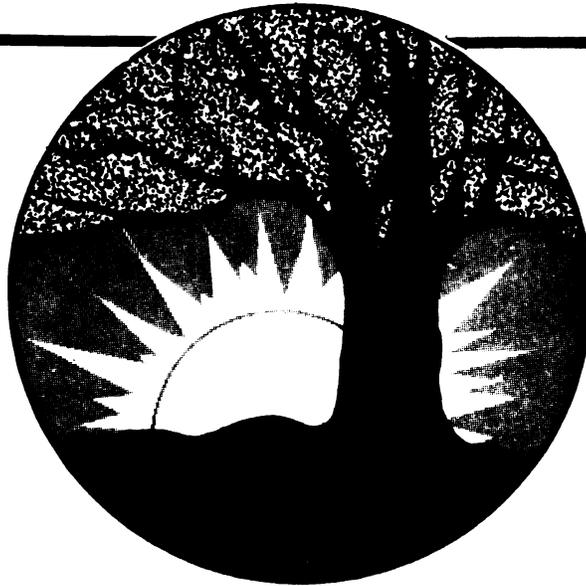


# PERFORMANCE AUDIT

**Regulatory Boards and Commissions**  
**September 2012**



Justin P. Wilson  
Comptroller of the Treasury



State of Tennessee  
Comptroller of the Treasury  
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September 19, 2012

The Honorable Ron Ramsey  
Speaker of the Senate  
The Honorable Beth Harwell  
Speaker of the House of Representatives  
The Honorable Mike Bell, Chair  
Senate Committee on Government Operations  
The Honorable Jim Cobb, Chair  
House Committee on Government Operations  
and  
Members of the General Assembly  
State Capitol  
Nashville, Tennessee 37243  
and  
Commissioner Julie Mix McPeak  
Department of Commerce and Insurance  
500 James Robertson Pkwy  
Davy Crockett Tower  
Nashville, Tennessee 37243-0565

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of eight boards and commissions that are administratively attached to the Department of Commerce and Insurance's Division of Regulatory Boards and are scheduled to terminate on June 30, 2013. Our scope covered the period July 1, 2008, through May 31, 2012. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Management of the Department of Commerce and Insurance's Division of Regulatory Boards and the Department of Finance and Administration is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

September 19, 2012

Page Two

Our audit disclosed certain findings, which are detailed in the Objectives, Methodologies, and Conclusions section of this report. We have included responses from management of the Department of Commerce and Insurance's Division of Regulatory Boards and management of the Department of Finance and Administration to the audit findings. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Auctioneer Commission, Board of Barber Examiners, Board of Cosmetology, Board of Funeral Directors and Embalmers, Collection Service Board, Private Investigation and Polygraph Commission, Real Estate Appraiser Commission, and Real Estate Commission should be continued, restructured, or terminated.

Sincerely,

A handwritten signature in black ink, reading "Arthur A. Hayes, Jr." in a cursive style.

Arthur A. Hayes, Jr., CPA  
Director

AAH/ss  
12059

State of Tennessee

# Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit

## Regulatory Boards and Commissions

**Auctioneer Commission**

**Board of Barber Examiners**

**Board of Cosmetology**

**Board of Funeral Directors and Embalmers**

**Collection Service Board**

**Private Investigation and Polygraph Commission**

**Real Estate Appraiser Commission**

**Real Estate Commission**

September 2012

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## AUDIT SCOPE

We have audited eight boards and commissions administratively attached to the Department of Commerce and Insurance's Division of Regulatory Boards for the period July 1, 2008, through May 31, 2012. Our audit scope included a review of the boards' and commissions' business practices; internal controls; compliance with laws, regulations, and provisions of contracts or grant agreements; and prior audit findings. We focused our audit specifically on the areas of board and commission self-sufficiency; state regulatory fees; civil penalties; education and recovery accounts; the licensee application process; monitoring unlicensed activity; cash receipting; the conflict of interest policy; travel reimbursement; performance measures; and Title VI. In addition, we followed up on prior sunset performance audit findings. The audit was conducted in accordance with generally accepted government auditing standards.

## AUDIT FINDINGS

**Finding 1** The Department of Finance and Administration has not analyzed the sufficiency of the state regulatory fee, the Department of Commerce and Insurance's Division of Regulatory Boards did not calculate the state regulatory fee correctly, and the Department of Commerce and Insurance allocated and charged indirect costs to the Division of Regulatory Boards, who allocated and charged indirect costs to the Regulatory Boards, in violation of state law (page 11).

**Finding 2** The Department of Commerce and Insurance's Legal Division failed to track and monitor civil penalties collection efforts for the Regulatory Boards, increasing the risk that the penalties were not collected timely or at all (page 20).

**Finding 3** The Division of Regulatory Boards inappropriately used the Real Estate Education and Recovery Account and the Auctioneer Education and Recovery Account for unauthorized purposes, did not establish adequate claim procedures for the Real Estate Education and Recovery Account, and did not ensure that the Auctioneer Education and Recovery Account maintained the required minimum balance (page 28).

**Finding 4** The Board of Cosmetology and Board of Barber Examiners staff did not properly maintain reciprocal licensing applications and management did not effectively supervise staff who issue licenses; additionally, the Division of Regulatory Boards did not ensure that employees were following the Office for Information Resources' Acceptable Use Policy for Information Security (page 35).

**Finding 5** The Department of Commerce and Insurance staff did not always deposit regulatory board revenue collections in accordance with the Department of Finance and Administration's policy and management failed to identify cash receipt risks in its annual risk assessment (page 43).

**Finding 6\*** As noted in the prior audit report, the department and division did not assess and mitigate the risks associated with Information Systems security, increasing the risk of fraudulent activity (page 52).

## OBSERVATIONS AND COMMENTS

The audit report also discusses the following issues:

**Observation 1** The Division of Regulatory Boards' lack of policies or procedures to address boards' deteriorating financial condition could impact the boards' self-sufficiency (page 7).

**Observation 2** The Conflict of Interest Policy and Procedures were not consistently followed and the policy was outdated (page 45).

\* This finding is repeated from the prior audit.

**Observation 3** The performance measure of the Real Estate Commission's Education and Recovery Fund included data which was inconsistent and not authorized as a standard measure (page 50).

#### **RECOMMENDATION FOR LEGISLATIVE CONSIDERATION**

The General Assembly may wish to modify Section 4-3-1011(b)(2), *Tennessee Code Annotated*, regarding the state regulatory fee (page 54).

# Performance Audit Regulatory Boards and Commissions

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# Performance Audit Regulatory Boards and Commissions

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## INTRODUCTION

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### PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the eight Regulatory Boards<sup>1</sup> that are scheduled to terminate June 30, 2013, was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. This audit is intended to aid the committee in determining whether these Regulatory Boards should be continued, restructured, or terminated.

Auctioneer Commission  
Board of Barber Examiners  
Board of Cosmetology  
Board of Funeral Directors and Embalmers  
Collection Service Board  
Private Investigation and Polygraph Commission  
Real Estate Appraiser Commission  
Real Estate Commission

### ORGANIZATION AND STATUTORY RESPONSIBILITIES

#### Department of Commerce and Insurance, Division of Regulatory Boards

Under the Department of Commerce and Insurance, the Division of Regulatory Boards (DRB) was established in 1978 pursuant to Section 56-1-301, *Tennessee Code Annotated*, to provide administrative and staff support to the various boards that perform the occupational licensing and regulation of various professions within Tennessee. As a division of the department, it receives fiscal and support services from the department's administrative division. In addition, the Office of Internal Audit under the Commissioner for the Department of Commerce and Insurance receives and investigates allegations of fraud, waste, and abuse of state funds and property, but does not investigate complaints against licensees.

The DRB is led by an Assistant Commissioner who is responsible for the overall functioning of the division. Each board is assigned an appropriate number of administrative staff, such as licensing technicians and administrative assistants. Some boards have an

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<sup>1</sup>Boards and commissions will only be described as board, unless a particular commission is noted for reporting purposes.

Executive Director, while others share an Executive Director: Board of Barber Examiners and Board of Cosmetology; Auctioneer Commission and Collection Service Board. Further, each board is assigned a specific lawyer who advises and handles various aspects of the complaint process for the boards. The DRB also employs an Accountant III who serves as a liaison to the department's Fiscal Services Section who helps communicate relevant financial information to the boards. The staff of the division are employees of the Department of Commerce and Insurance.

### **Office of Investigations**

The Office of Investigations reviews and investigates complaints against individuals licensed under the Division of Regulatory Boards. The complaints are initially received by the boards and are reviewed by the legal staff. If the complaint merits further review, it is then referred to the Office of Investigations so that an investigation can be initiated. Once the investigation has been conducted, a field representative provides a written report to the Director of the Office of Investigations. The Director forwards the report to the department's Legal Division who make a recommendation of action to the applicable board or commission.

### **Boards**

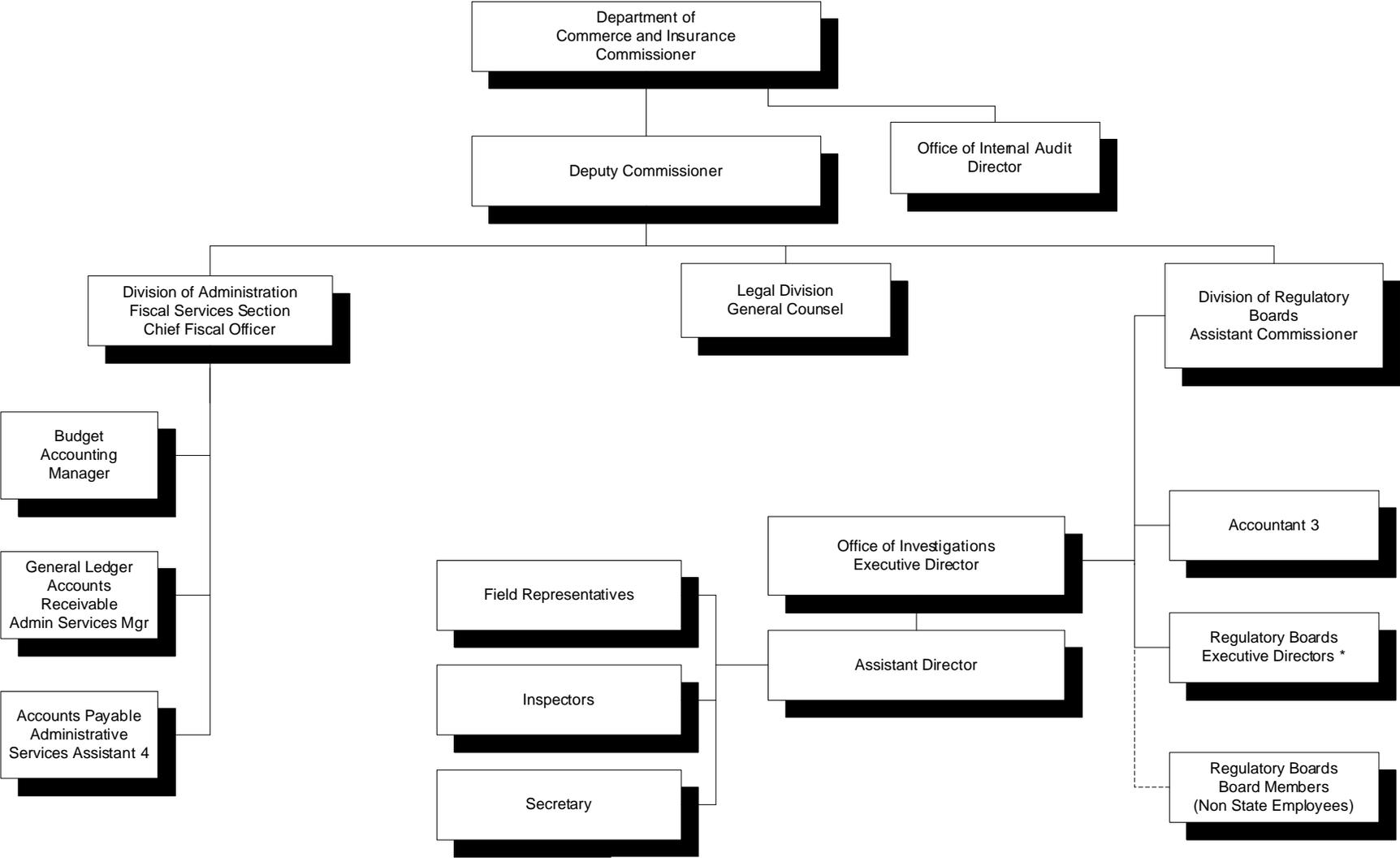
The Regulatory Boards are generally responsible for safeguarding the public by interpreting the laws, rules, and regulations to determine, regulate, and enforce the appropriate standard of practice for select professions in Tennessee. The boards meet as statutorily required to examine applications; conduct hearings to revoke or suspend a license; sponsor, conduct, or approve educational programs; and enact rules for licensees.

The members of each board are appointed by the Governor to serve a term defined by the statute for the board. The board members receive a per diem when actually engaged in the discharge of official duties and are reimbursed for travel and other necessary expenditures. They are not employees of the State of Tennessee.

The boards issue initial licenses and renew licenses on an annual or biennial basis. For the boards audited in this report, all licenses are renewed biennially. See Appendix 3 for a brief description of each of the boards included in the scope of this audit. Also in Appendix 4 is a chart of the number of licenses and range of renewal fees.

An organization chart of the Department of Commerce and Insurance's, Division of Regulatory Boards is exhibited on the next page.

Department of Commerce and Insurance  
 Partial Organization Chart  
 Showing Functions Related to the Division of Regulatory Boards



\* Note: For the Regulatory Boards covered in this audit report, only the Executive Director of the Real Estate Commission is hired by the board and does not report to the Assistant Commissioner.

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## **AUDIT SCOPE**

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We have audited eight boards and commissions administratively attached to the Department of Commerce and Insurance's Division of Regulatory Boards for the period July 1, 2008, through May 31, 2012. Our audit scope included a review of the boards' and commissions' business practices; internal controls; compliance with laws, regulations, and provisions of contracts or grant agreements; and prior audit findings. We focused our audit specifically on the areas of board and commission self-sufficiency; state regulatory fees; civil penalties; education and recovery accounts; the licensee application process; monitoring unlicensed activity; cash receipting; the conflict of interest policy; travel reimbursement; performance measures; and Title VI. In addition, we followed up on prior sunset performance audit findings. The audit was conducted in accordance with generally accepted government auditing standards.

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## **PRIOR AUDIT FINDINGS**

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Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. The Department of Commerce and Insurance filed its report with the Department of Audit on August 6, 2010. A follow-up of all prior audit findings was conducted as part of the current audit.

### **RESOLVED AUDIT FINDINGS**

The current audit found that the Department of Commerce and Insurance's Division of Regulatory Boards has corrected the previous audit findings concerning the complaint process against licensees and criminal background checks for applicants.

### **REPEATED AUDIT FINDING**

The prior audit report also contained a finding concerning Information Systems security controls. This finding has not been resolved and is repeated in the Prior Finding Follow-Up section of this report.

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## OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

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### Business Processes

#### SELF-SUFFICIENCY

Section 4-29-121, *Tennessee Code Annotated*, requires Regulatory Boards to maintain self-sufficiency. The boards achieve self-sufficiency by collecting fee revenue in amounts sufficient to cover the operating expenditures of the board for a consecutive two-year period.

The objectives of our review of the Regulatory Boards' self-sufficiency were to

- gain an understanding of the requirements to maintain self-sufficiency;
- review the boards' financial records, along with board minutes for fiscal years 2009-2011, to determine the boards' current and future self-sufficiency, document the boards' reserve fund status, and to identify any recent fee changes;
- determine which boards failed to be self-sufficient for fiscal years 2009-2011 and the reasons for deficits;
- determine if the state's current administrative structure for the Regulatory Boards is adequate;
- determine whether or not the Division of Regulatory Boards (DRB) evaluated boards' reserves on a routine basis, advised the boards about reserve levels, and considered setting a threshold reserve amount;
- analyze the impact of expenditures related to investigations, legal proceedings, and board member activities (per diem, travel, etc.) on the boards' self-sufficiency; and
- determine if board expenditures were appropriate, allowable, direct costs of operations, and to determine if any unallowable indirect costs were charged to the boards (even though prohibited by statute.)

We reviewed relevant sections of *Tennessee Code Annotated* to gain an understanding of the self-sufficiency requirements. We analyzed the financial records of the boards for fiscal years 2009-2011 to determine their self-sufficiency and the status of their reserve funds. We reviewed board minutes to determine which boards recently changed licensure fees to address self-sufficiency issues. We determined which boards were self-sufficient during the audit period. We analyzed the current structure utilized by the State to administer the Regulatory Boards, interviewed department management, and compared Tennessee's structure to other states'

administrative structures. We interviewed department management to determine if the Division of Regulatory Boards has considered setting a threshold reserve amount. We analyzed expenditures and interviewed the administration of the Regulatory Boards to determine the impact of the Office of Investigations, Office of General Counsel, and board member expenditures on self-sufficiency. We interviewed management of the Department of Finance and Administration to determine what expenditures from that department are allowed by statute to be charged to the Regulatory Boards. We reviewed Edison transactions to determine if Regulatory Boards were charged expenditures contrary to those allowed by statute.

Based on our interviews, reviews, and analysis,

- we gained an understanding of the statute related to self-sufficiency;
- we projected whether the boards under audit would remain self-sufficient or not in the future by performing an analysis of the prior financial statements. In addition, two of eight boards increased fees during the audit period, however, management's decision to increase fees was not intended to address a self-sufficiency issue (see observation 1);
- we determined all eight boards met the self-sufficiency requirement during fiscal years 2009-2011 (See Appendix 5 for the boards' financial position for fiscal years 2008-2011.);
- we determined that the current administrative structure of the Regulatory Boards is adequate;
- we determined that the Accountant III for the DRB provided the boards with reserve amounts after the close of each fiscal year, and according to the Deputy Commissioner, boards are not required to set a threshold reserve (see observation 1);
- we determined that the administration, legal, and investigation costs assessed to the Regulatory Boards may have a negative impact on self-sufficiency when the boards have little or no reserves; however, we found that for the boards who had high reserves, these costs did not immediately affect their self-sufficiency (see observation 1); and
- we found that the direct costs charged to the boards were appropriate and allowable; however, we found that indirect costs were inappropriately allocated and charged to the boards by the department through its cost allocation plan (see State Regulatory Fee finding 1).

As a result of our overall review, we found that the Division of Regulatory Boards' lack of policies and procedures to address the boards' deteriorating financial position could negatively impact the boards' self-sufficiency status (see observation 1 below).

**Observation 1: The Division of Regulatory Boards’ lack of policies or procedures to address boards’ deteriorating financial condition could impact the boards’ self-sufficiency**

Based on our interviews, testwork, and review of financial statements, all eight Regulatory Boards under audit were self-sufficient for fiscal years ended June 30, 2009, June 30, 2010, and June 30, 2011, as required by Section 4-29-121, *Tennessee Code Annotated*. We considered boards “self-sufficient” if current fee revenue was sufficient to cover current expenditures for the two consecutive years, regardless of the boards’ reserve balances.

Although all of the eight boards under audit were self-sufficient as defined above, some of the boards had expenditures greater than revenue for one or more of those years. This situation occurred in part due to decreased collections in the non-renewal year of the biennial renewal period. Specifically, the Board of Funeral Directors and Embalmers, Board of Barber Examiners, Collection Service Board, and Board of Cosmetology had expenditures greater than revenues during at least one year. We also found that the Auctioneer Commission experienced a decrease in the number of licensees, which contributed to the excess of expenditures over revenue during the audit period; however, the commission has not taken any action to address the financial shortage. See the table below.

**Boards Whose Annual Expenditures Were Greater Than Revenue  
For Fiscal Years 2009, 2010, and 2011**

Source: Financial Information Provided by DRB staff

<b>Board</b>	<i>Fiscal Year</i>		
	<b><u>2009</u></b>	<b><u>2010</u></b>	<b><u>2011</u></b>
Auctioneer Commission			X
Board of Barber Examiners		X	
Board of Cosmetology		X	
Board of Funeral Directors and Embalmers	X		X
Collection Service Board		X	

**Board of Barber Examiners Reserves Remain in the Negative**

When expenditures exceed revenues, the reserve fund, if positive, covers the deficit. In addition, when a board has revenue greater than expenditures for a fiscal year, the excess revenue increases the reserve fund. We found that the Board of Barber Examiners has had a negative reserve balance for at least seven years. See the table below for negative reserve balances in Fiscal Year 2009, Fiscal Year 2010, and Fiscal Year 2011. Current staff of the DRB could not provide us with an explanation for the underlying cause of the long-standing negative balances. We did note that the negative balance of the fund has improved since the year 2010.

**Board of Barber Examiners  
Balance of Reserve Fund  
Fiscal Years 2009-2011**

Source: Financial Information provided by DRB staff

<u>Fiscal Year</u>	<u>Reserve Balance</u>
2009	(173,511.15)
2010	(185,016.06)
2011	(156,788.56)

Although the Board of Barber Examiners has discussed raising fees, board management had not proposed a rule change as of July 26, 2012. The last fee change was in September 2004. We found, specifically, that the Board of Barber Examiners continues to not address its negative reserves, is not in a good financial position overall, and is less likely to withstand an unexpected investigation or high legal costs.

We also observed that it has been several years since the majority of the eight boards under audit have increased fees. Appendix 4 contains a table listing each board license fee renewal amount, the number of licenses, and the date of the last fee increase.

Based on our analysis of the financial statements, we projected whether the eight boards would remain self-sufficient for fiscal year ending June 30, 2012, and June 30, 2013. According to our projections, the Real Estate Commission, Auctioneer Commission, and Private Investigation and Polygraph Commission could have expenditures exceeding revenues for fiscal years 2012 and 2013, which would cause these boards to not be self-sufficient based on the consecutive year requirement stated in Section 4-29-121, *Tennessee Code Annotated*. Management of the DRB has considered holding a formal meeting with the boards to address their financial position at the end of each fiscal year; however, DRB management has not taken action. Management of the DRB does monitor the boards' current financial status, and forecasts trends in revenues, expenditures and licensing and communicates those issues with board staff. However, management should establish and document annual formal communication with the individual boards to advise them of their current and projected long-term fiscal health.

We recommend that the Division of Regulatory Boards document in their standard operating procedures (SOPs) their existing practices to monitor boards' financial health to assure timely and consistent monitoring when boards' financial positions begin to deteriorate. The boards should document the actions deemed necessary to protect the financial position in response to the formal communication from DRB management. To assist boards in monitoring their financial condition and possible financial deterioration, the DRB should establish criteria including the appropriate analysis of:

- current year revenue and expenditures;
- reserve fund balance;
- decrease in active licenses; and

- impact of legal or investigation fees.

The DRB's and boards' responses to one or more of these conditions may include increasing license fees or reducing expenditures. In addition, boards that have large positive reserve balances might wish to consider reducing license fees.

Furthermore, the DRB's policies and procedures should allow the Regulatory Boards adequate time to propose and pass fee changes so that the boards consistently maintain self-sufficiency. Also, the DRB should continue to provide active oversight and guidance through a formal reporting process to the boards by providing an analysis of their current and long-term financial conditions. By having documented policies and procedures of when and how the Regulatory Boards must react to these situations should reduce the risk that the boards will fail to meet self-sufficiency.

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## STATE REGULATORY FEE

Section 4-3-1011(b)(2), *Tennessee Code Annotated*, states "In addition to the board fee, each regulatory board shall also assess a state regulatory fee in such amount as is set each year in the general appropriations act. The state regulatory fee shall be in lieu of any allocation of indirect costs that would otherwise be allocated to such boards." Since 1989, when the state regulatory fee was created by the General Assembly, the Department of Finance and Administration, through the Appropriations Act, has kept the state regulatory fee (SRF) at \$5 per licensee per year and has not changed it in more than 20 years.

The objectives of our review of the SRF were to

- gain an understanding of SRF assessment used by the Regulatory Boards;
- determine the methodology used by the Division of Regulatory Boards (DRB) to calculate and collect the state regulatory fee from licensees;
- determine the DRB's procedures to remit the fee to the Department of Finance and Administration (F&A);
- recalculate the state regulatory fee based on the number of licenses to determine that the department remitted the proper fees to F&A;
- compare the state regulatory fee collections for the most recent year to total indirect costs associated with the Regulatory Boards operations to determine that the amount of regulatory fee remitted was sufficient to offset any indirect costs for that year;
- compare license revenue recorded in the Regulatory Boards System (RBS) with license revenue recorded in Edison and document any differences;

- review the Department of Commerce and Insurance's (C&I) 2011 Financial Integrity Act Risk Assessment as it related to the state regulatory fee process to determine whether management identified and addressed risks; and
- determine that the DRB did not allocate indirect costs to the boards.

We reviewed Section 4-3-1011, *Tennessee Code Annotated*, to gain an understanding of the SRF assessment. We interviewed DRB's staff to determine the methodology used to collect and calculate the SRF and the procedures to remit the fee to F&A. We reviewed the DRB's 'costbacks and reserves' worksheets prepared by the C&I Fiscal Director to obtain the final number of licenses used to calculate the fee. We reviewed Edison journal entries prepared by C&I to remit the fee to the Department of Finance and Administration. We compared the total fee remitted to F&A by the Department of Commerce and Insurance to the total amount of indirect costs associated with the Regulatory Boards' operations for fiscal year 2011, based on the department's cost allocation plan. We inquired of the DRB's Accountant III the reasons for any differences in license revenue between RBS and Edison. We reviewed C&I's 2011 Financial Integrity Act Risk Assessment as it related to the state regulatory fee process to determine whether management properly addressed risks. We reviewed the department's cost allocation plan and Edison queries to determine if any indirect costs were charged inappropriately to the boards.

Based on our interviews, reviews and analysis,

- we gained an understanding of the state regulatory fee assessment and determined that F&A has not analyzed the SRF; therefore, the intent of the legislation has not been fulfilled (see finding 1);
- we noted that although the SRF was remitted by the department to F&A, the methodology for the collection and calculation of the fee by the DRB was flawed and not in accordance with the state's Appropriations Act, (see finding 1);
- we found the department remitted the SRF amount as recorded on the worksheets each year to F&A;
- we determined that the state regulatory fee collections for June 30, 2011, were sufficient to offset any indirect costs incurred to operate the Regulatory Boards of that year; however, see the recommendation for legislative consideration following finding 1;
- we found differences between the amount of revenue recorded in RBS and Edison and although staff reconcile RBS on a daily basis, staff cannot reconcile yearly license revenue in RBS to Edison due to the current limitations of RBS (see finding 1);

- we noted that C&I's management had not identified 2011 Financial Integrity Act Risk Assessment risks or controls over the state regulatory fee process (see finding 1); and
- we noted that the Department of Commerce and Insurance allocated and charged departmental administrative indirect costs incurred by the department's administrative offices (Commissioner's Office, Personnel, Fiscal Services, Legal, and Information Systems) to the Division of Regulatory Boards, which is prohibited by statute (see finding 1).

## Finding

**1. The Department of Finance and Administration has not analyzed the sufficiency of the state regulatory fee, the Department of Commerce and Insurance's Division of Regulatory Boards did not calculate the state regulatory fee correctly, and the Department of Commerce and Insurance allocated and charged indirect costs to the Division of Regulatory Boards, who allocated and charged indirect costs to the Regulatory Boards, in violation of state law**

In 1989, the General Assembly created the State Regulatory Fee (SRF) for the purpose of establishing a revenue source to cover the state's overhead (indirect costs) to administer the Regulatory Boards.

Section 4-3-1011 (b)(2), *Tennessee Code Annotated*, states

In addition to the board fee, each regulatory board shall also assess a state regulatory fee in such amount as is set each year in the general appropriations act. The state regulatory fee shall be in lieu of any allocation of indirect costs that would otherwise be allocated to such boards.

In addition, Section 15, Item 10 of the 2012-2013 State Appropriations Bill states

Item 10. The Commissioner of Finance and Administration shall establish a state regulatory fee of \$5.00 for one year and \$10.00 for two years. The fee shall be in lieu of any allocation of indirect costs which would otherwise be allocated to the regulatory boards covered by the provisions of Tennessee Code Annotated, Section 4-3-1011(b)(2).

## Current Process

Since the inception of the SRF into law, the Department of Finance and Administration has set the amount of the fee in the annual appropriations bill at \$5 for a one-year license and \$10 for a two-year license. The fee is collected by the Department of Commerce and Insurance from active licenses within the Regulatory Boards. The DRB calculates the state regulatory fees due from all Regulatory Boards on active licenses and C&I remits those fees to the Department of Finance and Administration (F&A).

However, the Department of Finance and Administration has not routinely analyzed the sufficiency of the SRF to ensure the fee revenue adequately covers all indirect costs incurred by the state to properly administer the Regulatory Boards. F&A accounts for the SRF as general fund revenue and has not assigned the SRF funds to specifically offset the indirect costs of Regulatory Board operations. In addition, the Department of Commerce and Insurance's (C&I) Division of Regulatory Boards (DRB) did not calculate the SRF in accordance with guidelines set forth in the annual appropriations bill, and C&I allocated and charged departmental indirect costs to the DRB, who then allocated and charged those costs to the Regulatory Boards, in violation of the law.

Based on our interviews and testwork, we found the following issues:

*Failure to Perform Assessment of State Regulatory Fee*

Section 4-3-1011(a), *Tennessee Code Annotated*, states, "The commissioner of finance and administration shall certify to the...director of the division of regulatory boards, as defined in Section 4-3-1304, the amount of fees required by each board for the subsequent fiscal year based on the general appropriations act for that year." Management of the Department of Finance and Administration has not performed this certification and could not tell us whether the amount of state regulatory fees collected was sufficient to cover the indirect costs as intended by the law. According to the Department of Finance and Administration's Senior Advisor for the Division of Budget, for at least the last 14 years, the Department of Finance and Administration has not performed an analysis of the SRF to determine its sufficiency, even though statute requires certification.

Furthermore, representatives of the Department of Finance and Administration's Division of Budget stated that they do not apply the revenue collected from this fee to specific indirect costs of the Regulatory Boards, but the revenue is applied to any general fund expenditure; therefore, the Department of Commerce and Insurance does not receive the direct benefit of the fee to offset their own departmental indirect costs of the boards' operations.

The Department of Finance and Administration annually provides any statewide indirect costs information to the Department of Commerce and Insurance so that the department can include those statewide indirect costs in its own cost allocation plan for its divisions. Based on our review, we found that the Department of Commerce and Insurance did not improperly charge any statewide indirect costs to the Division of Regulatory Boards, but it did improperly pass its own departmental indirect costs to the Boards. Statewide indirect costs, as well as the department's own indirect costs, are critical in determining the sufficiency of the SRF and setting the fee at an amount sufficient to offset all of the state's indirect costs derived from board operations. Therefore, we believe it is both departments' responsibility to analyze all indirect costs so the Commissioner of Finance and Administration can properly establish the state regulatory fee.

### *2013 Additional Recurring Appropriation to Offset Indirect Costs*

Because the Department of Finance and Administration's Division of Budget has not adequately analyzed the amount of SRF needed to fund all indirect costs incurred by the state and by C&I to administer the Regulatory Boards and because the SRF is not utilized to offset indirect costs, C&I was unable to cover its own indirect costs associated with its administrative offices: Commissioner, Personnel, Fiscal Services, Legal, and Information Systems. As a result, C&I received additional state appropriations to cover these indirect costs. For the 2013 fiscal year, the General Assembly approved an additional recurring supplemental appropriation of \$1,280,200, even though the 1989 legislation had already provided the statute to collect the SRF from active licensees as a means to fund the indirect costs associated with Regulatory Boards operations. Furthermore, the supplemental appropriation used to fund board related indirect costs is derived from general tax collections. As stated above, we believe the General Assembly intended for the SRF to provide the state with sufficient revenue from active licenses to cover all indirect costs of board operations, thereby eliminating the need of supplemental state appropriations.

### *Improper Fee Calculation*

We reviewed the DRB's procedures and methodology for calculating and remitting the SRF to F&A. At the end of each fiscal year, the Department of Commerce and Insurance's Information Systems (IS) Office generates a report from the Regulatory Boards System (RBS) of all active licenses for all Regulatory Boards. This report must be generated before any new licenses are issued for the upcoming license year. Since RBS was not designed as an accounting system, it does not store historical license data about licenses, nor does it provide a closeout process to obtain that information. We found that the report of licenses used to calculate the state regulatory fee cannot be reconciled to RBS by an independent reviewer after the report is generated. Therefore, we could not recalculate the SRF that should have been remitted to F&A based on the license renewal periods. According to the department's IS Director, there are no plans to fix the current licensing system; instead, the division plans to purchase a new licensing system in the future.

We also determined that the current SRF calculation process involves the DRB's Accountant III multiplying the number of active licenses obtained from the license report by \$5. However, based on our interviews, we determined that the Accountant III did not assess the \$10 fee for two-year licenses. As noted above, the appropriations bill states that a \$10 fee should be assessed for a two-year license. Since the appropriation bill states that the fee is \$5 for a one-year license and \$10 for a two-year license, it should be calculated and remitted accordingly.

### *Improper Charges of Indirect Costs to the Boards*

Prior to fiscal year 1997-1998, a state appropriation had been made to the department to cover administrative costs related to Regulatory Board operations. However, the General Assembly eliminated the appropriation due to budget cuts, resulting in the department's loss of funds to cover those administrative costs. In order to recoup the costs, the department allocated and charged administrative indirect costs to the Division of Regulatory Boards, in violation of

Section 4-3-1011(b)(2), *Tennessee Code Annotated*. Based on inquiries with department management, personnel who were responsible for that decision are no longer with the department. However, subsequent administrations have continued to violate TCA by charging indirect costs to the boards. Based on our discussions with the Deputy Commissioner, his understanding was that the statute only prohibited charging the boards for statewide indirect costs identified by F&A, and not the departmental indirect costs. However, we interpret the General Assembly's intent of Section 4-3-1011(b)(2) and the collection of the SRF to be for the specific purpose of generating revenue to cover "any" indirect costs, statewide and departmental.

We also discussed our concerns with management from the Department of Finance and Administration's Division of Accounts and the Division of Budget. According to F&A's Chief of Accounts, the Division of Regulatory Boards can appropriately charge the Regulatory Boards for direct services such as Edison (the statewide accounting system), Office of Information Resources, and other direct costs, such as telephone/ telecommunications, rent, and data processing. Since these costs are considered direct costs, we agree that these are allowable expenditures to allocate to the Regulatory Boards. However, the Department of Commerce and Insurance also charged all boards and commissions under the division for the department's administrative indirect costs of \$1,061,475.71 for fiscal year 2011 and \$1,005,337.79 for fiscal year 2010. These costs were associated with the department's administrative offices: Commissioner, Personnel, Fiscal Services, Legal, and Information Systems. Since these costs are defined as indirect costs, the department is prohibited, as noted above, from charging them to the Division of Regulatory Boards and, ultimately, the Boards.

#### *Department's Failure to Identify Risks in Risk Assessment*

Based on our review of the Department of Commerce and Insurance's Risk Assessment, we found that the neither the department nor DRB management identified in its annual risk assessment the risks or mitigating controls related to calculating the SRF or violation of law regarding indirect costs of the Regulatory Boards.

### **Recommendation**

The Department of Finance and Administration, in conjunction with the Department of Commerce and Insurance, should analyze the amount of state regulatory fees collected to the amount of indirect costs incurred through board operations every two years and the Commissioner of Finance and Administration should establish the state regulatory fee at an amount sufficient to cover all the state's indirect costs derived from the Regulatory Boards' operations. In addition, so that general tax collections are not used to fund indirect cost of Regulatory Boards' operations (since all boards are required by law to be self-sufficient) and because the General Assembly has already established statute creating the state regulatory fee to cover all Regulatory Boards' indirect costs, the General Assembly may wish to consider alternative actions regarding the state regulatory fee, as outlined in "Recommendation for Legislative Consideration" below.

The Department of Commerce and Insurance's Fiscal Services Section should ensure that the Division of Regulatory Boards revises and documents the method for calculating the SRF assessment for each board to ensure the department remits the correct amount. In addition, instead of calculating the SRF at the end of the fiscal year, the division should account for the appropriate SRF (\$5/\$10) when the license is issued or renewed.

The department should not charge departmental administrative indirect costs to the regulatory boards. In addition, management should include the risks associated with the SRF and indirect costs of the regulatory boards in their annual risk assessment.

### **Recommendation for Legislative Consideration**

This performance audit identified areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Regulatory Boards' operations.

The General Assembly may wish to consider legislation to amend or repeal Section 4-3-1011(b)(2), *Tennessee Code Annotated*, regarding the state regulatory fee based on the following three options:

- Option 1 – The General Assembly may wish to consider if the state regulatory fee should be earmarked and established at an amount sufficient to cover all indirect costs of board operations. To accomplish this the General Assembly should amend the current statute to clarify its intent and require both the Commissioners of the Department of Finance and Administration and the Department of Commerce and Insurance to periodically analyze and certify all indirect costs incurred at a statewide and department level associated with the operations of the Regulatory Boards and set the fee accordingly.

This requirement would eliminate the General Assembly's need to provide recurring supplemental state appropriations (which began for fiscal year 2013) to cover indirect costs when the state regulatory fee is insufficient.

- Option 2 – The General Assembly may wish to consider eliminating the state regulatory fee (Section 4-3-1011(b)(2)), *Tennessee Code Annotated*, altogether and require the Regulatory Boards to become fully self-sufficient as implied by current legislation under Section 4-29-121, *Tennessee Code Annotated*.
- Option 3 – Should the General Assembly wish to continue to collect the state regulatory fee and use other general fund tax revenue (when the state regulatory fee collections are insufficient) to cover the indirect costs associated with Regulatory Boards' operations, the General Assembly should amend the current legislation to clarify its intent.

Under the current system, the Division of Regulatory Boards calculates the \$5 state regulatory fee from licensees and remits the fee to the Department of Finance and

Administration as general fund tax revenue, in lieu of the state or oversight department charging the boards for any indirect costs incurred from the boards' operations.

As noted in Finding 1, the current process is questionable because the Department of Commerce and Insurance has charged the Regulatory Boards for the department's indirect costs, in violation of law. Furthermore, the Department of Finance and Administration and the Department of Commerce and Insurance have not assessed the sufficiency of the state regulatory fee to cover fully the statewide and departmental indirect costs to operate the Regulatory Boards. In fact, the Commissioner of Finance and Administration has not changed the fee since it was established in 1989. For the boards to be truly self-sufficient, all costs should be borne by them, including all indirect costs.

## **Managements' Comments**

### **Department of Commerce and Insurance**

In the 2009 Performance Audit of Professional Regulatory Boards, the Comptroller's Office raised the issue of the state regulatory fee under the Observations and Comments section of the audit. The auditors recognized that there was considerable ambiguity over the intent of the statutory language, uncertainty over the historical evolution of the handling of the fee, and the issue of indirect costs charged to the boards. The audit recommended that the General Assembly revisit the state regulatory fee, its handling, its intended purpose, and how it is applied to the Department of Commerce and Insurance by the Department of Finance and Administration. The Department concurred with that assessment.

In the current audit, the Comptroller's Office was able to ascertain additional historical information and completed an analysis that concludes that the methodology developed between the inception of the program in 1989 and modifications in 1998 are flawed and contrary to the original legislative intent. Consistent with its concurrence with the 2009 audit observation, the Department has no basis not to concur with the new analysis.

The Department merely makes note that it relied in good faith on the 14-23 year historical precedent for the proper handling of the fee which included multiple financial and performance audits of the Regulatory Boards by the Comptroller's Office, including the specific review of the state regulatory fee in the 2009 audit, without a finding.

We do concur that the methodology of calculating the remittance of the state regulatory fee to the General Fund had a weakness, but do not concur that given the methodology used for the proceeding 23 years that the \$10 per license fee should be used. Assessing the \$5 fee on all current license holders annually was the appropriate amount to be assessed. The weakness in the methodology was that it may have not assessed the \$5 annual fee to those licensees that either had their license revoked or voluntarily surrendered their license prior to June 30 of each year prior to the expiration of their normal license term.

To address the weakness in the methodology used, the Division proposes to assess the appropriate fee (\$5 for one-year, \$10 for two-year) against the annual number of new licensees and renewed licensees in each fiscal year, instead of the \$5 for all current licenses at the end of the fiscal year. We believe that this is the most efficient and effective way to address the weaknesses identified in the finding. The Division does maintain records of the transactions, which will allow for the appropriate validation of the calculation used.

Finally, the Department in FY 2012 conformed with the direction given by the Department of Finance and Administration in that fiscal year to no longer assess the Division of Regulatory Boards and the individual boards and commissions a computed share of the departmental administrative costs and received instead a supplemental general fund appropriation to the administrative division of the department. The Department will continue to operate under this guidance and defers to the will of the Legislature regarding any additional legislative changes.

### **Department of Finance and Administration**

We concur. We have not analyzed the sufficiency of the state regulatory fee. We will analyze the sufficiency of the state regulatory fee at any time that the Governor wants to consider making a budget recommendation to increase the fee or at any time the General Assembly considers increasing the fee.

Our perspective and reservations on some of the audit comments are as follows:

#### **Comments**

We agree with the comment that the Department of Finance and Administration has not performed the annual certification of regulatory board fees required by TCA Section 4-3-1011(a) for each regulatory board. In the Budget Document, board license fees are estimated for each individual board, but the appropriations for regulatory boards are single line items from license fees for the Division of Regulatory Boards (C&I Dept.) and the Health-Related Boards (Health Dept.). Given that, we provide a work program (enacted budget) as provided by budget law, including all the appropriations act adjustments affecting the Division of Regulatory Boards and the Health-Related Boards. This is as far as our certification has gone. As a practical matter, the Department of Finance and Administration does not have the detail on individual board budgets and licensees that would be necessary to provide a certification of fee requirements for each board.

We will suggest to the Administration that it propose that the law be changed to provide that the departments of Commerce and Insurance and of Health certify to the Commissioner of Finance and Administration each board's fee requirements, based upon the work program provided by F&A, that the Commissioner of F&A approve the fee requirements, and that the departments of Commerce and Insurance and of Health provide the approved certification of fee requirements for each board to the directors of Regulatory Boards and Health-Related Boards.

The Department of Finance and Administration and its commissioner, and the departments of Commerce and Insurance and of Health, do not set the state regulatory fee; it annually is set by law in the general appropriations act. See Public Acts of 2012, Chapter 1029, Section 15, Item 10.

Although analysis of the sufficiency of the state regulatory fee to offset indirect costs of the regulatory boards is appropriate, we do not agree with the statement that the statute requires the analysis. The statute simply requires that a fee be set and that the fee be in lieu of any indirect cost charges.

The audit comments under the heading “2013 Additional Recurring Appropriation to Offset Indirect Costs” argue that assigning the state regulatory fees to offset indirect costs or increasing the state regulatory fee can eliminate the need for state appropriations. That is not correct. The general fund collects the state regulatory fee in lieu of the indirect cost charges to the boards. A state appropriation from the general fund to the administrative functions of the departments of Commerce and Insurance and of Health always will be necessary in order to hold the regulatory boards harmless from indirect cost charges of those departmental administrative functions.

The state regulatory fee is a tax apportioned to the general fund. The regulatory boards do not receive an appropriation from the general fund. The administrative divisions of the departments of Commerce and Insurance and of Health receive general fund appropriations so that they will not charge indirect costs to the regulatory boards. That is because, as a matter of law, the state regulatory fee is in lieu of any indirect cost charges to the regulatory boards. Therefore, general fund revenue must be used to fund the appropriations made to the administrative divisions of the two departments, which are appropriations made in lieu of indirect cost charges to the regulatory boards.

Because the setting of the fee is a matter of law, we would agree that the sufficiency of the fee to offset indirect costs should be analyzed at the time the Governor wants to recommend or the General Assembly intends to enact a state regulatory fee increase. We do not think that conducting the study each year or every two years would be a good use of staff resources.

#### Recommendation for Legislative Consideration

We believe that the state regulatory fee should remain in place but, for reasons discussed above, do not agree with the statement in Option 1 that setting the state regulatory fee at an amount sufficient to offset all indirect costs would eliminate the need for appropriations to the administrative divisions of the two departments. The appropriations to the administrative divisions are necessary in order to hold the regulatory boards harmless from indirect cost charges internal to the two departments.

We also think that the appropriate time to examine the sufficiency of the state regulatory fee is at the time that the Governor intends to recommend or the General Assembly to enact a fee increase and that a study and certification every two years would not be a good use of staff resources.

We do not recommend legislative Option 2, which would eliminate the state regulatory fee and implement indirect cost charges to the regulatory boards. The state regulatory fee is a simple method of collecting from the licensees the approximate indirect cost of having the regulatory boards. Using the state regulatory fee method is much simpler than using the large number of accounting transactions that would be necessary to allocate indirect cost charges to each of the many regulatory boards.

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## **CIVIL PENALTIES**

The Department of Commerce and Insurance's Legal Division is responsible for monitoring civil penalties for all Regulatory Boards. The Legal Division, in conjunction with the various boards, may prepare and propose civil penalties on a licensee for various infractions and on unlicensed individuals for operating without a license. The Legal Division also prepares consent orders which set forth payment options for licensees who are assessed civil penalties. Under these options the licensees may pay the penalties in full or they may establish a payment plan. The Legal Division also represents the boards in administrative hearings when the licensees dispute the alleged infractions. The Legal Division also works closely with the Office of the Attorney General and Reporter's Collection Unit (AG) to aid with uncollected civil penalties.

The objectives of our review of controls of the civil penalties process were to

- obtain from the Legal Division a listing of uncollected civil penalties that it referred to the AG's Collections Unit for our audit period and compare it to the listing obtained from the AG's Collections Unit to determine if the AG had a complete listing;
- document and determine if the system control used in the Regulatory Boards System (RBS) to flag licensees with payment plans for civil penalties operated as intended by management; and
- obtain a listing of licensees' payment plans for civil penalties that were maintained in RBS as of March 20, 2012, and evaluate the effectiveness of the Legal Division's monitoring of civil penalty collection efforts by testing whether payments were made in accordance with the payment plan and, if not, whether appropriate follow up action was taken by staff.

We obtained from the AG's Collections Unit a listing of all uncollected civil penalties referred to it by the Legal Division and reconciled the listing to the listing maintained by the Legal Division. We reviewed whether the new RBS system control used to flag licensees with payment plans for civil penalties was working as described. We obtained a listing of civil penalties maintained in RBS and tested whether management's controls to monitor payment plans were working as described and whether appropriate follow up action was taken when necessary.

Based on our interviews, reviews and testwork,

- we found that there were several major inconsistencies between the two listings maintained by the AG's Collection Unit and by the Legal Division (see finding 2);
- we determined that subsequent to our inquiries, the Assistant Commissioner of the DRB, in conjunction with the Legal Division, had implemented a new system control effective April 19, 2012, to flag licensees with payment plans for civil penalties. Based on our understanding, we believe the new control procedure is reasonable; however, we were not able to fully test the control procedure because no civil penalties involving payment plans were proposed since the change; and
- we found that the Legal Division staff had not effectively monitored licensees with payment plans or taken appropriate follow-up actions when licensees failed to make payments (see finding 2).

### Finding

#### **2. The Department of Commerce and Insurance's Legal Division failed to track and monitor civil penalties collection efforts for the Regulatory Boards, increasing the risk that the penalties were not collected timely or at all**

The Department of Commerce and Insurance's Legal Division failed to adequately track and monitor Regulatory Boards' civil penalty cases involving payment plans, and also failed to centrally track uncollected civil penalties that it had referred to the Office of the Attorney General and Reporter's Collections Unit (AG).

#### **Background**

The Department of Commerce and Insurance's Legal Division provides legal support services to the DRB, including research for and presentation of complaints from consumers or licensees (the "complainant") about licensed practitioners or firms (the "respondent") to their respective boards. When the Legal Division determines that licensees have violated board rules based on the facts of the complaint, the board may propose civil penalties and/or impose additional education requirements to address the violation(s).

The Legal Division's board attorneys are responsible for preparing the consent orders for the respondents. Upon receipt of the consent orders, respondents can

- admit liability for the alleged misconduct and agree to the discipline outlined in the proposed consent order by signing and returning the consent order with the full payment of the civil penalty; or
- reject the proposed consent order, whereby the board's attorney schedules a formal hearing on the matter with an administrative law judge. The process for contested cases is described under Section 4-5-3, *Tennessee Code Annotated*, the Uniform Administrative Procedures Act (UAPA).

Additionally, in cases where respondents acknowledge the violation but cannot make full immediate payment, they can arrange to make the penalty payments under a payment plan. When respondents fail to meet the terms of the payment plan, the boards may automatically revoke respondents' licenses.

The Legal Division may also refer some respondents' cases to the AG's Collections Unit for follow up. These cases involve respondents who are afforded full due process under the UAPA and have been found by the Legal Division to be in violation of board rules, but have refused to pay the assessed penalties either in full or in part.

### **The Legal Division Did Not Adequately Monitor Payment Plans**

We met with the department's Deputy Commissioner to determine how payment plans are tracked and monitored to ensure penalties are collected. The Deputy Commissioner stated that in August 2010 the department's Information Systems (IS) Division created a code in RBS to identify respondents with payment plans in order to close the case once the penalties were collected in full. However, the IS Division determined in February 2012 that users within the Legal Division and DRB were not using the correct code to close these cases. As a result, management's tracking reports of outstanding cases did not reflect the cases involving respondents with payment plans. The Assistant Commissioner of DRB implemented a new procedure, effective April 19, 2012, to flag respondents in RBS who have agreed to payment plans for civil penalties.

In addition, we found that the Legal Division did not maintain a centralized system to track respondents with payment plans, but relied on each individual board's attorney to track and monitor these respondents. Based on our testwork, we determined that without an effective tracking system, the Legal Division and DRB management did not monitor the respondents' cases with payment plans and did not follow up with respondents who failed to meet the payment plan terms. We obtained from the Legal Division's Chief Counsel a listing for all 22 regulatory boards of 47 active respondents with payment plans. We specifically identified the cases of respondents with payment plans for the eight boards within our audit scope and we tested all 15 active payment plans.

We noted the following specific problems associated with respondents with payment plans:

- For 2 of 15 (13%) respondent payment plans tested, the respondent remitted only a partial payment when they returned the signed consent order. Upon further review, we found that these two consent orders contained no payment plan terms. Respondents who have signed consent orders that do not specifically include the terms of a payment plan arrangement are required to remit full payment of the civil penalty. In these cases, the assigned board attorney had not made any effort to contact the respondents, issue new payment plan consent orders, or schedule the respondents for formal hearings for failing to abide by the original consent order. Once we notified the department's Deputy General Counsel of this issue, the assigned board attorney issued two demand letters, dated April 30, 2012, to the two respondents, demanding payment for the remaining respective balances of \$250 and \$1,000. One respondent paid the remaining balance on May 18, 2012. The other respondent failed to respond and a formal hearing was planned for September or November 2012, the next available hearing dates.
- For 9 of 15 (60%) respondent payment plans tested, the Legal Division failed to issue demand letters promptly or take other appropriate action in response to respondents' failure to meet the payment terms. The Legal Division did not pursue follow up action immediately and delayed from 164 to 436 days before starting any follow up action when respondents failed to meet payment terms.
- For five of five (100%) payment plans which required the respective boards to immediately revoke licenses when respondents failed to meet the terms of the consent orders, we found that the assigned board attorney failed to send license revocation letters to the respondents or to notify the administrative staff of the respective boards so that the boards could take action to revoke respondents' licenses. The Legal Division delayed anywhere from 164 days to 436 days before it issued the revocation letters after the respondents' last payment.
- For five of five (100%) payment plans tested in which a revocation letter was issued by the Legal Division, the Division of Regulatory Boards failed to immediately revoke the licensure status within RBS. The Director of Information Systems confirmed that any changes in licensure status within RBS updates the DRB's website overnight for the public use; however, the DRB failed to change RBS licensure status within the next business day after issuance of the revocation letters. The public uses this information to determine if an individual or firm is in good standing as to the practitioners' licenses. The five cases we tested were licensees of the Board of Barber Examiners and Board of Cosmetology. The DRB's Executive Director for the Board of Barber Examiners and Board of Cosmetology was responsible for changing the licensure status within RBS. We determined the Executive Director was not aware that the revocation letters had been issued by the Legal Division, even though the Office Manager had received and filed the letters. Apparently, management of the Legal Division and Board management and staff failed to communicate

expectations and procedures surrounding revocation letters. Since our initial inquiries, these five respondents' licenses have been revoked in RBS and updated on the DRB website.

Because the Deputy General Counsel of the Legal Division did not ensure assigned board attorneys' staff sufficiently and properly monitored licensees with outstanding civil penalties, those respondents were allowed to remain licensed for several months after violating board rules and the terms of their payment plan. Ultimately, some respondents were allowed to continue practicing even though they should have been scheduled for administrative hearings or had their licenses revoked.

### **The Legal Division Did Not Ensure That the AG's Collection Unit Had a Complete Listing of Referred Cases**

We discussed the Legal Division's process to refer cases involving uncollected civil penalties to the AG's Collections Unit with the Deputy General Counsel. According to the Deputy General Counsel, since 2009, each board attorney is responsible for tracking all cases referred to the AG's Collections Unit. Without a centralized referral process, the Legal Division and Regulatory Boards are at an increased risk that cases may be lost and possibly never referred to the AG's Collections Unit. In December 2011, the Legal Division began to centrally track referrals made to the AG's Collection Unit.

We obtained a listing of uncollected civil penalties from the AG's Collections Unit referred by the Legal Division as of April 24, 2012, and reconciled the listing to the centralized tracking list maintained by the Legal Division since December 2011. Based on our review and as described below, we noted several inconsistencies between the two lists:

- We found that, based on the AG's listing, 24 uncollected civil penalty cases, totaling \$132,916.25, were referred to the AG's Collections Unit, but these 24 cases were not on the Legal Division tracking list. After we brought this issue to their attention, the Legal Division conducted their own follow-up and confirmed the 24 cases were not on their list and were not tracked. The Legal Division's list includes referrals dating back to 2009, but the 24 cases were prior to 2009. Since each assigned board attorney was responsible for tracking referred cases, the 24 missing cases likely resulted from a combination of poor record keeping and board attorney turnover.
- For two uncollected civil penalty cases, the Legal Division received partial payments. For one of those cases, the Legal Division did not report the amount collected to the AG Collections Unit and for the other case, the Legal Division failed to deduct the amount received prior to referring the case to the AG.
- For six referred uncollected civil penalty cases that were both on the Legal Division and AG Collections Unit's list, the civil penalty amounts did not agree. The Chief Counsel of the Legal Division explained that the differences were due to collections by the Legal Division after the cases were referred to the AG, which were not communicated to the AG by the Legal Division.

Because the Legal Division failed to provide the AG's Collection Unit with all subsequent penalty collections and did not ensure that the AG's listing was complete, neither the Legal Division nor the AG's office can effectively pursue collection efforts.

The Legal Division's lack of effective tracking and monitoring of civil penalty cases and related consent order payment plans increases the risk that respondents may continue to operate as fully licensed professionals and that the DRB will not collect the amount of civil penalties owed.

### **Recommendation**

The Division of Regulatory Boards and the Legal Division should establish an adequate monitoring process for respondents with payment plans to ensure that all civil penalties are collected based on the terms of the consent orders.

The Legal Division's management should specifically ensure that:

- in cases where only a partial payment is received on a consent order, the Legal Division either obtains a signed payment plan consent order or schedules the respondent for a formal hearing for failing to abide by the terms of the consent order;
- demand letters are issued in a timely manner or other appropriate action is taken in response to respondents failure to meet the payment terms;
- revocation letters are issued in a timely manner in cases where the respondents failed to meet payment terms and the consent orders required immediate revocation of the respondents' licenses; and
- in cases where a revocation letter is issued, the respondents' licenses are promptly revoked and noted as such in RBS and, ultimately, the website.

The Deputy General Counsel should ensure that all uncollected civil penalty cases referred to the AG's Collections Unit are followed up on periodically as to resolution. Any penalty amounts collected by the Division of Regulatory Boards after cases are referred should be reported to the AG's Collections Unit to eliminate wasted collection efforts.

### **Management's Comment**

As noted in the 2009 Performance audit of the Professional Regulatory Boards the Division's management in 2008 initiated a comprehensive review of the Division's complaint-handling process. As stated in its response to the 2009 audit, management concluded from the review that one of the underlying issues impacting the effectiveness of the complaint handling process was that the responsibility for various aspects of the complaint-handling process had

become too diffused and that sustained improvement in outcomes would come from assuring shared accountability between the board staff and the legal department monitored by division management. In addressing this issue, management worked with the department's Information Systems section to develop a comprehensive management report that monitors the progress of every complaint as it works through key phases of the complaint process. The report was implemented in February 2010. At the time it was implemented, Division management issued a directive requiring the individual regulatory administrative staff and their assigned attorney meet on a monthly basis to review and monitor progress of the program's complaints. In August of 2010, a new tracking method was established in Regulatory Boards Information System (RBS) to identify complaints that had been concluded with a signed consent order establishing a payment plan for payment of a civil penalty.

Division management and the Legal Division determined in February 2012 that the RBS code established for identifying a matter closed by a consent order mandating a payment plan was not being utilized uniformly and took corrective action. All consent orders mandating a payment plan are being correctly coded in the RBS system and are now being reflected on the comprehensive management report. A standard operating procedure document and standard forms to document payments have been adopted and disseminated to all appropriate personnel. The requirement for monthly meetings between the Executive Director and the attorneys for a regulatory program has been documented in all appropriate personnel's job performance plans. The requirement that the monthly meeting be reported to management has been documented and disseminated to the appropriate personnel.

With regard to matters referred to the Office of the Attorney General and Reporter's Collections Unit (AG), all attorneys assigned to the Division of Regulatory Boards were instructed in 2009 to ensure that all assessed civil penalties by a regulatory program which had not been paid within 30 - 45 days after the formal hearing were sent to the Attorney General's office for collection. In December 2011 the Legal Division established a central tracking system for matters sent to the AG for collection.

We concur with the auditor's finding that there were inconsistencies and gaps in the initial effort at tracking cases referred to the AG, most notably in the instances highlighted by the auditors for the period prior to the new tracking efforts. The Division has reconciled those reporting differences and has implemented the improved tracking and reporting steps recommended in the audit.

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## **EDUCATION AND RECOVERY ACCOUNTS**

The General Assembly created two education and recovery accounts to provide recovery of actual or compensatory damages to individuals who have been harmed by professionals licensed by the Real Estate Commission (REC) or Auctioneer Commission (AC) and who have violated state law related to either profession. In addition, the accounts provide funding for educational seminars for the benefit of licensees. The accounts are funded by a portion of licensing fees paid by licensees.

## **Real Estate Education and Recovery Account**

The objectives of our review of the Real Estate Education and Recovery Account were to

- gain an understanding of the Real Estate Education and Recovery Account and related policies and procedures governing the account;
- determine how the DRB has recorded the education and recovery account in the state's financial records;
- determine if expenditures from this account, including any legal claims made against the education and recovery account, were allowable;
- review the rationale for any proposed rule change in license fee for the education and recovery account and determine if the rule change was in compliance with state law; and
- review the Department of Commerce and Insurance's (C&I) 2011 Financial Integrity Act Risk Assessment as it related to the education and recovery account process to determine that management identified and addressed risks.

We reviewed Section 62-13-208, *Tennessee Code Annotated*, requirements for the purpose and intended use of the education and recovery account. We interviewed key personnel from C&I and the Department of Finance and Administration (F&A) to gain an understanding of how the education and recovery account has been recorded in the state's financial records and if there were policies and procedures governing the account. We also reviewed the revenues and expenditures of the education and recovery account for fiscal years 2010 and 2011 to determine whether expenditures from this account were allowable. We interviewed a commission member, reviewed board meeting minutes, and attended a board meeting to determine the rationale for rule changes to increase/decrease license fees and whether the rationale was in compliance with state law. We reviewed C&I's 2011 Financial Integrity Act Risk Assessment as it related to the education and recovery account process to determine whether management identified and addressed risks.

Based on our interviews, reviews and testwork,

- we gained an understanding of the education and recovery account and of the available policies and procedures and determined the REC had not established policies and procedures governing expenditures from the Real Estate Education and Recovery Account (see finding 3);

- we determined that the education and recovery account was established as a special revenue fund in the state's financial statements and accounted for through two subaccounts. One subaccount is used to pay recovery claims to individuals harmed by a licensed professional. The other subaccount is funded from interest earned on the first subaccount and is used to pay for education and research seminars designed to benefit licensees;
- we found that there were two valid claims submitted by individuals for recovery for our audit period. However, we also noted some of the expenditures for the Real Estate Education and Recovery Account were not allowable or appropriate expenditures (see finding 3);
- we determined that the rationale for the proposed rule change in the license fee to fund the education and recovery account was in compliance with state law; and
- we noted that C&I's management did not identify any risks or controls over the education and recovery account in its 2011 Financial Integrity Act Risk Assessment (see finding 3).

### **Auctioneer Education and Recovery Account**

The objectives of our review of the Auctioneer Education and Recovery Account were to

- gain an understanding of the Auctioneer Education and Recovery Account and related policies and procedures governing the account;
- determine if the Auctioneer Education and Recovery Account maintained its statutorily required minimum balance;
- determine if expenditures paid from the Auctioneer Education and Recovery Account were allowable; and
- determine if C&I's management identified and addressed risks related to the education and recovery account in C&I's 2011 Financial Integrity Act Risk Assessment.

We reviewed *Tennessee Code Annotated*, Title 62, Chapter 19, to determine the purpose and intended use of the education and recovery account. We interviewed key personnel from C&I and F&A to gain an understanding of how the education and recovery account has been recorded in the state's financial records and if there were policies and procedures governing the account. We reviewed Chapter 1191 of the Public Acts 2008 to understand the authority governing the minimum required balance of the education and recovery account. We also reviewed the revenues and expenditures of the education and recovery account for fiscal years 2010 and 2011 to determine whether expenditures from this account were allowable. We reviewed C&I's 2011 Financial Integrity Act Risk Assessment as it related to the education and recovery account process to determine whether management identified and addressed risks.

Based on our interviews, reviews and testwork,

- we gained an understanding of the education and recovery account and determined the Auctioneer Commission established policies and procedures governing expenditures from the Auctioneer Education and Recovery Account;
- we determined that the authorization for F&A to sweep funds from the Auctioneer Education and Recovery Account was given in Chapter 1191 of the Public Acts of 2008, which caused the account balance to fall below the minimum balance required by Section 62-19-116, *Tennessee Code Annotated* (see finding 3);
- we determined that some of the expenditures of the Auctioneer Education and Recovery Account for state centralized services and departmental indirect costs were not allowable or appropriate expenditures from the account (see finding 3); and
- we noted that C&I's management did not identify risks or controls over the education and recovery account in its 2011 Financial Integrity Act Risk Assessment (see finding 3).

### Finding

**3. The Division of Regulatory Boards inappropriately used the Real Estate Education and Recovery Account and the Auctioneer Education and Recovery Account for unauthorized purposes, did not establish adequate claim procedures for the Real Estate Education and Recovery Account, and did not ensure that the Auctioneer Education and Recovery Account maintained the required minimum balance**

The Department of Commerce and Insurance's Division of Regulatory Boards did not ensure that

- the Real Estate Education and Recovery Account (REERA) and the Auctioneer Education and Recovery Account (AERA) were used for appropriate purposes;
- the Real Estate Commission developed policies and procedures governing REERA expenditures and erroneously paid recovery claims from the education portion of the account; and
- the Auctioneer Commission maintained the AERA balance at the statutorily required minimum balance.

### **Real Estate Commission Education and Recovery Account**

#### *Background*

The Real Estate Education and Recovery Account was created pursuant to Section 62-13-208(a), *Tennessee Code Annotated*, which established the account within the general fund and

required the account to maintain a minimum balance of \$500,000. When an individual applies for an original license as a real estate broker, affiliate broker, or time share salesperson, the applicant pays \$30 in addition to the normal licensure fees established by the REC, to fund the REERA. The account is reported as a special revenue fund in the State of Tennessee's Comprehensive Annual Financial Report and is divided into two subaccounts, one for principal and one for interest. The REC uses the principal subaccount to provide recovery to individuals for actual or compensatory damages. The other subaccount is funded by interest earned on the principal subaccount and by any application fees paid by licensees for educational courses. In return, DRB management uses the interest subaccount to pay for educational seminars for the benefit of licensees or to assist educational institutions in Tennessee by sponsoring studies, research, and programs to raise the standards of professional practice in real estate.

*Financial Status*

The expenditures and revenues for both subsidiary accounts are exhibited in the following chart.

*Real Estate Education and Recovery Account  
Principal Subaccount 103 (Principal)*

	<i>Fiscal Year Ended June 30,</i>			
	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>
Beg Bal.	\$3,530,696.00	\$3,500,000.00	\$3,637,066.00	\$3,710,011.00
<i>Revenues:</i>				
Fees	167,092.05	137,066.00	72,945.00	52,738.77
Interest	-	-	-	-
<i>Expenditures</i>				
F&A Sweep	(197,788.05)	-	-	-
Ending Balance	<u>3,500,000.00</u>	<u>3,637,066.00</u>	<u>3,710,011.00</u>	<u>3,762,749.77</u>

*Real Estate Education and Recovery Account  
Education Subaccount 026 (Interest)*

	<i>Fiscal Year Ended June 30,</i>			
	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>
Beg Bal.	\$ 522,110.22	-	\$ 22,887.77	\$ 35,160.49
<i>Revenues:</i>				
Fees	-	-	7,845.00	51,310.00
Interest	171,180.86	57,579.18	13,133.53	7,843.73
<i>Expenditures</i>				
F&A Sweep	(597,398.67)	-	-	-
Ending Balance	<u>-</u>	<u>22,887.77</u>	<u>35,160.49</u>	<u>64,903.63</u>

Source: Department of Commerce and Insurance, Division of Regulatory Boards, report titled "Real Estate Education and Recovery Fund (subsidiary 026)" and "(subsidiary 103)".

Based on our review of the Real Estate Education and Recovery Account during our audit we noted the following problems:

*Unallowable Expenditures Charged*

We reviewed the expenditures for the Real Estate Education and Recovery Account for fiscal years 2010 and 2011 and found that the C&I Fiscal Services Section charged the account for expenditures that were not directly related to the purpose of the account. Specifically, management erroneously charged 8 of 13 expenditures (62%) for the year ended June 30, 2010, and 34 of 46 expenditures (74%) for the year ended June 30, 2011. These unallowable expenditures are summarized in the table below:

**Real Estate Education and Recovery Account  
Unallowable Expenditures Charged for Fiscal Years 2010 and 2011**

Source: Expenditures recorded in Edison

<b>Fiscal Year</b>	<b>Account Description</b>	<b>Amount</b>
2010	General Services Postal Charges	\$19.98
2010	Finance and Administration (F&A) Billings	\$9.62
2010	Legal Costs	<u>\$3,823.00</u>
2010	<b>Total Unallowable Costs</b>	<b>\$3,852.60</b>
2011	General Services Postal Charges	\$11,460.10
2011	General Services Records Management	<u>\$177.64</u>
2011	<b>Total Unallowable Costs</b>	<b>\$11,637.74</b>
2011	<b>Departmental Administrative Indirect Costs</b>	<b>\$11,274.07</b>

Charges for state services such as accounting, Edison transaction processing, and departmental administrative indirect costs are not related to the specific intended purpose of education or recovery and, therefore, should not be charged to the education and recovery account. While the Real Estate Commission does incur mail costs when it mails educational information to its licensees, the Division of Regulatory Boards could neither provide supporting documentation for the postal charges nor provide a reasonable explanation for the significant increase in postal charges in FY 2011, compared to FY 2010. Therefore, without evidence that these costs related specifically to education or recovery purposes, we question the appropriateness of the expenditures.

*No Claims Procedures*

Based on testwork, we determined that the Real Estate Commission had not developed written policies and procedures governing the recovery claims process and issuance of payments from the REERA. In order to have a valid claim, plaintiffs must notify the Real Estate Commission in writing via certified letter prior to commencing any action in a court of law. The

Office of Attorney General and Reporter determines if the allegations of misconduct in the case result in any recovery to individuals who have been harmed. We obtained and reviewed all claims against the REERA for our audit period. We found that the assigned board attorney for the Real Estate Commission had not maintained documentation in order to track (from initial notification to resolution) the progress of the cases or evidence that the claims for recovery were reviewed prior to payment. In general, we found the files to be disorganized.

Specifically, we found that Fiscal Services staff for C&I:

- incorrectly charged one 2010 recovery claim to the education subaccount rather than to the recovery subaccount;
- processed one 2011 recovery claim from the education and recovery account as a reduction of revenue rather than as an expenditure; and
- incorrectly charged legal costs to the education and recovery account when the costs should have been charged to and paid out of the Cemetery Consumer Protection Fund.

Without adequate procedures governing expenditures from the account, management and staff used the REERA for unauthorized purposes and improperly recorded authorized expenditures within or between the subaccounts.

### **REC's and the Department's Management Fail to Identify Risks in Risk Assessment**

When REC management does not use the REERA for its intended statutory purposes, there is an increased risk that REERA funds may not be available to provide recovery to those harmed or educational and research resources for the benefit of the REC licensees. In addition, when management does not establish policies and procedures for paying recovery claims, the risk is increased that management may use REERA funds inappropriately. Neither the department nor REC's management identified the issues noted in this finding as risks in the department's annual risk assessment.

### **Auctioneer Education and Recovery Account**

#### *Background*

The Auctioneer Education and Recovery Account was created by Section 62-19-116(a), *Tennessee Code Annotated*. The statute requires management to maintain a minimum balance of \$150,000 in the account. The Auctioneer Commission charges each applicant/licensee (auctioneer, apprentice auctioneer or firm) \$50 upon issuance of a new license or renewal and this fee provides revenue for the education and recovery account.

The purposes of this account are (1) to provide recovery to individuals for actual or compensatory damages committed by those persons licensed by the Auctioneer Commission that have violated state law related to the profession and caused harm to the person and (2) to provide

funding to sponsor, conduct or assist in conducting education, training, or research designed to improve the competence, effectiveness, or professionalism of licensees, the members of the commission, or its staff. The Auctioneer Commission may spend fees and interest earned on the fees collected for education and research, provided that the Auctioneer Education and Recovery Account balance is over \$150,000.

We examined the Auctioneer Education and Recovery Account during our audit and noted the following problems.

*Unallowable Expenditures Charged*

Based on our review of the expenditures for the Auctioneer Education and Recovery Account for fiscal years ended June 30, 2009, through June 30, 2011, we identified expenditures which were not directly related to the intended purpose of the account. Specifically, we found that the Auctioneer Commission improperly charged the account a total of \$3,312.06 for state centralized services over the three fiscal years and a total of \$3,169.15 for departmental administrative indirect costs for fiscal year 2011. See the table below for expenditure details.

**Auctioneer Education and Recovery Account  
Unallowable Expenditures Charged for Fiscal Years 2009, 2010, and 2011**

Source: Expenditures recorded in Edison

<b>Fiscal Year</b>	<b>Account Description</b>	<b>Amount</b>
2009	F&A, Division Of Accounts (DOA) Statewide Accounting Bill	\$429.20
2009	State Employment Information Systems and Merit Billing	\$121.92
2010	General Services Postal Charges	\$111.78
2010	DOA Statewide Accounting Bill	\$164.76
2010	Edison Billing	\$58.58
2011	General Services Postal Charges	\$1,196.92
2011	DOA Statewide Accounting Bill	\$273.05
2011	Edison Billing	\$377.03
2011	General Services Printing Services Billing	\$578.82
2009-2011	<b>Total Unallowable Costs</b>	<b>\$3,312.06</b>
2011	<b>Departmental Administrative Indirect Costs</b>	<b>\$3,169.15</b>

Since these charges for state services such as accounting, Edison transaction processing, and departmental administrative indirect costs are not related to the intended purpose of the education or recovery functions of the account, we believe the expenditures are unallowable for this specific purpose.

*Account Balance Below Statutory Minimum*

In 2008, Chapter 1191 of the Public Acts of 2008, was passed by the General Assembly along with an amendment to Section 4-3-106, *Tennessee Code Annotated*. This legislation allowed F&A to sweep the funds from Regulatory Boards' reserve accounts and throughout state

government for the purposes of balancing the State's budget. When F&A removed \$359,030.97 from the Auctioneer Education and Recovery Account the remaining balance of \$100,000 was \$50,000 below the statutory minimum of \$150,000.

Following the sweep, when the balance was below the minimum, the Auctioneer Commission continued to pay for educational seminars, even though these seminars are only allowed if the balance is above \$150,000. Section 62-19-116(1)(1), *Tennessee Code Annotated*, states that “[t]he commission shall not expend or commit sums pursuant to subdivision (1)(1) in an amount that would reduce the account to a balance of less than one hundred fifty thousand dollars (\$150,000).” As a result of the spending on these seminars, it took the Auctioneer Commission three years, until the end of fiscal year 2011, to increase the account balance above the required minimum. When the account was below the minimum balance, management should have funded expenditures from the Auctioneer Commission's operating budget or it should have delayed expenditures until fees replenished the account.

### **Auctioneer Commission's Management and Department's Management Failed to Identify Risks in Risk Assessment**

As noted above, when management fails to use the education and recovery account as intended by statute and when management does not maintain the minimum balance requirement there is an increased risk that AERA funds may not be available to provide recovery for those harmed or educational and research resources to benefit licensees. Neither the department's nor the Auctioneer's management identified the issues noted in this finding as risks in the department's annual risk assessment.

### **Recommendation**

The Assistant Commissioner for the Division of Regulatory Boards and the Executive Directors of the Real Estate Commission and the Auctioneer Commission should ensure that only appropriate expenditures are charged to the accounts, in accordance with relevant statutes.

The Assistant Commissioner for the Division of Regulatory Boards and the Executive Director of the Real Estate Commission should ensure that policies and procedures are promptly developed for the recovery claims process of the Real Estate Education and Recovery Account.

The Assistant Commissioner for the Division of Regulatory Boards and the Executive Director of the Auctioneer Commission should ensure that expenditures for the education and recovery account do not cause the balance to go below \$150,000 and should utilize the operating budget to pay for educational seminars when the AERA account balance is below the minimum.

The Assistant Commissioner for the Division of Regulatory Boards should include the risks identified in this finding, along with mitigating controls, in the department's annual risk assessment.

## **Management's Comment**

A very critical component of the Division's responsibility as the administrative oversight for its 24 boards and commissions is to monitor each program to ensure that charges are posted properly and that, if warranted, corrections are made timely. While infrequent, misapplication does occur. The Department initiates thousands of entries each year, all of which are subject to improper coding, human error, etc. We acknowledge that there were in fact allocation errors, but believe that the \$11,460.10 in postal charges identified as inappropriate by the auditors were in fact proper but we did not maintain sufficient documentation. We do not dispute that there were other exceptions and do not take issue with the general finding.

With regard to procedures for filing claims against the Real Estate Education & Recovery account, TCA 62-13-208 very clearly outlines the criteria and processes for which an aggrieved person may make claim against the account. We agree, however, that the Department and the Real Estate Commission have not done an adequate job of making these procedures readily available to the public.

As outlined in the audit report, at the end of FY 2008 the Auctioneer Education and Recovery Fund was reduced by the Department of Finance and Administration by \$359,030.97, pursuant to authority granted in the Public Acts of 2008, Chapter 1203. At the time of the reduction, the Auctioneer Commission was already contractually obligated to expenses incurred with statutorily required education vendors. The timing of the reduction did not give consideration to the Department or the Auctioneer Commission for obligations already in place. The Department did communicate in writing with the Commission at the time of the "sweep" to discuss the fact that the fund had fallen below the statutorily required minimum balance and offered to work with the Commission to review alternate funding options for FY 2009 for any essential expenditures. The Commission's general operating budget had ample ability to absorb the small expenditures that dropped the fund below its statutory minimum. The failure to do so was an administrative oversight and the appropriate staff have been made aware of the issue and will be vigilant going forward.

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## **LICENSEE APPLICATION PROCESS**

To obtain a license with any board or commission under the Division of Regulatory Boards (DRB), an applicant must complete an application for licensure, furnish all required documentation, and be approved by the respective board staff within the DRB.

The objectives of our review of the license application process were to determine whether

- the Regulatory Boards' executive directors verified that their staff obtained the required information (exams, background checks, references, transcripts, etc.) and properly approved applications; and

- the C&I's Office of Internal Audit (OIA) investigation report on the licensee application process would have an effect on our audit scope.

We selected a sample of 63 applications, of which two were missing as noted below, that were approved for licenses during calendar year 2011 from the eight boards under audit to determine if the Regulatory Boards staff verified the licensees' application and required information (exams, background checks, references, transcripts, and etc.) before properly approving the application for licensure. We met with the Director of OIA and reviewed OIA's investigation report. Based on the report conclusions, we expanded our audit scope by performing walkthroughs for all eight boards to review physical security controls over sensitive information.

Based on our sample selection of 63 license applications, of which 28 were Cosmetology Board applications, we found that two of the 28 license applications for the Cosmetology Board were missing. We found no significant problems within our sample for the remaining 35 applications for the other seven boards under audit. We discussed the missing license applications with the Cosmetology Board's Executive Director, who indicated that the Board staff was involved in an ongoing internal audit investigation regarding reciprocal<sup>2</sup> applications. We met with the Director for the OIA to discuss the allegations and reviewed the findings identified in the issued investigation report (see finding 4). Our walk-throughs revealed that some of the boards' employees were not locking their computers when they were away from their desks, which is a violation of the Office for Information Resources *Acceptable Use Policy* for information security (see finding 4).

### Finding

4. **The Board of Cosmetology and Board of Barber Examiners staff did not properly maintain reciprocal licensing applications and management did not effectively supervise staff who issue licenses; additionally, the Division of Regulatory Boards did not ensure that employees were following the Office for Information Resources' Acceptable Use Policy for Information Security**

The Department of Commerce and Insurance's Division of Regulatory Boards (DRB) assists boards in licensing applicants. Applicants who wish to obtain Tennessee licenses from any board or commission under the DRB must complete an application for licensure, furnish all required documentation, and be approved by the respective board staff. The Regulatory Boards' executive directors and their staff obtain the applications and the required information (exams,

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<sup>2</sup>Reciprocal applications – individuals licensed in another state that move to Tennessee can apply for a license in Tennessee under reciprocity, only if the other state provides Tennessee licensees with similar recognition.

Source: <http://www.tn.gov/commerce/boards/cosmo/licReq.shtml#Reciprocity>; Office of Internal Audit investigation report.

background checks, references, transcripts, etc.) before approving the applications and issuing the licenses.

As part of our review of the licensing process, we also reviewed the department's Office of Internal Audit's Investigation report, released on May 24, 2012, related to the licensing process. Based on the results of this internal report and based on our own testwork and review of license applications, we determined that management of the Board of Cosmetology and Board of Barber Examiners (the Boards) did not properly develop and maintain internal controls or ensure that management and staff had properly issued and maintained documentation of reciprocity applications.

### **Missing Licensee Applications**

During our audit, the department's Office of Internal Audit (OIA) initiated an internal investigation in response to allegations it received in February 2012 regarding the Boards' licensing practices. The allegations centered on the Boards' Licensing Technician who was responsible for processing reciprocal applications. Based on our testwork and discussions with the Boards' Executive Director, we found that 2 of 63 (3%) reciprocal licensing applications were missing. These were reciprocal applications which were the responsibility of the Licensing Technician.

These same two applications that were part of our sample were included in the sample of 146 of 515 (28%) reciprocal applications that OIA had identified in their investigation as missing and documented in their audit report. OIA's review was limited to the Board of Cosmetology for the period July 1, 2011, through February 14, 2012. Management of C&I instructed OIA to perform a follow-up to the investigation in order to determine whether the problem was a documentation problem due to poor organization or whether there could be a more serious problem of improperly issuing reciprocal licenses. The result of OIA's follow-up was presented to the Tennessee Bureau of Investigation and the Attorney General's Office on July 19, 2012, for further review. The investigation is on-going.

### **Lack of Proper Supervision**

In addition, OIA reported an internal control finding stating that management did not effectively supervise this same Licensing Technician who was responsible for reciprocal license applications. According to the OIA report, the Boards' management first identified problems involving the Licensing Technician nearly two years prior to management placing the Licensing Technician on administrative leave on February 24, 2012, during the investigation. The Licensing Technician was subsequently allowed to resign in lieu of termination. Management failed to take timely corrective action while this employee was performing at a subpar level which exacerbated the breakdown of controls over the reciprocal license application process and may have resulted in the Boards' improperly issuing reciprocal licenses.

## **Employees Did Not Follow OIR Acceptable Use Policy**

OIA's report also addressed an allegation concerning the same Licensing Technician approving applications from another employee's workstation. As a result, OIA issued a finding because employees were not logging out of RBS (Regulatory Board System) or locking their computers when leaving their workstations. In the report, OIA noted that prior to February 2012, management did not require employees to log out of RBS. The report stated that "Employees leaving their workstation without first logging out of RBS, [sic] breaks down the access controls established by management to ensure segregation of duties and accountability for transactions."

After the Director of OIA informed us of this allegation, we performed walkthroughs in the DRB on May 21, 22, and 23, 2012 to determine if employees were locking their computers when leaving their desks. For six of the eight boards under our audit, we observed one or more employees away from their desks with their computers unlocked. In addition, at various other times during the audit, we observed employees leaving their computers unlocked. On one occasion, we noted that an account clerk in the accounting office left her desk without locking the computer several times during the course of the day. We also noted another incident when an Executive Director left her office for an extended period of time with the computer unlocked.

When employees do not properly secure their workstations and management does not enforce its computer security policy, there is a risk that fraud or abuse could occur within the licensing process. Specifically, unsupervised employees could improperly issue reciprocal licenses and expose the public to licensees who may not meet all the required credentials for the profession.

### **Recommendation**

The Assistant Commissioner of the Division of Regulatory Boards should continue to resolve any remaining issues with missing applications and determine the validity of reciprocal licenses granted by the Board of Cosmetology and the Board of Barber Examiners. The Assistant Commissioner should determine if the leadership of the Boards is capable of correcting the significant problems noted in the internal audit report. The Assistant Commissioner and the Office of Internal Audit should monitor the activities of the individuals responsible for correcting the problems and determine whether satisfactory progress is being made. The Assistant Commissioner should take appropriate action if the problems are not corrected.

The Assistant Commissioner should ensure that the DRB and the Boards' comply with OIR policies that require an agency to establish policies, standards, procedures, and guidelines for securing information technology resources consistent with OIR guidelines. Since the DRB does not have a policy to lock computers, the Assistant Commissioner should establish policies and procedures to ensure employees are properly safeguarding sensitive data and equipment.

## **Management's Comment**

The auditor's finding is a result of and consistent with the Department's own Internal Audit review of the Boards of Cosmetology and Barber Examiners initiated independent of the Comptroller's Performance Audit. In December 2011, the Board of Cosmetology advised Division management that they had discovered missing and incomplete reciprocity files. Division management subsequently requested an investigation by the Department's Office of Internal Audit. The investigation revealed systemic failures including inconsistent and inefficient processes, poor supervision, incomplete and disorderly files, and unacceptable management practices.

Division management has taken the following initial steps, consistent with the audit recommendations:

- Opened appropriate review of the remaining missing applications to determine the validity of reciprocal licenses granted.
- In conjunction with the Department's migration toward paperless processes and its implementation of the new CORE licensing system, focused attention in revising the flawed business practices.
- Restructured vendor contracts to allow students to go directly to the testing vendor upon completion of their education requirements which resulted in significant reallocation of the programs resources to areas identified as weaknesses.
- Reclassified a field position vacancy to address immediate administrative staffing need.

Additionally, the Department's investigation uncovered unrelated improper workplace conduct by employees. The information was promptly reported to the Attorney General's Office, the Comptroller's Office and the TBI for potential criminal prosecution. The Department cooperated with law enforcement authorities in the investigation of the case to assure that the efforts of the Department did not delay or interfere with the investigation. Appropriate disciplinary action was promptly brought against the involved parties resulting in the termination or resignation of five employees.

Division management is concluding its comprehensive analysis and review of the management and business practices of the programs and its determination of additional corrective action required, consistent with the auditor's recommendations.

Finally, the Division is taking steps to comply as recommended with the OIR Acceptable Use Policy and should have implemented the necessary changes by December 1, 2012.

## MONITORING UNLICENSED ACTIVITY

The Department of Commerce and Insurance's (C&I) Division of Regulatory Boards (DRB), in conjunction with the various boards, is responsible for ensuring that licensees comply with the laws and regulations of their professions and for protecting the public from any licensee's unprofessional conduct or illegal activity. Unlicensed individuals are not regulated by the DRB or by the boards and pose a risk to the unsuspecting public because they may not have the same necessary skills, knowledge, or training as validly licensed practitioners. As a result, it is critical for the boards and commissions to investigate and monitor any reports of unlicensed activity.

The objectives of our review of the DRB and the Regulatory Boards' process to monitor unlicensed activity were to determine if the

- boards tracked the number of persons or businesses penalized for unlicensed activity;
- civil penalties had any effect on deterring unlicensed activity;
- Division of Regulatory Boards maintained a list on their website of those individuals/businesses that were found to be practicing without a license; and
- C&I and boards' management identified the risk of unlicensed activity in its 2011 Financial Integrity Act Risk Assessment.

We interviewed the Deputy General Counsel for DRB and reviewed board rules. We reviewed several boards' meeting minutes for calendar years 2010 and 2011 to determine the normal outcome of any investigations involving complaints of unlicensed activity. We reviewed Section 56-1-308, *Tennessee Code Annotated*, regarding penalties. We reviewed the DRB's website and performed analytical procedures on the monthly disciplinary action reports for calendar years 2010 and 2011 to determine the number of individuals/businesses disciplined for unlicensed activity by each board we audited and to determine if there were repeat offenders with no apparent intention of complying with the licensure requirement. We reviewed Section 56-1-302, *Tennessee Code Annotated*, requirements for press releases for disciplinary actions taken by the boards. We reviewed the C&I 2011 Financial Integrity Risk Assessment to determine if the unlicensed activity risk had been identified and included.

Based on our interviews, review, and analytical procedures, we determined that

- at the time of our review, the Auctioneer Commission, Real Estate Commission, and Private Investigation and Polygraph Commission all stated on their website, under "How to File a Complaint":

*The boards and commissions do not have jurisdiction over unlicensed persons, and therefore cannot take disciplinary action against them. However, after an investigation, a board or commission can seek criminal prosecution through the District Attorney General or State Attorney General. An injunction can also be*

*sought to prohibit further unlicensed activity. According to the Deputy General Counsel of the Regulatory Boards, this statement is not accurate and he was unaware that it was on the website. Under Section 56-1-308, Tennessee Code Annotated, the boards have statutory authority to penalize individuals and businesses that are found operating without a license.*

After our discussion with the Deputy General Counsel, the statement was removed from the websites. We also noted that other boards, such as the Board of Cosmetology and Board of Barber Examiners, have civil penalties incorporated into their rules to penalize those practicing without a license;

- the highest percentage of disciplinary actions for unlicensed activity was for the Board of Cosmetology, Board of Barber Examiners and Auctioneer Commission for both 2010 and 2011 calendar years. However, much of this unlicensed activity resulted from previously licensed professionals and businesses who had allowed their licenses to expire. We also found that there most complaints related to the Board of Cosmetology and Board of Barber Examiners for unlicensed activity involving individuals who had never applied for or received a license, but were working in a licensed business. We found only two instances of repeat offenders for unlicensed activity; both were for the Board of Cosmetology. Because the Regulatory Boards can penalize licensed businesses for employing unlicensed individuals, the boards have leverage to deter individual unlicensed activity. A licensed business jeopardizes its business license and could incur financial penalties by employing unlicensed individuals;
- Section 56-1-302, *Tennessee Code Annotated*, requires the [Executive] Directors of the Regulatory Boards to issue a press release with the names and professional addresses of those disciplined, along with the disciplinary action taken. The press release is to be made available to newspapers of general circulation in Chattanooga, Knoxville, Memphis, Nashville, and the Tri-cities by the 15<sup>th</sup> of the following month. Based on discussion with the Deputy General Counsel of the Regulatory Boards and the Communications Director, management uses the disciplinary action reports (which are posted to the Regulatory Boards' website) for their press release. However, the DRB was not sending the disciplinary action reports to any newspapers, as required by Section 56-1-302. After our discussion with the Deputy General Counsel of the Regulatory Boards, the monthly disciplinary reports have been added to the Department's media distribution list to be sent to newspapers in each of the required cities, normally by the 15<sup>th</sup> of each month; and
- the DRB's management did not identify the risks associated with unlicensed activity in its 2011 Financial Integrity Act Risk Assessment.

Since Section 56-1-302, *Tennessee Code Annotated*, provides the authority, the Division of Regulatory Boards should post the names of those individuals that continue to practice without proper credentials and a valid license to the department's website as a deterrent for unlicensed activity.

Management of the DRB should address in their annual risk assessment the risk that a business or individual who is unlicensed may practice without obtaining a license. Management should also include the mitigating controls for this identified risk.

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## **Internal Controls**

### **CASH RECEIPTING**

The Department of Commerce and Insurance's Fiscal Services Section manages the mail room, the revenue processing center, the cashier's window, and the accounting office. This section is primarily responsible for receiving, processing, and depositing licensure revenue for the Regulatory Boards.

The objective of our review of controls over cash receipting were to

- gain an understanding of the revenue collection, recording, and reconciliation process;
- document the cash reconciliation process between RBS and Edison performed by the accounting office;
- determine the percentage of the eight Regulatory Boards' revenue that is received by the Fiscal Services Section's revenue processing center and cashier's window, on-line by a third party vendor, and by mail by the Department of Revenue lockbox;
- test the cash receipting process for the Fiscal Services Section revenue processing center and cashier's window for the period January 2012 through April 2012;
- determine if revenue collections were deposited in accordance with *Department of Finance and Administration (F&A) Policy 25—Deposit Practices*;
- document security issues and how frequently the revenue processing center's door combination lock was changed;
- determine if adequate segregation of duties existed in the revenue processing center and cashier's window; and
- review the Department of Commerce and Insurance's (C&I) 2011 Financial Integrity Act Risk Assessment as it related to the cash receipting process to determine whether management identified and addressed risks.

We performed a walkthrough to review the revenue collection, recording, and reconciliation process in the revenue processing center and cashier's window for the Fiscal

Services Section. We interviewed key department personnel to document the reconciliation process of RBS and Edison used by the accounting office in the Fiscal Services Section. We obtained an RBS license renewal report for 2011 calendar year from the department's Information Systems Division and used it to calculate the percentages of the eight boards' revenue receipted at the cashier's window (walk-in) or revenue processing center (mail), through on-line transactions, and through the Department of Revenue lockbox. We also tested a random sample of 60 individual cash transactions for the eight boards receipted at either the revenue processing center or cashier's window to review the cash receipting process. We tested the timeliness of deposits in accordance with *Department of Finance and Administration (F&A) Policy 25—Deposit Practices*. We further inquired as to whether the keypad combination for the locked door to the revenue processing center was changed regularly and under what circumstances. In addition, during our walkthrough we observed duties of the cashier's window and revenue processing center staff to determine if any segregation of duties issues existed. We also reviewed C&I's 2011 Financial Integrity Act Risk Assessment as it related to the cash receipting process to determine that risks were identified and addressed.

Based on our reviews and testwork,

- we determined that the Fiscal Services Section properly collected, recorded, and reconciled revenues;
- we determined that the accounting office performed cash reconciliations between Edison and RBS;
- we calculated the percentage of revenue receipted by the revenue processing center (mail) or cashier's window (walk-in), through on-line transactions, and through the Department of Revenue lockbox;
- we determined that the cash receipting process was operating as described for the revenue processing center and the cashier's window;
- we noted no problems for deposits for those funds receipted by the cashier's window in our sample; however, we found that funds receipted by the revenue processing center were not deposited in a timely manner by the Fiscal Services Section as required by *Finance and Administration (F&A) Policy 25 - Deposit Practices* (see finding 5);
- we determined that the door combination lock is changed according to policy;
- we found no issues involving segregation of duties within the revenue processing center or cashier's window; and
- we determined that DRB management failed to identify any risks or mitigating controls related to timeliness of deposits in C&I's 2011 Financial Integrity Act Risk Assessment (see finding 5).

## Finding

### **5. The Department of Commerce and Insurance staff did not always deposit Regulatory Board revenue collections in accordance with the Department of Finance and Administration's policy and management failed to identify cash receipt risks in its annual risk assessment**

The Department of Commerce and Insurance's Fiscal Services Section did not always deposit licensure fee collections for the Regulatory Boards in accordance with the Department of Finance and Administration (F&A) Policy 25, increasing the risk that cash could be misappropriated. Section 9-4-301, *Tennessee Code Annotated*, states that funds received by state agencies must be deposited "immediately". In addition, *Department of Finance and Administration (F&A) Policy 25 – Deposit Practices* part 4 defines "immediately" as follows: "...A) For departments, institutions, offices and agencies, 'immediately' means within 24 hours after \$500.00 has been accumulated."

The Department of Commerce and Insurance's Fiscal Services Section collects and processes Regulatory Board license fees in different ways. First time applicants may remit fees by mail, which is processed by the revenue processing center, or by walk-in at the cashier's window. Renewal licensees may remit fees by mail, walk-in, or online. Based on our review of the license renewals for the 2011 calendar year for the eight boards under audit, we found that the percentage of license renewals by location were as follows: the cashier's window and revenue processing center collectively processed 9,647 (19%) of all license renewals, the Department of Revenue processed 24,534 (47%) of renewal licenses sent to the lockbox, and a third party online vendor processed 17,940 (34%) of the license renewals.

During our planning, we obtained and reviewed the department's Office of Internal Audit (OIA) report, *Revenue Processing*, which was released December 19, 2011. The report included a finding related to the lack of timeliness of deposits in the department's Fiscal Services Section. The OIA finding covered testwork on deposits during the period July 1, 2010, through September 15, 2011. Based on the OIA report, we performed a follow-up on the finding to determine whether the Fiscal Services Section had taken prompt corrective action regarding the timeliness of deposits. We tested 60 cash transactions for the eight regulatory boards under audit for the period January 1, 2012, through April 30, 2012, that were receipted by either the revenue processing center or cashier's window. For eight of 60 cash transactions we tested (13%), we found that the fees receipted at the revenue processing center were not always deposited as required by policy. Specifically, we found that five of the eight cash transactions were deposited one day late and the remaining three transactions were deposited three days late. Subsequent to our testwork, the Administrative Service Manager for the Fiscal Services Section told us that they had initiated an additional daily deposit of funds, which was effective June 2012.

Because we also found problems with deposits based on our follow up testwork, it is apparent that management of the Fiscal Services Section has still not adequately addressed untimely deposits. When funds received are not deposited timely, management has an increased risk of misappropriation of funds. We also found that management had failed to identify the risk

of untimely deposits and develop appropriate mitigating controls in the department's annual risk assessment.

### **Recommendation**

The Commissioner of the Department of Commerce and Insurance and management of the Fiscal Services Section should ensure that all funds received by the department are deposited in accordance with Policy 25. Management should also include this risk in their annual risk assessment and should ensure that proper controls are in place to prevent and detect any misappropriation of assets.

### **Management's Comment**

This finding came as a result of the Department's own Internal Audit review of the Department's compliance with F&A Policy 25, completed on December 19, 2011. During the audit, management was in the process of developing a new procedure with the Division of Regulatory Boards in regards to the handling of mail, subsequent depositing of funds, and ultimate posting to the Regulatory Boards database system. Our new dating procedure in INOVAH now accurately reflects the date of processed money received, thus creating a deposit that is now within the 24 hour requirement of the policy. This change in procedure was effective June 1, 2012. Since this change, the department has successfully deposited funds within the requirements of the policy consistent with the audit recommendations. In addition:

- Management will include and identify cash receipt risks in future annual risk assessments.
- Management runs daily reconciliation reports to ensure compliance.

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### **CONFLICT OF INTEREST POLICY**

Employees of the Department of Commerce and Insurance, including those employed by the Division of Regulatory Boards, and members of the various boards under the DRB are required to disclose any conflict of interest that could impair, either in fact or in appearance, the performance of their departmental or board duties.

The objectives of our review of the conflict of interest policy were to determine if the

- employees signed the department's conflict of interest form [disclosure form] annually (see Appendix 6);
- department had updated the conflict of interest policy to reflect the most recent executive orders (see Appendix 6);

- board members followed the department’s DRB conflict of interest policy statement (see Appendix 7);
- board members signed the conflict of interest form annually (see Appendix 7); and
- board members recused themselves from any discussions or decisions related to a disclosed conflict.

We reviewed the department’s conflict of interest policy and selected a sample of key employees for the department/division to determine if employees signed a conflict of interest form [disclosure form] annually. We reviewed the executive orders to determine if management updated the department’s conflict of interest policy to reflect the most recent executive orders. We reviewed the conflict of interest statements that board members completed to determine if board members were in compliance with the conflict of interest policy. We tested all current board members for the eight boards to determine if members signed a board member conflict of interest statement annually. We also attended a board meeting and reviewed board minutes and the board members’ files to determine if board members recused themselves from any discussions or decisions related to a disclosed conflict of interest.

We found that the board members followed the conflict of interest policy, signed annual conflict of interest statements, and recused themselves when they had conflicts. As for our other audit objectives, although we did not report a finding related to conflict of interest, we have noted management’s weaknesses in the Observation below.

**Observation 2: The conflict of interest policy and procedures were not consistently followed and the policy was outdated**

The Department of Commerce and Insurance’s management did not ensure that the

- conflict of interest policy was updated to reflect the most recent executive orders;
- employees’ conflict of interest statements were maintained in accordance with policy;
- employees’ disclosure forms were completed accurately; and
- board members’ conflict of interest statements provided space for conflicts to be disclosed on the form.

We reviewed the Department of Commerce and Insurance’s conflict of interest policy and disclosure forms for employees and the conflict of interest statement for board members. We found that (1) the department’s conflict of interest policy references outdated executive orders, (2) the department/division employees’ conflict of interest forms were not maintained annually according to policy, (3) department/division employees’ conflict of interest policy statements were not signed by the required deadline, and (4) there were inconsistencies in how department/division employees completed the conflict of interest disclosure forms.

In addition, we found the department had not properly designed the Board Member conflict of interest form to provide a place for board members to report the nature of their conflict, rather the board members are instructed to disclose the conflicts to the “appropriate person.”

### **The Department’s Conflict of Interest Policy References Outdated Executive Orders**

The conflict of interest policy repeatedly makes reference to Executive Orders No. 1, 2, and 3, which were issued in February 2003 (see Appendix 6) by the former Governor. However, Executive Order No. 1, issued in January 2011 by the current Governor, replaced the former Governor’s Executive Orders No. 1 and 2. It allowed Executive Order No. 3 to remain in effect, except as amended in Executive Order No. 1. The department’s General Counsel is the Compliance Officer for the conflict of interest policy, but had not yet updated the department’s policy to incorporate the current executive orders. When the department’s General Counsel does not update the policy, management cannot be assured that employees have been made aware of any new requirements or significant changes in conflict of interest requirements.

### **Employees’ Conflict of Interest Statements Were Not Maintained According to Policy**

Based on the testwork performed on a sample of key department/division employees, we found that the Human Resources Section did not require employees to sign the disclosure forms by January 15, as required by policy, or did not maintain the form for those that should have had a signed form. An annual disclosure form was not obtained or maintained for 5 of 74 (7%) employees during at least one of the years within our audit period. The department’s policy states: “The Department of Commerce and Insurance’s Ethics and Conflict of Interest Policy requires employees within the department to disclose certain information on or before January 15 of each calendar year.”

To determine if the forms were signed timely, we reviewed a sample of key employees to determine the date that employees had signed their annual disclosure form for the calendar years 2009, 2010, 2011, and 2012. Based on our review, we found that for 72 out of 73 (99%) employees did not sign their form by the January 15 deadline for at least one of the years reviewed. The number of days late ranged from 3 to 115 days.

### **Employees’ Disclosure Forms**

Furthermore, we noted that when the department’s Human Resource office sends out the conflict of interest policy for all employees to read, the information includes Disclosure Forms (D-1 and D-2) (see Appendix 6). The D-1 states: “This form should be filled out by all employees who have a conflict of interest to disclose or who are filling out a conflict of interest disclosure form for the first time”. The D-2 states: “This form should be filled out by all employees who have previously filled out a Conflict of interest disclosure form and who have no new conflicts of interest to disclose.” The Declaration of Receipt of Ethics and Conflict of Interest Policy (See Appendix 6) states: “The Department’s Human Resources Section shall ensure that each new employee receives this policy by requiring each new employee to sign a declaration stating that he/she has received this policy.”

We identified inconsistencies in how employees were completing the forms. We observed that some employees submitted an annual D-1 form even if there were no new disclosures to report, while others completed the D-2 form one year and the D-1 form the next year even if there were no new disclosures to report. Some employees submitted both a D-1 and a D-2 form at the same time. In addition, we found several employees who submitted the Declaration of Receipt of Ethics and Conflict of Interest Policy even though they were not new employees.

### **Board Members' Potential Conflicts Are Not Disclosed in Writing**

We found that the form, *Conflict of Interest Statement for Board and Commission Members*, that board members are required to sign did not provide an area to disclose any known potential conflicts (see Appendix 7). Rather, the form was an acknowledgement that the signer had read the conflict of interest policy and that they should contact the “appropriate person” to disclose any known conflicts. If the Division of Regulatory Boards would require board members to disclose known conflicts when signing and provide space on the disclosure form for such disclosures, it is more likely that any known conflicts would be reported at that time.

### **Recommendations for Employees' Disclosure Forms**

We recommend that the Department of Commerce and Insurance update its employees' Ethics and Conflict of Interest Policy to reflect the most current Executive Orders referenced. The department should also develop a process to ensure that all employees are sent the policy with adequate time to read and complete the disclosure statements correctly and submit them by the required deadline. The department may want to consider adjusting the deadline, since a majority of the statements submitted late were within a few weeks of the deadline. The department management should reiterate to all employees the importance that they submit the policy disclosure statements by the required deadline. The department should enforce the policy to ensure employees are submitting the appropriate disclosure statements by the required deadline.

Since the inconsistency in which forms are submitted by the employees may cause confusion and result in conflicts of interest going unreported to management, the department may want to consider consolidating the pages included in the employees' Ethics and Conflict of Interest Policy for disclosures and confirmation of receiving the policy. The Declaration of Receipt of Ethics and Conflict of Interest Policy could be added to the D-1 and/or D-2 disclosure statement forms. The department may want to consider eliminating the D-2 disclosure statement form and having all employees disclose possible conflicts of interest annually, instead of only when there is something new to disclose. This may simplify the process for the department to monitor possible conflicts of interest.

## **Recommendations for Board Members' Statements**

The DRB should include an area on the board member conflict of interest statement for the board member to disclose any possible conflict of interest. While it may not be possible for board members to anticipate every possible conflict of interest that may come before their board, they should be able to disclose certain items, such as name of the board members' business, organizational membership, and names of any board licensed family members on their conflict of interest statement.

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## **TRAVEL CLAIMS**

The department's DRB employees and board members often incur travel costs when performing their required duties. To obtain reimbursement for those travel costs, the employees and board members are required to prepare their travel claims in accordance with the State's Comprehensive Travel Regulations and the Department of Commerce and Insurance's Training/Travel Authorization Standard Operating Procedures.

The objectives of our review of DRB employees' and board members' travel claims were to determine whether

- the department paid travel claims in accordance with the State's Comprehensive Travel Regulations and the Department of Commerce and Insurance's Training/Travel Authorization Standard Operating Procedures; and
- travel reimbursements for any one board appeared excessive in comparison to other boards.

We reviewed the State's Comprehensive Travel Regulations and the department's Training/Travel Authorization Standard Operating Procedures (SOP). We tested a nonstatistical sample of travel claims that the department paid from July 1, 2010, through June 30, 2011, to determine if employees and board members submitted the claims in compliance with the Comprehensive Travel Regulations and the department's SOP. We also analyzed and compared travel expenditures for the fiscal years ended June 30, 2010, and June 30, 2011, to determine if any of the boards appeared to have excessive travel.

Based on our review and testwork, we determined that the department reimbursed employees' and board members' travel claims in accordance with the State's Comprehensive Travel Regulations and the department's SOP. We found travel costs across the boards to be equitable.

## Compliance

### PERFORMANCE MEASURES

Executive agencies are required by Section 9-4-5606(b), *Tennessee Code Annotated*, to submit annually both a strategic plan and program performance measures. These are published in two separate volumes, which comprise the *Agency Strategic Plans* document. Volume 1 contains Five-Year Strategic Plans and includes agency-wide information. Volume 2 contains the agencies' Program Performance Measures and includes more detailed program information and performance standards and measures for each program. These documents represent the commitment of the Administration to provide the General Assembly information that is useful in the budget process and for agency oversight.

The objectives of our review of the Division of Regulatory Boards' strategic plans and program performance measures were to

- note any change in performance measures from the agency strategic plan to the program performance report and determine if prior approval was obtained from the Department of Finance and Administration (F&A) for any changes;
- assess the method of calculating, reviewing and reporting the performance measures for accuracy and reasonableness; and
- determine if C&I's management identified risks related to its performance measures in the 2011 Financial Integrity Risk Assessment.

We reviewed the 2011 *Agency Strategic Plans*, Volumes 1 and 2 and the *2010-2011 Program Performance Report* we obtained from the Department of Finance and Administration. We submitted questionnaires to the DRB's Accountant III, who is responsible for compiling the results submitted to F&A for the *Program Performance Report* and *Agency Strategic Plan, Volume 2*, to help us gain an understanding of why the DRB chose the particular standards of measure and how the actual and targeted results were calculated. For the actual results, we obtained documentation supporting the performance results reported in the *2010-2011 Program Performance Report* and the *2011 Agency Strategic Plan, Volume 2*. In addition, we reviewed the department's 2011 risk assessment to determine if management had identified the risk of inaccurate or inconsistent performance measures and developed appropriate mitigating controls.

Based on our review, we determined that the performance measures for the DRB and Auctioneer Commission's Education and Recovery Fund appeared adequate and accurate and that the DRB used a reasonable process for performance measure development and data collection supporting the measures. As for our other audit objectives, although we did not report a finding related to performance measures, we have noted management's weaknesses in the Observation below.

**Observation 3: The performance measure of the Real Estate Commission’s Education and Recovery Fund included data which was inconsistent and not authorized as a standard measure**

The Real Estate Education and Recovery Fund (Fund), which is administered by the Real Estate Commission, was authorized by Section 62-13-208, *Tennessee Code Annotated*, for the primary purpose of making payments to individuals for actual or compensatory damages resulting from a violation of law or rule by an individual licensed by the Real Estate Commission. The REC may, at its discretion, utilize any return on investment of the account to cover expenses incurred in the performance of functions authorized by 62-13-107 and 62-13-108 or in the preparation and dissemination of information for the benefit of licensees.

Section 9-4-5608, *Tennessee Code Annotated*, requires agencies, including the REC, to develop performance measures and to report annually on the progress of the commission in meeting those performance measures. The commission determined that the performance measure for the REC and the Fund was to provide educational seminars to licensees during a fiscal year using money from the interest earned on the Fund’s balance. The commission set the standard for the performance measure at eight seminars per year. The REC’s performance measures that were reported for fiscal years 2009, 2010, and 2011 are shown in the following table:

**Real Estate Education and Recovery Fund  
Number of Educational Seminars Reported each Year  
Fiscal Years 2009-2011  
Source: Information Provided by DRB staff**

<b>Year</b>	<b>Target</b>	<b>Reported</b>
<b>2008 - 2009</b>	<b>8</b>	<b>1</b>
<b>2009 - 2010</b>	<b>8</b>	<b>10</b>
<b>2010 - 2011</b>	<b>8</b>	<b>11</b>

We determined that the Real Estate Commission was inconsistent in reporting the results of this performance measure. For the 2008 – 2009 year, as shown in the table above, the commission used the interest from the Fund to conduct one educational seminar and reported one seminar held. The Real Estate Commission’s Executive Director stated that the Department of Finance and Administration, at request of the General Assembly, took funds from the interest account in fiscal year ended June 30, 2008, and the Director of Education left in the early part of calendar year 2009. As a result of the loss of funds, it took the REC some time to replenish the fund. Also, the REC did not replace the Director of Education until early 2010, partly because the Commission members wanted to review their education policies. The Executive Director handled the functions of the Director of Education during this time. (Section 62-13-207, *Tennessee Code Annotated*, requires the Real Estate Commission to have a full-time Director of Education.)

In the *2009 – 2010 Program Performance Report*, the REC reported that it had conducted 11 educational seminars, ten of which were actually commission meetings, rather than seminars.

According to the Executive Director of the REC, the REC voted to include commission meetings as continuing education by licensees, although the REC did not submit the performance changes to F&A for approval. In addition, since the REC does not pay the costs associated with commission meetings from the Real Estate Education and Recovery Fund, we do not agree that commission meetings should be included as the standard to measure management's performance. In fact, in 2009 – 2010, the REC only conducted one educational seminar which was funded with the Fund's interest earnings.

In the *2010 – 2011 Program Performance Report*, the REC conducted eleven educational seminars and reported these eleven seminars in the results. REC management allowed the licensees to receive continuing education credit for attending commission meetings, but REC management did not count these meetings in achieving its performance measure.

In addition, management of the Division of Regulatory Boards does not review supporting documentation for the actual results it reports in achieving the REC's performance measures, but relies totally on the review of the REC and the Director of Education when submitting the results to the Department of Finance and Administration. The Division of Regulatory Boards should ensure that accurate performance measures are used when measuring and reporting whether the REC management and staff achieve the performance goals of the Education and Recovery Fund of the Real Estate Commission.

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## TITLE VI

Title VI of the Civil Rights Act of 1964 states that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

The objectives of our review of Title VI as it related to the DRB were

- to determine if the department prepared a Title VI plan; and
- to determine if the department had procedures for handling Title VI complaints and determine if the department received any Title VI-related complaints for the Division of Regulatory Boards for the prior two years.

We reviewed the Title VI Implementation Plan for the Department Commerce and Insurance. We interviewed key personnel to determine if the department had any complaints on the DRB in the last two years and had procedures for handling Title VI complaints to ensure it is meeting Title VI requirements.

Based on our interviews and reviews, we found that

- the Department of Commerce and Insurance included Title VI reporting for the Division of Regulatory Boards; and
- the department received one complaint for the Real Estate Appraiser Commission under the Division of Regulatory Boards during the last two years. The department's procedures for handling Title VI complaints were followed, and the department determined that there had been no discriminatory treatment.

The Human Rights Commission is charged with the responsibility of verifying that all state governmental entities that are recipients of Federal financial assistance comply with the requirements of Title VI of the Civil Rights Act of 1964 pursuant to the State of Tennessee Public Acts, 2009 Public Chapter No. 437. The Human Rights Commission's *Tennessee Title VI Compliance Program Annual Report*, prepared by the Human Rights Commission, which covers the period of July 1, 2009 through June 30, 2011, reported the following finding:

The Department of Commerce and Insurance did not train department staff on Title VI.

See Appendix 2, for Division of Regulatory Boards' staff ethnicity and gender demographics.

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**FINDING FOLLOW-UP FROM PRIOR 2009 AUDIT** (The follow-up of all other prior findings can be found in the applicable sections.)

### **Licensing System**

The Division of Regulatory Boards utilizes a licensing system known as RBS to track applications, licensees, renewals, etc. We reviewed the division's policies and procedures concerning access to RBS. Due to the sensitive nature of the finding written, we cannot reveal our full objectives or the work performed.

### **Finding**

6. **As noted in the prior audit report, the department and division did not assess and mitigate the risks associated with Information Systems security, increasing the risk of fraudulent activity**

Division of Regulatory Boards' personnel, Department of Commerce and Insurance Information Systems personnel, and Department of Finance and Administration's Office for Information Resources personnel all have some level of access to RBS, the Regulatory Boards' computer system. During the audit, we observed conditions that violated best practices for information security controls.

The wording of this finding does not identify specific vulnerabilities that could allow someone to exploit the Regulatory Boards' computer system. Disclosing these vulnerabilities could present a potential security risk by providing readers with information that might be confidential pursuant to Section 10-7-504(i), *Tennessee Code Annotated*. We provided the Department of Commerce and Insurance's Division of Regulatory Boards with detailed information regarding specific vulnerabilities as well as our recommendations for improvement.

### **Recommendation**

Department and division management should ensure that these conditions are remedied by the prompt development and implementation of effective controls. Management should ensure that risks associated with this finding are adequately identified and assessed in the department's, division's, and boards' risk assessments; this would include determining if any weaknesses have actually been exploited. Management should implement effective controls to ensure compliance with applicable requirements, assign staff to be responsible for ongoing monitoring of the risks and mitigating controls, and take action if deficiencies occur.

### **Management's Comment**

Department management has received from the Comptroller's audit staff the specific weaknesses and issue identified. The principal issue in the finding was that not all policies and procedures implemented as a result of the prior audit finding had been consistently applied by staff. Department management has established additional monitoring to assure and document that the appropriate compliance reviews for each program within the Division of Regulatory Boards are completed.

Management's review of the identified weaknesses shows no evidence that those weaknesses were exploited in any way. The Division will ask for a follow-up review with the Comptroller's Office by January 31, 2013 to assure that all appropriate actions and recommendations from the audit have been implemented, or appropriate compensating controls and procedures have been established.

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## RECOMMENDATION FOR LEGISLATIVE CONSIDERATION

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### STATE REGULATORY FEE

This performance audit identified areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Regulatory Boards' operations.

The General Assembly may wish to consider legislation to amend or repeal Section 4-3-1011(b)(2), *Tennessee Code Annotated*, regarding the state regulatory fee based on the following three options:

- Option 1 – The General Assembly may wish to consider if the state regulatory fee should be earmarked and established at an amount sufficient to cover all indirect costs of board operations. To accomplish this the General Assembly should amend the current statute to clarify its intent and require both the Commissioners of the Department of Finance and Administration and the Department of Commerce and Insurance to periodically analyze and certify all indirect costs incurred at a statewide and department level associated with the operations of the Regulatory Boards and set the fee accordingly.

This requirement would eliminate the General Assembly's need to provide recurring supplemental state appropriations (which began for fiscal year 2013) to cover indirect costs when the state regulatory fee is insufficient.

- Option 2 – The General Assembly may wish to consider eliminating the state regulatory fee ((Section 4-3-1011(b)(2)), *Tennessee Code Annotated*, altogether and require the Regulatory Boards' to become fully self-sufficient as implied by current legislation under Section 4-29-121, *Tennessee Code Annotated*.
- Option 3 – Should the General Assembly wish to continue to collect the state regulatory fee and use other general fund tax revenue (when the state regulatory fee collections are insufficient) to cover the indirect costs associated with Regulatory Boards' operations, the General Assembly should amend the current legislation to clarify its intent.

Under the current system, the Division of Regulatory Boards calculates the \$5 state regulatory fee from licensees and remits the fee to the Department of Finance and Administration as general fund tax revenue, in lieu of the state or oversight department charging the boards for any indirect costs incurred from the boards' operations.

As noted in Finding 1, the current process is questionable because the Department of Commerce and Insurance has charged the Regulatory Boards for the department's indirect costs, in violation of law. Furthermore, the Department of Finance and Administration and the Department of Commerce and Insurance have not assessed the sufficiency of the state

regulatory fee to cover fully the statewide and departmental indirect costs to operate the Regulatory Boards. In fact, the Commissioner of Finance and Administration has not changed the fee since it was established in 1989. For the boards to be truly self-sufficient, all costs should be borne by them, including all indirect costs.

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## APPENDICES

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### Appendix 1

#### Performance Measures Information

As stated in the Tennessee Governmental Accountability Act of 2002, “accountability in program performance is vital to effective and efficient delivery of governmental services, and to maintain public confidence and trust in government.” In accordance with this act, all executive branch agencies are required to submit annually to the Department of Finance and Administration a strategic plan and program performance measures. The department publishes the resulting information in two volumes of *Agency Strategic Plans: Volume 1 - Five-Year Strategic Plans* and *Volume 2 - Program Performance Measures*. Agencies were required to begin submitting performance-based budget requests according to a schedule developed by the department, beginning with three agencies in fiscal year 2005, with all executive-branch agencies included no later than fiscal year 2012. The Department of Commerce and Insurance began submitting performance-based budget requests effective for fiscal year 2009.

Detailed below are the performance standards and measures for the Division of Regulatory Boards (DRB), the Real Estate Commission for its Real Estate Education and Recovery Fund, and the Auctioneer Commission for its Auctioneer Education and Recovery Fund, as reported in the September 2011 *Volume 2 - Program Performance Measures*. Also reported below is a description of the agency’s processes for (1) identifying/developing the standards and measures; (2) collecting the data used in the measures; and (3) ensuring that the standards and measures reported are appropriate and that the data is accurate.

The objectives of our review of the Division of Regulatory Boards strategic plans and program performance measures were to only:

- note any change in performance measures from the agency strategic plan to the program performance report and determine if prior approval was obtained from the Department of Finance and Administration (F&A) for any changes;
- assess the method of calculating, reviewing, and reporting the performance measures for accuracy and reasonableness; and
- determine if the C&I’s 2011 Financial Integrity Risk Assessment addresses the risk that a performance measure may be inaccurate or inconsistent.

Refer to the **Observation** in the Performance section within the report for issues identified regarding the lack of consistency and review of supporting documentation for some of the Performance Measures reported in this appendix.

**Performance Standards and Measures**

**Division of Regulatory Boards**

Performance Standard 1

Issue licenses within 60 days of receipt of a completed/approved application.

Performance Measure 1

Actual (FY 2010-2011)	Estimate (FY 2011-2012)	Target (FY 2012-2013)
95%	95%	95%

The DRB administration prepares the results of this performance measure annually. This performance measure is just an estimate. The Regulatory Boards System (RBS) software system automatically issues a license once the application is completed and approved. The estimated actual amount allows for a small margin of error of 5% to account for any unforeseen occurrence, resulting in an estimated actual amount of 95%.

Performance Standard 2

Resolve consumer complaints or refer them for legal action within 180 days of receipt.

Performance Measure 2

Actual (FY 2010-2011)	Estimate (FY 2011-2012)	Target (FY 2012-2013)
78.2%	70%	75%

The DRB administration collects the information for reporting purposes. The information is collected each month and at the conclusion of the fiscal year. The information is extracted from the Case and Complaint tables within the RBS. The percentage is calculated by dividing the total number of cases and complaints closed on or before reaching 180 days by the total number of cases and complaints.

The performance measure is calculated using information from an access database titled “Case Complaint Ratio Information”. The DRB has a procedure to calculate the percentage while making sure each case is only counted once and that all cases that have not been closed and not reached 180 days are not counted in the current calculation.

The calculation is prepared by the Accountant III and then reviewed by the Assistant Commissioner for the Regulatory Boards who also reviews the final percentage for reasonableness and sets the new benchmarks for the next two fiscal years.

## Real Estate Education and Recovery Fund

### Performance Standard 1

Conduct a minimum of eight educational seminars for licensees annually.

### Performance Measure 1

Actual (FY 2010-2011)	Estimate (FY 2011-2012)	Target (FY 2012-2013)
11	8	8

The performance measure is a count of the number of education seminars that the Real Estate Commission holds each fiscal year in accordance with Section 62-13-208, *Tennessee Code Annotated*. The seminars are prepared by the Real Estate Commission's Education Director. At the conclusion of the year, the Director of Education will provide the Regulatory Boards administration with the number of seminars held during the fiscal year. DRB management does not review the supporting documentation provided to them by the Director of Education.

## Auctioneer Education and Recovery Fund

### Performance Standard 1

Conduct one educational seminar for licensees in each grand division of the state annually.

### Performance Measure 1

Actual (FY 2010-2011)	Estimate (FY 2011-2012)	Target (FY 2012-2013)
3	3	3

The performance measure is a count of the number of education seminars that the Auctioneer Commission holds each fiscal year in accordance with Section 62-19-116, *Tennessee Code Annotated*. The Auctioneer Commission's Regulatory Boards office staff collects the information related to the seminars and sends it to Regulatory Boards administration who compiles the information annually for the performance measure document. The contractor that conducts the seminars provides any necessary supporting documents, such as sign-in sheets and agendas upon request. The Auctioneer Commission's Regulatory Boards office staff is responsible for confirming the number before submitting it to the Regulatory Boards administration for compilation.

## Appendix 2

### Division of Regulatory Boards Staff Ethnicity and Gender Demographics By Job Position as of April 2012

Source: Department of Commerce and Insurance's Human Resource Division Staff

<i>Job Title</i>	<i>Asian</i>	<i>Black</i>	<i>Other</i>	<i>White</i>	<i>F</i>	<i>M</i>
Assistant Commissioner 2				1		1
Accountant/Auditor 1				1		1
Accountancy Board Investigator				2		2
Accountant III				1	1	
Administrative Secretary				3	2	1
Administrative Services Manager				1	1	
Administrative Services Assistant 2				1	1	
Administrative Services Assistant 4				2	2	
Auditor II		1		1		2
Auditor III			1	6	2	5
Auditor IV				1		1
Board Member	1	9		60	20	50
Clerk III				3	2	1
Commission Member		6		32	8	30
Contractor Inspector				2		2
Information Systems Analyst II				1	1	
Information Systems Analyst IV		1			1	
Information Systems Manager III				1		1
Licensing Technician		6		18	19	5
Programmer/Analyst IV	1			1		2
Regulatory Boards Administrative Manager		1		5	3	3
Regulatory Boards Administrative Assistant I		5		15	14	6
Regulatory Boards Administrative Assistant II		2	1	8	10	1
Regulatory Boards Administrative Assistant III				7	3	4
Regulatory Boards Administrative Director 1				2	1	1
Regulatory Boards Executive Director		1		10	6	5
Regulatory Boards Field Representative		2		11	5	8
Regulatory Boards Investigator				14	5	9
Regulatory Boards Investigations Assistant				1		1
Director						
Secretary				1	1	
<b>Totals</b>	<b>2</b>	<b>34</b>	<b>2</b>	<b>212</b>	<b>108</b>	<b>142</b>

**Appendix 2 (continued)**

**Regulatory Board Members Ethnicity and Gender Demographics  
As of April 2012**

Source: Department of Commerce and Insurance's Human Resource Division Staff

<i>Board/Commission</i>	<i>Gender</i>		<i>Ethnicity</i>			<i>Vacancy</i>
	<i>Female</i>	<i>Male</i>	<i>Asian</i>	<i>Black</i>	<i>Hispanic</i> <i>White</i>	
Auctioneer		5			5	
Barber Examiners		5		3	2	
Cosmetology	8			2	6	1
Funeral Directors and Embalmers	2	5		1	6	
Collection Service Board	2	2			4	1
Private Investigation and Polygraph	3	6		2	7	
Real Estate Appraiser	2	6		1	7	1
Real Estate	2	7		1	8	
<b>Totals</b>	<b>19</b>	<b>36</b>		<b>10</b>	<b>45</b>	<b>3</b>

## Appendix 3

### Regulatory Boards Covered in Audit

#### **Auctioneer Commission**

The Auctioneer Commission was created in 1967. The board is governed by Sections 62-19-101 to 62-19-128, *Tennessee Code Annotated*. The board licenses and regulates apprentice auctioneers, auctioneers, firms, galleries, firm branches, and gallery branches. The five-member board is appointed by the Governor. The board is statutorily required to meet quarterly.

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#### **Board of Barber Examiners**

The Board of Barber Examiners was created in 1939. The board is governed by Sections 62-3-101 to 62-3-133, *Tennessee Code Annotated*. The board regulates the practice of barbering, including the licensure and registration of Master Barbers, Barber Instructors, Barber Shops, and Barber Schools. The five board members are appointed by the Governor. Statute does not specify the number of times the board is to meet annually.

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#### **Board of Cosmetology**

The Board of Cosmetology was created in 1939. The board is governed by Sections 62-4-101 to 62-4-134, *Tennessee Code Annotated*. The board regulates the practice of cosmetology, including the licensure and registration of Cosmetologists, Instructors, Aestheticians, Manicurists, Shampoo Technicians, Natural Hair Stylists, Cosmetology Shops, and Cosmetology Schools. The board is made up of nine members appointed by the Governor. Statute does not specify the number of times the board is to meet annually.

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#### **Board of Funeral Directors and Embalmers**

The Board of Funeral Directors and Embalmers was created in 1951. The board is governed by Sections 62-5-101 to 62-5-611, *Tennessee Code Annotated*. The board regulates the professions of funeral directors, embalmers, funeral establishments, apprentices, and mortuary students. The board is made up of seven members appointed by the Governor. Statute does not specify the number of times the board is to meet annually.

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#### **Collection Service Board**

The Collection Service Board was created under the Tennessee Collection Service Act enacted in 1981. The board is governed by Sections 62-20-101 to 62-20-127, *Tennessee Code Annotated*. The board formulates public policy concerning the collection industry, enacts rules and regulations, grants licenses, initiates investigations, suspends or revokes licenses for cause, and ensures compliance with enacted legislation pertaining to the collection industry. The five-member board is appointed by the Governor. Statute does not specify the number of times the board is to meet annually.

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### Appendix 3 (continued)

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#### **Private Investigation and Polygraph Commission**

The Private Investigation Commission was created in 1993. In 1999, the Polygraph Commission was transferred to the Private Investigation Commission, thus creating the Private Investigation and Polygraph Commission. The Commission is governed by Sections 62-26-201 to 62-27-129, *Tennessee Code Annotated*. The Commission regulates the professions of private investigators, private investigation companies, and polygraph examiners. The board is made up of nine members appointed by the Governor. Statute does not specify the number of times the board is to meet annually.

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#### **Real Estate Appraiser Commission**

The Real Estate Appraiser Commission was created in 1981. The Commission is governed by Sections 62-39-101 to 62-39-426, *Tennessee Code Annotated*. The Commission regulates real estate appraisers in accordance with federal and state laws, rules, and policies. The board is made up of nine members appointed by the Governor and is statutorily required to meet three times a year.

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#### **Real Estate Commission**

The Real Estate Commission was created in 1951. The Commission is governed by Sections 62-13-101 to 62-13-603, *Tennessee Code Annotated*. The Commission licenses and registers Real Estate Firms, Brokers, and Affiliate Brokers. The Commission is made up of nine members appointed by the Governor and is statutorily required to meet three times a year.

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**Appendix 4**  
**License Renewal Amounts, Number of Licenses as of June 30, 2011, and**  
**Date of Last Fee Increase**

<b>Board</b>	<b>Biennial Renewal Amount</b>	<b>Number of Licenses (a)</b>	<b>Last Fee Increase</b>
Auctioneer Commission	\$175 - \$275(b)	2,937	December 2008 (g)
Board of Barber Examiners	\$80-\$90(c)	7,084	September 2004
Board of Cosmetology	\$50-\$60(d)	56,129	August 2004
Board of Funeral Directors & Embalmers	\$200-\$575(e)	3,600	June 2002
Collection Service Board	\$50-\$350(f)	1,448	March 1990
Private Investigations & Polygraph Commission	\$50-\$1,250(f)	1,813	October 1992
Real Estate Appraiser Commission	\$350	2,513	January 2012 (h)
Real Estate Commission	\$110	29,309	Prior to 2007

Notes:

- (a) Numbers do not include those required only to register with a board
- (b) Includes individuals and firms
- (c) Includes individuals, schools, and shops
- (d) Includes location manager and agency
- (e) Includes individuals and funeral establishments
- (f) Includes individuals and companies
- (g) Increase due to the establishment of two new professions: Public Automobile Auctioneer and Public Automobile Auction
- (h) Fee increase in response to federal fee increase in the National Registry fee

Sources: Title 62, Section 3-5, 13, 19, 20, 26, 27, 39, *Tennessee Code Annotated*; RBS Reports; and Boards' websites and Executive Directors

## Appendix 5

Source: Division of Regulatory Boards, Accountant III.

### Auctioneer Commission

#### Revenues and Expenditures for Fiscal Years 2008-2011

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Regular Salaries and Wages	73,266.00	89,595.31	37,077.53	84,914.11
Longevity	3,700.00	1,200.00	1,908.09	4,588.30
Overtime	29.58	61.43	0.00	0.00
Employee Benefits	33,921.84	26,497.04	17,523.18	38,719.80
<b>Total Payroll Expenditures</b>	<b>110,917.42</b>	<b>117,353.78</b>	<b>56,508.80</b>	<b>128,222.21</b>
Travel	5,387.31	5,777.08	10,282.26	7,803.45
Printing, Duplicating & Film Proc.	3,685.49	2,602.86	0.00	65.84
Utilities and Fuel	0.00	0.00	0.00	0.00
Communications & Shipping	2,816.95	1,019.18	2,708.25	2,852.47
Maint., Repairs and Svcs by Others	0.00	0.00	0.00	0.00
Third Party Prof. & Admin. Svcs	2,915.78	1,931.78	9,187.30	2,996.17
Supplies and Office Furniture	1,070.46	116.40	1,529.62	1,869.27
Rentals and Insurance	16,704.00	21,264.00	3,240.00	1,650.04
Motor Vehicle Operation	0.00	0.00	0.00	0.00
Awards and Indemnities	0.00	0.00	0.00	0.00
Grants and Subsidies	208.00	25.00	0.00	0.00
Unclassified Expenses	0.00	0.00	0.00	0.00
Training of State Employees	0.00	0.00	0.00	0.00
Computer Related Items	0.00	0.00	0.00	1,419.63
State Prof. Svcs.	20,356.22	38,986.91	34,040.38	26,362.25
<b>Total Other Expenditures</b>	<b>53,144.21</b>	<b>71,723.21</b>	<b>60,987.81</b>	<b>45,019.12</b>
<b>SUBTOTAL for Expenditures</b>	<b>164,061.63</b>	<b>189,076.99</b>	<b>117,496.61</b>	<b>173,241.33</b>
<b>Cost Backs:</b>				
Administration	24,124.00	80,703.22	68,396.14	90,978.32
Legal	22,491.00	0.00	0.00	0.00
Investigation	6,157.00	4,217.64	5,690.03	9,729.81
Department	30,678.00	0.00	0.00	0.00
<b>Total Cost Backs</b>	<b>83,450.00</b>	<b>84,920.86</b>	<b>74,086.18</b>	<b>100,708.13</b>
<b>TOTAL EXPENDITURES</b>	<b>247,511.63</b>	<b>274,261.45</b>	<b>191,582.79</b>	<b>273,949.46</b>
<b>TOTAL REVENUES</b>	<b>273,617.00</b>	<b>300,174.08</b>	<b>340,815.00</b>	<b>258,033.88</b>
Less: State Regulatory Fee	15,260.00	15,325.00	14,835.00	14,685.00
<b>NET REVENUE</b>	<b>258,357.00</b>	<b>284,849.08</b>	<b>325,980.00</b>	<b>243,348.88</b>
<b>FISCAL YEAR BALANCE</b>	<b>10,845.37</b>	<b>10,587.63</b>	<b>134,397.21</b>	<b>-30,600.58</b>
<b>PRIOR FISCAL YEAR RESERVE</b>	<b>48,124.05</b>	<b>15,319.42</b>	<b>25,907.05</b>	<b>159,899.83</b>
<b>BALANCE</b>	<b>58,969.42</b>	<b>25,907.05</b>	<b>160,304.26</b>	<b>129,299.25</b>
<b>BALANCE ADJUSTMENT</b>	<b>43,650.00</b>	<b>0.00</b>	<b>-404.43</b>	<b>0.00</b>
<b>ADJUSTED BALANCE</b>	<b>15,319.42</b>	<b>25,907.05</b>	<b>159,899.83</b>	<b>129,299.25</b>

**Appendix 5 (continued)**  
**Board of Barber Examiners**  
**Revenues and Expenditures for Fiscal Years 2008-2011**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Regular Salaries and Wages	134,567.65	125,843.01	126,601.03	125,932.75
Longevity	4,425.00	6,400.00	5,100.00	5,500.00
Overtime	0.00	0.00	0.00	0.00
Employee Benefits	60,808.95	53,041.88	54,152.63	59,354.62
<b>Total Payroll Expenditures</b>	<b>199,801.60</b>	<b>185,284.89</b>	<b>185,853.66</b>	<b>190,787.37</b>
Travel	25,825.16	38,522.86	43,560.39	45,065.24
Printing, Duplicating & Film Proc.	1,673.00	1,215.00	0.00	0.00
Utilities and Fuel	0.00	0.00	0.00	0.00
Communications & Shipping	3,599.63	1,933.72	2,701.88	3,084.21
Maint., Repairs and Svcs by Others	0.00	0.00	0.00	0.00
Third Party Prof. & Admin. Svcs	200.00	1,011.26	340.48	408.03
Supplies and Office Furniture	9,203.55	0.00	0.00	0.00
Rentals and Insurance	8,352.00	9,748.50	1,496.14	1,077.60
Motor Vehicle Operation	0.00	0.00	0.00	0.00
Awards and Indemnities	0.00	0.00	0.00	0.00
Grants and Subsidies	79.00	889.75	0.00	0.00
Unclassified Expenses	0.00	0.00	0.00	0.00
Training of State Employees	0.00	0.00	0.00	18.75
Computer Related Items	0.00	0.00	0.00	0.00
State Prof. Svcs.	6,803.92	11,871.58	33,289.90	14,316.94
<b>Total Other Expenditures</b>	<b>55,736.26</b>	<b>65,192.67</b>	<b>81,388.79</b>	<b>63,970.77</b>
<b>SUBTOTAL for Expenditures</b>	<b>255,537.86</b>	<b>250,477.56</b>	<b>267,242.45</b>	<b>254,758.14</b>
<b>Cost Backs:</b>				
Administration	52,834.51	108,315.10	105,894.46	118,594.10
Legal	22,109.51	0.00	0.00	0.00
Investigation	2,081.51	712.57	0.00	38.08
Department	67,188.51	0.00	0.00	0.00
<b>Total Cost Backs</b>	<b>144,214.04</b>	<b>109,027.67</b>	<b>105,894.46</b>	<b>118,632.18</b>
<b>TOTAL EXPENDITURES</b>	<b>399,751.90</b>	<b>359,768.83</b>	<b>373,136.91</b>	<b>373,390.32</b>
<b>TOTAL REVENUES</b>	<b>404,371.89</b>	<b>426,044.00</b>	<b>397,027.00</b>	<b>437,037.82</b>
Less: State Regulatory Fee	44,195.00	35,990.00	35,395.00	35,420.00
<b>NET REVENUE</b>	<b>360,176.89</b>	<b>390,054.00</b>	<b>361,632.00</b>	<b>401,617.82</b>
<b>FISCAL YEAR BALANCE</b>	<b>-39,575.01</b>	<b>30,285.17</b>	<b>-11,504.91</b>	<b>28,227.50</b>
<b>PRIOR FISCAL YEAR RESERVE</b>	<b>-164,121.26</b>	<b>-203,696.27</b>	<b>-173,511.15</b>	<b>-185,016.06</b>
<b>BALANCE</b>	<b>-203,696.27</b>	<b>-173,411.10</b>	<b>-185,016.06</b>	<b>-156,788.56</b>
<b>BALANCE ADJUSTMENT</b>	<b>0.00</b>	<b>0.00</b>	<b>-404.43</b>	<b>0.00</b>
<b>ADJUSTED BALANCE</b>	<b>-203,696.27</b>	<b>-173,411.10</b>	<b>-185,420.49</b>	<b>-156,788.56</b>

**Appendix 5 (continued)**  
**Board of Cosmetology**  
**Revenues and Expenditures for Fiscal Years 2008-2011**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Regular Salaries and Wages	416,011.89	436,554.55	404,047.19	387,701.28
Longevity	15,775.00	19,386.82	14,714.56	14,300.00
Overtime	0.00	0.00	0.00	0.00
Employee Benefits	198,753.09	190,116.85	188,003.99	185,111.41
<b>Total Payroll Expenditures</b>	<b>630,539.98</b>	<b>646,058.22</b>	<b>606,765.74</b>	<b>587,112.69</b>
Travel	114,613.80	136,730.76	107,252.83	111,337.29
Printing, Duplicating & Film Proc.	3,308.26	2,882.33	0.00	29.98
Utilities and Fuel	0.00	0.00	0.00	0.00
Communications & Shipping	35,145.74	18,399.75	30,325.73	31,194.83
Maint., Repairs and Svcs by Others	430.00	0.00	0.00	0.00
Third Party Prof. & Admin. Svcs	1,027.00	1,287.50	2,149.02	1,215.59
Supplies and Office Furniture	17,195.50	2,637.49	2,422.08	2,495.05
Rentals and Insurance	32,508.00	40,203.00	1,743.86	1,121.15
Motor Vehicle Operation	0.00	0.00	0.00	0.00
Awards and Indemnities	0.00	0.00	0.00	0.00
Grants and Subsidies	237.00	18.75	0.00	0.00
Unclassified Expenses	0.00	0.00	0.00	0.00
Training of State Employees	0.00	0.00	0.00	306.25
Computer Related Items	0.00	0.00	0.00	4,377.10
State Prof. Svcs.	45,054.34	59,192.12	204,530.74	87,662.64
<b>Total Other Expenditures</b>	<b>249,519.64</b>	<b>261,351.70</b>	<b>348,424.26</b>	<b>239,739.88</b>
<b>SUBTOTAL for Expenditures</b>	<b>880,059.62</b>	<b>907,409.92</b>	<b>955,190.00</b>	<b>826,852.57</b>
<b>Cost Backs:</b>				
Administration	205,584.00	626,376.63	630,094.67	674,736.52
Legal	27,565.00	0.00	0.00	0.00
Investigation	6,492.70	828.12	2,494.54	2,437.21
Department	261,439.52	0.00	0.00	0.00
<b>Total Cost Backs</b>	<b>501,081.22</b>	<b>627,204.75</b>	<b>632,589.21</b>	<b>677,173.73</b>
<b>TOTAL EXPENDITURES</b>	<b>1,381,140.84</b>	<b>1,534,878.27</b>	<b>1,587,779.21</b>	<b>1,504,026.30</b>
<b>TOTAL REVENUES</b>	<b>1,737,741.00</b>	<b>1,853,192.54</b>	<b>1,797,222.01</b>	<b>1,937,020.28</b>
Less: State Regulatory Fee	333,705.00	274,340.00	276,420.00	280,645.00
<b>NET REVENUE</b>	<b>1,404,036.00</b>	<b>1,578,852.54</b>	<b>1,520,802.01</b>	<b>1,656,375.28</b>
<b>FISCAL YEAR BALANCE</b>	<b>22,895.16</b>	<b>43,974.27</b>	<b>-66,977.20</b>	<b>152,348.98</b>
<b>PRIOR FISCAL YEAR RESERVE</b>	<b>1,206,910.53</b>	<b>319,483.40</b>	<b>361,676.22</b>	<b>294,699.02</b>
<b>BALANCE</b>	<b>1,229,805.69</b>	<b>363,457.67</b>	<b>294,699.02</b>	<b>447,048.00</b>
<b>BALANCE ADJUSTMENT</b>	<b>-910,322.29</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>ADJUSTED BALANCE</b>	<b>319,483.40</b>	<b>363,457.67</b>	<b>294,699.02</b>	<b>447,048.00</b>

**Appendix 5 (continued)**  
**Board of Funeral Directors and Embalmers**  
**Revenues and Expenditures for Fiscal Years 2008-2011**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Regular Salaries and Wages	204,700.23	168,620.95	173,327.64	162,729.87
Longevity	5,825.00	7,650.32	4,809.68	5,700.00
Overtime	0.00	0.00	0.00	0.00
Employee Benefits	108,047.10	93,821.57	101,626.96	99,370.49
<b>Total Payroll Expenditures</b>	<b>318,572.33</b>	<b>270,092.84</b>	<b>279,764.28</b>	<b>267,800.36</b>
Travel	54,117.84	51,232.60	59,305.24	64,689.24
Printing, Duplicating & Film Proc.	1,889.54	5,726.80	23.98	24,396.79
Utilities and Fuel	0.00	0.00	0.00	0.00
Communications & Shipping	4,641.11	2,823.66	3,692.76	2,667.54
Maint., Repairs and Svcs by Others	0.00	0.00	0.00	0.00
Third Party Prof. & Admin. Svcs	1,693.34	2,138.23	2,714.32	5,408.07
Supplies and Office Furniture	2,816.16	1,345.67	2,244.35	1,249.12
Rentals and Insurance	25,056.00	31,086.00	1,496.14	851.15
Motor Vehicle Operation	29.16	0.00	0.00	0.00
Awards and Indemnities	0.00	0.00	0.00	0.00
Grants and Subsidies	3,495.00	91.25	0.00	0.00
Unclassified Expenses	260.00	0.00	0.00	0.00
Training of State Employees	0.00	0.00	0.00	50.00
Computer Related Items	0.00	0.00	0.00	4,345.16
State Prof. Svcs.	23,864.33	21,928.47	79,506.43	43,252.17
<b>Total Other Expenditures</b>	<b>117,862.48</b>	<b>116,372.68</b>	<b>148,983.22</b>	<b>146,909.24</b>
<b>SUBTOTAL for Expenditures</b>	<b>436,434.81</b>	<b>386,465.52</b>	<b>428,747.50</b>	<b>414,709.60</b>
<b>Cost Backs:</b>				
Administration	65,802.45	149,525.35	149,754.88	195,914.94
Legal	39,614.00	0.00	0.00	0.00
Investigation	5,933.00	2,715.46	2,494.54	3,636.78
Department	83,681.00	0.00	0.00	0.00
<b>Total Cost Backs</b>	<b>195,030.45</b>	<b>152,240.81</b>	<b>152,249.43</b>	<b>199,551.72</b>
<b>TOTAL EXPENDITURES</b>	<b>631,465.26</b>	<b>538,969.93</b>	<b>580,996.93</b>	<b>614,261.32</b>
<b>TOTAL REVENUES</b>	<b>1,014,509.00</b>	<b>449,220.96</b>	<b>958,740.14</b>	<b>529,703.68</b>
Less: State Regulatory Fee	16,675.00	17,765.00	16,870.00	18,000.00
<b>NET REVENUE</b>	<b>997,834.00</b>	<b>431,455.96</b>	<b>941,870.14</b>	<b>511,703.68</b>
<b>FISCAL YEAR BALANCE</b>	<b>366,368.74</b>	<b>-107,513.97</b>	<b>360,873.21</b>	<b>-102,557.64</b>
<b>PRIOR FISCAL YEAR RESERVE</b>	<b>-184,777.89</b>	<b>177,133.40</b>	<b>69,404.08</b>	<b>430,277.29</b>
<b>BALANCE</b>	<b>181,590.85</b>	<b>69,619.43</b>	<b>430,277.29</b>	<b>327,719.65</b>
<b>BALANCE ADJUSTMENT</b>	<b>-4,457.45</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>ADJUSTED BALANCE</b>	<b>177,133.40</b>	<b>69,619.43</b>	<b>430,277.29</b>	<b>327,719.65</b>

**Appendix 5 (continued)  
Collection Service Board**

**Revenues and Expenditures for Fiscal Years 2008-2011**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Regular Salaries and Wages	51,630.67	93,578.67	68,661.13	117,589.51
Longevity	2,580.00	3,980.00	5,241.40	6,703.47
Overtime	0.00	0.00	0.00	0.00
Employee Benefits	22,329.11	35,751.00	31,360.77	56,303.41
<b>Total Payroll Expenditures</b>	<b>76,539.78</b>	<b>133,309.67</b>	<b>105,263.30</b>	<b>180,596.39</b>
Travel	4,212.74	3,088.28	4,737.57	6,411.14
Printing, Duplicating & Film Proc.	571.91	201.66	0.00	31.68
Utilities and Fuel	0.00	0.00	0.00	0.00
Communications & Shipping	3,694.65	3,378.07	5,721.68	8,868.62
Maint., Repairs and Svcs by Others	0.00	0.00	120.00	0.00
Third Party Prof. & Admin. Svcs	25.00	666.00	419.15	257.47
Supplies and Office Furniture	3,167.70	2,013.90	1,579.19	1,743.61
Rentals and Insurance	9,756.00	11,946.00	0.00	540.00
Motor Vehicle Operation	0.00	0.00	0.00	0.00
Awards and Indemnities	0.00	78.75	0.00	0.00
Grants and Subsidies	250.00	500.00	0.00	0.00
Unclassified Expenses	0.00	0.00	2.72	0.00
Training of State Employees	0.00	0.00	0.00	800.00
Computer Related Items	0.00	0.00	0.00	567.40
State Prof. Svcs.	10,289.96	10,084.73	19,622.17	14,395.44
<b>Total Other Expenditures</b>	<b>31,967.96</b>	<b>31,957.39</b>	<b>32,202.48</b>	<b>33,615.36</b>
<b>SUBTOTAL for Expenditures</b>	<b>108,507.74</b>	<b>165,267.06</b>	<b>137,465.78</b>	<b>214,211.75</b>
<b>Cost Backs:</b>				
Administration	25,012.47	128,654.15	90,324.83	132,849.76
Legal	14,986.48	0.00	0.00	0.00
Investigation	1,321.00	654.79	1,360.66	437.94
Department	31,808.00	0.00	0.00	0.00
<b>Total Cost Backs</b>	<b>73,127.95</b>	<b>129,308.94</b>	<b>91,685.49</b>	<b>133,287.70</b>
<b>TOTAL EXPENDITURES</b>	<b>181,635.69</b>	<b>294,839.60</b>	<b>229,151.27</b>	<b>347,499.45</b>
<b>TOTAL REVENUES</b>	<b>357,155.00</b>	<b>373,395.00</b>	<b>211,257.00</b>	<b>400,433.86</b>
Less: State Regulatory Fee	6,340.00	6,250.00	7,375.00	7,240.00
<b>NET REVENUE</b>	<b>350,815.00</b>	<b>367,145.00</b>	<b>203,882.00</b>	<b>393,193.86</b>
<b>FISCAL YEAR BALANCE</b>	<b>169,179.31</b>	<b>72,305.40</b>	<b>-25,269.27</b>	<b>45,694.41</b>
<b>PRIOR FISCAL YEAR RESERVE</b>	<b>866,872.73</b>	<b>269,148.74</b>	<b>341,298.47</b>	<b>316,029.20</b>
<b>BALANCE</b>	<b>1,036,052.04</b>	<b>341,454.14</b>	<b>316,029.20</b>	<b>361,723.61</b>
<b>BALANCE ADJUSTMENT</b>	<b>-766,903.30</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>ADJUSTED BALANCE</b>	<b>269,148.74</b>	<b>341,454.14</b>	<b>316,029.20</b>	<b>361,723.61</b>

**Appendix 5 (continued)**  
**Private Investigation and Polygraph Commission**  
**Revenues and Expenditures for Fiscal Years 2008-2011**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Regular Salaries and Wages	40,330.42	45,461.70	36,712.04	70,815.41
Longevity	1,155.00	500.00	0.00	1,324.00
Overtime	0.00	0.00	271.55	53.57
Employee Benefits	27,994.58	19,093.88	16,294.33	39,502.47
<b>Total Payroll Expenditures</b>	<b>69,480.00</b>	<b>65,055.58</b>	<b>53,277.92</b>	<b>111,695.45</b>
Travel	5,430.71	6,463.35	4,744.09	8,085.45
Printing, Duplicating & Film Proc.	19,145.00	1,643.35	0.00	0.00
Utilities and Fuel	0.00	0.00	0.00	0.00
Communications & Shipping	6,908.97	4,454.98	2,804.66	3,875.60
Maint., Repairs and Svcs by Others	0.00	0.00	0.00	0.00
Third Party Prof. & Admin. Svcs	13.00	2,772.00	74.95	458.00
Supplies and Office Furniture	1,686.14	0.00	687.50	33.04
Rentals and Insurance	13,986.00	17,541.24	1,236.00	1,313.00
Motor Vehicle Operation	0.00	0.00	0.00	0.00
Awards and Indemnities	287.43	0.00	0.00	0.00
Grants and Subsidies	0.00	0.00	0.00	0.00
Unclassified Expenses	0.00	0.00	0.00	0.00
Training of State Employees	0.00	0.00	0.00	0.00
Computer Related Items	0.00	0.00	0.00	259.52
State Prof. Svcs.	17,635.50	17,944.26	34,304.29	31,315.18
<b>Total Other Expenditures</b>	<b>65,092.75</b>	<b>50,819.18</b>	<b>43,851.49</b>	<b>45,339.79</b>
<b>SUBTOTAL for Expenditures</b>	<b>134,572.75</b>	<b>115,874.76</b>	<b>97,129.41</b>	<b>157,035.24</b>
<b>Cost Backs:</b>				
Administration	14,086.00	53,284.17	38,560.88	48,594.34
Legal	18,417.00	0.00	0.00	0.00
Investigation	1,455.00	5,257.60	907.11	2,513.38
Department	17,913.00	0.00	0.00	0.00
<b>Total Cost Backs</b>	<b>51,871.00</b>	<b>58,541.77</b>	<b>39,467.99</b>	<b>51,107.72</b>
<b>TOTAL EXPENDITURES</b>	<b>186,443.75</b>	<b>174,680.13</b>	<b>136,597.40</b>	<b>208,142.96</b>
<b>TOTAL REVENUES</b>	<b>243,720.25</b>	<b>251,395.00</b>	<b>229,399.69</b>	<b>221,517.61</b>
Less: State Regulatory Fee	9,535.00	9,415.00	9,425.00	9,065.00
<b>NET REVENUE</b>	<b>234,185.25</b>	<b>241,980.00</b>	<b>219,974.69</b>	<b>212,452.61</b>
<b>FISCAL YEAR BALANCE</b>	<b>47,741.50</b>	<b>67,299.87</b>	<b>83,377.29</b>	<b>4,309.65</b>
<b>PRIOR FISCAL YEAR RESERVE</b>	<b>238,985.82</b>	<b>74,487.32</b>	<b>141,824.33</b>	<b>204,808.48</b>
<b>BALANCE</b>	<b>286,727.32</b>	<b>141,787.19</b>	<b>225,201.62</b>	<b>209,118.13</b>
<b>BALANCE ADJUSTMENT</b>	<b>-212,240.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>ADJUSTED BALANCE</b>	<b>74,487.32</b>	<b>141,787.19</b>	<b>225,201.62</b>	<b>209,118.13</b>

**Appendix 5 (continued)**  
**Real Estate Appraiser Commission**  
**Revenues and Expenditures for Fiscal Years 2008-2011**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Regular Salaries and Wages	84,687.49	45,346.00	113,070.71	82,110.00
Longevity	800.00	0.00	3,720.31	912.31
Overtime	0.00	0.00	0.00	1.87
Employee Benefits	33,718.41	20,893.54	55,233.60	45,689.83
<b>Total Payroll Expenditures</b>	<b>119,205.90</b>	<b>66,239.54</b>	<b>172,024.62</b>	<b>128,714.01</b>
Travel	24,098.95	20,503.78	25,561.13	20,627.19
Printing, Duplicating & Film Proc.	4,231.59	172.86	0.00	11.69
Utilities and Fuel	0.00	0.00	0.00	0.00
Communications & Shipping	2,535.90	860.66	4,846.87	3,125.40
Maint., Repairs and Svcs by Others	0.00	0.00	0.00	0.00
Third Party Prof. & Admin. Svcs	78,611.84	41,765.11	124,318.50	68,142.13
Supplies and Office Furniture	453.53	279.79	2,442.71	2,541.65
Rentals and Insurance	18,918.00	23,163.00	0.00	269.04
Motor Vehicle Operation	0.00	0.00	0.00	0.00
Awards and Indemnities	338.50	119.68	0.00	47.00
Grants and Subsidies	663.00	675.00	0.00	0.00
Unclassified Expenses	0.00	0.00	0.00	0.00
Training of State Employees	0.00	0.00	0.00	400.00
Computer Related Items	0.00	0.00	0.00	3,882.46
State Prof. Svcs.	18,551.89	26,694.72	47,965.37	37,377.69
<b>Total Other Expenditures</b>	<b>148,403.20</b>	<b>114,234.60</b>	<b>205,134.58</b>	<b>136,424.25</b>
<b>SUBTOTAL for Expenditures</b>	<b>267,609.10</b>	<b>180,474.14</b>	<b>377,159.20</b>	<b>265,138.26</b>
<b>Cost Backs:</b>				
Administration	44,284.72	127,784.32	115,333.65	143,425.17
Legal	57,194.49	0.00	0.00	0.00
Investigation	2,687.40	3,485.81	1,298.81	647.38
Department	56,316.49	0.00	0.00	0.00
<b>Total Cost Backs</b>	<b>160,483.10</b>	<b>131,270.13</b>	<b>116,632.46</b>	<b>144,072.55</b>
<b>TOTAL EXPENDITURES</b>	<b>428,092.20</b>	<b>312,007.87</b>	<b>493,791.66</b>	<b>409,210.81</b>
<b>TOTAL REVENUES</b>	<b>749,265.50</b>	<b>424,530.00</b>	<b>675,475.00</b>	<b>616,360.00</b>
Less: State Regulatory Fee	13,440.00	13,360.00	12,790.00	12,565.00
<b>NET REVENUE</b>	<b>735,825.50</b>	<b>411,170.00</b>	<b>662,685.00</b>	<b>603,795.00</b>
<b>FISCAL YEAR BALANCE</b>	<b>307,733.30</b>	<b>99,162.13</b>	<b>168,893.34</b>	<b>194,584.19</b>
<b>PRIOR FISCAL YEAR RESERVE</b>	<b>291,243.85</b>	<b>155,603.66</b>	<b>255,613.41</b>	<b>424,506.75</b>
<b>BALANCE</b>	<b>598,977.15</b>	<b>254,765.79</b>	<b>424,506.75</b>	<b>619,090.94</b>
<b>BALANCE ADJUSTMENT</b>	<b>-443,373.49</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>ADJUSTED BALANCE</b>	<b>155,603.66</b>	<b>254,765.79</b>	<b>424,506.75</b>	<b>619,090.94</b>

**Appendix 5 (continued)**  
**Real Estate Commission**  
**Revenues and Expenditures for Fiscal Years 2008-2011**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Regular Salaries and Wages	801,863.96	750,928.11	664,519.54	608,740.46
Longevity	24,500.00	32,500.00	22,400.00	21,300.00
Overtime	97.07	0.00	0.00	0.00
Employee Benefits	385,352.61	351,394.45	322,490.98	300,608.27
<b>Total Payroll Expenditures</b>	<b>1,211,813.64</b>	<b>1,134,822.56</b>	<b>1,009,410.52</b>	<b>930,648.73</b>
Travel	104,139.97	98,386.62	62,216.29	59,743.35
Printing, Duplicating & Film Proc.	14,064.62	168,523.23	2,222.53	1,529.99
Utilities and Fuel	0.00	10.01	0.00	0.00
Communications & Shipping	90,349.30	48,189.16	56,183.43	64,109.65
Maint., Repairs and Svcs by Others	241.98	0.00	0.00	0.00
Third Party Prof. & Admin. Svcs	99,557.85	46,206.01	49,819.54	43,627.74
Supplies and Office Furniture	27,820.32	5,923.96	5,786.36	6,729.04
Rentals and Insurance	106,773.00	131,580.00	4,096.84	1,345.20
Motor Vehicle Operation	0.00	0.00	21.54	0.00
Awards and Indemnities	137.74	122.44	0.00	212.29
Grants and Subsidies	4,023.00	1,685.00	0.00	0.00
Unclassified Expenses	25.98	0.00	2.08	0.00
Training of State Employees	0.00	0.00	0.00	2,655.00
Computer Related Items	0.00	0.00	0.00	27,906.77
State Prof. Svcs.	182,559.84	122,470.90	319,291.07	254,775.06
<b>Total Other Expenditures</b>	<b>629,693.60</b>	<b>623,097.33</b>	<b>499,639.68</b>	<b>462,634.09</b>
<b>SUBTOTAL for Expenditures</b>	<b>1,841,507.24</b>	<b>1,757,919.89</b>	<b>1,509,050.20</b>	<b>1,393,282.82</b>
<b>Cost Backs:</b>				
Administration	205,692.48	524,746.06	710,246.10	778,263.75
Legal	66,082.51	0.00	0.00	0.00
Investigation	4,791.17	8,011.58	9,421.54	1,770.79
Department	261,577.13	0.00	0.00	0.00
<b>Total Cost Backs</b>	<b>538,143.29</b>	<b>532,757.64</b>	<b>719,667.64</b>	<b>780,034.54</b>
<b>TOTAL EXPENDITURES</b>	<b>2,379,650.53</b>	<b>2,290,941.13</b>	<b>2,228,717.84</b>	<b>2,173,317.36</b>
<b>TOTAL REVENUES</b>	<b>3,893,063.20</b>	<b>2,839,184.82</b>	<b>2,596,989.97</b>	<b>2,373,612.69</b>
Less: State Regulatory Fee	206,480.00	168,870.00	159,680.00	146,545.00
<b>NET REVENUE</b>	<b>3,686,583.20</b>	<b>2,670,314.82</b>	<b>2,437,309.97</b>	<b>2,227,067.69</b>
<b>FISCAL YEAR BALANCE</b>	<b>1,306,932.67</b>	<b>379,373.69</b>	<b>208,592.13</b>	<b>53,750.33</b>
<b>PRIOR FISCAL YEAR RESERVE</b>	<b>5,568,917.13</b>	<b>1,786,231.02</b>	<b>2,164,272.50</b>	<b>2,372,864.63</b>
<b>BALANCE</b>	<b>6,875,849.80</b>	<b>2,165,604.71</b>	<b>2,372,864.63</b>	<b>2,426,614.96</b>
<b>BALANCE ADJUSTMENT</b>	<b>-5,089,618.78</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>ADJUSTED BALANCE</b>	<b>1,786,231.02</b>	<b>2,165,604.71</b>	<b>2,372,864.63</b>	<b>2,426,614.96</b>

## Appendix 6

### Employee Conflict of Interest Policy & Disclosure Forms

#### DEPARTMENT OF COMMERCE AND INSURANCE STATE OF TENNESSEE ETHICS AND CONFLICT OF INTEREST POLICY

EFFECTIVE JANUARY 16, 2006

#### **ARTICLE I- AUTHORITY, PURPOSE, AND SCOPE OF POLICY**

**AUTHORITY:** Executive Orders 1, 2 and 3 (February 2003), and Tenn. Code Ann. §4-3-121. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

**PURPOSE:** To maintain high standards of honesty, integrity, impartiality, and conduct by Tennessee Department of Commerce and Insurance employees; to ensure the proper performance of departmental business; to maintain the confidence of citizens; and to avoid misconduct and conflicts of interest on the part of Department employees.

**APPLICATION:** As a condition of initial and continued employment, employees of the Department of Commerce & Insurance shall abide by the following:

1. This policy – All employees.
2. Executive Order 2 – Commissioner, Deputy Commissioners and Assistant Commissioners
3. Executive Order 3– all Executive Service Employees.

This policy supercedes the conflict of interest policy issued and adopted by Commissioner Paula A. Flowers on November 1, 2004.

#### **ARTICLE II - DEFINITION OF CONFLICT OF INTEREST**

A conflict of interest occurs when an employee's private interest Differs, has the potential to differ or appears to differ from his or her professional obligations to the Department.

#### **ARTICLE III-DEFINITIONS**

As used herein, unless the context requires otherwise:

1. Career Service Employee means any person employed by the Department who has been placed under the civil service provisions of Tenn. Code Ann. §8-30-101, et seq;

## Appendix 6 (continued)

2. Commissioner means the Commissioner of the Department of Commerce and Insurance or her designee;
3. Compliance Officer is the Departmental employee appointed by the Commissioner with the following duties and responsibilities:
  - (a) Coordinates overall Departmental compliance with this policy and Executive Orders 2 and 3;
  - (b) Maintains records documenting compliance and non-compliance;
  - (c) Reports to the Commissioner any potential material violation of this policy and Executive Orders 2 and 3;
  - (d) Refers material violations of Executive Orders 2 and 3 to the Ethics Committee and performs the following as needed:
    1. provide additional information to the Ethics Committee,
    2. appear before the Ethics Committee, and
    3. as necessary, make recommendations to the Ethics Committee;
  - (e) Informs the Commissioner, Deputy Commissioners and Assistant Commissioners of the requirements of Executive Order 2, all Executive Service employees of the requirements of Executive Order 3 and all employees of the requirements of this policy;
  - (f) Distributes a copy of Executive Orders 2 and 3 to each affected employee and a copy of this policy to all employees;
  - (g) Obtains from each employee a signed statement certifying that the employee has received a copy of the applicable Executive Order(s) and/or this policy, that the employee has either read the applicable document(s) or that the document(s) has been read to them, and that the employee agrees to abide by the terms of the document(s) as a condition of initial and continued employment.
  - (h) Annually (on or before January 31 of each year) prepares a written statement from the Commissioner to the Governor with a copy to the Commissioner of the Department of Finance and Administration certifying that all material violations of Executive Orders 2 and 3, known to the Commissioner or the Compliance Officer, have been reported to the Ethics Committee.
  - (i) Advises employees in response to questions regarding interpretation of this policy and Executive Orders 2 and 3.
  - (j) Pursuant to Executive Order 2, numbered paragraph 1, (attached) coordinates the gathering of the required disclosure of information and files the disclosed information with the Commissioner of the Department of Finance and Administration.
  - (k) Pursuant to Executive Order 2, numbered paragraph 4, (attached) receives the required statement of any substantial change in circumstances which might result in or create the appearance of items (i) through (vi) as outlined in paragraph 2 of Executive Order 3.

## **Appendix 6 (continued)**

- (1) Pursuant to Executive Order 3, numbered paragraph 4, item vi, (attached) receives and forwards the required statement to the Commissioner of the Department of Finance and Administration.
4. Department means the Department of Commerce and Insurance;
5. Division means any division of the Department of Commerce and Insurance.
6. Employee means any person employed by the Department in an employer/employee relationship or any person the Department employs in an independent contractor capacity, where applicable, and shall not include any member of any board which the Department administers;
7. Ethics Committee means the committee appointed by the Governor as outlined in Executive Order 1 as signed in February 2003;
8. Executive Service Employee means any person employed by the Department who is not a Career Service Employee as that term is defined herein;
9. Immediate Family means a spouse, parent, child or sibling of the employee;
10. Lobbyist means any person who communicates, directly or indirectly, with any official in the legislative branch or executive branch, for pay or for any consideration, for the purpose of influencing any legislative action or administrative action. Tenn. Code Ann. §3-6-102(12), (13) and (14);
11. Person means any natural person, individual, corporation, limited liability company, partnership, association or other legal entity.

## **ARTICLE IV -CONFLICTS OF INTEREST PROHIBITED**

**Section 1 Employment or Affiliation With Regulated Persons** - An employee, or a member of an employee's immediate family, shall not accept or maintain outside employment with a person that is regulated in any manner by any division in which such employee or immediate family member performs work of any sort, nor shall such employee or immediate family member serve on the board of directors or advisory board, or act as an unpaid consultant, or act in any other directive or authoritative capacity with a person that is regulated in any manner by any division in which such employee performs work of any sort, **unless** such employee discloses in writing to his/her immediate supervisor and Assistant Commissioner such employment and completely recuses him/herself from any matter which such outside employer has before the Department. Prior to and as a condition of employment with the Department, a candidate

## **Appendix 6 (continued)**

for employment shall disclose the name, address and telephone number of all former employers regulated by the division of the Department in which the candidate is seeking employment. An employee shall recuse him/herself from any and all matters before the Department involving such former employer.

**Section 2 Ownership by Regulated Persons** - An employee, or a member of an employee's immediate family, shall not have an ownership interest in or engage in any financial transaction for personal gain with a person regulated by any division in which such employee performs work of any sort **unless and until** his/her direct supervisor and Assistant Commissioner is notified in writing, and such employee completely recuses him/herself from any regulatory role with respect to such person. Such employee shall do everything reasonably possible to distance him/herself from any contact and/or conversations concerning such person and shall not maintain his/her ownership interest if he/she cannot maintain such distance.

**Section 3 Supplementation of Income by Outside Source** - An employee, or a member of an employee's immediate family, shall not receive a supplementation of their Department income from a private source as compensation for the employee's services to the Department.

### **Section 4 Gifts and Other Gratuities -**

1. No employee shall solicit or accept, directly or indirectly, on behalf of himself or herself or any member of the employee's household and/or immediate family, any gift, including but not limited to any gratuity, service, favor, food, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value, from any person or entity that:

- (a) Currently has, or is seeking to obtain, contractual or other business or financial relations with the department; or
- (b) Conducts operations or activities that are regulated by the department; or
- (c) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

2. The prohibitions on accepting gifts in paragraph 1 of this Section do not apply to:

- (a) A gift given by a member of the employee's immediate family or by an individual if the gift is given for a non-business purpose and is motivated by a close personal friendship and not by the position of the employee. In determining whether a gift falls within this subsection, the factors contained in Tenn. Code Ann. §3-6-114(b) (3) (A) and (B) shall apply.

## Appendix 6 (continued)

- (b) Informational materials in the form of books, articles, periodicals, other written materials, audio tapes, videotapes, or other forms of communication;
- (c) Sample merchandise, promotional items, and appreciation tokens, if they are routinely given to customers, suppliers or potential customers in the ordinary course of business;
- (d) Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento and similar items; any such item shall not be in a form which can be readily converted to cash;
- (e) Food, refreshments, foodstuffs, entertainment, or beverages provided as part of a meal or other event, if the value of such items does not exceed fifty dollars (\$50.00) per occasion; provided further, that the value of a gift made pursuant to this subsection may not be reduced below the monetary limit by dividing the cost of the gift among two or more persons or entities identified in paragraph 2 of this section;
- (f) If at any time an employee accepts a gift under provisions (c), (d), or (e) of this section, above, the employee must disclose to their Assistant Commissioner a description of the gift, the name of the person who provided the gift, the name of the person's employer, and the value of the gift, if known, or its estimated value, if unknown. Disclosure must be in writing (e-mail is permitted) and be made within seven (7) calendar days of the acceptance of the gift. At the end of each month, the Assistant Commissioner shall forward that month's reports to the Compliance Officer; When it is in the best interest of the Department, the Compliance Officer in conjunction with the Commissioner may at any time restrict an employee(s) from accepting additional gifts under these provisions;
- (g) There may be circumstances where refusal of reimbursement of a gift (such as a lunch or dinner) may be awkward and contrary to the larger interests of the State. In such circumstances, the employee is to use his or her best judgment, and disclose the gift, including a description, estimated value, the person or entity providing the gift, and any explanation necessary within seven (7) calendar days to the Compliance Officer. The Compliance Officer will provide a form for this purpose;
- (h) Food, refreshments, meals, foodstuffs, entertainment, beverages or intrastate travel expenses that are provided in connection with an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which has regular meetings; and
- (i) Loans from established financial institutions made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any person described in paragraph 2 of this section.

3. For restrictions on gifts from lobbyists, see Article VI.

## **Appendix 6 (continued)**

**Section 5 Acceptance of Honoraria** - An employee shall not accept honoraria or other compensation for activities which are, or should be, performed as a part of his/her official duties. Reimbursement for reasonable expenses incurred in carrying out such activities will not be considered compensation. For honoraria received from lobbyists, see Article VI.

**Section 6 Nonprofit Entities** - An employee shall not serve on the governing board of any nonprofit agency which seeks to influence decisions of the Department, **unless** such employee recuses him/herself from any matter the nonprofit agency has before the Department.

**Section 7 Use of and Protection of Information Obtained** - An employee shall not, directly or indirectly, use, disclose or allow the use of official information obtained through or in connection with his/her government employment, which has not been made available to the general public, for the purpose of furthering the private interest, pecuniary or otherwise, of any person, including the employee. Furthermore, an employee shall not engage in a financial transaction as a result of, or primarily based upon, information obtained through his government employment.

**Section 8 Holding of Professional Licenses** - Though employees are encouraged to seek and to retain professional licenses and certification, an employee shall not actively participate in the private use of such license or certification, if such participation constitutes a conflict of interest as described herein.

**Section 9 Conflicts of Interest Generally** - An employee shall not place him/herself in a position where, for some advantage gained or to be gained personally, the employee finds it difficult if not impossible to devote him/herself with complete energy, loyalty, and singleness of purpose to the best interest of the general public. This advantage is something more than the salary, experience, and opportunity to serve the general public, and the esteem that he/she gains from employment with the Department.

**Section 10 Appearance of Conflict of Interest or Impropriety** – An employee shall avoid any conduct which might result in or create the appearance, however slight, of:

1. using public office for private gain;
2. giving preferential treatment to any person;
3. impeding government efficiency or economy;
4. losing complete independence or impartiality;
5. making a government decision outside of official channels; or
6. affecting adversely the confidence of the public in the integrity of the government.

## **Appendix 6 (continued)**

**Section 11 Recusal** - An employee shall treat all persons dealing with the Department in any capacity whatsoever impartially and with equal consideration. If an employee believes or should believe that he/she cannot, for whatever reason, grant equal consideration and/or act impartially towards any person dealing with the Department, he/she shall immediately notify his/her direct supervisor and offer to recuse him/herself from any dealings with said person.

### **ARTICLE V- PROHIBITED CONDUCT**

**Section 1 Purchase of Confiscated Property** - A Department employee or employee's agent may not buy or offer to buy any motor vehicles (except on behalf of the Department) or intoxicating liquors disposed of at public sale when the employee was directly or indirectly involved in the confiscation of such property. Tenn. Code Ann. §12-2-208.

**Section 2 Purchases of Surplus State Property Unless Offered at Public Auction** - An employee shall not purchase surplus property from the State except by bid at public auction. Tenn. Code Ann. §12-2-412(a).

#### **Section 3 Financial Interests-**

1. No employee shall enter into or derive any benefit, directly or indirectly, from any contractual arrangement with the State or any of its agencies. In recognition of the fact that many husbands and wives have separate careers, the normal employment compensation of a spouse whose regular, ongoing employer or business has a contractual arrangement with the State shall not be considered a "benefit" to the employee, provided the contract with the State was procured without any participation, assistance or influence by the employee.
2. No employee shall have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her government duties or responsibilities. "Indirect financial interest" in this case includes a substantial interest on the part of a parent, spouse, or minor child of the employee. This subsection shall not apply to interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests. This subsection also shall not apply to ownership of publicly traded stocks or bonds where such ownership constitutes less than two percent (2%) of the total outstanding amount of the stocks or bonds of the issuing entity.
3. If, at the time the employee begins employment with the State or at any subsequent time during State employment, the employee possesses such direct or indirect financial interests prohibited by this section, the employee shall divest

## Appendix 6 (continued)

such interest within a reasonable time and notify their supervisor and Assistant Commissioner of such interest and divestiture.

**Section 4 Input or Control over State Contracts** - An employee shall not be interested, either directly or indirectly, in any state contract over which such employee has input or control. Tenn. Code Ann §12-4-101.

**Section 5 Bidding** - An employee shall not bid on, sell, or offer for sale any merchandise, equipment or material, or similar commodity, to the State of Tennessee, or have any interest in the selling of the same. Tenn. Code Ann. §12-4-103.

**Section 6 Acceptance of Gifts from Lobbyists** - Except as provided by law, an employee shall not solicit or accept, directly or indirectly, a gift from a lobbyist or an employer of a lobbyist. Tenn. Code Ann. §3-6-114. See Article VI.

**Section 7 Use of Government Property** - No employee shall make use of the facilities, equipment, personnel, or supplies of the State or its agencies for private use or gain except to the extent that the use is incidental or minimal or is lawfully available to the general public.

**Section 8 Specific Prohibitions and Other Conduct Prohibited by Statute** - All prohibitions listed in this article are generally described; all employees are presumed to be aware of such prohibitions with specificity and any other prohibitions mandated by law by any governmental unit. This Article has been written merely to delineate some of the conduct of an employee prohibited by statute, and is not intended to be an exhaustive list of activities prohibited.

## **ARTICLE VI- THE LOBBYING REGISTRATION AND DISCLOSURE ACT**

**Section 1 Solicitation or Acceptance of Gifts from Lobbyists for Purposes of Influencing a Decision Prohibited** - No employee and no member of an employee's immediate family shall solicit or accept anything of value from a lobbyist based upon any stated or tacit understanding that the employee's vote, official action or judgment would be influenced thereby. Tenn. Code Ann. §3-6-108(c).

**Section 2 Solicitation or Acceptance of Loans from Lobbyists Prohibited** - No employee and no member of an employee's immediate family shall solicit or accept a loan from a lobbyist. Tenn. Code Ann. §3-6-108(e).

**Section 3 Solicitation or Acceptance of Lobbyist Gifts Prohibited; Exceptions** - No employee and no member of an employee's immediate family shall, directly or indirectly, solicit or accept a gift from a lobbyist or an employer of a lobbyist, Tenn. Code Ann. §3-6-114(a)(2), **except** as follows:

## Appendix 6 (continued)

1. benefits resulting from business, employment or other outside activities of an employee or a member of an employee's immediate family, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the employee. Tenn. Code Ann. §3-6-114(b) (1);
2. informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes or other forms of communication. Tenn. Code Ann. §3-6-114(b) (2);
3. a gift given by an individual if the gift is given for a non-business purpose and is motivated by a close personal friendship and not by the position of the employee. Tenn. Code Ann. §3-6-114(b) (3). No gift will be considered to be given for a nonbusiness purpose if the individual giving the gift (i) deducts the value of the gift as a business expense on the individual's federal income tax return, or (ii) seeks direct or indirect reimbursement or any other compensation for the value of the gift from a client or employer. Tenn. Code Ann. §3-6-114(b) (3) (A);
4. sample merchandise, promotional items and appreciation tokens, if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business. Tenn. Code Ann. §3-6-114(b) (4);
5. unsolicited tokens or awards of appreciation, honorary degrees or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento and similar items; provided that, any such item shall not be in a form which can be readily converted to cash. Tenn. Code Ann. §3-6-114(b) (5);
6. opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to (a) discounts afforded to the general public or specified groups or occupations under normal business conditions except that such discounts may not be based on the status of the employee, (b) prizes and awards given in public contests, and (c) benefits of participation in events held within the state and sponsored by, or for the benefit of charitable organizations, provided that such events must be open to participation by persons other than employees and members of employees' immediate families, and any benefit must not be enhanced due to the status of the employee. Tenn. Code Ann. §3-6-114(b)(6);
7. tickets to athletic events involving teams representing in-state schools, colleges and universities or to other events sponsored by such institutions, if offered by the involved institution, and benefits of attendance at political events or fundraisers' sponsored by candidates for public office or other political organizations, and/or tickets to charitable, cultural, educational or political events held within the state, when customarily provided as a courtesy to all employees of similar rank in the event's jurisdiction. Tenn. Code Ann. §3-6-114(b)(7);
8. expenses for out of state travel, if such travel is paid for, reimbursed, or sponsored by a government or an association of elected government officials or any other group or association which is an umbrella organization for public officials. Tenn. Code Ann. §3-6-114(b) (8) (A);
9. entertainment, food, refreshments, meals, health screenings, amenities, foodstuffs or beverages that are provided in connection with a conference if the conference is sponsored by an established or recognized association of elected

## **Appendix 6 (continued)**

state government officials, staff of elected state government officials or both officials and staff or any other group or association which is an umbrella organization for such officials, staff, or both officials and staff. Tenn. Code Ann. §3-6-114(b) (8) (B);

10. food, refreshments, meals, foodstuffs or beverages that are provided in connection with an event to which invitations are extended to the entire membership of the general assembly, a committee of either or both houses of the general assembly, or a delegation in the general assembly from two (2) or more senatorial districts, provided, that no employee may receive food, refreshments, meals, foodstuffs, or beverages the value of which exceeds fifty dollars (\$50.00) per event; and provided further, that the value of a gift made pursuant to this subdivision G) may not be reduced below the monetary limit by dividing the cost of the gift among two (2) or more lobbyists or employers of lobbyists. No employee shall receive gifts pursuant to this subdivision (j) from a lobbyist or employer of a lobbyist that have a cumulative value of more than five hundred dollars (\$500.00) during a calendar year. Tenn. Code Ann. §3-6-114(b) (9);

11. food, refreshments, meals, foodstuffs, entertainment, beverages or intrastate travel expenses that are provided in connection with an event where the employee or immediate family member of such employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which has regular meetings. Tenn. Code Ann. §3-6-114(b) (10);

12. health care services which are provided or rendered on state property and are offered as a courtesy to all officials or employees of the legislative or executive branch. Tenn. Code Ann. §3-6-114(b) (11);

13. travel expenses for intrastate ground travel for which no fare is ordinarily charged. Tenn. Code Ann. §3-6-114(b)(12).

**Section 4 Use of Credit or Credit Card of a Lobbyist Prohibited; Exception** - An employee or a member of an employee's immediate family shall not use the credit or a credit card of a lobbyist or a lobbyist's employer or any other credit or credit card over which the lobbyist has control unless the lobbyist attends the meal or other activity in which the employee or employee's immediate family member participates. Tenn. Code Ann. §3-6-108(g).

## **ARTICLE VII THE LITTLE HATCH ACT**

**Section 1 Interference with Election or Nomination** - No employee shall use his/her official position, authority or influence to interfere with an election or nomination for office or directly or indirectly attempt to intimidate, coerce or command any other officer or employee (as those terms are defined in the Little Hatch Act) to vote for or against any measure, party or person, or knowingly receive or pay assessments of any kind or character for political purposes or for election expenses from any other officer or employee. Tenn. Code Ann. §2-19-202(a).

## **Appendix 6 (continued)**

**Section 2 Soliciting Contributions for Political Purposes** - No employee shall knowingly solicit directly or indirectly any contribution of money, thing of value, facilities or services of any person who has received contracts, compensation, employment, loans, grants or benefits, or any person whose organization, agency or firm has received such benefits financed by public funds, state, federal or local, for political purposes or campaign expense. Tenn. Code Ann. §2-19-203(a).

**Section 3 Soliciting Contributions from Public Officers or Employees** - No employee shall knowingly solicit, accept, or collect, directly or indirectly, any contribution from a public officer or employee (as those terms are defined in the Little Hatch Act) if the solicitor or his/her principal is, directly or indirectly, in a supervisory capacity over such officer or employee or is otherwise able to control the retention, promotion, demotion, or terms or conditions of employment of such officer or employee. Tenn. Code Ann. §2-19-203(b) (2).

**Section 4 Promises of Benefit for Political Activity** - No employee shall directly or indirectly promise employment, position, work, compensation, contracts, loans, grants, appropriations or other benefits provided principally from public funds as a consideration, favor or reward for any political activity, support or opposition to any candidate, party or measure in any election. Tenn. Code Ann. §2-19-204.

**Section 5 Deprivation, Attempts to Deprive, or Threats to Deprive Persons of Benefits** - No employee shall directly or indirectly deprive, attempt to deprive, or threaten to deprive any person of employment, position, work, compensation, contracts, loans, grants, appropriations or benefits provided principally from public funds for any political activity, support or opposition to any candidate, party or measure in any election. Tenn. Code Ann. §2-19-205.

**Section 6 Use of State-Owned Property for Campaign Advertising or Activities** - No employee shall display campaign literature, banners, placards, streamers, stickers, signs or other items of campaign or political advertising on behalf of any party, committee or agency or candidate for political office, on the premises of any building or land owned by the state, or to use any of the facilities of the state, including equipment and vehicles, for such purposes. Tenn. Code Ann. §2-19-206(a).

**Section 7 Political Activity Interfering with State Business** - No employee shall engage actively in a political campaign on behalf of any party, committee, organization, agency or political candidate, or attend political meetings or rallies or otherwise use his/her official position or employment to interfere with or affect the result of any regular or special primary election conducted within the state or to perform political duties or functions of any kind not directly a part of his/her employment, during those hours of the day when he/she is required by law or administrative regulation to be conducting the business of the state. Tenn. Code Ann. §2-19-207(a). Nothing in this section shall be construed to deprive any employee from voting for the party or candidate of his choice or to deprive such person of the right to express his/her personal opinion concerning any political subject, party or candidate.

## **Appendix 6 (continued)**

Tenn. Code Ann. § 2-19-207(b) (1). Elected officials, employees on leave or during hours not required by law or administrative regulation to be conducting the business of the state, persons duly qualified as candidates for public office and teachers are expressly excluded from the provisions of this section. Tenn. Code Ann. §2-19-207(b)(2).

### **ARTICLE VIII - EFFECT OF CONFLICTS OF INTEREST**

**Section 1 Career Service Employees** - A Career Service Employee who engages in an act prohibited by Articles IV, V, VI or VII of this policy shall be subject to disciplinary action in accordance with Tenn. Code Ann. §§ 8-30-202, 203 and 326 and the Rules and Regulations of the State of Tennessee Department of Personnel.

**Section 2 Executive Service Employees** - An Executive Service Employee who engages in an act prohibited by Articles IV, V, VI or VII of this policy shall be subject to disciplinary action in accordance with the dictates of the Commissioner.

**Section 3 Independent Contractors** - Any person who has an employment relationship with the Department, acting as an independent contractor, who engages in an act prohibited by Articles IV, V, VI or VII of this policy shall be subject to any and all remedies available to the Commissioner that are delineated in the contract of employment as well as any and all other remedies available to the Commissioner.

### **ARTICLE IX- DISCLOSURE OF CONFLICTS OF INTEREST**

**Section 1 Annual Disclosures for Career Service Employees** - Prior to employment with the Department, and on or before January 15 of each calendar year thereafter, all career service employees, on forms provided by the Department, shall disclose the following:

(a) The employer's name, address and phone number for all jobs (including self-employed jobs) with annual wages or compensation greater than Five Thousand Dollars(\$5000.00) then held by the employee, those which the employee held during the previous twelve (12) months and those which the employee expects to hold during the following twelve (12) months, other than the employee's employment with the Department; and all such jobs held by the employee's immediate family; **if** such employer is in any manner regulated by any division which such employee works for;

(b) The name, address and phone number of all persons and entities with respect to whom the employee and/or the employee's immediate family have an ownership interest or indebtedness greater than Five Thousand Dollars (\$5000.00), **if** such person or entity is in any manner regulated by any division which such employee works for.

Notwithstanding the fact that career service employees should not disclose conflicts of interest in which the value of the conflict is Five Thousand Dollars (\$5000.00) or less,

## **Appendix 6 (continued)**

all career service employees should be advised that such conflicts are still subject to this policy, and that any career service employee violating this policy, even with respect to conflicts that should not be disclosed, is subject to the penalties delineated in Article VIII.

**Section 2 Annual Disclosures for Executive Service Employees** - As a condition of employment with the Department, and on or before January 15 of each calendar year thereafter, all executive service employees, on forms provided by the Department, shall disclose the following:

(a) The employer's name, address and phone number for all jobs (including self-employed jobs) then held by the employee, those which the employee held during the previous twelve (12) months and those which the employee expects to hold during the following twelve (12) months, other than the employee's employment with the Department; and all such jobs held by the employee's immediate family; **if** such employer is in any manner regulated by any division which such employee works for;

(b) The name, address and phone number of all persons and entities with respect to whom the employee and/or the employee's immediate family have an ownership interest or indebtedness greater than a de minimis ownership interest or indebtedness, **if** such person or entity is in any manner regulated by any division which such employee works for.

**Section 3 Disclosure Forms** - Appropriate disclosure forms may be obtained from the Department's Human Resources Section. Form D-1, attached hereto, shall be filled out by all employees who must disclose a conflict of interest or who are filling out a disclosure form for the first time. Form D-2, attached hereto, shall be filled out by all employees who have previously filed Form D-1 and who have no new conflicts of interest to disclose. The Human Resources Section shall annually distribute both Form D-1 and Form D-2 to each employee in the Department, and shall collect all completed forms for placement in each respective employee's personnel file. The Department's Human Resources Section shall ensure that all employees in the Department have properly completed the disclosure forms in compliance with the provisions of this policy.

**Section 4 Continuing Nature of Duty to Disclose** - The duty to disclose a conflict of interest under this policy is continuing in nature. Conflicts required to be disclosed under this policy that arise after an employee executes Form D-1 must be disclosed on a new form D-1. This disclosure must be made within seven (7) days of any such conflict arising. Assistance in making this disclosure may be obtained from the Department's Human Resources Section.

**Section 5 Failure to Disclose** - An employee who fails to disclose a conflict of interest pursuant to this article shall be subject to the penalties delineated in Article VIII of this policy.

**Appendix 6 (continued)**

**ARTICLE X-MISCELLANEOUS PROVISIONS**

**Section 1 Interpretations of Policy** – This policy shall be the ethics, conflict of interest and acceptance of gifts policy for the Department. All inquiries concerning the proper interpretation of this policy shall be addressed to the Commissioner. The Commissioner shall resolve any questions concerning the proper interpretation of any provision of this policy.

**Section 2 Distribution of Policy** – This policy shall be distributed by the Department's Human Resources Section to each employee upon or shortly after the commencement of such person's employment period. The Department's Human Resources Section shall ensure that each new employee receives this policy by requiring each new employee to sign a declaration stating that he/she has received this policy. Furthermore, the Department's Human Resources Section shall provide this policy to any employee of the Department upon request by such employee.

This Ethics and Conflict of Interest policy is hereby declared to be effective on the sixteenth day of January, 2006.

Paula A. Flowers  
Commissioner  
Department of Commerce & Insurance

**Appendix 6 (continued)**

**FORM D-1-DISCLOSURE STATEMENT**

The Department of Commerce and Insurance's Ethics and Conflict of Interest Policy requires employees within the Department to disclose certain information on or before January 15 of each calendar year. This form should be filled out by all employees who have a conflict of interest to disclose or who are filling out a conflict of interest disclosure form for the first time.

Name (**Please Print**): \_\_\_\_\_ S.S. Number \_\_\_\_\_

Division: \_\_\_\_\_ Section: \_\_\_\_\_

Please disclose the following:

- a. The employer's name, address and phone number for all jobs you currently hold (not including your job with the Department), those jobs which you have held during the previous twelve (12) months, and those jobs you expect to hold during the following twelve (12) months;
- b. The names of all former employers regulated by any division of the Department in which you work.
- c. The employer's name for all jobs held by immediate family members (including self-employed jobs); if they and/or their employer are in any manner regulated by any division that you work for; and
- d. the name, address and phone number of all persons and entities with respect to whom you or your immediate family have an ownership interest or indebtedness greater than a de minimis (trifling) ownership interest or indebtedness; if such person or entity is in any manner regulated by any division that you work for.

**PURSUANT TO TENN. CODE ANN. § 8-50-506, IF YOU ARE A CAREER SERVICE EMPLOYEE, DO NOT DISCLOSE ANY CONFLICT OF INTEREST IN WHICH THE VALUE OF THE CONFLICT IS FIVE THOUSAND DOLLARS (\$5000.00) OR LESS.**

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**Appendix 6 (continued)**

**DECLARATION OF RECEIPT  
OF  
ETHICS AND CONFLICT OF INTEREST POLICY**

I, **(Print Name)** \_\_\_\_\_, declare that I have received a copy of the Department of Commerce and Insurance's Ethics and Conflict of Interest Policy, and I have read and understand this policy.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

Source: Department of Commerce and Insurance's Human Resource Section, Personnel Manager.

## Appendix 7

### Board Member Conflict of Interest Statement



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
500 JAMES ROBERTSON PARKWAY, SECOND FLOOR  
DIVISION OF REGULATORY BOARDS  
NASHVILLE, TENNESSEE 37243-0572  
615-741-3449 FAX 615-741-6470

#### CONFLICT OF INTEREST STATEMENT

For

Board and Commission Members

- 1) Each board or commission member shall avoid any action, whether or not specifically prohibited by statute or regulation, which might result in or create the appearance of:
  - i. Using public office for private gain;
  - ii. Giving preferential treatment to any person;
  - iii. Impeding government efficiency or economy;
  - iv. Losing complete independence or impartiality;
  - v. Making a government decision outside of official channels; or
  - vi. Affecting adversely the confidence of the public in the integrity of the government.
- 2) Use of information. No board or commission member shall, directly or indirectly:
  - i. Use, disclose, or allow the use of official information which was obtained through or in connection with his or her appointment to the respective board or commission and which has not been made available to the general public for the purpose of furthering the private interest or personal profit of any person, including the board or commission member; or
  - ii. Engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her board or commission appointment.
- 3) Use of government property. No board or commission member shall make use of the facilities, equipment, personnel, or supplies of the State or its agencies for private use or gain, except to the extent that the use is incidental or de minimis or is lawfully available to the general public.
- 4) The board or commission member will avoid all known conflicts of interest, and to the extent he or she becomes aware of a conflict of interest in connection with any matter brought before the board or commission on which he or she serves, he or she will disclose such conflict to the appropriate person and will further recuse himself or herself from participating in any consideration of the matter.
- 5) While serving on any board or commission, the board or commission member will not participate in considerations or actions involving individuals in his or her immediate family, individuals employed by him or her, or his or her organization, services provided by him or her, or his or her organization, or any other matter in which his or her participation may create an appearance of bias or impropriety.

**Appendix 7 (continued)**

- 6) While serving on any board or commission, the board or commission member shall not serve as an officer, or otherwise serve in a policy-making role, in any trade or professional association directly related to the trade or profession regulated by the board or commission on which he or she serves. Service on committees of trade or professional associations is permissible; provided, however, that while in such service, the board or commission member does not participate in considerations or actions concerning the board or commission of which he or she is a member.
  
- 7) Questions on interpretation of this statement. When a board or commission member is in doubt as to the proper interpretation of this conflict of interest statement, he or she is expected to seek the advice of the Commissioner of Commerce and Insurance or the Ethics Compliance Officer of the Department of Commerce and Insurance.

\_\_\_\_\_

Board or Commission Member Date

Print Name: \_\_\_\_\_

Board or Commission Name: \_\_\_\_\_