

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF CHIROPRACTIC

#### [ 49 PA. CODE CH. 5 ]

#### Fees

The State Board of Chiropractic (Board) and the Acting Commissioner of the Bureau of Professional and Occupational Affairs (Commissioner) amend Chapter 5 (relating to State Board of Chiropractic) by amending §§ 5.6, 5.15 and 5.16 (relating to fees; licensure examinations; and failure on examination; reexamination) to read as set forth in Annex A.

#### *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The first graduated increases for application fees will be implemented on the date of publication of this final-form rulemaking in the *Pennsylvania Bulletin*, and then subsequently increased a second time on July 1, 2026, and a third time on July 1, 2028.

The increased biennial registration fees will be effective upon publication of this final-form rulemaking in the *Pennsylvania Bulletin*, enabling the Board to implement the first increase for the September 2, 2024—September 1, 2026, biennial registration period. This first increase will impact licenses that expire on September 1, 2024. The fee will subsequently increase a second time for the September 2, 2026—September 1, 2028, biennial registration, impacting licenses that expire on September 1, 2026, and then increase a third time for the September 2, 2028—September 1, 2030, biennial registration period, impacting licenses that expire on September 1, 2028, and thereafter.

#### *Statutory Authority*

Under section 302(3) of the Chiropractic Practice Act (act) (63 P.S. § 625.302(3)), the Board is authorized to promulgate rules and regulations necessary to carry out the act. Under section 1101(a) of the act (63 P.S. § 625.1101(a)), the Board shall, by regulation, fix the fees required for examination, licensure, renewal of licenses and limited licenses. Section 1101(b) of the act provides that if the revenues raised by fees, fines and civil penalties imposed are not sufficient to meet expenditures over a 2-year period, the Board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures. Additionally, section 502 of the act (63 P.S. § 625.502) provides the nature and content of the examination.

The Commissioner is appointed by the Governor and has a number of powers and duties. Specifically, under section 810(a)(7) of The Administrative Code of 1929 (71 P.S. § 279.1(a)(7)), the Commissioner has the power and duty, “[u]nless otherwise provided by law, to fix the fees to be charged by the several professional and occupational examining boards within the department.”

#### *Background and Need for this Final-Form Rulemaking*

This final-form rulemaking increases application fees to reflect updated costs of processing applications and increases the Board’s biennial registration fees to ensure its

revenue meets or exceeds its current and projected expenses. The Board last increased its fees in 1996.

This final-form rulemaking increases the following application fees on a graduated basis: application for chiropractic licensure by examination; application for chiropractic licensure by reciprocity; application for certification to use adjunctive procedures; and application for continuing education course approval. Approximately 916 applicants will be impacted annually by the increased application fees.

The Board is also implementing a graduated biennial registration fee increase for chiropractors. There are approximately 4,011 licensed chiropractors who will be required to pay more for biennial registration. Chiropractic licenses expire on September 1 of every even numbered year. The first of three graduated biennial registration fee increases will be implemented and in effect for the September 2, 2024—September 1, 2026, biennial registration period.

Finally, this final-form rulemaking eliminates references to the Pennsylvania Chiropractic Law Examination (PCLE), including the PCLE fee, to reflect the Board’s current license application procedure. Other health boards under the Bureau of Professional and Occupational Affairs (Bureau) do not perform this type of testing and the Board no longer believes testing an applicant’s knowledge of Pennsylvania law is a necessary component of licensure.

The Board’s operations are supported from the revenue it generates through fees, fines and civil penalties. The act provides that the Board shall increase fees when expenditures outpace revenue. The majority of general operating expenses of the Board are borne by the licensee population through revenue generated by the biennial registration of licenses. A small percentage of its revenue comes from application fees, fines and civil penalties. Board expenses are the result of direct charges, timesheet-based charges and licensee-based charges.

The Board receives an annual report from the Department of State’s Bureau of Finance and Procurement (BFP) regarding the Board’s income and expenses. The BFP presented the following information to the Board at its public meeting on February 24, 2022.

In fiscal years (FY) 2018-2019 and 2019-2020, the Board incurred expenses of \$535,006.75 and \$581,536.81, respectively, and received \$884,530.72 and \$43,090.33 in revenue, respectively. In other words, over that 2-year time frame, the Board’s total expenses (\$1,116,543.56) outpaced its total revenue (\$927,621.05) by \$188,922.51. The Board’s overall remaining balance at the end of FY 2019-2020 was \$1,685,626.02.

In FYs 2020-2021 and 2021-2022, the Board’s expenses were \$563,936.23 and \$540,000 (projected), respectively, with revenues of \$854,455.90 and \$43,000 (projected), respectively. In other words, over that 2-year time frame, the Board’s total expenses (\$1,103,936.23) outpaced its total revenue (\$897,455.90) by \$206,480.33. The Board’s overall remaining balance at the end of FY 2021-2022 was \$1,479,145.69.

In FYs 2022-2023 and 2023-2024, the Board’s expenses were projected to be \$581,000 and \$556,000, respectively, with revenues projected to be \$890,000 and \$43,000, respectively, meaning for that 2-year time frame, the Board’s total expenses (\$1,137,000) are projected to out-

pace its total revenue (\$933,000) by \$204,000. The Board's overall remaining balance at the end of FY 2023-2024 is projected to be \$1,275,145.69.

According to the BFP's projections, if the Board were to keep its current fee structure in place (no increases for any of its fees), the Board's annual revenue would remain at \$933,000 for each of the next 6 years. However, its expenses are projected to grow each year, so that the amount the Board would be spending above and beyond its revenue would become increasingly larger each successive year. The Board's projected revenue would fall short of meeting its expenses by \$238,000 in FY 2024-2025/FY 2025-2026, then by \$273,000 in FY 2026-2027/FY 2027-2028, and then by \$309,000 in FY 2028-2029/FY 2029-2030. Those projections also show a significant reduction in the Board's overall remaining balance, which by the end of FY 2029-2030 would be down to \$455,145.

Given that its revenues generated by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period, the Board voted on February 24, 2022, to adopt the proposed graduated fee increases for application and biennial registration fees contained in the BFP's report.

*Summary of Comments and the Board's Response*

Notice of the proposed rulemaking was published at 53 Pa.B. 4420 (August 5, 2023). The Board received comments from the Pennsylvania Chiropractic Association (PCA) and the American Chiropractic Association (ACA). The Board did not receive any comments from the Consumer Protection and Professional Licensure Committee (SCP/PLC) of the Senate or the Professional Licensure Committee (HPLC) of the House of Representatives. The Independent Regulatory Review Commission (IRRC) reviewed the proposed rulemaking and provided comments and recommendations as well.

PCA, the ACA and IRRC commented on § 5.6(a), specifically the proposed fee for "continuing education course approval" which will incrementally increase the current fee of \$30 per application to \$100 for FY 2024-2025 and FY 2025-2026, to \$110 for FY 2026-2027 and 2027-2028, and finally to \$120 for FY 2028-2029 and thereafter. Each year, the Board receives approximately 600 applications for approval of continuing education courses (or about 1,200 biennially). Accordingly, the proposed fee increases will generate additional revenue as follows:

FY 2024-2025 through FY 2025-2026: The fee increase from \$30 to \$100 will generate an additional \$84,000 in fees as compared to FY 2022-2023 through FY 2023-2024.

FY 2026-2027 through FY 2027-2028: The fee increase from \$100 to \$110 will generate an additional \$12,000 in fees as compared to FY 2024-2025 through FY 2025-2026.

FY 2028-2029 through FY 2029-2030: The fee increase from \$110 to \$120 will generate an additional \$12,000 in fees as compared to FY 2026-2027 through FY 2027-2028.

PCA commented that the fee increase should be reflected in a "tiered manner" specific to "per credit" ranges, as opposed to "per course" (or "per application"). IRRC requested that the Board address PCA's comment and explain why the Board's proposed fees are reasonable. For the following reasons, the Board is not amending § 5.6(a) in this final-form rulemaking: (1) this final-form rulemaking increases application fees to reflect updated costs

of processing an application; and (2) to adopt PCA's proposed "per credit" approach would deviate from the Bureau's standard "per application" approach, which would require some applicants to pay more to submit the application than it would cost the Bureau to process the application. The cost to the Bureau to process an application for approval of a program of continuing chiropractic education is approximately the same regardless of the length of the course itself. It is Bureau policy that an applicant pay the approximate cost to the Bureau to process that specific application. It would be inequitable to charge an applicant (for example) \$50 to process an application for a 1-hour course that costs the Bureau \$100 to process; or to charge an applicant \$150 to process an application for a 3-hour course that only costs the Bureau \$100 to review.

When the BFP determines that the Board's fees must be increased to cover its costs of operation, the BFP calculates the true cost to the Board/Bureau to process each application, and this calculation is provided to the Board in "fee report forms" generated by the BFP. With respect to the Board's fee for "Application for Continuing Education Program," the BFP presented the Board with the following information and recommendation:

*Fee Objective:*

The fee should (1) offset the identifiable costs incurred by the Board to process an application and (2) defray a portion of the Board's administrative overhead.

*Fee-Related Activities and Costs:*

Staff time-process application	(1 hour)	\$46.24
Board Administrator review	(.25 hour)	\$14.16
Board Member review	(.25 hour)	\$26
Transaction fee		\$2.50
Administrative Overhead:		\$10
Total Estimated Cost:		\$98.90
Proposed Fee:		\$100

*Analysis, Comment and Recommendation:*

It is recommended that a fee of \$100 be established for processing an application for the Continuing Education Program.

Accordingly, the Board has adopted the BFP's recommendation and increases its application fees to reflect the updated costs of processing these applications. Therefore, the Board is not amending § 5.6(a) in this final-form rulemaking.

PCA also commented that "90 days lead time to approve [continuing education applications] is far too long." Section 507(c) of the act (63 P.S. § 625.507(c)) provides that continuing education course providers submit to the Board, in writing, the information detailed in section 507(c)(1)—(3) at least 90 days prior to the date on which the program is scheduled to be presented. Accordingly, § 5.73(a) (relating to application for approval of continuing education courses; attendance certificates) provides that continuing education course providers submit applications for course approval with the required fee to the Board at least 90 days prior to the scheduled date of the program. Therefore, because the 90 days "lead time" is a statutory requirement, the Board cannot deviate from this requirement in its regulations.

The ACA commented that the proposed fee for "continuing education course approval" will make the delivery of affordable, quality, approved continuing education credits

to licensed Doctors of Chiropractic in the Commonwealth a cost-prohibitive undertaking. Additionally, the ACA proposed the Board consider the continuing education models of several other states, namely Colorado, Delaware and Illinois, described by the ACA as “where the rules, regulations, or administrative codes of each state promulgate the standards of acceptable, board-approved continuing education courses or credits, the subject areas that should be covered, and the responsibility of the licensee to select courses that align with these standards.” IRRC requested that the Board address the ACA’s alternative approach and explain why the proposed fees are reasonable.

In this Commonwealth, as a condition of biennial renewal, under section 507(a) of the act licensees must complete at least 24 hours of continuing chiropractic education within the immediately preceding 2-year period, and under section 507(b) of the act licensees may receive credit for only those hours of continuing chiropractic education in programs approved by the Board and for only those hours directed toward keeping the licensee apprised of advancements and new developments in chiropractic which build upon the basic courses required to practice chiropractic. However, while the Board is empowered to approve continuing education programs, section 507(c) and (d) of the act, specify:

(c) *Application by sponsors.*—Prior to receiving board approval for a program of continuing chiropractic education, a sponsor shall submit to the board, in writing, the following information at least 90 days prior to the date on which the program is scheduled to be presented:

(1) Evidence that the sponsor’s program would be directed toward keeping the licensee apprised of advancements and new developments in chiropractic which build upon the basic courses required to practice chiropractic and which are in the areas specified in subsection (b).

(2) A detailed course outline or syllabus, including such items as methods of instruction and testing materials, if any.

(3) A current curriculum vitae of each instructor, speaker or lecturer appearing in the program.

(d) *Action on application.*—The board shall notify each sponsor, in writing, of approval or disapproval of the application within 45 days of the receipt of the application. If an application is disapproved, the board shall detail the reasons for disapproval in order that the sponsor may cure any defect and submit an amended application in a timely manner.

Accordingly, while the act affords the Board a great deal of latitude to determine what constitutes acceptable continuing education, the act also requires that sponsors of continuing education submit written applications for continuing education program approval to the Board at least 90 days prior to the date on which the program is scheduled to be presented.

The relevant Colorado statute (C.R.S. § 12-215-113) directs the Colorado board to prepare an annual educational schedule of minimum postgraduate requirements, and the Colorado board’s regulations (3 CCR 707-1:1.10(D)) state that a licensee is responsible for ensuring that continuing education courses comply with the requirements and section 12-215-113, C.R.S., which requires that each licensed chiropractor complete (biennially) 30 hours of scientific clinics, forums, or chiropractic educational study consisting of subjects basic to the field

of the healing arts. Moreover, the regulations indicate that the Colorado board does not pre-approve continuing education courses, curriculum or programs. Accordingly, like section 507(b) of the act, the Colorado statute affords the Colorado board a great deal of latitude to determine what constitutes acceptable continuing education. However, unlike section 507(c) and (d) of the act which provide that sponsors of continuing education receive Board approval for each program of continuing chiropractic education, the Colorado board shifts the burden to the licensees to ensure that continuing education courses comply with the requirements.

The relevant Delaware statute (24 Del.C. § 706(a)(10)) empowers the Delaware board to provide for the rules for continuing education, and the Delaware board’s regulations require that licensees complete 24 hours of approved CE during each biennial licensing period (24 Del. Admin. Code 700-2.1), and that those continuing education courses contribute directly to the competency of a person licensed to practice as a chiropractor (24 Del. Admin. Code 700-2.1.8). Furthermore, the regulations indicate that courses co-sponsored by accredited chiropractic colleges, National or states organizations are presumptively approved (24 Del. Admin. Code 700-2.1.7). Accordingly, like section 507(b) of the act, the Delaware statute affords the Delaware board a great deal of latitude to determine what constitutes acceptable continuing education. However, unlike section 507(c) and (d) of the act which provide that sponsors of continuing education receive Board approval for each program of continuing chiropractic education, the Delaware board has “pre-approved” courses co-sponsored by accredited chiropractic colleges, National or states organizations.

The relevant Illinois statute (225 ILCS 60/20) directs the Illinois board to promulgate rules of continuing education which require that licensees complete an average of 50 hours of continuing education per license year, and the statute requires that the rules assure that licensees are given the opportunity to participate in those programs sponsored by or through their professional associations or hospitals which are relevant to their practice. The relevant rule (68 Ill. Adm. Code 1285.110(b)) allows licensees to obtain continuing education credit hours by completing formal continuing education programs conducted or endorsed by hospitals, specialty societies, medical, chiropractic or osteopathic colleges, schools or education programs, or specialty boards and professional associations. Accordingly, like section 507(b) of the act, the Illinois statute affords the Illinois board a great deal of latitude to determine what constitutes acceptable continuing education. However, unlike section 507(c) and (d) of the act which provide that sponsors of continuing education receive Board approval for each program of continuing chiropractic education, the Illinois board is required to accept continuing education programs sponsored by or through professional associations or hospitals. The Illinois board expanded the list of “pre-approved” providers of continuing education through its regulations.

Ultimately, to sum it all up, the Colorado board is empowered to shift the burden to licensees to ensure that continuing education courses comply with the requirements; the Board is not. The Delaware and Illinois boards are empowered to “pre-approve” sponsors or providers of continuing education programs; the Board is not.

Due to the specific application requirements set forth in section 507(c) and (d) of the act, the Board is not empowered to adopt the continuing education models of Colorado, Delaware or Illinois. Consequently, the Board

has not amended this final-form rulemaking and finds the fee to be reasonable given the costs incurred by the Board to process an application for continuing education program approval. It would be inequitable to expect licensees of the Board to underwrite the costs of approval of continuing education programs through their biennial registration fees. In addition, a \$100 fee for approval of a continuing education course is comparable to the fees paid by other professions under the Bureau. For example, the State Board of Massage Therapy's regulation at § 20.3 (relating to fees) sets forth a \$100 fee for approval of a continuing education program; the State Board of Podiatry's regulation at § 29.13 (relating to fees) sets forth a fee of \$75 for applications for approval of educational conference; and the State Board of Veterinary Medicine's regulation at § 31.41 (relating to fees) is being amended to increase its fee for application for continuing education program approval from \$35 to \$108. As each of these boards also set their fees based on the cost of processing the application for approval, and these fees are fairly comparable, the Board finds the \$100 fee to be reasonable.

*Fiscal Impact and Paperwork Requirements*

The amendments will increase application and biennial registration fees on a graduated basis. Applicants, licensees and registrants will be required to comply with this final-form rulemaking. The fees may be paid by applicants, licensees or registrants or may be paid by their employers, should their employers choose to pay these fees. This final-form rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions of the Commonwealth.

Approximately 916 applicants will be impacted by the increased application fees. Specifically, the number of applicants affected are as follows: 175 applications for licensure by exam; 15 applications for licensure by reciprocity; 126 applications for certification to use adjunctive procedure; and 600 applications for continuing education course approvals.

Based upon the graduated application fee increases, the total economic impact is as follows:

FYs 2024-2025 and 2025-2026:	\$134,710
FYs 2026-2027 and 2027-2028:	\$18,440
FYs 2028-2029 and 2029-2030:	\$19,102
Total:	\$172,252

Licensed chiropractors will be impacted by the increased biennial registration fees. Based upon the above graduated increases, the economic impact is as follows:

FYs 2024-2025 and 2025-2026:	\$57,150
FYs 2026-2027 and 2027-2028:	\$60,960
FYs 2028-2029 and 2029-2030:	\$64,770
Total:	\$182,880

Thus, the total economic impact to applicants, licensees, registrants or employers (if employers choose to pay application or biennial registration fees) is \$355,132. This amount reflects the economic impact that will occur as a result of the fee increases between FY 2024-2025 and FY 2029-2030.

This final-form rulemaking will require the Board revise certain applications and biennial registration forms to reflect the new fees; however, the amendments will not create additional paperwork for the regulated community or for the private sector.

*Sunset Date*

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned. Additionally, the BFP provides the Board with an annual report detailing the Board's financial condition. In this way, the Board continuously monitors the adequacy of its fee schedule.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 25, 2023, the Board submitted a copy of the notice of proposed rulemaking, published at 53 Pa.B. 4420 and a copy of a Regulatory Analysis Form to IRRC and to the chairperson of the SCP/PLC and chairperson of the HPLC. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board shall submit to IRRC, the SCP/PLC and the HPLC, copies of comments received as well as other documents when requested. In preparing this final-form regulation, the Board has considered all comments from IRRC, the SCP/PLC, the HPLC and the public.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on March 15, 2024, the Board delivered this final-form rulemaking to IRRC, the SCP/PLC and the HPLC. Under section 5.1(j.2) of the Regulation Review Act, the final-form rulemaking was deemed approved by the SCP/PLC and the HPLC on April 17, 2024. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 18, 2024, and approved the final-form rulemaking.

*Additional Information*

Additional information may be obtained by writing to Shakeena Chappelle, Board Administrator, State Board of Chiropractic, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-CHIROPRACTIC@pa.gov.

*Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments received were considered in drafting this final-form rulemaking.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 53 Pa.B. 4420.

(4) This final-form rulemaking is necessary and appropriate for the administration of the act.

*Order*

The Board, therefore, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 5, are amended by amending §§ 5.6, 5.15 and 5.16 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this final-form rulemaking to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-form rulemaking to IRRC, the SCP/PLC and the HPLC as required by law.

(d) The Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

WILLIAM AUKERMAN, DC,  
*Chairperson, State Board of Chiropractic*

ARION R. CLAGGETT,  
*Acting Commissioner, Bureau of Professional and Occupational Affairs*

*(Editor's Note: See 54 Pa.B. 2469 (May 4, 2024) for IRRC's approval order.)*

**Fiscal Note:** Fiscal Note 16A-4335 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 5. STATE BOARD OF CHIROPRACTIC**

**Subchapter A. GENERAL PROVISIONS**

**§ 5.6. Fees.**

(a) An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

	<i>Effective June 8, 2024</i>	<i>Effective July 1, 2026</i>	<i>Effective July 1, 2028</i>
Licensure by examination	\$105	\$115	\$126
Licensure by reciprocity	\$150	\$164	\$180
Limited license	\$30	\$30	\$30
Adjunctive procedures certification	\$105	\$115	\$126
Certification of grades or licensure	\$25	\$25	\$25
Continuing education course approval	\$100	\$110	\$120
Licensure restoration	\$25	\$25	\$25

(b) An applicant for biennial registration shall pay the following fees:

	<i>September 2, 2024— September 1, 2026, Biennial Registration Fee</i>	<i>September 2, 2026— September 1, 2028, Biennial Registration Fee</i>	<i>September 2, 2028— September 1, 2030, Biennial Registration Fee and thereafter</i>
Chiropractor	\$225	\$241	\$258

**Subchapter B. LICENSURE, CERTIFICATION, EXAMINATION AND REGISTRATION PROVISIONS**

**§ 5.15. Licensure examinations.**

(a) To qualify for licensure by examination, an applicant shall successfully complete the following examinations:

- (1) Parts I, II, III and IV of the National Board Examination.
- (2) [Reserved].

(b) The applicant shall apply to the NBCE for admission to the National Board Examinations and pay the required fees at the direction of the NBCE.

\* \* \* \* \*

(d) Passing scores on the National Board Examinations shall be established by the NBCE for each administration of the National Board Examinations in accordance with section 502(e) of the act (63 P.S. § 625.502(e)). A passing score on Part IV of the National Board Examination obtained at any time since Part IV has been offered by the NBCE will satisfy the Part IV National Board Examination requirement under § 5.12(a) (relating to licensure by examination).

(e) [Reserved].

**§ 5.16. Failure on examination; reexamination.**

(a) An applicant who fails one or more of the National Board Examinations is eligible for reexamination in accordance with the rules and regulations of the NBCE.

(b) [Reserved].

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[ 49 PA. CODE CH. 36 ]

#### Federally Mandated Revisions

The State Board of Certified Real Estate Appraisers (Board) amends Chapter 36, Subchapter A (relating to general provisions) by amending §§ 36.41 and 36.91 (relating to continuing education requirement; and reactivation of lapsed certification) and Subchapter E (relating to appraisal management companies) by amending § 36.412 (relating to qualifications of owners and key persons) to read as set forth in Annex A.

#### *Effective Date*

This final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

Regarding the continuing education component of this final-omitted rulemaking, section 5(1) of the Real Estate Appraisers Certification Act (act or REACA) (63 P.S. § 457.5(1)) authorizes the Board “[t]o pass upon the qualifications and fitness of applicants for certification or licensure and to adopt and revise rules and regulations requiring applicants for certification to pass examinations relating to their qualifications for certification.” Under section 5(2) of the act, the Board is empowered “[t]o adopt and, from time to time, revise such rules and regulations as may be necessary to carry out the provisions of this act.” Under section 6 of the act (63 P.S. § 457.6), the Board is authorized to issue certificates to real estate appraisers that meet the minimum education and experience requirements established by the Appraiser Qualifications Board (AQB) under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (Pub.L. No. 101-73, 103 Stat. 183), as amended (12 U.S.C. §§ 3331—3356). Under section 10(b), (b.1) and (b.2) of the act (63 P.S. § 457.10(b), (b.1) and (b.2)), continuing education is a condition of biennial renewal for certified residential and general appraisers, certified broker/appraisers and licensed appraiser trainees if, and only to the minimum extent, required under FIRREA.

Regarding the qualifications of owners and key persons amendments in this final-omitted rulemaking, section 4(a) of the Appraisal Management Company Registration Act (AMCRA) (63 P.S. § 457.24(a)) authorizes the Board to implement, administer and enforce the act, including the power to adopt rules and regulations consistent with the act. Title XI of the FIRREA at 12 U.S.C. § 3353 requires the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), Consumer Financial Protection Bureau (Bureau) and Federal Housing Finance Agency (FHFA), to establish minimum requirements to be applied by states in the registration and supervision of appraisal management companies (AMC), regarding AMC minimum requirements. Under this authority, these Federal agencies jointly adopted regulations establishing the minimum requirements for AMCs found at 12 CFR 34.210—34.216, 12 CFR 225.190—225.196, 12 CFR 323.8—323.14 and 12 CFR 1222.20—1222.26.

#### *Omission of Proposed Rulemaking*

Under section 204(3) of the Commonwealth Documents Law (CDL) (45 P.S. § 1204(3)), the Board is authorized to omit the procedures for proposed rulemaking in section 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) if the Board finds that the specified procedures are impracticable, unnecessary or contrary to the public interest. The Board has determined that publication of proposed rulemaking is unnecessary under the circumstances because this final-omitted rulemaking is needed to comply with recently adopted AQB requirements concerning appraiser training on valuation bias and fair housing laws and regulations, a recently adopted name change of the 7-hour National Uniform Standards of Professional Appraisal Practice (USPAP) Update Course and applicable Federal law concerning AMC ownership limitations.

#### *Background and Need for the Amendments*

FIRREA is the Federal legislation that established the broad framework by which state appraiser regulatory bodies are to credential real estate appraisers and licensed appraiser trainees. The Appraisal Subcommittee (ASC) was created as a result of Title XI of FIRREA to provide Federal oversight for all appraiser programs of every state appraiser regulatory agency in the United States. See 12 U.S.C. § 3310. As required under 12 U.S.C. § 3332(b), the ASC monitors and reviews the practices, procedures, activities and organizational structure of the Appraisal Foundation. The AQB and the Appraisal Standards Board (ASB) are independent boards that are under the umbrella of the Appraisal Foundation. The Appraisal Foundation, through the AQB, is charged under FIRREA with establishing the minimum initial education, continuing education, examination and experience requirements for state-credentialed appraisers. These minimum qualification criteria are binding on the Board. Additionally, under Title IX of FIRREA, the ASB is responsible for writing, amending and interpreting the USPAP, which provides the generally recognized ethical and performance standards for the appraisal profession in the United States.

Regarding the continuing education component of this final-omitted rulemaking, all State appraiser programs must meet the minimum Federal standards that are established by the AQB for continuing education, as well as the standards set forth in USPAP. The AQB publishes the Federal minimum requirements for real property appraisers in the Real Property Appraiser Qualification Criteria (Criteria) (AQB Qualification Criteria) found at <https://appraisalfoundation.sharefile.com/share/view/s63f99dc2b9f241e0b3fd1645f7b63680>.

In June of 2021, the Biden Administration created the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) which is dedicated to ending bias in property valuation. The PAVE Task Force is co-chaired by Marcia Fudge, Secretary of the United States Department of Housing and Urban Development (HUD), and Neera Tanden, Director, White House Domestic Policy Council (DPC). The PAVE Task Force is comprised of 13 Federal agencies, including the ASC, HUD, DPC, Board of Governors of the Federal Reserve System, the Bureau, FDIC, FHFA, NCUA, OCC, United States Department of Agriculture, United States Department of Justice, United States Department of Labor and United States Department of Veterans Affairs. On March 31, 2022, the PAVE Task Force issued an action plan which outlined the historical role of racism in the valuation of residential property, examined the forms of bias that could impact

property valuation, and described affirmative steps that Federal agencies should take to advance equity in the appraisal process.

The AQB engaged the appraiser community Nationwide by releasing exposure drafts and soliciting written and verbal comments. On January 31, 2023, the AQB released the First Exposure Draft of Proposed Changes to the Real Property Appraiser Qualification Criteria, which can be found at <https://appraisalfoundation.sharefile.com/share/view/sad153ab0d1f94d208860a41be6268580/fo691e7b-5fc0-4a99-ac55-82dbcb621eba>.

The proposed changes included valuation bias and fair housing as a required component of an appraiser's qualifying and continuing education. The written comment period was open between January 31, 2023, through March 13, 2023. At its virtual public meeting on March 22, 2023, the AQB discussed the written comments received and entertained additional verbal comments. For the most part, the commentors expressed support for the changes. There was concern that the implementation date for the valuation bias and fair housing course did not provide sufficient time for states to implement it because of the various rulemaking processes of each state. Additionally, some appraisers questioned why the course was required for all appraisers and suggested that the course only be required for appraisers who performed residential appraisal assignments and for appraisers that have been identified as being deficient in understanding valuation bias and fair housing laws and regulations.

At the conclusion of the March 22, 2023, public meeting, the AQB voted to release a second exposure draft. In drafting the Second Exposure Draft of Proposed Changes to the Criteria (Second Exposure Draft), the AQB considered comments received in response to the First Exposure Draft of Proposed Changes to the Criteria (First Exposure Draft), recognizing that the First Exposure Draft did not take into consideration the rulemaking processes of the different states. Regarding the question as to why everyone had to take the course, the AQB emphasized the importance for all appraisers being trained on valuation bias and fair housing issues. The Second Exposure Draft which can be found at <https://appraisalfoundation.sharefile.com/share/view/sad153ab0d1f94d208860a41be6268580/fo691e7b-5fc0-4a99-ac55-82dbcb621eba>, was released on May 17, 2023. The written comment period was open from May 17, 2023, through June 17, 2023. At its virtual public meeting on June 22, 2023, the AQB discussed the written comments received and entertained additional verbal comments. At the conclusion of the June 22, 2023, public meeting, the AQB voted to adopt the Second Exposure Draft. The AQB announcement regarding the adoption of the changes to the AQB Criteria was posted on the Board's web site on June 27, 2023, was sent out to all licensees as an e-mail blast on June 27, 2023, and was announced at the July 27, 2023, Board meeting as required under § 36.2(f) (relating to application process) of the Board's regulations.

The Second Exposure Draft makes training on valuation bias and fair housing laws and regulations a required component of every appraiser's qualifying and continuing education. Credentialed appraisers must successfully complete a course which meets the content requirements of the AQB's valuation bias and fair housing laws and regulations course outline every 2 calendar years. The first time an appraiser completes the continuing education course, it must be a 7-hour course. If an appraiser has successfully completed a 7-hour (plus 1-hour exam) course as part of their qualifying education, the 7-hour

course length requirement is satisfied. After the 7-hour course length requirement is satisfied, appraisers are required to take a valuation bias and fair housing law and regulations course that is at least 4 hours in length as a condition of renewal.

The changes to the AQB Qualification Criteria will be effective as of January 1, 2026, to ensure that each state appraiser regulatory agency has time to complete their respective rulemaking process to adopt these Federal requirements. The AQB is encouraging state regulatory agencies, however, to implement these changes as soon as their regulatory process is completed. The Board reviewed its current regulations; the AQB Qualification Criteria is adopted and incorporated by reference throughout the Board's regulations. Specifically, under § 36.42 (relating to subject matter and sources of continuing education), the Board's regulations require that continuing education subject matter and sources must comply with the requirements in the AQB Qualification Criteria. Heeding the advice of the AQB that state appraiser regulatory agencies should implement the changes as soon as possible, the Board determined that it should amend the regulations as soon as possible to ensure that the regulated community is aware of the specific time frame by which all appraisers in this Commonwealth must complete their 7-hour continuing education course on valuation bias and fair housing. The regulations would be amended to reflect the AQB Criteria and would require appraisers in this Commonwealth and licensed appraiser trainees to complete the 7-hour continuing education course beginning with the 2025—2027 biennial renewal period as a condition of renewal of certification or licensure. Every biennial renewal period thereafter, appraisers and trainees will be required to take the continuing education course that is at least 4 hours in length. The Board's amendments in this final-omitted rulemaking will put the Board in compliance with the Federally required continuing education requirements.

The AQB also adopted a name change for the 7-hour National USPAP Update Course; it is now the 7-hour National USPAP Continuing Education Course. This final-omitted rulemaking updates the Board's regulation to reflect this name change.

Regarding the component of this final-omitted rulemaking addressing qualifications of owners of appraisal management companies, during a recent audit, the ASC advised the Board that § 36.412(b) of the Board's AMC regulations is inconsistent with the Federal standard under 12 CFR 34.214(a)(1) and (2) (relating to ownership limitations for State-registered appraisal management companies) regarding AMC ownership limitations. Thus, the Board must amend its regulation regarding the qualifications of owners and key persons to be in compliance with Federal regulations. Section 36.412(b) of the Board's AMC regulations currently states that “[a]n individual may not be an owner or key person of an AMC if the individual had a license or certificate refused, denied, cancelled, suspended or revoked or if they voluntarily surrendered a license or certificate, unless the license or certificate was subsequently granted or reinstated to the individual[.]” Under 12 CFR 34.214(a)(1), a state may not register an AMC that is “. . . owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.” Under 12 CFR 34.214(a)(2), however, an individual is not disqualified from becoming an owner of an AMC if the Board determines that the individual's license

or certificate was not revoked for a substantive cause and the individual's license or certificate was reinstated by the state in which the individual was licensed or certified. The AMC Final Rule on Minimum Requirements for Appraisal Management Companies published at 80 FR 32658 (June 9, 2015) (AMC Final Rule) addresses the difference between a substantive and technical licensing violation. A substantive cause is a non-technical violation that would include license violations such as fraud, violations of the Truth in Lending Act (15 U.S.C. §§ 1601—1667f) and failure to perform an appraisal in compliance with USPAP. Technical violations are procedural or administrative in nature and would not be related to the quality of appraisals or fraudulent conduct, but rather, would include violations such as lapsed licenses and non-payment of fees or penalties.

*Description of the Amendments*

The Board is amending § 36.41 to require completion of an AQB-compliant course on valuation bias and fair housing laws and regulations as a condition of renewal of certification or licensure, beginning with the 2025—2027 biennial renewal period. The first time certified real estate appraisers and licensed appraiser trainees take the AQB-compliant course on valuation bias and fair housing laws and regulations, the course length must be 7 hours. If the certified real estate appraiser or licensed appraiser trainee successfully completed a 7-hour (plus 1-hour exam) course as part of their qualifying education, they have satisfied this requirement.

Licenseses that have satisfied the 7-hour course length requirement shall complete an AQB-compliant continuing education course of at least 4 hours on valuation bias and fair housing laws and regulations as a condition of renewal of certification or licensure.

The Board is amending § 36.91 by deleting the term "Update" and replacing it with "Continuing Education." The phrase "7-hour National USPAP Update Course" will, therefore, become "7-hour National USPAP Continuing Education Course."

Section 36.412(a) currently states that an individual may not be an owner or key person if they are disqualified from eligibility to be certified or licensed under REACA. Section 36.412(b) states that a person is disqualified from eligibility to be certified or licensed under REACA if the individual had a license or certificate refused, denied, cancelled, suspended or revoked or voluntarily surrendered a license or certificate, unless the license or certificate has been subsequently granted or reinstated to the individual. The Board is amending its regulations by adding § 36.412(b.1), which only applies to owners. Section 36.412(b.1) is the same standard contained in § 36.412(b), except that § 36.412(b.1) includes the Federal standard under 12 CFR 34.214(a)(1) and (2) regarding AMC ownership limitations. Accordingly, under § 36.412(b.1), an individual is not disqualified from becoming an owner of an AMC if the individual's license or certificate was not revoked for a substantive cause and the individual's license or certificate was reinstated by the state in which the individual was licensed or certified. The Board also amends § 36.412(b) to clarify that subsection (b) applies to key persons since § 36.412(b.1) now addresses ownership qualifications.

*Fiscal Impact and Paperwork Requirements*

This final-omitted rulemaking will have no fiscal impact on the regulated community. Appraisers and appraiser trainees are required to complete 28 hours of continuing education every 2 years as a condition of

biennial license renewal. The continuing education course on valuation bias and fair housing laws and regulations will fall within the 28 hours that are already required and, therefore, will not pose an additional cost to licensees. Additionally, the amendments to the AMC regulations will not have a fiscal impact.

This final-omitted rulemaking will not have a fiscal impact and will not create additional paperwork for the general public or the Commonwealth's political subdivisions.

*Sunset Date*

The Board continuously monitors the effectiveness of the regulations. Therefore, no sunset date has been assigned.

*Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on April 9, 2024 the Board submitted copies of the final-omitted rulemaking with a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Consumer Protection and Professional Licensure Committee of the Senate (SPC/PLC) and the chairperson of the Professional Licensure Committee of the House of Representatives (HPLC). On the same date, the Board submitted a copy of the final-omitted rulemaking to the Office of Attorney General under section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)).

Under sections 5.1(e) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(e) and (j.2)), the regulations were deemed approved by the SPC/PLC and the HPLC on May 15, 2024, and IRRC met on May 16, 2024, and approved the final-omitted rulemaking.

*Additional Information*

Further information regarding this final-omitted regulation may be obtained by contacting Kristel Hennessy Hemler, Board Administrator, State Board of Certified Real Estate Appraisers, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649. Reference regulation No. 16A-7031 (Federally Mandated Revisions), when requesting information.

*Findings*

The Board finds that:

(1) Public notice of the Board's intention to amend the Board's regulations under the procedures in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) has been omitted under section 204 of the CDL (45 P.S. § 1204) because publication of proposed rulemaking and public comment is unnecessary in that the rulemaking is needed to comply with recently adopted AQB Federal requirements concerning appraiser training on valuation bias and fair housing laws and regulations, to comply with the recently adopted name change of the 7-hour National USPAP Update Course, and to comply with applicable Federal law concerning AMC ownership limitations.

(2) The promulgation of the regulations in the manner provided in this order is necessary to comply with Federal law and for the administration of the Real Estate Appraisers Certification Act (63 P.S. §§ 457.1—457.20) and the Appraisal Management Company Registration Act (63 P.S. §§ 457.21—457.32).

*Order*

The Board, acting under its authorizing statute, orders that:



(a) The regulations of the Board, 49 Pa. Code Chapter 36 are amended by amending §§ 36.41, 36.91 and 36.412, to read as set forth in Annex A.

(b) The Board shall submit this final-omitted rule-making to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-omitted rule-making to IRRC, the HPLC and the SPC/PLC as required by law.

(d) The Board shall certify this final-omitted rule-making and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-omitted rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

MARK V. SMELTZER, Sr.,  
Chairperson

(*Editor's Note:* See 54 Pa.B. 3134 (June 1, 2024) for IRRC's approval order.)

**Fiscal Note:** 16A-7031. No fiscal impact; recommends adoption.

### Annex A

## TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

#### CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

##### Subchapter A. GENERAL PROVISIONS CONTINUING EDUCATION

##### § 36.41. Continuing education requirement.

(a) Continuing education for certified real estate appraisers and licensed appraiser trainees is necessary to ensure that they maintain and increase their skill, knowledge and competency in real estate appraising. Except as provided in subsection (b), certified real estate appraisers and licensed appraiser trainees shall satisfy the continuing education requirements in the AQB Qualification Criteria, which must include at least 2 hours on the act, this chapter and the policies of the Board during each biennial renewal period as a condition of renewal of certification for the next biennial renewal period.

(a.1) Beginning with the renewal of certification or licensure for the 2025—2027 biennial renewal period, certified real estate appraisers and licensed appraiser trainees shall provide evidence of completion of an AQB-compliant course on valuation bias and fair housing laws and regulations as a condition of renewal of certification or licensure. The following apply:

(1) *7-hour course length requirement.* The first time a certified real estate appraiser or licensed appraiser trainee completes the AQB-compliant course on valuation bias and fair housing laws and regulations referenced in this subsection, the course length must be 7 hours. If a certified real estate appraiser or licensed appraiser trainee successfully completed a 7-hour (plus 1-hour exam) course as part of their qualifying education, the 7-hour course length requirement is satisfied.

(2) *4-hour course length requirement.* A certified real estate appraiser or licensed appraiser trainee who has satisfied the 7-hour course length requirement shall, as a condition of renewal of certification or licensure, complete

an AQB-compliant continuing education course of at least 4 hours on valuation bias and fair housing laws and regulations.

(b) A certified general real estate appraiser, residential real estate appraiser or licensed appraiser trainee whose initial certification or license becomes effective between January 1 and June 30 of a biennial renewal year will not be required to furnish proof of continuing education as a condition of renewal of certification in that biennial renewal year.

### MISCELLANEOUS PROVISIONS

#### § 36.91. Reactivation of lapsed certification.

A certified real estate appraiser whose certification has lapsed for failure to biennially renew certification may apply to the Board for reactivation of certification by paying the renewal fee required under § 36.6 (relating to fees) and providing documentation of having completed the continuing education hours that would have been required under § 36.41 (relating to continuing education requirement) if the certified real estate appraiser had maintained current certification, except that only the most recent versions of the 7-hour National USPAP Continuing Education Course and the 2-hour course on the act, this chapter and Board policies must be completed. A certified real estate appraiser who performed an appraisal, or held himself out as an appraiser, during a period when his certification was lapsed shall be subject to disciplinary action by the Board under section 3 of the act (63 P.S. § 457.3) in addition to being required to pay late renewal fees under section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. § 1401-225).

#### Subchapter E. APPRAISAL MANAGEMENT COMPANIES

##### REGISTRATION

##### § 36.412. Qualifications of owners and key persons.

(a) A person who would be disqualified from eligibility to be certified or licensed under REACA as defined in subsections (b) and (b.1) may not be an owner or a key person.

(b) An individual would be disqualified from eligibility to be certified or licensed under REACA, as provided in section 8(d)(1) of AMCRA (63 P.S. § 457.28(d)(1)), and may not be a key person if the individual had a license or certificate refused, denied, cancelled, suspended or revoked, or voluntarily surrendered a license or certificate under any of the following provisions of REACA or CHRIA, or similar provision of another jurisdiction, unless the license or certificate has been subsequently granted or reinstated to the individual:

(1) Section 3 of REACA (63 P.S. § 457.3).

(2) Section 6(c)(1) of REACA (63 P.S. § 457.6(c)(1)).

(3) Section 11 of REACA (63 P.S. § 457.11).

(4) Section 9124(c)(1) or (2) of CHRIA (18 Pa.C.S. § 9124(c)(1) and (2) (relating to use of records by licensing agencies)).

(b.1) An individual would be disqualified from eligibility to be certified or licensed under REACA and may not be an owner if the individual had a license or certificate refused, denied, cancelled, suspended or revoked, or voluntarily surrendered a license or certificate under any of the following provisions of REACA or CHRIA, or similar provision of another jurisdiction, unless the Board determines that the individual's license or certificate was not

revoked for a substantive cause and the license or certificate has been subsequently reinstated to the individual:

- (1) Section 3 of REACA (63 P.S. § 457.3).
  - (2) Section 6(c)(1) of REACA (63 P.S. § 457.6(c)(1)).
  - (3) Section 11 of REACA (63 P.S. § 457.11).
  - (4) Section 9124(c)(1) or (2) of CHRIA (18 Pa.C.S. § 9124(c)(1) and (2) (relating to use of records by licensing agencies)).
- (c) Nothing in AMCRA or this subchapter may be construed as a requirement that an owner or a key person shall possess the education or experience required by the AQB or REACA for certification or licensure.

(d) A person who has been suspended or revoked, or has voluntarily surrendered a license under RELRA, 7 Pa.C.S. Chapter 61 (relating to Mortgage Licensing Act) or sections 301—318 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P.S. §§ 456.301—456.318) (repealed) may not be an owner or key person.

(e) The Board may consider a disqualifying violation described in subsection (b) if the individual's license or certificate has been subsequently reinstated or granted in determining whether the individual possesses good moral character as required under section 5(c)(4) of AMCRA (63 P.S. § 457.25(c)(4)).

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