies of Appraisals

Section 11328 allows BREa to substantiate documentation of appraisal experience, or to facilitate the investigation of illegal or unethical activities by requiring the licensee to submit copies of appraisals, or any work product which is addressed by USPAP, and all supporting documentation and data. Failure to comply with this section impedes BREa's mission of consumer protection. Preventing BREa from its main mission is a serious violation and can warrant the maximum discipline of revocation, full cost recovery, and a fine. If there are mitigating factors, then the minimum discipline for such a violation should be revocation stay, one year probation, standard terms 1-8, and optional term 9 and 12.

7. B&P 11328.1. Failure to Respond to Request for Information

Similar to section 11328, section 11328.1 addresses the issue of failure to comply with a request from BREa for document. Unlike section 11328, section 11328.1 is drafted for AMCs not individual appraisers. Therefore, the focus of section 11328.1 is to obtain all written material; whereas for section 11328 the focus is on the appraisal itself. This is because appraisers conduct appraisals, AMCs do not conduct appraisals. Instead, AMCs have written material related to appraisals such as contracts and engagement letters. These written materials are needed to determine if an AMC has violated the law. Like section 11328, violation of section 11328.1 is serious and can warrant the maximum discipline of revocation, full cost recovery, and a fine. If there are mitigating factors, then the minimum discipline for such a violation should be revocation stay, one year probation, standard terms 1-8, and optional term 9 and 12.

8. B&P 11345.05 (AMC). Failure to Notify BREa of Changes of Contact Information

Pursuant to section 11345.05, AMCs have an obligation to notify BREa of any additions, deletions, or changes in names, addresses, and contact information for the individuals listed on its application. Individuals listed on the application are controlling persons. In order to qualify as a controlling person under section 11345.2, the individual must not be a felon or had their appraiser license revoked or denied. Therefore, it is important all controlling persons are properly screened to ensure compliance with the law. If an AMC fails to notify BREa of an additional controlling person, BREa is unable to verify the controlling person is eligible to be a controlling person, thus jeopardizing BREa's consumer protection mission. Furthermore, BREa needs to be kept abreast of all controlling person's contact information in case they need to be contacted. Based on these reasons, a violation can be serious enough to warrant suspension, full cost recovery, and payment of a fine. However, violations may involve some mitigating facts to reduce the discipline to the minimum discipline of a fine.

9. B&P 11345.4 (AMC). Improper Influence of Appraisals

AMCs receive requests for appraisals and pay appraisers to complete the appraisals. It is common that properties need to appraise at a certain value in order for the client requesting the appraisal to close the deal. When an appraisal does not reach the value needed, the client may attempt to influence the AMC to increase the appraisal value. However, the AMC cannot improperly influence the appraiser to change the value. There is a list of prohibited acts in section 11345.4. If an AMC does improperly influence an appraisal, this undermines the reliability of the report that all debt holders rely upon. This is a serious compromise of the entire appraisal system and warrants the maximum discipline available. If there are mitigating factors, the minimum discipline may be imposed of 30 day suspension, revocation stayed, one year probation, standard terms 1-8, and optional term 10 through 12.

10. B&P 11345.45. Structuring of Appraisal Assignment to Evade Provisions

To prevent AMCs and individuals from structuring appraisal assignments to evade the law, the legislature created section 11345.45. A violation is particularly egregious because the violator has changed assignment conditions to evade the law. Therefore, the maximum discipline available may be imposed. The minimum discipline is revocation stayed, one year probation, standard terms 1-8, and optional term 12.

11. B&P 11345.6 (AMC). Alteration of Completed Appraisal Reports

As explained above, AMC's hire appraisers to complete appraisal reports. If the AMC finds an error or wants the appraiser to consider appropriate additional information, the AMC can make the request to the appraiser. In no event can an AMC change a completed appraisal report with the intent to change the value conclusion. To do so transforms the appraisal from the appraiser's report to the AMC's report and AMCs are not permitted to appraise property. This is a serious violation and the maximum discipline available may be imposed. If mitigating factors are present, the minimum discipline is revocation stayed, one year probation, standard terms 1-8, and optional terms 9 and 12.

12. B&P 11345.7. Prohibited Interest in Appraised Property

Section 11345.7 contains the fundamental rule that an appraiser must not have a prohibited interest in the property they are appraising. Section 11345.7 cited the Code of Federal Regulations to further expand on the prohibited interests. The Code of Federal Regulations states: "No person preparing a valuation or performing valuation management functions for a covered transaction may have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed." (12 C.F.R. § 226.42(d)). Violating section 11345.7 risks the production of a biased or fraudulent appraisal. Thus, a violation is serious and subjects the violator to the maximum discipline available. However, mitigating factors can result in the minimum discipline of revocation stayed, one year probation, standard terms 1-8, and optional term 12.

California Code of Regulations (CCR)

1. Section 3527(a) (Appraisers). Failure to Maintain and Submit Personal Information or Contact Change

Section 3527 requires all licensees, temporary practice permit holders, and course providers to submit written notice to BREa of any changes to their contact information. This is important so BREa is able to contact these individuals and companies especially if there is an alleged violation that needs to be addressed immediately. Failure to keep an updated address can result in failure to respond to BREa and potential delays. Therefore, a violation can be serious enough to warrant suspension stayed, full cost recovery, standard terms and optional term 12. However, if there are mitigating factors it may warrant the minimum discipline of a fine.

2. Section 3527(b) (AMC). Failure to Maintain and Submit Personal Information or Contact Change

As explained above, B&P section 11345.05 requires AMCs to notify BREa of any additions, deletions, or changes in names, addresses, and contact information for the individuals listed on its application. Individuals listed on the application are controlling persons. In order to qualify as a controlling person under section 11345.2, the individual must not be a felon or had their appraiser license revoked or denied. Therefore, it is important all controlling persons are properly screened to ensure compliance with the law. If an AMC fails to notify BREa of an additional controlling person, BREa is unable to verify the controlling person is eligible to be a controlling person, thus jeopardizing BREa's consumer protection mission. Furthermore, BREa needs to be kept abreast of all controlling person's contact information in case they need to be contacted. Based on these reasons, a violation can be serious enough to warrant suspension stayed, full cost recovery, standard terms and optional term 12 or minimum discipline of a fine.

3. Section 3529. Failure to Cooperate with Audits

BREa examines and audits the records of applicants, licensees, educational providers, and AMCs. Failure of individuals and entities to cooperate with BREa and provide access to information may delay BREa's mission of consumer protection. Beyond delay, failure to comply is also used to obfuscate information and bad practices. Therefore, a violation is serious and may require the maximum discipline available. At a minimum, the discipline may be revocation stayed, one year probation, standard terms 1-8 and optional term 12.

4. Section 3568. Trainee Licenses and Supervisor Appraiser Responsibilities

BREa offers a trainee license to those who complete the necessary requirement such as education. The trainee is not permitted to appraise properties for a federally related transaction, but can assist a supervising appraiser. Section 3568 contains the requirements for both trainees and supervisors. Trainees must maintain copies of appraisal reports which appear on their log of

experience needed to upgrade their license. Trainees must also comply with the continuing education requirement. Supervisors also have several requirements such as examining the trainee's work. A violation of section 3568 can result in non-USPAP compliant appraisals. Hence, a violation may result in the maximum discipline available. The minimum recommended discipline is revocation stayed, one year probation, standard terms 1-8, and optional terms 10 through 13.

5. Section 3577 (AMC). Minimum Standards of Practice for AMCs

Section 3577 sets the minimum standards of practice for AMCs. These standards include only assigning work to licensed appraisers, adopting procedures for USPAP compliance, maintaining records, preventing improper influence, etc. The standards detailed in section 3577 are fundamental rules provided in statute and USPAP. Violation of the standards is a gross deviation from proper procedure and compromise the entire unbiased appraisal system. Therefore, violation subjects the violator to maximum discipline available. Mitigating factors can warrant discipline of revocation stayed, one year probation, standard terms 1-8, and optional term 12.

6. Section 3701. Standards of Professional Appraisal Practice (Conform to USPAP)

As required by B&P section 11340(c), section 3701 incorporates by reference the standards of practice set by USPAP. As explained above, USPAP is the minimum professional standard for licensed appraisers. All appraisers must study USPAP before receiving a license and enroll in USPAP courses as part of their continuing education. It is a serious offense to violate USPAP. Thus, a violation can result in maximum discipline available. However, some violations are less serious and there may be mitigating factors to justify the minimum discipline of revocation stayed, one year probation, standard terms 1-8, and optional term 10 through 14.

7. Section 3702. Special Qualifications – Honesty, Candor, Integrity, Trustworthiness

The Chief of BREa declared in section 3702 that the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensable to the practice of the appraisal profession. Furthermore, all licensees and controlling persons must demonstrate honesty, candor, integrity, and trustworthiness. Failure to demonstrate these vital qualifications can warrant maximum discipline available or the minimum discipline of revocation stayed, one year probation, standard terms 1-8, and optional terms 9 through 14.

8. Section 3705. Signature and License Number on Reports

After an appraiser completes an appraisal they must sign the appraisal and place their license number on the appraisal. Failure to do may be an inadvertent accident or intentional to avoid the responsibilities associated with a signed appraisal. The discipline imposed will depend on the reason for the violation. The maximum discipline is suspension, full cost recovery, and a fine. The minimum discipline is a fine.

9. Section 3721(a)(1). Conviction of Felony or Substantially Related Crime

The Chief may discipline a licensee for receiving a felony conviction or any conviction which is substantially related to the qualifications, functions, or duties of the profession of real estate appraisal. A felony conviction is a serious criminal violation. As such it may subject a licensee to discipline. Misdemeanors are less serious criminal violations and need to be evaluated pursuant to the substantial relationship criteria in section 3722. As always, the convictions will be evaluated in conjunction with the criteria for rehabilitation. Regardless if the conviction is for a felony or misdemeanor, a conviction may justify the maximum discipline available or the minimum discipline of revocation stayed, one year probation, standard terms 1-8, and optional term 12.

10. Section 3721(a)(2). Dishonesty, Fraud, Deceit

The Chief may discipline a licensee if the licensee does any act involving dishonesty, fraud or deceit with the intent to benefit himself or another, or to injure another. Honesty is the cornerstone of the profession. Being dishonest or committing fraud warrants the maximum discipline available. The minimum discipline is revocation stayed, one year probation, standard terms 1-8, and optional terms 9 through 14.

11. Section 3721(a)(3). Conviction for Solicitation of Criminal Act – Bodily Harm

The Chief may discipline a licensee if the licensee was convicted for commission or solicitation of a criminal act which involved or threatened bodily harm to others. This is similar to section 3721(a)(1), which allows discipline for a felony conviction or any conviction which is substantially related to the qualifications, functions, or duties of the profession of real estate appraisal. However, this provision does away with the substantial relationship requirement when a licensee receives a misdemeanor conviction for commission or solicitation of a criminal act which involved or threatened bodily harm to others. Such a conviction is deemed by regulation substantially related. Any licensee receiving such a conviction is subject to the maximum discipline available. The minimum discipline is revocation stayed, one year probation, standard terms 1-8, and optional term 12.

12. Section 3721(a)(4). Any Act which would be Grounds for Discipline

The Chief may deny the issuance of a license or certification for registration if the applicant has done any act which if done by the holder of a license to practice real estate appraisal would be grounds for revocation or suspension of such license. As these guidelines have demonstrated, a licensee is subject to many different possible violations. The majority of the violations involve appraisal practice or personal issues. An applicant for a license should not have a scope of work violation because the applicant should not be practicing. An applicant can also be subject to personal issues such as convictions or other conduct that may jeopardize their ability to obtain a license. Therefore, the maximum discipline available for an applicant is denial. The minimum

discipline is license granted, immediately revoked, revocation stayed, one year probation, standard terms of probation 1-8.

13. Section 3721(a)(5). False Statement in Application

The Chief may revoke or deny the issuance of a license or certification for registration if the applicant knowingly made a false statement of material fact required to be disclosed in an application for a license authorizing the practice of real estate appraisal. This violation is typically committed by an applicant (when applying) or supervisor (when verifying supervision requirement on application), but BREa may not discover the false statement until the license has been granted. Therefore, the maximum discipline may be imposed for both applicants (denial, full cost recovery, and fine) and licensees (revocation, full cost recovery, and fine). This is because knowingly making false statements on an application is a blatant problem for an appraiser trusted to be honest as a licensee. The minimum discipline for an applicant is license granted, immediately revoked, revocation stayed, one year probation, standard terms 1-8, optional term 11 or if the respondent is a licensee then the minimum is revocation stayed, one year probation, standard terms 1-8, optional term 12.

14. Section 3721(a)(6). USPAP Violation

The Chief may discipline a licensee if the licensee violates USPAP. As explained above, USPAP contains the standards for the profession so a violation is serious. As such, the maximum discipline available may be imposed. The minimum discipline that may be imposed is suspension stayed, one year probation, standard terms 1-8, and optional terms 10 through 14.

15. Section 3721(a)(7). Violation of Real Estate Appraisers' Licensing Law

The Chief may discipline a licensee for violating any provision of the Real Estate Appraisers' Licensing and Certification Law, Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code, or regulations promulgated pursuant thereto; or any provision of the Business and Professions Code applicable to applicants for or holders of licenses authorizing appraisals. This allows a licensee to be disciplined for a violation of any applicable Business and Professions Code or BREa's regulations. The wide variation of possible violations create a wide difference between the maximum and minimum discipline. The maximum discipline is the maximum discipline available and the minimum is simply a fine.

16. Section 3721(a)(8). Prohibited from Participating in Insured Depository Institution

The Chief may revoke or deny a license if the licensee or applicant has been prohibited from participating in the affairs of an insured depository institution pursuant to Section 19(a) of the Federal Deposit Insurance Act (12 U.S.C. Section 1829). This is similar to section 3721(a)(1) which allows discipline for a conviction. However, this provision does away with the substantial relationship requirement when a licensee is prohibited from participating in a insured depository

institution. In order to be prohibited from participating in a insured depository institution, a person must be convicted of a criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense. Therefore, these are serious crimes and the maximum discipline may be imposed for both applicants (denial, full cost recovery, and fine) and licensees (revocation, full cost recovery, and fine). The minimum discipline for an applicant is license granted, immediately revoked, revocation stayed, one year probation, standard terms 1-8 or if the respondent is a licensee then the minimum is revocation stayed, one year probation, standard terms 1-8.

17. Section 3721(a)(9). Dishonored Financial Instrument

The Chief may revoke or deny a license if the licensee or applicant has submitted a financial instrument to BREAs for the payment of any fee, fine or penalty which instrument is subsequently dishonored by the issuing institution due to an act or omission of that person. Writing a check without sufficient funds is a misdemeanor (Cal. Penal Code § 476a). The act also involves financial dishonesty which is unacceptable for appraisers who are responsible for determining the value of property. The maximum discipline may be imposed for both applicants (denial, full cost recovery, and fine) and licensees (revocation, full cost recovery, and fine). The minimum discipline for an applicant is license granted, immediately revoked, revocation stayed, one year probation, standard terms 1-8 or if the respondent is a licensee then the minimum is revocation stayed, one year probation, standard terms 1-8.

18. Violation of Probation

When a licensee violates probation by failing to follow a term of probation, an action may be taken to revoke probation. If the violation was substantial, the maximum discipline for violation of probation should be imposed. The maximum discipline is removing the stay and imposing the stayed discipline. If the violation of probation was non-substantive, the minimum discipline for violation of probation should be imposed. The minimum discipline is extending probation. As with all discipline, the presence of mitigating and aggravating factors determines if the maximum, minimum or something in between is sufficient to protect the public.

Terms of Probation

There are two types of terms, standard and optional. Standard terms should appear in all probation orders. There are eight (8) standard terms including: Obey All Laws; Appraisal Log/Work Samples; Monitoring; Monitoring Costs; Comply with Probation; Cost Reimbursement; Violation of Probation; and Surrender of License. Each term will be explained in depth below. These terms should always be included because they are universally applicable to all probationers.

The optional terms include: Actual Suspension; Uniform Standards of Professional Appraisal Practice Course /Examination; Basic Education Courses/Examination; Payment of Fine; Restricted License – Supervision; and Restricted License - Limited Scope of Practice. Each term will be explained in depth below. These terms provide the user the ability to choose which, if any, terms are appropriate to protect the public.

Model Disciplinary Language

The model disciplinary language provides language to use when implementing discipline. The language for each model is discussed in detail below.

1. Revocation Order

The revocation order simply revokes the license or certificate held by the respondent.

2. Suspension Order

There is also the option of suspending the license or certificate. The suspension will begin immediately after the effective date of the decision to allow the Respondent time to file a writ of mandamus while ensuring a timely suspension to protect the public.

3. Stay Order

If a revocation or suspension is stayed, this language may be used.

4. Probation Order

This language articulates the length of the probationary term.

5. Public Reprimand

In addition to the options above, the licensee may also be publically reprimanded.

Standard Terms of Probation

1. Obey All Laws

Respondent is required to obey all laws and probation orders while on probation. This term is to ensure respondent does not violate any laws while on probation. A violation of the law or USPAP can result in additional discipline. Therefore, if respondent violates the law or USPAP respondent has violated probation and probation can be revoked and the stayed order can be imposed.

2. Appraisal Log/Work Samples

The appraisal log/work samples should be used for cases directly related to professional competency and ethics such as USPAP violations. There is no need to impose this term for

respondents being disciplined for convictions or bad acts because those respondents will not benefit from having their work examined. There are two different options when selecting this term depending on whether the respondent is a licensee or an AMC. The terms are different because appraisers appraise property; whereas, AMCs assign appraisers appraisals to complete. Therefore, the logs are designed to capture the different functions.

Appraisers

The term requires the appraiser submit a log with all appraisal and appraisal reviews completed every six months. All appraisal and appraisal reviews are required to be sent to prevent the appraiser from only sending their best appraisals and appraisal reviews and allows BREa to select at random which reports to review. The six month period provides sufficient time to accumulate enough reports to be able to select a cross section, but not so long as allow appraisers to continue making mistakes. The six month period allows BREa investigators to examine the work and provide input to the appraiser on how to draft a compliant report. The appraiser must complete at least 12 appraisals per year or the probation is tolled. The rationale for this provision is to prevent an appraiser from not practicing, run out the probation, and then regain practice without having his/her work examined to ensure compliance. If this term is being utilized, the appraiser demonstrated competency or ethical issues and needs to have their work examined to ensure they have learned the proper way to complete a report. The number 12 was selected over a period of one year because it averages to one appraisal a month and active appraisers average at least one appraisal a month.

AMCs

Similar to appraisers, AMCs must provide a log every six months. Again, six months was chosen to provide sufficient time to accumulate enough assignments to be able to select a cross section, but not so long as to make the log unmanageable. The purpose of the log is to verify the AMC is not committing ethical violations. Primarily, this involves examining when the assignment was received, who was assigned to produce the report, and when the report was delivered.

3. Monitoring

This term requires respondent to cooperate with BREa. Cooperation is needed to ensure compliance.

4. Monitoring Costs

BREa has a team of licensed appraisers who investigate complaints against licensees and then examine licensees work log when they are on probation. BREa estimates it invests approximately nine hours every six months examining the work logs. It is estimated that the typical investigator's time is worth about \$50 an hour. Therefore, BREa set the monitoring costs

to not exceed \$450 every six months. The date of six months was set to sync with the reporting periods.

5. Comply with Probation

This term requires respondent comply with the terms and conditions of probation. Compliance is needed to ensure the terms are followed and the public protected.

6. Cost Reimbursement

Pursuant to Business and Professions Code section 125.3, a licentiate found to have committed a violation of the practice act may pay a sum not to exceed the reasonable cost of the investigation and enforcement of the case. Payment is required within 30 days of the effective date to provide a quick date for payment. However, if a licensee is unable to pay the entire amount at one time, BREA is willing to work with licensees in developing a payment plan. Pursuant to Business and Professions Code section 11409, if full payment is not received by BREA by the due date, a 10 percent late penalty shall be added to the unpaid balance and interest will accrue on the unpaid balance at the pooled money investment rate in effect at that time, until the full amount is paid. Furthermore, respondent shall not be eligible to renew his or her license until such time as full payment of the outstanding costs have been made.

7. Violation of Probation

This provision allows BREA the ability to revoke probation if respondent violates any term of probation. This provision is needed to enforce the terms of probation and protect the public from licensees unable or unwilling to perform as ordered. If revocation of probation is sought, the respondent will be given notice and an opportunity to be heard.

8. Surrender of License

Occasionally, a probationer will decide they no longer wish to be a licensee. If so, this provision provides them a way out by permitting surrender of their license. Surrendering a license while on probation is considered discipline because the terms of discipline have not been completed. Therefore, the surrender will be displayed on BREA's website. This is to inform the public that the respondent is no longer a licensee and has surrendered their license.

After surrender, respondent can reapply for licensure or petition pursuant to Government Code section 11522 for reinstatement of their surrendered license. In either event, respondent will need to meet the licensing requirements in effect at that time. This is to ensure that a licensee who has been out of practice meets the minimum criteria to begin practicing again. This is a public protection requirement.

Optional Terms of Probation

9. Actual Suspension

Often times a revocation or suspension will be stayed and the standard terms will apply. However, sometimes an actual suspension is required to properly discipline a respondent. This optional term allows for the actual suspension of a license for a set number of days.

10. USPAP Course/Examination

When a respondent demonstrates a knowledge deficiency regarding USPAP, this optional term should be imposed. The 15-hour USPAP basic education course is a fundamental course that all licensees must complete. Lessons from this important class can be forgotten in which case remediation education is required. This course is widely available and reasonably priced. As with all educational courses ordered as discipline, it may not be credited as continuing education and failure to complete shall result in automatic license suspension.

11. Basic Education Courses/Examination

When a respondent demonstrates a knowledge deficiency regarding any other subject than USPAP, this option provides 13 different educational courses to remedy respondent's deficiency. Appendix A includes a list of 13 available educational courses. These courses range from basic appraisal courses for all license levels to specific courses for certified level appraisers. This allows selection of course(s) that will benefit respondent without overburdening respondent with unnecessary courses. As with all education ordered as discipline, it may not be credited as continuing education and failure to complete shall result in automatic license suspension.

12. Payment of Fine

Assessing a fine can be a good method of discipline while also deterring future violations. The amount of the fine is to be determined by the decision maker. Payment shall be due within 30 days of the effective date of the Decision and Order to allow time for the Decision and Order to become final. As with cost reimbursement, if a licensee is unable to pay the entire amount at one time, BREa is willing to work with the licensee in developing a payment plan.

13. Restricted License – Supervision

This term is primarily for respondents who acted improperly as a supervisor or for respondents who commit violations that demonstrate an inability to properly supervise. This provision will prohibit respondent from supervising for the entire probationary term.

14. Restricted License – Limited Scope of Practice

Vacant land, complex appraisals, and non-residential appraisals require advanced knowledge. When the violations include an inability to properly value these advanced knowledge areas, the licensee may be prohibited from appraising those kinds of properties during the probationary period.

15. Relinquish Certificate

This term is only applied when a respondent's license has been revoked without a stay order. The term requires respondent to return the license or certificate.

Appendix A. Basic Education Module Requirements

This list of education modules includes all basic education courses available that are approved by BREa. All modules are included to allow the decision maker the ability to review the modules and determine what modules are applicable.

Underlying Data

The Bureau did not rely on any underlying data.

Fiscal Impact Analysis in General

This proposal has no fiscal impact.

Economic Impact Analysis/Assessment

The Bureau has made the initial determination that the proposed regulatory action would have no statewide adverse economic impact directly effecting California. This initial determination is based on the fact that the proposed regulations are only guidelines used when determining appropriate discipline.

- **Analysis of creation/elimination of jobs:** There will be no creation or elimination of jobs because the only effect of the proposal will be uniformed discipline. There will be no additional grounds for discipline or any added bureaucracy to create or eliminate jobs.
- **Analysis of creation/elimination of businesses:** There will be no creation or elimination of businesses because the only effect of the proposal will be uniformed discipline. There will be no additional grounds for discipline or any added bureaucracy to create or eliminate businesses.
- **Analysis of expansion of business:** The proposed regulations are not expected to, directly or indirectly, lead to the expansion of new businesses within California. This is because the guidelines only uniform current discipline.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:** BREa has made an initial determination that the proposed regulatory action will have the following benefits to the health and welfare of California residents: The proposal will increase consumer protection from incompetent behavior of licensees and registrants. The appraisal industry will be put on notice that the violations of statutes and regulation enforced by BREa could lead to

imposing of appropriate administrative discipline, and potentially deterring dishonest behavior.

Specific Technologies or Equipment

This proposed regulatory action does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

Do nothing. This alternative was rejected because the BREAs need disciplinary guidelines. These guidelines are needed because BREAs conduct many disciplinary actions each year and there needs to be similar results for similar violations. These guidelines will provide for consistent and equitable disciplinary enforcement.

BUREAU OF REAL ESTATE APPRAISERS

Proposed Text

California Code of Regulations Title 10, Chapter 6.5

The text below represents existing language modified to show proposed changes. Proposed deletions are in ~~striketrough~~. Proposed additions are in underline.

§ 3733. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Bureau shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" [Rev. 2015] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau and/or administrative law judges in its/his or her discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Sections 11313 and 11314, Business and Professions Code; and Section 11425.50, Government Code. Reference: Sections 11310.1, 11315.5, and 11320, Business and Professions Code; and Section 11425.50(e), Government Code.

A MANUAL OF DISCIPLINARY GUIDELINES AND MODEL DISCIPLINARY ORDERS

Revision 2015

I. INTRODUCTION

To establish consistency in license discipline for similar offenses on a statewide basis, the Bureau of Real Estate Appraisers (“BREAA”) has adopted these uniform disciplinary guidelines. This document, which is designed for use by Administrative Law Judges, attorneys, BREAA licensees, applicants, others involved in BREAA’s disciplinary process, and ultimately the Chief of BREAA, shall be revised from time to time and will be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and disciplinary guidelines for specific offenses.

For purposes of this document, terms and conditions of probation are divided into two general categories: (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation; and (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

This document is a guideline and the presence of mitigating or aggravating circumstances may necessitate deviations from these guidelines. If there are deviations, BREAA requests the Administrative Law Judge hearing the matter state the reasons for deviation in the proposed decision.

II. GENERAL CONSIDERATIONS

Proposed decisions should include the following:

- a. Specific code sections and/or regulations violated with their definitions;
- b. Clear description of the violation;
- c. Respondent’s explanation of the violation if he/she is present at the hearing;
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate;
- e. When suspension or probation is ordered, BREAA requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

III. FACTORS IN AGGRAVATION

Factors in aggravation include but are not limited to:

- Respondent's violation was intentional;
- Respondent induced a trainee to commit or assist in the commission of a violation;
- Respondent has a history of prior discipline, particularly where the prior discipline involved the same or similar type of conduct;
- Respondent's action could have or did result in financial damage to his/her clients or other consumers. The amount of loss may be an additional aggravating factor;
- Respondent violated conditions of a BREA stipulation or final order;
- Respondent failed to acknowledge responsibility for the violation;
- Respondent failed to cooperate with BREA;
- Respondent's acts or omissions are numerous;
- Respondent took advantage of his/her client for personal gain (e.g. respondent was able to take advantage due to the ignorance, age or lack of sophistication of the client);
- Submission of false statements or evidence, or other deceptive practice (e.g., adding to work file after complaint filed); and
- Intimidation of or threats to witnesses or others involved with the investigation.

IV. FACTORS IN MITIGATION

Factors in mitigation include but are not limited to:

- Respondent's violation was unintentional;
- Respondent was induced by others to participate, was a passive participant, or played a minor role in the violation (e.g. trainee);
- Respondent's violation was committed because of an unusual circumstance which is unlikely to recur;
- Respondent made technical errors that did not result in financial damages;
- Respondent made reasonable and diligent efforts to comply with applicable laws and regulations;
- Respondent demonstrated remorse and a willingness to take corrective action;
- Respondent was cooperative during the investigation;
- The passage of considerable time since the violation occurred with no evidence of recurrence or evidence of any other violations;
- The assignment was difficult/complex;
- License level at the time of the violation; and
- Respondent was under the supervision of another licensee at the time of any violation (e.g., trainee).

V. GROUNDS FOR DISCIPLINARY ACTION AND DISCIPLINARY GUIDELINES

The following are violations and recommended discipline for accusations and statements of issue. The numbers following conditions of probation refer to the Standard Conditions of Probation or Optional Probation Conditions listed below. These conditions vary dependent upon the nature of the offense and presence of mitigation or aggravation.

Business and Professions Code

- B&P 11318** Failure to Notify BREAs of Felony Charge, Conviction, Discipline
- Maximum: Revocation, full cost recovery, payment of fine
Minimum: Optional term 12
- B&P 11319** USPAP – Minimum Standard
- Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard conditions of probation 1-8 and optional probation conditions 10 through 12
- B&P 11320/11320.5** Practice Without a License/Certificate
- Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one to three years probation; standard terms of probation 1-8 and optional terms 9 and 12
- B&P 11321** Unauthorized Use of Title
- Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 9 and 12
- B&P 11323** Conflict of Interest – Compensation Dependent on Value Conclusion
- Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, three years probation, standard terms of probation 1-8 and optional terms 10 through 14
- B&P 11328** Failure to Provide Copies of Appraisals
- Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 9 and 12

B&P 11328.1

Failure to Respond to Request for Information

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 9 and 12

**B&P 11345.05
(Appraisal Management
Companies “AMC”)**

Failure to Notify BREAs of Changes of Contact Information

Maximum: Suspension, full cost recovery, payment of fine
Minimum: Optional term 12

B&P 11345.4 (AMC)

Improper Influence of Appraisals

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 10 through 12

B&P 11345.45

Structuring of Appraisal Assignments to Evade Provisions

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

B&P 11345.6 (AMC)

Alteration of Completed Appraisal Reports

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 9 and 12

B&P 11345.7

Prohibited Interest in Appraised Property

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

**California Code of
Regulations, Title 10**

**Section 3527(a)
(Appraisers)**

Failure to Maintain and Submit Personal Information or Contact
Change

Maximum: Suspension stayed, one year probation, standard terms
of probation 1-8 and optional term 12
Minimum: Optional term 12

Section 3527(b)

Failure to Maintain and Submit Personal Information or Contact

(AMCs)

Change

Maximum: Suspension stayed, one year probation, standard terms of probation 1-8 and optional term 12
Minimum: Optional term 12

Section 3529

Failure to Cooperate with Audits

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

Section 3568

Trainee Licenses and Supervisor Appraiser Responsibilities

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 10 through 13

Section 3577 (AMC)

Minimum Standards of Practice for AMCs

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

Section 3701

Standards of Professional Appraisal Practice (Conform to USPAP)

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 10 through 14

Section 3702

Special Qualifications – Honesty, Candor, Integrity, Trustworthiness

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 9 through 14

Section 3705

Signature and License Number on Reports

Maximum: Suspension, full cost recovery, payment of fine
Minimum: Optional term 12

Section 3721(a)(1)

Conviction of Felony or Substantially Related Crime

Maximum: Revocation, full cost recovery, payment of fine
Minimum: Revocation stayed, one year probation, standard terms of

probation 1-8 and optional term 12

Section 3721(a)(2)

Dishonesty, Fraud, Deceit

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional terms 9 through 14

Section 3721(a)(3)

Conviction for Solicitation of Criminal Act – Bodily Harm

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Revocation stayed, one year probation, standard terms of probation 1-8 and optional term 12

Section 3721(a)(4)

Any Act which would be Grounds for Discipline

Maximum: License denied, full cost recovery, payment of fine

Minimum: License granted, immediately revoked, revocation stayed, one year probation, standard terms of probation 1-8

Section 3721(a)(5)

False Statement in Application

Maximum: License denied, full cost recovery, payment of fine.

Revocation, full cost recovery, payment of fine

Minimum: License granted, immediately revoked, one year probation, standard terms of probation 1-8. Revocation stayed, one year probation, standard terms of probation 1-8, optional term 12

Section 3721(a)(6)

USPAP Violation

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Suspension stayed, one year probation, standard terms of probation 1-8 and optional terms 10 through 14

Section 3721(a)(7)

Violation of Real Estate Appraisers' Licensing Law

Maximum: Revocation, full cost recovery, payment of fine

Minimum: Optional term 12.

Section 3721(a)(8)

Prohibited from Participating in a Insured Depository Institution

Maximum: License denied, full cost recovery, payment of fine; or

Revocation, full cost recovery, payment of fine

Minimum: License granted, immediately revoked, revocation stayed, one year probation, standard terms of probation 1-8; or Revocation stayed, one year probation, standard terms of probation

Section 3721(a)(9)

Dishonored Financial Instrument

Maximum: License denied, full cost recovery, payment of fine; or Revocation, full cost recovery, payment of fine

Minimum: License granted, immediately revoked, revocation stayed, one year probation with standard terms 1-8; or Revocation stayed, one year probation, standard terms of probation 1-8

Violation of Probation

Maximum: Vacate stay order and impose discipline that was stayed

Minimum: Extension of probation

TERMS OF PROBATION

Probation conditions are divided into two categories:

1. Standard Conditions of Probation that should appear in all probation cases, and
2. Optional Conditions of Probation that depend on the nature and circumstances of a particular case. BREa prefers that the optional conditions be placed before the standard conditions in sequence in the proposed disciplinary order. Other conditions appropriate to the case which are not contrary to public policy may also be imposed.

MODEL DISCIPLINARY LANGUAGE

Revocation Order

IT IS HEREBY ORDERED that Real Estate Appraiser (License No. ____ or Certificate No. ____) issued to Respondent is revoked.

Suspension Order

IT IS HEREBY ORDERED that Real Estate Appraiser (License No. ____ or Certificate No. ____) issued to Respondent is suspended for ____ days immediately after the effective date of the Decision and Order. During the period of suspension, Respondent shall not engage in any activities for which licensure as a real estate appraiser is required.

Stay Order

However, the [revocation or suspension] is stayed and Respondent is placed on probation for ____ years on the following terms and conditions.

Probation Order

Respondent is placed on probation for a period of ____ years.

Public Repeal

Respondent's license is publically repealed.

STANDARD TERMS OF PROBATION (to be included in all cases of probation)

1. Obey All Laws. Respondent shall comply with all federal, state and local laws, the Real Estate Appraisers' Licensing and Certification Law and regulations promulgated thereto, and conform to the minimum guidelines set forth under the Uniform Standards of Professional Appraisal Practice ("USPAP"), and all other laws and regulations pertaining to real estate appraisers. Additionally, if Respondent is subject to criminal court orders, Respondent shall comply with all criminal court orders, including probation and parole.

Please note: Standard terms 2-4 should be used for cases directly related to professional competency or ethics (i.e. USPAP violations not convictions).

2. Appraisal Log/Work Samples

[Use for Real Estate Appraisers]

Commencing on the effective date of the Decision and Order and continuing through the period of probation, Respondent shall maintain a log of all appraisals and appraisal reviews Respondent performs on a Log of Appraisal Experience form provided by BREAA. Respondent shall submit a complete and accurate copy of the log of all appraisals and appraisal reviews completed each six (6) months. Each six (6) month log shall be submitted to BREAA within thirty (30) days following the end of each six (6) month period. Respondent understands BREAA may select work samples for review from each submitted six (6) month log. Failure to submit the log, or any selected work samples, in compliance with these terms shall extend the probation for a period equivalent to the period of noncompliance.

Respondent shall complete a minimum of six (6) appraisals every six (6) months. If Respondent fails to complete six (6) appraisals every six (6) months, probation shall be tolled. Periods during which probation is tolled shall not apply to reduction of the probationary period, suspension or any other disciplinary order or term.

[Use for Appraisal Management Companies ("AMCs")]

Commencing on the effective date of the Decision and Order and continuing through the period of probation, Respondent shall maintain a log of all appraisal assignments. The log shall contain: (1) the date of the receipt of the request; (2) the name of the person from whom the request was received; (3) the name of the client for whom the request was made, if different from the name of the person from whom the request was received; (4) the name of the appraiser or appraisers assigned to perform the contracted service; and (5) the date of delivery of the appraisal product to the client. Respondent shall submit a complete and accurate copy of the log of all appraisal

assignments made each six (6) months. Each six (6) month log shall be submitted to BREA within 30 days following the end of each six (6) month period. Failure to submit the log in compliance with these terms shall extend the probation for a period equivalent to the period of noncompliance.

3. Monitoring. Respondent shall be subject to, and shall permit and cooperate with, monitoring and investigation of Respondent's professional practice. Such monitoring and investigation shall be conducted by representatives of BREA.
4. Monitoring Costs. Respondent shall pay \$450 every six months while on probation to compensate BREA for enforcing the order by examining the work samples or AMC logs. Failure to pay monitoring costs shall be a violation of probation.
5. Comply with Probation. Respondent shall fully comply with the terms and conditions of the probation imposed by the Chief of BREA and shall cooperate fully with representatives of BREA in its investigation of Respondent's compliance with the terms and conditions of probation.
6. Cost Reimbursement. Respondent shall reimburse BREA its investigation and prosecution costs in the sum of \$_____. The payment shall be made within 30 days of the effective date the Decision and Order, unless BREA agrees in writing to payment plan. Payment shall be made to the Real Estate Appraisers Regulation Fund, c/o Bureau of Real Estate Appraisers, 1102 Q Street, Suite 4100, Sacramento, California 95811, by check or money order and shall indicate on its face the notation: "BRE A Case No. _____." Respondent shall also submit a copy of the invoice with payment, which will be provided by BRE A. If full payment is not received by BRE A by the date due as noted in the invoice, a 10 percent late penalty shall be added to the unpaid balance and interest will accrue on the unpaid balance at the pooled money investment rate in effect at that time, until the full amount is paid. Respondent shall not be eligible to renew his or her license until such time as full payment of the outstanding costs have been made. Failure to timely reimburse BRE A's costs of its investigation and prosecution shall constitute a violation of the probationary order or further disciplinary action.
7. Violation of Probation. If Respondent violates probation in any respect, the Chief of BRE A, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Chief shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
8. Surrender of License: During Respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his or her license to BRE A. BRE A reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate

and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with BREa. An appraiser whose license has been surrendered may re-apply for licensure no sooner than one year from the effective date of the disciplinary decision.

Respondent may petition to BREa for reinstatement pursuant to the provisions set forth in Government Code section 11522. If, following a surrender of his or her license, Respondent ever applies for licensure to BREa and/or petitions for reinstatement in the State of California, the Chief shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in the Accusation or Statement of Issues will be deemed true when the Chief determines whether to grant or deny the application or petition. Further, Respondent shall pay the enforcement costs, fines and complete all education, as specified in this Decision and Disciplinary Order prior to filing any application for reinstatement or issuance of a new license.

OPTIONAL TERMS OF PROBATION

9. Actual Suspension. Respondent's license is suspended for a period of ____ days immediately following the effective date of the Decision and Order. During the period of suspension the Respondent shall not engage in any activities for which licensure as a real estate appraiser is required.

10. Uniform Standards of Professional Appraisal Practice Course/Examination. Respondent shall take and pass a BREa approved 15-hour basic education course on the Uniform Standards of Professional Appraisal Practice within six (6) months of the effective date the Decision and Order. The course may be taken on-line or in a classroom setting. However, the course must be The Appraisal Foundation's National USPAP Course (or its equivalent as determined solely by the Appraiser Qualifications Board (AQB) Course Approval Program) and at least one of the course instructors must be an AQB Certified USPAP Instructor who is also a state certified appraiser in good standing. The course must administer a closed-book final examination. Respondent must submit proof of successful completion of the course and final examination within six (6) months following the effective date of the Decision and Order. Respondent understands that it is his/her responsibility to ensure that the course meets all of the requirements listed above and to make all necessary and preparatory arrangements to take the course. Educational courses imposed by the Chief of BREa may not be credited toward Respondent's continuing education requirements required for renewal of Respondent's real estate appraiser license. Failure to comply with the education requirements as contained in this Disciplinary Order shall result in an automatic suspension of Respondent's real estate appraiser

license. In order to reinstate Respondent's license if it is automatically suspended for failure to comply with the education requirement, Respondent must provide BREa with the following: (i) satisfactory verification of the completion of the education course or courses imposed; (ii) completion and filing of a reinstatement application; and (iii) payment of all applicable fees, fines, or penalties.

11. Basic Education Courses/Examination. Respondent shall take and successfully complete, within 12 months from the effective date of the Decision and Order, BREa approved basic education course(s) covering the following modules: ***Specify topics and hours listed in Appendix A (i.e., Sales and Comparison Approach, Valuation Process, Real Estate Markets and Analysis etc.).*** The course(s) must administer a closed-book final examination. Respondent must submit proof of successful completion of the course(s) and final examination within 12 months following the effective date of the Decision and Order. Respondent understands that it is his/her responsibility to ensure that the course meets all of the requirements listed above and to make all necessary and preparatory arrangements to take the course. Educational courses imposed by the Chief of BREa may not be credited toward Respondent's continuing education requirements required for renewal of Respondent's real estate appraiser license. Failure to comply with the education requirements as contained in this Disciplinary Order shall result in an automatic suspension of Respondent's real estate appraiser license. In order to reinstate Respondent's license if it is automatically suspended for failure to comply with the education requirement, Respondent must provide BREa with the following: (i) satisfactory verification of the completion of the education course or courses imposed; (ii) completion and filing of a reinstatement application; (iii) payment of all applicable fees, fines, or penalties.
12. Payment of Fine. Respondent shall pay a fine in the sum of \$ _____. The payment shall be made within 30 days of the effective date of the Decision and Order, unless BREa agrees in writing to payment plan. Payment shall be made to the Real Estate Appraisers Regulation Fund, c/o Bureau of Real Estate Appraisers, 1102 Q Street, Suite 4100, Sacramento, California 95811, by check or money order and shall indicate on its face the notation: "BREa Case No. ____." Respondent shall also submit a copy of the invoice with payment, which will be provided by BREa. If full payment is not received by BREa by the date due as noted in the invoice, a 10 percent late penalty shall be added to the unpaid balance and interest will accrue on the unpaid balance at the pooled money investment rate in effect at that time, until the full amount is paid. Respondent shall not be eligible to renew his or her license until such time as full payment of the outstanding fine has been made. Failure to make payment on the fine shall constitute a violation of the probationary order or further disciplinary action.
13. Restricted License - Supervision. For the entire probationary term, Respondent shall not supervise any individual in the practice of real estate appraisal.
14. Restricted License – Limited Scope of Practice (Please choose all applicable restrictions).

- a. For the entire probationary period Respondent shall be restricted from appraising vacant land.
- b. For the entire probationary period Respondent shall be restricted from performing complex appraisal assignments.
- c. For the entire probationary period Respondent shall be restricted from performing non-residential appraisal assignments.

In outright revocation orders, the following language shall be included:

15. Relinquish Certificate. Respondent shall relinquish and shall forward or deliver to BREa the license or certificate to practice within 10 days of the effective date of this decision and order.

APPENDIX A
BASIC EDUCATION MODULE REQUIREMENTS

| Minimum Hours | Basic Education Modules |
|----------------------|---|
| 30 | Basic Appraisal Principles (applies to all license levels) |
| 30 | Basic Appraisal Procedures (applies to all license levels) |
| 15 | Residential Market Analysis and Highest and Best Use (applies to all license levels) |
| 15 | Residential Appraiser Site Valuation and Cost Approach (applies to all license levels) |
| 30 | Residential Sales Comparison and Income Approach (applies to all license levels) |
| 15 | Residential Report Writing and Case Studies (applies to all license levels) |
| 15 | Advanced Residential Applications and Case Studies (applies to Certified Residential and Certified General licenses only) |
| 15 | Statistics Modeling and Finance (applies to Certified Residential license and Certified General License) |
| 30 | General Appraiser Market Analysis and Highest and Best Use (applies to Certified General license only) |
| 30 | General Appraiser Sales Comparison Approach (applies to Certified General license only) |
| 30 | General Appraiser Site Valuation and Cost Approach (applies to Certified General license only) |
| 30 | General Appraiser Report Writing and Case Studies (applies to Certified General license only) |
| 60 | General Appraiser Income Approach (applies to Certified General license only) |

Please note that a module is a subject matter area and not necessarily the name of the course. A module may consist of one (1) or two (2) subtopics or portions of several different subtopics. Proposed Decisions should specify the module(s) required and the corresponding number of hours.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

| | | | |
|---|-------------------------------|--|----------------------------------|
| DEPARTMENT NAME Bureau of Real Estate Appraisers | CONTACT PERSON Kyle Muteff | EMAIL ADDRESS Kyle.muteff@orea.ca.gov | TELEPHONE NUMBER 916.341.6126 |
| DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Disciplinary Guidelines | | | NOTICE FILE NUMBER Z |

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts business and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance
- g. Impacts individuals
- h. None of the above (Explain below):

See attached

If any box in Items 1 a through g is checked, complete this Economic Impact Statement.

If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.

2. The Bureau of Real Estate Appraisers estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
- Between \$10 and \$25 million
- Between \$25 and \$50 million
- Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: See attached

Describe the types of businesses (Include nonprofits): See attached

Enter the number or percentage of total businesses impacted that are small businesses: See attached

4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: n/a

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

6. Enter the number of jobs created: 0 and eliminated: 0

Describe the types of jobs or occupations impacted: Licensees and registrants may be affected.

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ See attached

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: n/a3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____4. Will this regulation directly impact housing costs? YES NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? YES NOExplain the need for State regulation given the existence or absence of Federal regulations: There are no federal disciplinary guidelines.

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: The Guidelines will provide for consistent and equitable discipline decisions.2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ n/a4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: n/a**D. ALTERNATIVES TO THE REGULATION** *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: Do nothing. This alternative was rejected. The Guidelines are necessary to ensure that there are similar results for similar violations.

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ 0 Cost: \$ 0

Alternative 1: Benefit: \$ 0 Cost: \$ 0

Alternative 2: Benefit: \$ 0 Cost: \$ 0

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: n/a

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO

***If YES, complete E2. and E3
If NO, skip to E4***

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: n/a

The incentive for innovation in products, materials or processes: n/a

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: The Guidelines will provide for consistent and equitable discipline decisions.

FISCAL IMPACT STATEMENT

FISCAL EFFECT ON LOCAL GOVERNMENT Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

- b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- a. Implements the Federal mandate contained in _____

- b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Annual Savings. (approximate)

\$ _____

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain _____

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain See attached.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

2. Savings in the current State Fiscal Year. (Approximate)

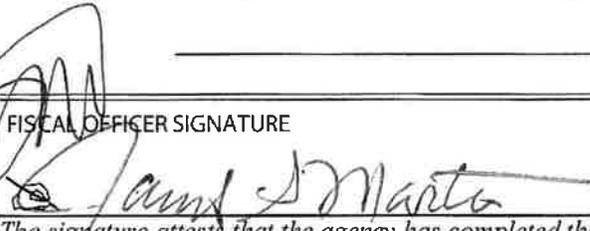
\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE

DATE

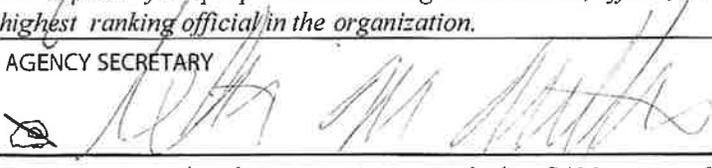


3-8-16

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY

DATE

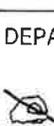


5/27/15

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE



Attachment to Form 399

Bureau of Real Estate Appraisers Proposed Regulation Disciplinary Guidelines

ECONOMIC IMPACT

A.1. ESTIMATED PRIVATE SECTOR COST IMPACTS

The proposed addition of Section 3733 will not create new grounds for discipline or impose any new requirements, but rather provide the framework for the Administrative Law Judge (ALJ) to recommend consistent and equitable discipline decisions, which will insure that similar cases will result in similar dispositions. There should be no effect on licensees as the Bureau Chief currently reviews all ALJ decisions for consistency and can reject decisions that are not consistent. This process will not change.

A.3. BUSINESS IMPACTS. It is difficult to determine the business impacts because some of the approximately 11,000 licensees operate their own businesses and some work for others. We do not track this information. However, the Bureau does register approximately 280 Appraisal Management Companies which will be affected by this regulation.

B.1 ESTIMATED COSTS. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime?

The Guidelines will provide for consistent disposition of similar cases when being heard by the ALJ. The Bureau Chief has final say on the disposition of cases, and currently ensures consistency by rejecting an ALJ decision as deemed appropriate. This process will not change. Therefore, there would be no new impact to businesses and individuals that would occur as a result of a disciplinary action that they would not have already been subject to without Guidelines in place.

FISCAL IMPACT

B.4 FISCAL EFFECT ON STATE GOVERNMENT

Since the Bureau's current processes are not changing, this regulation should have no or negligible impact to the Bureau.