



Memorandum



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To: The Honorable Carlos A. Gimenez, Mayor, Miami-Dade County
The Honorable Jean Monestime, Chairman
and Members, Board of County Commissioners, Miami-Dade County

The Honorable Perla Tabares Hantman, Chairwoman
and Members, Miami-Dade County School Board
Alberto Carvalho, Superintendent, Miami-Dade County Public Schools

Commissioner Juan C. Zapata, Chair
and Members, Value Adjustment Board, Miami-Dade County

The Honorable Pedro J. Garcia, Property Appraiser, Miami-Dade County
The Honorable Harvey Ruvín, Clerk, Miami-Dade County

From: Mary T. Cagle, Inspector General 

Date: September 14, 2015

Subject: Final Report – OIG Review of the Value Adjustment Board, IG14-13

I am pleased to present the Office of the Inspector General's (OIG's) Final Report of our Review of the Value Adjustment Board (VAB). For your convenience, the Executive Summary can be found on page 2 of the report. The OIG embarked on this review due to concerns that continuous delays in the VAB appeal process have resulted in the late certification of the tax rolls, and consequently delayed revenue to the School District.

This report contains sixteen (16) recommendations that, we believe, address many of the deficiencies identified during our review of the value adjustment appeals process. These recommendations were shared with the VAB and the Property Appraiser through our draft report and comment process. We hope the implementation of these recommendations will foster needed improvements. As such, the OIG kindly requests that the VAB and Property Appraiser provide a report within 90 days, on or before December 14, 2015, detailing their plans to implement these recommendations.

Lastly, the OIG would like to thank the Property Appraiser and his staff, and the Value Adjustment Board Director and his staff for their cooperation during this review.

cc: Mark A. Martinez, Director, Value Adjustment Board
Manuel A. Blanco, Attorney, Value Adjustment Board
Robert Alfaro, Manager, Value Adjustment Board
Marcus Saiz, Tax Collector
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Miami-Dade County Office of the Inspector General



Final Report

OIG Review of the Value Adjustment Board

IG14-13

September 14, 2015

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I. INTRODUCTION

The Miami-Dade County Office of the Inspector General (OIG) reviewed the Miami-Dade County Value Adjustment Board's process of handling citizen appeals of property valuations made by the Property Appraiser's Office (PAO). Value Adjustment Boards (VABs) are created by Florida statute to accept and process taxpayers' petitions contesting a property's assessment, classification, or exemption as determined by the Property Appraiser.

The Miami-Dade County Public Schools (M-DCPS) Superintendent, Alberto Carvalho, requested that the OIG look into his concerns related to the VAB. Additionally, the M-DCPS Office of Management and Compliance Audits (OMCA) performed an audit of the VAB appeals process and requested investigative support from the OIG. The Superintendent's concerns arose from continuous delays in the VAB appeal process resulting in late certification of the tax rolls, and consequently delayed revenue to the School District. The School District's funding model is such that local property tax assessments make up approximately 50% of the School District's budget through what is termed the Required Local Effort funding. The Miami-Dade County School District suffers from a two-year lag in recouping funds as a result of the VAB's delays in hearing appeals and consequent delay in certification of the tax rolls.

Among the Superintendent's concerns was that VAB petitions were being filed by tax agents without the authorization and knowledge of the taxpayers, resulting in an increased volume of petitions and contributing to the delays. Another issue raised was that excessive and improper rescheduling of hearings, due to taxpayer requests, contributes to the VAB's delays. The third specific concern was that improper relationships between special magistrates and tax agents result in rulings favorable to the tax agents and taxpayers at the expense of the taxing authority.

The OIG and OMCA coordinated efforts to achieve a comprehensive review of the VAB process and the potential causes for the delays. The OIG assisted with the investigative aspects of its audit and conducted a separate review of the Superintendent's concerns.

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II. EXECUTIVE SUMMARY

First, the OIG examined the issue that a “loophole” in the petition filing process—allowing petitions to be filed without the taxpayer’s signature—results in widespread abuse. Specifically, the concern raised was that tax agents filing numerous petitions without the knowledge or consent of taxpayers has adversely impacted the VAB’s workload and added to the delays. Our review found the number of petitions filed without proper evidence of authorization was so minimal, that it was not a contributing factor in the delays. The OIG did note a couple of areas that raised concerns of VAB compliance with the DOR regulations and efficiency of operations. Specifically, the OIG found that the VAB does not verify, as required by law, that petitions filed by unlicensed tax agents contain the taxpayer’s signature or are accompanied by the taxpayer’s written authorization. The OIG also found deficiencies in the VAB’s registration system; and we further noted as a concern, the VAB’s lack of a central repository for complaints.

At the end of this discussion, the OIG provides five (5) recommendations for the Miami-Dade VAB to consider. [See Section VI.A.7] These recommendations pertain to the VAB’s intake of petitions, registration of tax agents (both licensed and unlicensed), and the establishment of a central complaint repository.

Second, the OIG focused on the concern that taxpayers’ requests to reschedule cases were contributing or causing the delays in the VAB process. The OIG examined the scheduling and rescheduling of VAB hearings to determine if the delays could be attributed to the method and manner of scheduling those hearings. Procedurally, the VAB hearings must be conducted in accordance with Florida Statutes and regulations promulgated by the Department of Revenue (DOR). The VAB’s scheduling process was reviewed as well as the interaction of the various parties in that process, such as the tax agents, the taxpayers, the Property Appraiser’s staff, and the VAB staff. Based on the OIG’s review of the 2011, 2012 and 2013 tax year rescheduled hearings, it is evident the statutory provision allowing a one-time rescheduling without cause impacts the time needed to complete the VAB cycle. The review also found that inefficiencies and miscommunications occurring in recent years, while not the only cause of the current delays, have contributed to the length of time it has taken to certify the tax rolls. The OIG also found inconsistencies in coding the rescheduling of hearings resulting in inaccurate VAB records.

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As it relates to these observed conditions and noted deficiencies, the OIG tenders eight (8) recommendations for consideration. The recommendations contained in Section VI.B.7 of this report address the need for written action plans, staffing formulas, accurate coding, enhancements to the scheduling and rescheduling process, and documented analysis supporting settlements. Four (4) recommendations are directed at the VAB and three (3) recommendations are within the purview of the PAO to implement. One recommendation—perhaps the most important—requires both the VAB's and the PAO's input and commitment.

Third, in order to address the concern that improper relationships are resulting in rulings favorable to the tax agent and taxpayer at the expense of the taxing authority, the OIG assessed whether special magistrate assignments are creating biases in favor of tax agents. For this review the OIG examined the role of special magistrates, their qualifications, and the rules governing conflicts and recusals. Moreover, we examined how special magistrates are assigned to Boards and the utilization of the "Agent Board" (an entire Board of appeals represented by the same tax agent in a compressed amount of time). Specifically, we tested five pairings where a high percentage of a particular agent's appeals were heard before the same magistrate. The OIG found no pattern that demonstrates bias.

Our review of the issues relating to special magistrates concludes with three (3) recommendations for the VAB's consideration. [See Section VI.C.6] These recommendations suggest guidance and training for special magistrates in the area of conflicts of interest and recusals, training specific to handling the rigors of an Agent Board, and implementing formal evaluations of special magistrates.

The objective of our recommendations is not merely to revamp process and procedure. It is to ensure that the VAB timely concludes the hearings to allow for timely certification of the tax rolls. Eliminating the delay will allow the taxing authorities to accurately budget and fund the services they provide to the public.

Prior to the presentation of the three issues summarized above, a background section sets forth an overview of the appeals process and provides the historical backdrop to a two-year surge from 2007 to 2009. The two main causes identified for that surge are real estate market forces and a 2008 constitutional amendment, which capped the annual assessment of non-homesteaded properties at 10% over the previous year. In addition, the School District's funding model, which includes a 2007 change in that funding model, was reviewed.

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III. OIG JURISDICTIONAL AUTHORITY

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs; audit, inspect and review past, present and proposed County programs, accounts, records, contracts, and transactions; conduct reviews, audits, inspections, and investigations of County departments, offices, agencies, and Boards; and require reports from County officials and employees, including the Mayor, regarding any matter within the jurisdiction of the Inspector General.

Pursuant to an Interlocal Agreement between Miami-Dade County and the School Board, the OIG has the authority to investigate M-DCPS affairs; to audit, inspect and review past present, and proposed programs, accounts, records, contracts and transactions; to require reports and the production of records from School Board members and School District officials; and to report our findings and make recommendations to the School Board and Superintendent.

IV. SCOPE & REVIEW METHODOLOGY

During this review, the OIG coordinated efforts with the M-DCPS Office of Management and Compliance Audits (OMCA). The OIG also met with the County's Internal Auditor, of the Audit and Management Services Department, who provided an understanding of past audits of property value adjustments and the tax rolls. Given the concurrent audit and oversight attention being paid to the VAB process, the OIG felt it was important that our organizations not duplicate efforts and, where possible, work together to share resources. The observations, assessments, and conclusions that are contained in this report, however, are independently those of the OIG.

The OIG conducted numerous interviews with key staff members and external stakeholders involved in the VAB process. The OIG interviewed tax agents, special magistrates, VAB staff, both the current and previous Property Appraisers and their staff, the Tax Collector, Clerk of Courts Administrators, and the M-DCPS Superintendent. The OIG received and analyzed substantial amounts of data provided by VAB and PAO staff, pertaining to the volume of appeals filed, scheduling of hearings, identity and registration of tax agents and other petition filers, and the

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disposition of the individual cases. Lastly and not insignificantly, the OIG researched and reviewed various prior reports and audits on this same subject matter.¹

V. BACKGROUND

In this section, the OIG provides an overview of the value appeals process and a historical backdrop of the delays and backlog plaguing the process.

A. Overview of Property Taxation and the Appeals Process

As required by the Florida Constitution, revenue from property taxes is reserved for use by local governments. Property taxes are determined based on a valuation of property and a tax rate (millage rate) set by the local taxing authorities. Florida's Property Appraisers determine the just value of all parcels of property in their counties as of January 1st of each year. To establish the taxable value of property, the property's just or market value is first determined.

Section 193.011, Florida Statutes, provides the factors to be used in deriving just valuation as: (1) the present cash value of the property, which is the amount a willing purchaser would pay a willing seller; (2) the highest and best use of the property; (3) the location of said property; (4) the quantity or size of said property; (5) the cost of said property and the present replacement value of any improvements thereon; (6) the condition of said property; (7) the income from said property; and (8) the net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale.

¹ These reports include the Florida Legislature Office of Program Policy Analysis & Government Accountability's (OPPAGA) December 2012 report entitled *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process* (<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1064rpt.pdf>); the Florida Auditor General's May 2014 report entitled *County Value Adjustment Boards and Department of Revenue's Oversight Thereof* (http://www.myflorida.com/audgen/pages/pdf_files/2014-194.pdf); the Miami-Dade County Public Schools Office of Management and Compliance Audits' March 2015 report entitled *Audit of the Miami-Dade County Value Adjustment Board (VAB) Appeals Process – Phase 1* (http://mca.dadeschools.net/AuditCommittee/AC_March_10_2015/item3.pdf); The Washington Economics Group, Inc.'s December 2014 report entitled *The Economic Impacts of the School District's Funding Shortfall on Miami-Dade County Public Schools, the Miami-Dade County Economy and the Florida Economy* (http://news.dadeschools.net/pdf_files/MDCPS%20Economic%20Impact%20Study%2001-05-15.pdf); and various audit reports issued by the Miami-Dade County Audit and Management Services Department.

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All valid assessment limitations (such as the Save Our Homes cap) are deducted from the just value to determine the “assessed value” of the property. Finally, all valid classifications, and exemptions are deducted to establish the “taxable value” of the property. Having determined the taxable values, the Property Appraiser completes the tax roll and submits it to the Florida Department of Revenue for its review.

The Property Appraiser (PA) does not determine the actual tax owed by the taxpayer. Taxes are based on the millage rate² set by local governments with authority to levy taxes, such as: counties, cities, school districts, and other special taxing districts. The millage rate is multiplied by the property’s taxable value, as determined by the PA, to determine the property tax owed. Once the tax is set, the Tax Collector sends out the property tax bills. The Tax Collector also distributes the taxes paid to the local government authorities and processes and issues refunds to the taxpayers for any overpayments. M-DCPS receives roughly 50% of its funding from the collection of local property taxes.

Taxpayers, who object to the assessed value of their residential or commercial real estate, or tangible personal property, may file a petition with a Value Adjustment Board.³ In each county within the State of Florida there is a Value Adjustment Board to hear such appeals.⁴ In counties having a population of more than 75,000, the Board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the Board, which the Board may adopt without further hearing. In Miami-Dade County, for appeals concerning the 2013 tax roll, the VAB appointed 31 special magistrates to conduct valuation hearings. The Clerk of Courts provides personnel to staff the activities of the VAB and to carry out the clerical functions for this process.

² A mill is one dollar per one thousand dollars of taxable value.

³ Taxpayers may also petition the VAB to contest the classification or exemptions as determined by the Property Appraiser.

⁴ Value Adjustment Boards consist of two (2) members of the governing body of the county, one (1) of whom shall be elected chairperson; one (1) member of the School Board; and two (2) citizen members, one (1) who is a homestead property owner in the county and is appointed by the governing body of the county, and one (1) who is appointed by the School Board and must own a business within the school district. Section 194.035, Fla. Stat.

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Taxpayers may also contact the PAO directly to challenge the assessed value of their property. This is referred to as an informal conference. Both options are available to the taxpayer.

The general applicable timeframes for the process as a whole are:

January 1st Effective date of Property Appraiser's valuation of real and tangible properties.

March 1st Deadline for taxpayers to file for exemptions, property classifications,⁵ and portability.

July All taxing authorities set preliminary millage, i.e., tax rates.

August TRIM (truth in millage) notices are mailed by the Property Appraiser to taxpayers. The TRIM, in addition to publishing the proposed tax rates, notifies taxpayers of the assessed value of their property.⁶

September Taxpayers believing that their property value is incorrectly assessed may file an appeal with the VAB within 25 days of the TRIM Notice. Taxpayers may also seek a reduction from the Property Appraiser directly.

Taxing authorities adopt final budgets and set the millage rates.

November The tax collector sends out the property tax bills.

March 31st (of the following year) Deadline to pay taxes.

As highlighted above, taxpayers are provided with their properties' assessed value through the TRIM notice in mid-August. They have 25 days after receiving the TRIM to file a petition challenging the assessment.⁷ Filing fees are \$15 per folio

⁵ Various classifications of property can affect the tax liability. Examples of classifications are agricultural or historic properties used for commercial or certain nonprofit purposes.

⁶ The notice is designed to inform taxpayers which governmental entity is responsible for the taxes levied and the amount of tax liability owed to each taxing entity. It enables the taxpayer to compare the prior year assessed value and taxes with the present year assessed value and proposed taxes. The notice also shows the deadline for filing a petition to protest the assessment and any denial of exemption.

⁷ The deadline date is printed on the TRIM notice.

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number/parcel or \$5 per folio⁸ for multi-folio petitions filed by a condominium, cooperative or homeowners associations, or multiple contiguous parcels of undeveloped real property. The taxpayer wishing to contest the PA's assessed value must nevertheless pay 75% of the tax bill before the taxes are delinquent on April 1st.

Contacting the PAO directly for an informal conference does not preclude the taxpayer from filing a petition with the VAB, provided that the appeal is filed by the 25-day deadline. Settlements may be reached between taxpayer/petitioner and the PAO anytime—either before or after an appeal is filed.

After the petition filing period is closed, the VAB schedules the petitions to be heard, and sends out written notification to the petitioners at least 25 days before the scheduled hearing. Special magistrates are contacted to check their availabilities to staff the hearings. The petitioner must provide the PAO representative with a list of evidence, copies of documentation, and a summary of any witness testimony 15 days before the scheduled hearing. The petitioner may request an exchange of evidence in writing. Upon request, the PAO representative must then provide the petitioner with its evidence seven (7) days before the hearing.

At the hearing, the burden of proof is on the petitioner to rebut the PA's assessed value, which is "presumed correct if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate." §194.301, Fla. Stat. The petitioner is entitled to know the appraisal methodology used by the PAO in determining the assessed value.

After the hearing, the special magistrate, based on the evidence presented, makes a determination regarding the property's value. If the magistrate determines that the market value of the property is below the PAO's assessed value, then the taxpayer will receive a reduction resulting in a refund. The final certification of the tax roll cannot be done until all appeals have been heard and ruled upon, or settled.

⁸ A folio number is a unique number assigned by the Property Appraiser to each parcel of land as an identifier.

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B. Historical Backdrop: Surge of Appeals 2007 – 2009

The delays and backlog affecting the Miami-Dade VAB trace back to the massive increase in real estate value appeals filed beginning in 2008. From 2007 to 2008, the upsurge was a 73 percent increase. From 2008 to 2009, the number of real estate value appeals increased by another 46 percent. These two successive years saw the rise of appeals grow from 51,682 to 130,239 parcels – a 152 percent increase. Table 1, which follows, charts the surge and the steady decline (since 2010) in the number of value appeals by parcels.

Table 1: Appeals Filed by Tax Year

TAX YEAR	TOTAL NUMBER OF ALL APPEALS BY PARCELS *	NUMBER OF ALL VALUE APPEALS BY PARCEL	
2007	62,042	51,682	FROM 2007 TO 2009 AN INCREASE OF 152 %
2008	98,348	89,409	
2009	138,597	130,239	
2010	103,310	99,817	FROM 2009 TO 2014 A REDUCTION OF 53%
2011	91,519	88,482	
2012	75,439	73,448	
2013	69,888**	67,560**	
2014	63,642**	61,159**	

*Numbers obtained from the VAB's Notice to the DOR (Form DR-529) (Rule 12D-16.002) "Tax Impact of Value Adjustment Board"

** Number obtained from the Miami-Dade County Value Adjustment Board *Comparative Statistical Report for Tax Years 2013 & 2014* as of February 2015.

Throughout this review, the OIG interviewed many knowledgeable industry professionals in an effort to determine the cause in the upsurge of appeals. Some believe that the increase of valuation appeals was a result of the decline in values in the real estate market.

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While the real estate market crash of 2009 can be blamed for the surge in value appeals filed during the August – September 2009 filing period, it does not fully explain the first upsurge of appeals in 2008. In the late summer, early fall of 2008, Miami-Dade County home prices were retreating from their record highs, but the brunt of the real estate market crash had yet to reveal itself. In fact, only a year earlier, in the spring of 2007, Florida legislators, seeking to provide relief to taxpayers for soaring property values, proposed a constitutional amendment capping annual assessment increases for all non-homesteaded properties to 10 percent. The constitutional amendment was approved overwhelmingly on January 29, 2008, in a statewide referendum. The 10 percent cap (as well as other components in the amendment) went into effect in 2009.⁹

According to the current Miami-Dade County Property Appraiser, this change in the law was the catalyst for the surge of appeals in 2008. To maximize the benefit of the new 10 percent cap, owners of non-homesteaded properties sought to challenge their 2008 valuations in an effort to reduce values and establish a new starting point for subsequent capped valuations.

The external market forces, coupled with the constitutional amendment in 2008, gave way to creating a perfect storm. In a two year span (from 2007 to 2009) petitions filed increased by 152 percent. From the highest point in 2009 through 2014, the number of appeals decreased by 53 percent. In other words, the surge was sharp and rapid; the decline has been steady but slow.

C. Unique Impact on School District’s Funding Model Created by Certification Delays

Educational funding comes from both State revenues (sales taxes and lottery sales) and a Required Local Effort (revenues from local property taxes).¹⁰ Annually, the State Legislature determines the millage rate for the Required Local Effort.¹¹

⁹ The constitutional amendment contained five components. First, it provided for an additional \$25,000 Homestead Exemption (not applicable to school tax levies). Second, it allowed homestead property owners to transfer the benefits recognized under “Save Our Homes” to another property, i.e., portability. The third and fourth provisions applied to the tangible personal property tax exemption for mobile homes and businesses. The fifth component was a 10 percent cap on the assessment of non-homestead properties.

¹⁰ The M-DCPS’ fiscal year runs from July 1 through June 30th.

¹¹ The State Legislature’s millage determination is only a preliminary calculation. State law requires that the Property Appraiser’s estimate of the tax roll be used to calculate the final Required Local Effort millage. The Commissioner of Education is authorized to adjust the first millage calculation (the State’s) based on the Property Appraiser’s estimate of the tax roll to reach

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Section 1011.62, Fla. Stat., requires that M-DCPS' budget be based on 96% of what is estimated to be collected on the taxable value of property in the County. Final tax rolls and actual collections, however, cannot be calculated until all VAB appeals have been completed. If collections fall below the School District's estimate, a shortfall is created in the School District's budget.¹²

Prior to 2007, shortages in collecting the local property taxes, for example, due to changes in property values, were made up by the State through a Prior Period Adjustment (PPA). This funding adjustment was provided by the State to the districts in the next fiscal year after the shortage was determined. Starting with the 2007 tax roll, the State no longer provided the PPA to the districts, but instead required them to collect the shortage through a Prior Period Funding Adjustment Millage (PPFAM). The School District could have recaptured that year's shortage in 2008 if the 2007 tax roll had been certified by June 1, 2008. **It was not.** The delay in certifying the tax roll, however, was not a new phenomenon. Even before the 2007 change in law, Miami-Dade County's tax roll took 10 – 11 months to certify.

There has been a two-year lag in the School District's ability to assess the PPFAM since the inception of the PPFAM. As a result of the delays in certifying the final tax rolls, M-DCPS first assessed the PPFAM in 2009, for the shortage of tax collections from two years prior. Table 2, below, shows the number of appeals filed (by parcel and petition)¹³ and the length of time it has taken the VAB to complete the real estate value hearings.¹⁴

Table 2: Number of Months to Complete Real Estate Value Hearings by Tax Year

TAX YEAR	NUMBER OF APPEALS BY PARCELS ^a	NUMBER OF APPEALS BY PETITIONS	VAB REAL ESTATE VALUE HEARINGS START DATE	VAB REAL ESTATE VALUE HEARINGS END DATE ^c	LENGTH OF TIME TO COMPLETE HEARINGS
2005	N/A	N/A	11-12-2005	10-13-2006	11 months
2006	N/A	N/A	11-13-2006	9-17-2007	10 months
2007	62,042	N/A	12-03-2007	11-26-2008	12 months

a final Required Local Effort contribution for each county. The second calculation is usually done in the second or third week of July.

¹² The OIG recognizes that many factors impact the School District's budget, such as tax certificate sales; however, this report focuses solely on the VAB process.

¹³ A single petition may challenge the valuation of various properties or parcels. For example, in the case of a condominium, one petition could be filed for 50 units (parcels).

¹⁴ The OIG was only able to obtain hearing start dates and end dates going back to 2005.

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TAX YEAR	NUMBER OF APPEALS BY PARCELS ^a	NUMBER OF APPEALS BY PETITIONS	VAB REAL ESTATE VALUE HEARINGS START DATE	VAB REAL ESTATE VALUE HEARINGS END DATE ^c	LENGTH OF TIME TO COMPLETE HEARINGS
2008	98,348	N/A	11-24-2008	6-21-2010	19 months
2009	138,597	84,515	4-19-2010	5-19-2011	13 months
2010	103,310	63,063	6-20-2011	5-17-2012	11 months
2011	91,519	59,451	6-5-2012	4-22-2013	10.5 months
2012	75,439	52,096	6-5-2013	5-16-2014	11.5 months
2013	69,888 ^b	44,650	6-23-2014	4-27-2015	10 months

- a. Numbers obtained from the annual notices titled *Tax Impact of Value Adjustment Board*. (DOR Form DR-529, Rule 12-D16.022)
- b. Number obtained from the Miami-Dade County Value Adjustment Board *Comparative Statistical Report for Tax Years 2013 & 2014* as of February 2015.
- c. This end-date is more akin to a substantial completion date and is based on information provided to the OIG by the VAB.

The current state of the two-year lag began immediately upon implementation of the 2007 change-in-law. The 2007 tax roll took approximately 12 months to complete—five (5) months longer than the ideal time frame, which is seven (7) months. Based on the date the first appeals can possibly be heard, sometime in November,¹⁵ the preferred deadline for completion of the VAB hearings and certification of the final tax roll is June 1st (before the School District’s completion of its budget). This would give the State the ability to calculate the supplemental millage (PPFAM) for inclusion in the following year’s TRIM notices and the final tax bill.

The 2008 tax roll took the longest to complete—19 months. Any further delay could have lengthened the lag from two years to three years. The 2008 shortage, however, was included in the 2010 tax bill, and the lag has remained constant at two years. As Table 3, on the next page, illustrates, the School District has suffered shortfalls in the millions. The average shortfall for the last six years has been \$39.3 million.

¹⁵ November is the earliest hearings can commence, given the required timeframes for filing petitions, VAB review and notice of hearings to all parties.

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Table 3: M-DCPS Prior Period Funding Adjustment Millage Collections

TAX ROLL	SCHOOL DISTRICT FISCAL YEAR	SHORTFALL	PPFAM INCLUDED IN TAX BILL	PPFAM FY COLLECTIONS
2007	2007-2008	\$26M	2009	2009-2010
2008	2008-2009	\$39M	2010	2010-2011
2009	2009-2010	\$55M	2011	2011-2012
2010	2010-2011	\$43M	2012	2012-2013
2011	2011-2012	\$35M	2013	2013-2014
2012	2012-2013	\$38M	2014	2014-2015
2013	2013-2014	TBD	2015	2015-2016

The appeals, which spiked dramatically in two successive years, 2008 and 2009, have been on a steady decline. (See Table 2) Conceivably, if the 2014 tax roll can be certified by the end of this calendar year and the 2015 appeal hearings can begin immediately thereafter, the School District may be able to recoup two years of shortages (2014 and 2015) in the 2016 tax bill, and if not, then by 2017. While this will take a herculean effort by all parties involved and will depend on the number of petitions filed this August - September 2015, it is not outside the realm of possibilities. If this “catch-up” could be realized, it would be more important than ever to ensure that all future years’ tax roll certifications stay on track.

Since 2009, M-DCPS has been able to regularly include one prior year’s adjustment (albeit from two years previous) in its budget. The consequences of “catching-up” are two-fold. First, having two tax rolls certified in the same year will result in a greater impact to taxpayers, as two years of shortfalls will come due. Second, the VAB would need to ensure continuous timely certifications or risk creating another funding gap. If a subsequent tax roll could not be certified on time (i.e., by early June) the result would leave a hole in the School District’s budget akin to the hole in the 2007 budget, and the two-year lag would begin anew.

The effort to stay current would necessitate that hearings start as soon as legally possible (at the end of October/beginning of November) and conclude by the end of May. At present, with the two-year lag, the District is assured the inclusion of one year’s PPFAM. Once caught-up, all the resources need to be in place to ensure that

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the following years' deadlines are not missed. Careful attention and planning must be made now to safeguard future budgeting efforts.

VI. OIG REVIEW: ISSUES, FINDINGS, AND RECOMMENDATIONS

Against this backdrop of increased petitions, two year backlogs in hearings, and resulting delays in final certification and disbursal of taxes, the OIG examined several issues that were alleged to be potentially contributing to, if not actually, causing delays.

As with any review, understanding the terminology used by the parties involved is a crucial first step in accurately evaluating any data or records. In its review, the OIG found that the VAB, in its record keeping, did not use terminology consistently on reporting documents. For example, documents that reported the number of petitions filed used the term parcels and petitions interchangeably. A parcel refers to a single property as identified by a folio number, but a petition, the actual form filed by the tax agent or taxpayer, could encompass multiple folios or parcels. The misuse of these terms, which are not interchangeable, can result in numerical discrepancies when trying to report or quantify data.

The issues, restated below in the form of questions, comprise the next three sections of the OIG's report.

- Are tax agents filing petitions that are not authorized by the taxpayers, resulting in additional appeals and delays?
- Are the procedures used to schedule and reschedule hearings contributing to the delays in completing the appeals?
- Are special magistrate assignments creating biases in favor of the tax agents?

In reviewing the reports and data provided by the VAB, the OIG had to frequently and repeatedly verify what was reported and the terms used in order to ensure accurate interpretation of the data. Consequently, the statistics contained in this report may vary slightly from numbers reported by other reviewers depending on the source or specific data used.

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A. Are tax agents filing petitions that are not authorized by the taxpayers, resulting in additional appeals and delays?

In order to assess the validity of the concern and—more relevantly—the magnitude of the impact of unauthorized filings on the VAB process, the OIG examined the types of petitions being filed in relation to who was filing them.¹⁶ The review found that the limited number of petitions filed without proof of taxpayer authorization is not a contributing factor in the delays of the VAB process. The review also found concerns regarding VAB compliance with the DOR regulations and efficiency of operations. Specifically, the VAB does not verify whether or not petitions filed by unlicensed tax agents contain either the taxpayer’s signature or written authorization. The OIG also examined the VAB registration system and complaint tracking system.

1. Licensure and Registration of Tax Agents

A tax agent is anyone filing a petition on behalf of a taxpayer. Any person can be a tax agent; one need not have specific qualifications. A taxpayer can be represented by a family member or a friend. If the tax agent, however, is licensed in one of four Florida licensure categories, then the petition does not need the signature or written authorization of the taxpayer. These four licensure categories are: 1) licensed real estate sales tax agent or broker, 2) licensed property appraiser, 3) licensed Florida attorney, and 4) certified public accountant.

DOR regulations allow VABs to implement a tax agent registration system. The Miami-Dade County VAB has requested that, regardless of their licensing status, tax agents filing 25 or more petitions register and obtain a tax agent number. This internal registration system assists the VAB in scheduling hearings and sending out mandatory notifications. Currently the Miami-Dade County VAB has over 220 tax agents registered.

The lack of a requirement that the taxpayer sign the petition has been described as the loophole allowing tax agents to file petitions without the taxpayer’s knowledge or consent. DOR rules do not require *licensed* tax agents to supply supporting documentation of taxpayer authorization. For petitions filed by *unlicensed* tax agents DOR rules require the signature or the written authorization of the taxpayer.

¹⁶ For this analysis, the OIG examined petitions—not parcels. Because this analysis is dependent on whether the petition filers have authorization from the taxpayer, we believe that the number of petitions is a more suitable criterion.

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Importantly, the filing of any petition by a tax agent – licensed or not – requires that the tax agent certify, under penalty of perjury, that the tax agent is duly authorized to act on behalf of the taxpayer.

Licensed tax agents (registered with the VAB or not)¹⁷ make up the overwhelming majority of petitions filed. For 2011 and 2012, licensed tax agents constituted 87.4% and 92% of all petitions filed, respectively. Licensed tax agents are required, as part of their signature and certification of each petition, to write their Professional License Number (such as a Florida Bar Number) on each petition, and swear, under penalty of perjury, that they are authorized to file the petition on behalf of the taxpayer. Licensed tax agents risk jeopardizing their professional license, and incur potential criminal liability by proceeding without authorization.

Additionally, professional licensed tax agents intend to be compensated for their services. When asked about obtaining taxpayer authorization, one tax agent interviewed by the OIG, responded with the rhetorical question: “How are we to get paid if these cases are filed without the consent of the owners?” Indeed, it is difficult to imagine that tax agents are putting in their time and effort on a significant number of petitions on the hope that they will be paid for their services, since refunds are credited directly to the taxpayer. Typically, tax agents collect their fees, directly from the taxpayer, through a representation agreement for a set percentage of any reduction achieved. Moreover, most tax agents interviewed by the OIG, require the taxpayer to pay the \$15 filing fee up front. The payment of the filing fee would constitute evidence of the taxpayer’s authorization of representation.

2. Complaints

The OIG requested that the VAB provide any complaints involving unauthorized representation. The OIG interviewed the VAB Manager and VAB Counsel, who stated that the VAB receives less than five (5) complaints per year from condominium owners who contend that a petition was filed without their consent. According to § 194.011(3)(e), Fla. Stat., tax agents need not obtain the consent of individual condominium unit owners when the tax agent is “hired” by the condominium association or its Board of Directors. The condominium association board or its officers can file the petition on behalf of condominium owners. The

¹⁷ Of those registered with the Miami-Dade County VAB, there were 84 registered tax agents who filed petitions in 2011 and another 75 registered tax agents who filed petitions in 2012. Of the 84 who filed in 2011, 79 were licensed tax agents; five (5) were not. Of the 75 registered tax agents who filed in 2012, 71 were licensed tax agents; four (4) were not.

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condominium association is required by law to notice the unit owners and provide them an opportunity to “opt-out” of the petition.

The OIG interviewed two licensed tax agents that file a large number of petitions each year before the VAB. According to the tax agents, when filing on behalf of condominium associations, issues often arise at the end of the process, after the tax agent is successful in obtaining lower values for the building’s units and the unit owner benefits from a reduction. The tax agents interviewed expressed some difficulties in collecting their fees from some unit owners. The tax agents advised that the owners often forget about the notices or claim that they never received one. One of the tax agents stated that his firm also sends a notice in addition to the notice sent by the condominium association. Due to the “opt-out” provision for condo owners, it is easy to see how a condo owner might not realize that their property was part of a petition seeking a reduction until after the reduction was realized.

VAB staff was unable to provide the OIG with any written complaints regarding unauthorized petitions filed by tax agents. VAB staff stated that if an unlicensed tax agent’s petition does not contain the taxpayer’s signature or the written authorization of the taxpayer, the VAB **does not** request that the documentation be supplied. The VAB staff stated that it would be too voluminous to require the documentation.

Although the VAB could not provide any written complaints alleging the unauthorized representation of taxpayers, staff did provide extensive data on petitions filed. The OIG conducted an analysis of the petitions filed by category of petitioner in an effort to isolate the volume of petitions filed by licensed and unlicensed tax agents.

3. OIG Analysis of Petition Filers for Tax Years 2011 & 2012

Tables 4a and 4b, on the next pages, illustrate for tax years 2011 and 2012 the identity, by category, of petition filers.

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Table 4a: Petition Filers by Category for 2011

Number of Petitions	Category of Petitioner	Percentage of All Petitions	Comments
4,678	Taxpayer	9%	
44,513	Registered/Licensed Tax Agent	85.2%	24,716 or 56% were residential 19,797 or 44% were commercial
1,138	Unregistered/Licensed Tax Agent	2.2%	450 or 40% were residential 678 or 60% were commercial
50,329	Sub-total	96.4%	
1,273	Registered/Unlicensed Tax Agent	2.4%	Collectively, these 1,273 petitions were filed by 5 separate individuals or entities (1,034 were for residential properties; 239 were for commercial properties).
261	Unregistered/Unlicensed Tax Agent	0.5%	Collectively, these 261 petitions were filed by 58 separate individuals or entities (127 were for residential properties; 134 were for commercial properties).
382	Tax Appeal Companies	0.7%	Collectively, these 382 petitions were filed by 62 entities (76 were for residential properties; 306 were for commercial properties).
1,916	Sub-total	3.6%	
52,245*	Total	100%	13,175 of all the petitions filed were for condominiums or cooperatives.

*Total number of petitions excludes non-payments and cancellations. Non-payment status occurs when taxes are not paid as required. The Property Appraiser's Office occasionally changes folio numbers on parcels for legal reasons. Petitions filed with incorrect folio numbers due to the changes are cancelled.

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Table 4b: Petition Filers by Category for 2012

Number of Petitions	Category of Petitioner	Percentage of All Petitions	Comments
3,104	Taxpayer	6.5%	
42,464	Registered/Licensed Tax Agent	90%	23,257 or 55% were residential 19,207 or 45% were commercial
978	Unregistered/Licensed Tax Agent	2%	300 or 31% were residential 678 or 69% were commercial
46,546	Sub-total	97.5%	
340	Registered/Unlicensed Tax Agent	0.7%	Collectively, these 340 petitions were filed by 4 separate individuals or entities (60 were for residential properties; 280 were for commercial properties).
235	Unregistered/Unlicensed Tax agent	0.5%	Collectively, these 235 petitions were filed by 177 separate individuals or entities (130 were for residential properties; 105 were for commercial properties).
628	Tax Appeal Companies	1.3%	Collectively, these 628 petitions were filed by 47 separate entities (87 were for residential properties; 541 were for commercial properties).
1,203	Sub-total	2.5%	
47,749*	Total	100%	11,327 of all the petitions filed were for condominiums or cooperatives.

* Total number of petitions excludes non-payments and cancellations. Non-payment status occurs when taxes are not paid as required. The Property Appraiser's Office occasionally changes folio numbers on parcels for legal reasons. Petitions filed with incorrect folio numbers due to the changes are cancelled.

The two categories of taxpayers and licensed tax agents comprised 96.4% and 97.5% of all petitions filed for 2011 and 2012, respectively. Excluding these categories, the remaining number of unlicensed tax agents represents a fraction, 3.6% and 2.5%, of those filing petitions for 2011 and 2012, respectively. The M-DCPS OMCA also reviewed this issue and tested a random sample of petitions filed by unlicensed

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registered tax agents.¹⁸ OMCA's review uncovered that unlicensed tax agents had filed petitions without including the written authorization of the taxpayer. OMCA's finding was consistent with the VAB's staff's admission to the OIG that petitions by unlicensed tax agents are not reviewed or rejected if lacking the signature or written authorization. However, the lack of documentation alone does not mean the petition was not authorized.

It should be noted that the small percentage of filings by unlicensed tax agents can be further reduced if the petitions for commercial properties, 679 for 2011 and 926 for 2012, are excluded. Generally, properties can be valued using different methods, including cost, sales and income. Residential properties are generally valued using the sales approach. While some commercial properties may also be valued using the sales approach, many of the commercial properties reviewed by the OIG were found to have been valued using the income approach. Commercial or income property valuations are labor intensive and time consuming. The OIG interviewed PAO staff to learn about the valuation of commercial properties.

The valuation process for commercial properties is different and more complex than residential properties. Commercial properties include multi-tenant or large single tenant properties, warehouses, shopping centers, hotels or any special use properties that support a business and are income-producing. Rental rates, vacancy rates, and listing rates are some of the data used in determining the value of income producing properties. A small adjustment on a variety of factors can have a significant impact on the value of large commercial properties.

Prior to a commercial property hearing, tax agents usually submit a variety of information to the PAO, such as rent rolls or income tax information, obtained from the taxpayer. Given the nature of the evidence required in a value appeal of a commercial property, it is unlikely that a tax agent would file a petition without the taxpayer's knowledge or consent. Eliminating commercial properties from the number of unlicensed tax agents further reduces the percentage of petitions that could have been filed without authorization to 2.4% and 0.6% for the 2011 and 2012 years, respectively. Even if all those filings were actually unauthorized, the number of such filings cannot be said to have contributed to delays in the process.

Finally, the OIG sought to determine if there was any other evidence of unauthorized petition filings through the review of duplicate petitions. According to VAB staff, duplicate petitions, i.e., two petitions filed on the same property, do occur.

¹⁸ The samples include petitions from the 2011, 2012 and 2013 tax years.

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VAB staff provided examples of why duplicate petitions are filed, which include, when a taxpayer hires a new tax agent without advising his or her previous tax agent and both file a petition on behalf of the taxpayer; or when a taxpayer sells his or her property and the previously retained tax agent files a petition as well as the new owner. These duplicate petitions are deemed rare by VAB staff and the discrepancies are quickly detected and resolved. The OIG determined that duplicate petitions do not add to the quantity of petitions, and therefore do not delay the process.

Based on the analysis of VAB petitions filed and the interviews of tax agents, VAB staff, and PAO staff the OIG concludes that the limited number of petitions filed without proof of taxpayer authorization is not significantly impacting the volume of appeals filed or contributing to the delays in the VAB process. During the review, the OIG did note a couple of areas that raised concerns regarding VAB compliance with the DOR regulations and efficiency of operations.

4. VAB Lack of Review of Petitioner Signature Requirements

The VAB does not reject a petition if it is missing either the taxpayer's signature or written authorization when filed by unlicensed tax agents. While the instances of unlicensed tax agents filing without authorization do not rise to the level of creating delays in the process, it should not be ignored. The VAB has a duty, imposed by law, to ensure that the petitions filed by unlicensed tax agents contain the required signature or are accompanied by written authorization. VAB staff explained their function as ministerial in nature and stated that requesting the authorization letter with the petition would become "voluminous." VAB staff also stated the petitions filed online contain a waiver signed by the tax agents stating that they are authorized to file on behalf of the taxpayer.

Florida law provides that VAB petitions "must be in substantially the form" prescribed by the DOR, see §194.011, Fla. Stat. DOR regulations state: "[t]he Board clerk shall accept for filing any completed petition that is timely submitted...If an incomplete petition is received, the Board clerk shall notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days." Rule 12D-9.015(9)(a) F.A.C. Further, the regulation defines a completed petition as "...one that provides information for all the required elements that are displayed on the department's form, and is accompanied by the appropriate filing fee if required." Rule 12D-9.015(9) (b) F.A.C. The VAB's own petition form contains the admonition that

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“[a] petition filed by an unlicensed tax agent must be signed by the taxpayer or include written authorization from the taxpayer.”

DOR regulations require the “...Board clerk shall rely on the licensure information provided by a licensed agent, or written authorization provided by an unlicensed agent, in ***accepting the petition.***” (Emphasis supplied) Rule 12D-9.015(9)(c) F.A.C. It is clearly beyond the bounds of the VAB to go beyond the filing and question the information contained in the petition. For example, it would indeed be inappropriate to question a tax agent’s license number, whether the signature or the written authorization was in fact the taxpayer’s, or whether it was forged or coerced. However, it is precisely the duty of the VAB to ensure petitions filed by unlicensed tax agents contain either the signature of the taxpayer or the taxpayer’s written authorization. Furthermore, the waiver signed by an unlicensed tax agent when submitting an online petition is not a substitute for the taxpayer’s written authorization as required by the regulations.

5. Deficiencies in Registration System

The OIG noted some deficiencies in the VAB registration system. As noted above, DOR regulations allow VABs to establish a registration system for tax agents. DOR Rule 12D-9.018 F.A.C. The Miami-Dade VAB created a registration system that has been in place since 1997. According to the VAB Manager, tax agents are not required to register, but are encouraged to do so. The VAB recommends that tax agents filing 25 or more petitions register with the VAB. Initially the system was instituted to assist the VAB in providing records to tax agents quickly and efficiently. As more and more records become available online, the original purpose has shifted. The registration system now assists the VAB in the scheduling of hearings and sending notifications.

In order to register, tax agents fill out a registration form and provide general information including their company name, their license number and type, mailing address, and email address, if the tax agent is willing to accept notices via email. Once registered, the VAB assigns the tax agent a unique and permanent registration number. The petition form has a space for tax agents to enter their registration number. Tax agent registration forms are kept in the VAB Manager’s office. While tax agents do not have to re-register, they are asked to update their information upon any changes by notifying the VAB. The OIG found that the registry contains unlicensed tax agents and outdated information on some registered tax agents. The

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registry contained tax agents that are no longer in business or have not filed petitions in years.

6. Lack of Central Complaint Repository

As discussed earlier in this section, the OIG requested records of complaints received by the VAB from taxpayers alleging the filing of unauthorized petitions. From interviews with the VAB Manager and VAB Counsel, the OIG learned that the VAB receives approximately five (5) complaints a year from condominium owners alleging unauthorized representation. This information, however, was based on their experience and recollection and not on any actual record of the statistic. The OIG was informed that any complaints regarding unauthorized representation are given to the VAB Counsel for resolution. The OIG interviewed both the interim and current VAB Counsel. VAB Counsel stated that once complaints are received the taxpayers are advised that they can withdraw the petition or nullify the hearing results. Evidence of any correspondence is maintained in the individual files. Thus, with no central repository it is impossible to locate complaints.

The VAB receives complaints, although infrequently, about magistrate treatment of petitioners. Those complaints are handled by VAB Counsel. Any correspondence is kept within the individual file. According to the VAB Manager, the majority of complaints received by the VAB are actually requests for reconsideration.¹⁹ Other than reconsiderations, the VAB does not log or track complaints.

7. Recommendations

- a) The VAB should consider establishing an intake system ensuring all petitions are “complete” within the definition of Florida Statutes and DOR Regulations, particularly the petitions filed by unlicensed tax agents should be signed or accompanied by written authorization from the taxpayer.
- b) The VAB should consider adding a designation to the tax agent registration number to differentiate licensed from unlicensed tax agents. It may be as simple as adding an “L” or a “U” as a suffix or a prefix to the number. The designation will assist the VAB in complying with its authorization requirements.

¹⁹ The VAB does track the number of reconsideration requests.

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- c) The VAB should consider lowering the number of petitions triggering registration. While anyone can represent a taxpayer, it is unlikely that tax agents representing more than a couple of taxpayers are individuals assisting friends or family members. A lower threshold, of 10 instead of 25, would ensure that the VAB maintains records of tax agents acting as a business enterprise. Adding agents to the registration system will also improve the scheduling process.
- d) The VAB should periodically review and update its registration data to ensure tax agent information is current and accurate. Periodic notices and reminders to tax agents to update their information, or a system of deleting tax agents after a number of years of inactivity, will ensure an accurate registry is maintained.
- e) The VAB should establish a system to track complaints and their resolutions. Without a formal complaint system, the VAB was not able to provide, other than anecdotally, any actual complaint regarding unauthorized representations or other issues. Meaningful review of problems cannot be made without a system in place that tracks the types of complaints and records the resolutions.

B. Are the procedures used to schedule and reschedule hearings contributing to the delays in completing the appeals?

The OIG first focused on the issue that taxpayers' requests to reschedule cases were contributing or causing the delays in the VAB process. In order to determine the impact of rescheduling, the OIG examined the entire VAB process and multiple records and data relating to the scheduling and rescheduling of the hearings. As with any review, although the focus was on the issue raised, the OIG found other areas of concern.

Primarily, the OIG was interested in determining if there was a cause for the continued delays in the process even as the number of petitions declined. As noted earlier in Table 2 for the last three years of completed hearings, 2011 through 2013, the number of filings by parcel has steadily decreased from the preceding three years – during the surge in appeals. Notably, although the appeals have decreased, the amount of time it has taken the VAB to complete the process is relatively the same. The OIG examined the scheduling and rescheduling process for the 2011

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through 2013 tax years in an effort to determine the reason for the continuing length of processing time. In order to fully understand the complex system of scheduling and rescheduling hearings, background information on the VAB's processes and procedures follows.

1. Overview of VAB Scheduling Process

The VAB handles all the tax appeal cases for Miami-Dade County for real estate, tangible personal properties, and exemption cases. The VAB, pursuant to §194.032, Fla. Stat., and DOR Rule 12D-9.019 F.A.C., has the responsibility of scheduling the hearings before the magistrates. The real estate value hearings are formal proceedings before a special magistrate where both parties (the PAO representative and the taxpayer petitioner) are allowed to present evidence relating to a petitioned property.

All petitions filed with the VAB are assigned a formal number, called an agenda number, which the VAB uses to track and schedule hearings before the magistrates. Once assigned, the petitions are referred to as "agendas" by VAB staff, magistrates, and PAO staff. Agendas are divided by type into legal and value. Value is further divided into real estate and tangible personal property.

A compilation of agendas scheduled before a particular special magistrate, in a particular room, on a particular date and time, is known as a "Board." Legal Boards consist of taxpayer challenges to exemptions, such as the homestead exemptions, and are handled by attorney magistrates. Value Boards consist of taxpayer challenges to the Property Appraiser's valuation of different types of properties.²⁰

The primary driver in scheduling agendas onto Real Estate Value Boards involves the type of property whose valuation is being considered (e.g., residential, condominium, commercial, etc.). The number of agendas on a Board varies depending on the type. A Residential Board averages 50 to 60 agendas. A Commercial Board averages 35 to 45 agendas, although it could be lower if they are high income properties, and thus considered more complex. The VAB receives the petitions and enters them into their computer system, which allows them to sort by the County Land Use Code (CLUC). Similar properties in the same geographical location are generally grouped together and placed on the same Boards.

²⁰ The OIG's review focused on challenges to real estate valuations and not tangible personal property valuations.

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As explained to the OIG, the VAB utilized an automated scheduling system until caseloads increased. The system was not equipped to handle the large volume of appeals, and more importantly, was scheduling tax agents' cases on multiple Boards at the same time, giving rise to conflicts. The VAB switched to a manual system, which requires an extraordinary amount of time and effort by staff.

Currently, scheduling is done manually. The process is initiated by the PAO providing the VAB with one or more lists of agendas relating to an agreed upon CLUC. Each list contains the representatives assigned to the agendas for a particular date. The VAB uses each list to schedule a Board. VAB staff looks to see if an agenda is being handled by a particular tax agent—as almost 97% of them are tax agent cases—and efforts are made not to overlap any tax agent's cases among different Boards during the same date and time. If tax agents are scheduled to be at different hearings at the same time, it would only result in a request to reschedule. VAB staff schedules most Boards based on the lists provided by the PAO.

The OIG also interviewed PAO staff and administration, regarding the scheduling process for hearings. The PAO administration stressed that in scheduling the hearings, cooperation and coordination between the two offices is essential. The VAB Manager and his staff agree that it is necessary to work with the PAO in order for the scheduling to run efficiently. According to the PAO administration, if the VAB were to schedule without PAO input it would be a "nightmare." It was explained that some properties should be considered as an "assemblage" or a package and scheduled together. It was asserted that even if the VAB were to schedule based on the CLUC, without the PAO input, certain properties that should be scheduled together would not be placed on the same Boards. As an example, the Deputy Property Appraiser cited shopping malls as properties with multiple folio numbers that operate as a single economic unit and need to be heard together. PAO administrators asserted that the lists of agendas and the corresponding PAO representatives provided to the VAB are for informational purposes and are not meant as scheduling directives to the VAB. In reality, however, the VAB schedules the agendas based on the PAO groupings and timetable.

The VAB is required to give petitioners notice 25 days prior to a hearing. In scheduling the hearings, the VAB must be mindful of the notice requirements, or the petitioner has "cause" to reschedule the hearing. Petitioners may request an exchange of information from the PAO in advance of the hearing. If the PAO does

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not comply with the exchange of information within the prescribed amount of time prior to the hearing, the petitioner has “cause” to reschedule the hearing.

The process of scheduling the Boards also includes contacting the special magistrates by phone or email to determine their availability. According to VAB staff interviewed by the OIG, special magistrates are scheduled for hearings one to two weeks prior to the actual hearing dates. Approximately one or two days before the hearings, the special magistrates are actually assigned to a Board. The specific Board assignments are not known to anyone other than a few VAB staff members. Magistrates have no ability to view the agendas assigned to their Boards until the morning of the hearings. Petitioners, tax agents, and PAO representatives do not know the magistrate assignments until the morning of the hearing.

2. Legal Basis for Rescheduling Hearings

Like scheduling, the rescheduling of hearings before VAB magistrates is controlled by Florida Statutes and DOR regulations. The VAB’s required 25-day notice to petitioners in advance of the hearing date, also applies to rescheduled hearings. Section 194.032, Fla. Stat., provides for the rescheduling of hearings by petitioners. The statute allows that “[u]pon receipt of the notice, the petitioner may reschedule the hearing a single time by submitting to the clerk a written request to reschedule, at least 5 calendar days before the day of the originally scheduled hearing.” §194.032(2)(a), Fla. Stat. Expanding on the statutory provision, DOR regulations also provide that petitioners may have subsequent hearings rescheduled upon a showing of good cause. Rule 12D-9.019(4)(b) F.A.C., provides reasons that may be considered to be good cause:

1. Petitioner is scheduled for a Value Adjustment Board hearing for the same time in another jurisdiction;
2. Illness of the petitioner or a family member;
3. Death of a family member;
4. The taxpayers’ hearing does not begin within a reasonable time of their scheduled hearing time; or
5. Other reasons beyond the control of the petitioner.

DOR regulations also address rescheduling requests by the Property Appraiser. Rule 12D-9.019(4)(c) F.A.C., provides “[t]he property appraiser or tax collector may submit a written request to the Board clerk to reschedule the hearing, and must provide a copy of the request to the petitioner. If there is a conflict, such as the

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attorney or staff needs to attend two different hearings which are scheduled at the same time, the property appraiser or tax collector may request a reschedule.” The PAO contends that insufficient staffing is a basis for granting a rescheduling request as it constitutes a conflict pursuant to DOR Rule 12D-9.019(4)(c) F.A.C.

The VAB receives rescheduling requests in multiple ways: through email, fax, phone, by mail, or in person. The VAB developed guidelines defining “good cause” criteria based on the DOR regulations, as well as the statutory criteria, to assist staff in making the rescheduling determinations. Staff is able to reschedule most requests as they are received, based on the VAB criteria. A few cases require the review of the VAB Manager or VAB Counsel. The OIG was provided with a copy of the criteria numbered 1 through 11. Criteria number 9 is the statutory provision allowing the petitioner to reschedule without cause provided it is done with notice at least 5 days prior to the hearing. This provision is often referred to by VAB staff and on VAB documentation as “Criteria 9.” They also refer to it as the “freebie.”

In brief, rescheduling hearings require that VAB staff review the request, determine if it qualifies according to the criteria, update the VAB database to reflect the rescheduling, notify the petitioner and the PAO of the rescheduled case, and file the documentation relating to the request. If a request is approved, VAB staff enters the rescheduling into the system using an alphabetical code corresponding to the established criteria. In addition to entering the code, a written justification is entered by VAB personnel, and notice is sent to the PAO.

3. The VAB’s Duty to Schedule Hearings and the Importance of Coordinating with the PAO

In examining the scheduling of cases, it became apparent that for tax years 2011 through 2013, the time it has taken the VAB to complete the hearings has remained relatively the same despite a yearly decrease in petitions filed and heard. The OIG also found that during the 2012 and 2013 tax years some inefficiencies and miscommunications contributed to the length of time it took to certify those tax rolls.

During 2009 through 2011, as the petitions increased, the PAO added representatives and had approximately 70 representatives designated to staff VAB hearings. Despite the increase in staff and the decline in the number of petitions filed in the subsequent years (2012 and 2013), the process remained at 11.5 months and 10 months for 2012 and 2013, respectively.

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The hearings for the 2012 tax year began in early June 2013. The PAO advised the VAB that it was instituting a new process to try and settle cases directly with the petitioners (taxpayers and tax agents) in order to avoid hearings. The PAO decided to hold off on assigning staff to hearings while they tried the new settlement process. The PAO has indicated to the OIG, that they shifted personnel from hearings to work on settlements and had only 10 or 12 representatives available to work on VAB hearings. According to the VAB Manager, the number of Boards was reduced from 8 per day to 2 per day, and sometimes only 1 or none at all. There were entire weeks during the 2012 tax year with only 6 or 7 Boards. The VAB Manager also stated that the slowdown happened from June through September 2013, resulting in more than 50% of the agendas still pending as of January 2014. As a result, the VAB Counsel notified the VAB Chair that the PAO was not assigning its personnel to scheduled hearings.

By February 2014, there were a substantial number of unscheduled agendas pending and the certification deadline at the end of May was drawing closer. The VAB and PAO met with some of the tax agents handling large numbers of the pending agendas to establish a schedule to expedite the process. As a result, VAB staff began scheduling what they describe as an “unorthodox” number of agendas on each Board in order to be done by late April 2014. While a normal Board consisted of 50 to 60 residential agendas a day, they began scheduling “Agent Boards” with 100 to 120 agendas twice a day, in what VAB staff has characterized as an “intense effort.”

In order to maintain the intense schedule, tax agents had to increase their staffs and the PAO began moving rapidly with settlement offers for the agendas that were set. The 2012 tax hearings took 11.5 months to complete, one month longer than it took in 2011, yet there were 16,080 fewer appeals by parcel. The 2010 tax year was completed in slightly less time (11 months) and had 27,871 more appeals by parcel. See Table 2 on pages 11 and 12.

In examining the issues that resulted in the 2012 tax year delays, the OIG notes that the PAO made a concerted effort to settle prior to hearings. Such efforts, however, should not stall the process. The PAO set no timelines or deadlines for the settlement initiative; without time limits the process lingered. The VAB, which bears the statutory responsibility to schedule hearings, also failed to set limits. Moreover, the OIG asked if the PAO documents the justification for the reductions offered through settlements. The Deputy PA indicated that while supporting documents are

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maintained in the file, there is no written explanation from the PAO detailing its settlement analysis.

The OIG was informed by both VAB and PAO staff that prior to the start of the 2013 tax year hearings the offices communicated with each other to address the scheduling issues that impacted certifying the 2012 tax year. The OIG learned from the VAB Director that the VAB made it clear they would take a steady scheduling approach for the 2013 tax year. VAB staff informed the OIG of their belief that as a result of meetings with the PAO they had reached an agreement to schedule between 9 and 10 Boards a day. In years prior to 2013, the norm was 6 to 8 Boards daily. Initially, according to the VAB Manager, the PAO requested three weeks to get its staff prepared for the increased number of hearings. Real Estate Value hearings for the 2012 tax year ended on May 16, 2014, and the first Real Estate Value hearings for the 2013 tax year were not scheduled to begin until June 23, 2014.

The Deputy PA explained to the OIG that his office had agreed to “ramp up.” However, the PAO was in the process of hiring new staff and could not start the increased Boards immediately. When sufficient lists of agendas were not provided by the PAO, the VAB scheduled the Boards directly from the pool of pending agendas, in an attempt to meet its goal. According to the VAB Manager, once the VAB began scheduling the maximum number of Boards, the PAO failed to provide representatives to staff all the scheduled Boards. As a result, the PAO requested the cancellation of numerous Boards. Regarding the 2013 tax year scheduling issues, the PAO administration explained there was a miscommunication or misunderstanding between the VAB and PAO.

A partial review of the 2013 tax year, from June 23, 2014, through November 20, 2014, found that 1,298 agendas were rescheduled due to PAO non-availability. Rather than create a situation similar to the 2012 tax year, a mad rush to finish, the VAB and PAO returned to their previous scheduling method, which involved PAO input in selecting the agendas for hearings. In October 2014, the VAB reverted to scheduling Boards based on lists provided by the PAO, although not at the anticipated 9 to 10 Boards daily.

The OIG requested the PAO provide information on the number of staff they had available to attend hearings during the 2013 tax year. The PAO provided several lists of personnel assigned to the appeals division at different intervals between April 2011 and September 2013. However, the PAO was unable to provide a detailed

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accounting of which personnel were available to attend hearings for specific periods of time.

4. Review of Tax Years 2011, 2012, and 2013 Rescheduled Hearings

The OIG requested that the VAB provide a listing of all the rescheduled VAB hearings for the 2011, 2012, and 2013 tax years. The lists were analyzed to identify how many agendas were actually rescheduled for a subsequent hearing and to categorize the reasons for rescheduling. Only real estate value hearings were analyzed. The majority of rescheduled agendas can be attributed to the use of Criteria 9 rescheduling.

For the 2011 tax year, per the data provided by the VAB, there were 11,009 agendas rescheduled. The OIG analysis of the data found that 2,795 agendas on the rescheduled list were actually withdrawn petitions, settled agendas, or agendas that were moved from one Board to another for efficiency or logistical reasons and never rescheduled for a hearing. Of the actual 8,214 agendas rescheduled in 2011, 6,847 were rescheduled as Criteria 9. The Criteria 9 rescheduling was 13.1 % of the 52,245 total petitions filed in 2011.

For the 2012 tax year, per the data provided by the VAB, there were 22,450 agendas rescheduled. The OIG analysis of the data found that 11,377 agendas on the rescheduled list were actually withdrawn petitions, settled agendas, or agendas that were moved from one Board to another for efficiency or logistical reasons and never rescheduled for a hearing. Of the actual 11,073 agendas rescheduled in 2012, 9,320 were rescheduled as Criteria 9. The Criteria 9 rescheduling was 19.5 % of the 47,749 total petitions filed in 2012.

For the 2013 tax year, the rescheduled agendas numbered 7,721, from June 23, 2014 through November 20, 2014,²¹ and 5,527 of those were the due to Criteria 9. The OIG analysis of the data found that 3,108 agendas on the rescheduled list were actually withdrawn petitions, settled agendas, or agendas that were moved from one Board to another for efficiency or logistical reasons. The table on the next page shows the number of rescheduled agendas for the years 2011, 2012 and 2013.

²¹ Data for Tax Year 2013 that was available at the time of the OIG analysis was for the period of June 23, 2014 through November 20, 2014. These numbers were also reduced by the OIG to exclude agendas classified as rescheduled by the VAB, but that were not actually reset for another hearing date.

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Table 5: Analysis of Rescheduled Agendas

Tax Year	2011	2012	2013*
Total Agendas ²²	52,245	47,749	43,392
Agendas Rescheduled ²³	11,009	22,450	10,829
Number of Withdrawn, Settled or Transferred Petitions	2,795	11,377	3,108
Agendas Actually Rescheduled	8,214	11,073	7,721
Agendas Rescheduled for Criteria 9	6,847	9,320	5,527
Percent of Total Agendas Rescheduled by Criteria 9	13.1%	19.5%	12.7%

*2013 Tax Year data available at the time of the OIG analysis was for the period of time between June 23, 2014 and November 20, 2014.

Based on the OIG’s review of the 2011, 2012 and 2013 tax year rescheduled hearings, it is evident the statutory provision allowing a one-time rescheduling without cause is a contributing factor that impacts the time needed to complete the VAB cycle.

5. Coding Inconsistencies and Errors Impacting Accuracy of VAB Records

In reviewing the VAB’s rescheduling data and its process for rescheduling hearings, the OIG found other factors that, while not contributing to the delays, do contribute to inaccuracies in assessing the work of the VAB. Primarily, the problem found centered on inconsistencies in coding the rescheduling of hearings resulting in inaccurate VAB records.

²² The total number of agendas was provided by the VAB and excludes any cancelled petitions and petitions removed due to non-payment of taxes.

²³ These numbers are from the *Reschedule Spreadsheets* provided by the VAB, which contain detailed reasons for each rescheduling. A separate review using the 2011 and the 2012 VAB Petitions Spreadsheets (different spreadsheets provided by the VAB), which do not provide detailed reasons for each rescheduling, documented 13,231 rescheduled agendas for 2011 and 26,256 rescheduled agendas for 2012.

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According to VAB staff interviewed, the VAB's reporting of rescheduled cases includes agendas that were set for hearing, subsequently withdrawn, and never intended to be rescheduled. Agendas may be withdrawn because the taxpayer and PAO have reached a settlement or because the taxpayer has requested to withdraw the petition. However, once the agenda was scheduled for a Board, any action, including withdrawals and settlements were counted as rescheduled in the report provided to the OIG. Clearly, settled and withdrawn cases are never actually scheduled for a subsequent hearing. The effect is inaccurate data, which the OIG found plagues the VAB reporting system.

Equally concerning, is the VAB's failure to accurately code the reasons for the rescheduled agendas. The rescheduling data, provided to the OIG by the VAB, contained notations as to the rescheduling reasons in addition to a cancellation indicator. After a careful analysis of each entry, the OIG found instances where the notation explaining the reason for the continuance was either labeled with the wrong indicator code, or grouped using the indicator code "O." According to VAB staff interviewed, the database used to input the case information does not allow for each criteria to be individually coded.

The VAB Manager explained that the VAB computer system is antiquated and cannot accommodate the most frequently used rescheduling criteria; nor can it accommodate the case load currently handled by the VAB. The VAB Manager stated that the system was never designed to handle the "freebie" or the volume of settlements and withdrawals. However, the OIG review found that the VAB was using the "O" indicator code as a catch-all, even when codes existed for the rescheduled reasons. While there may be, and indeed the OIG found, instances where an agenda is rescheduled due to "good cause" for which there are no pre-established indicator codes, the bulk of the errors centered on the mislabeling of withdrawals, settled cases, and cases transferred to other Boards. This lack of accurate coding is problematic. Any review of the rescheduling data would be skewed and incorrect unless the reviewer, as did the OIG, examined line-by-line and verified the indicator codes against the reason included in the notes.

6. Example of Rescheduling and Coding Issues Pertaining to August 27, 2014

A review of the Boards scheduled for August 27, 2014, provides a snapshot of the various problems afflicting the entire process. On that date, OIG Special Agents observed the VAB hearings and noted that the posted calendar listed a total of six

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(6) Boards, three (3) of which were marked as cancelled. The OIG chose to review the scheduling process for that date.

On August 27, 2014, ten (10) Boards were originally scheduled. Boards are identified alphabetically and represent the rooms in which the hearings will be held. On that date, the Boards were A through D, F, H, I, J, M and P. Of the ten (10) Boards scheduled, two (2) were Agent Boards. Although the PAO does not provide lists for Agent Boards, the PAO works with the VAB and the tax agents to determine which agendas will be scheduled. The PAO provided the VAB scheduling staff with three (3) lists of agendas and the assigned representatives on or about July 29, 2014. The PAO did not provide any other lists of agendas for the remaining five (5) Boards. Accordingly, VAB staff pulled agendas from their pool of pending agendas and grouped them together by CLUC to schedule the remaining Boards for August 27, 2014.

On August 20, 2014, the PAO sent the VAB an email requesting the rescheduling of seven (7) Boards (A, D, F, H, I, J, and P) due to “non-availability of staff to prepare and present the Boards...” In effect, the five (5) Boards scheduled by the VAB for August 27, 2014, without PAO input, were all cancelled. In addition, one Agent Board and another Board, both scheduled with PAO input, were also cancelled, for a total of seven (7) Boards cancelled for this particular date.

The OIG reviewed the manual worksheets, handwritten calendars, and rescheduling data for the Boards scheduled on August 27, 2014. The analysis shows that 433 agendas were set, and that the PAO cancelled seven (7) Boards containing a total of 259 agendas. The remaining three (3) Boards scheduled for August 27, 2014 had 174 agendas. The OIG also reviewed other spreadsheets containing VAB data relating to hearings and found several reporting inconsistencies.

The VAB’s summary of daily activity spreadsheet titled *VAB Hearings Tax Year 2013 (2013 Spreadsheet)* reports 494 agendas, labeled as “cases” set for hearing, 355 reset and 139 as heard. The report contains columns by Boards and also columns indicating the code and criteria for resets.

The *2013 Spreadsheet* indicates **no** cancellations by the PAO under the column labeled “V -VAB/PA Cancel.” Instead, the spreadsheet lists 105 resets under column “F – criteria 9” and 250 under column “O – other.” The OIG was provided a

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list by VAB staff containing codes to be used when rescheduling. The codes, as captured in the spreadsheet, do not correspond with the list.

According to the *2013 Spreadsheet*, the VAB applied “Criteria 9,” the statutory one-time rescheduling available to petitioners, to 105 agendas on August 27, 2014. Some of the petitioners, who had their hearings cancelled by the PAO, were nevertheless charged with their one-time rescheduling. The OIG also analyzed the VAB’s spreadsheet titled *2013 Re-schedule Agendas Reason Cancellation Memo 11 20 14 (Reschedule Spreadsheet)*. This spreadsheet codes all the rescheduling requests as “O.” In addition to the code, the spreadsheet contains reasons for the rescheduling of the hearings.

The analysis of the *Reschedule Spreadsheet* indicates that a total of 294 agendas were rescheduled, not 355 as indicated in the *2013 Spreadsheet*. Of those rescheduled, the reasons indicate that 171 were rescheduled due to the non-availability of the PAO, and 105 due to “Criteria 9.” Of the 105 “Criteria 9” rescheduled agendas, 81 were on Boards that were cancelled by the PAO. Of those, 22 petitioners requested the rescheduling on the **same day or after the PAO’s request** to cancel the Boards was emailed to the VAB. Furthermore, the *Reschedule Spreadsheet* also notes that a total of 16 cases were withdrawn or settled and two (2) were transferred. Withdrawn and settled agendas, as noted earlier, are not truly rescheduled agendas.

The OIG has received conflicting information from the PAO administration regarding the PAO’s compliance with DOR Rule 12D-9.019(4) (c) F.A.C., which requires the PAO to copy the petitioner with any request to reschedule a VAB hearing. The OIG was informed by the Deputy PA that copies of the request are regularly sent by email to tax agents. However, the PAO Director of VAB Appeals advised the OIG that, in fact, copies of the rescheduling requests are not sent to petitioners. Instead they rely on the VAB to notify petitioners of the cancellations. Relying on the VAB’s notification of the cancellation does not meet the PAO’s requirement to send the “copy” of the request for rescheduling to the petitioner.

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The next table summarizes the rescheduling requests for the August 27, 2014, hearings and the VAB data record of those requests.

Table 6: August 27, 2014, Boards Rescheduled at PAO's Request

Board	PAO Requested Cancellations	Recorded PAO Cancellation	Petitioner Request Prior to Aug 20	Petitioner Request on or after Aug 20	Withdrawn or Transferred
A	41	16	15	7	3
D	40	22	16	2	0
F	42	32	8	0	2
H	23	16	4	2	1
I	35	18	12	4	1
J	38	27	4	7	0
P	40	40	0	0	0
Total	259	171	59	22	7

The OIG questions whether the petitioners should have been charged their one-time rescheduling when the PAO requested cancellation of the entire Board. Further, the rescheduled agendas attributed to the petitioner, instead of the PAO, clearly resulted in underreporting of the agendas rescheduled by the PAO. The OIG notes that the issue was not isolated to the one date used as a sample. A review of the entire week of August 25, 2014, found 11 additional instances where a petitioner requested the rescheduling on the same day or after the PAO's request to cancel the Boards, resulting in a total of 33 for the week.

These issues of inaccurate categorization of data, and numbers that cannot be reconciled within different VAB reports, as shown by the August 27, 2014, example, were observed throughout the OIG's review of the process.

7. Recommendations

- a) Once the number of petitions for the tax year has been determined, the VAB and PAO should agree on a written action plan that includes the amount and frequency of Boards needed to complete the process by a target date, regardless of any settlement process. Deciding on a plan and a target date will allow the PAO to implement settlement initiatives and ensure that the VAB meets its

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responsibility of scheduling hearings. Most of all, it will ensure the process moves forward and is not delayed, as it was in 2012.

- b)** The PAO should document the analysis undertaken by staff in arriving at settlements. The OIG recognizes that some of the information contained in a taxpayer's file maintained by the PAO is confidential under Florida law, the analysis should be written to allow for transparency and consistency.
- c)** The VAB should seek to upgrade its computer system and software. The software updates should include the ability to group agendas to be heard together, either by allowing the PAO access to do those groupings, or by having the PAO provide its methodology or parameters for such groupings. Such functionality would allow the VAB to independently schedule Boards and still maintain the efficiencies that the PAO believes are essential.
- d)** The PAO should establish a staffing formula. Using the historical data available, the PAO should be able to establish a staffing formula that ensures that the necessary personnel are available to staff Boards. Having the aforementioned written action plan [Recommendation 7(a)] will assist the PAO in establishing said staffing formula, i.e., determining the number of staff necessary to complete the hearings by a target date.
- e)** The VAB should review its criteria for rescheduling and ensure that staff has sufficient categories and indicator codes to accurately track the reasons for rescheduling a hearing. While the OIG understands that many of the scheduling and coding problems arise from an antiquated computer system, there are measures that could be taken immediately. Using the existing system, the VAB can re-categorize the indicator codes to allow for accurate recording of the rescheduling. Using the same indicator codes and criteria within the VAB's various reporting systems would be a first step in ensuring consistency and accuracy.
- f)** The PAO should ensure that copies of any requests to reschedule hearings sent to the VAB are provided to the petitioner in

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accordance with DOR Rule 12D-9.019(4)(c) F.A.C., and maintain documentation of the copy sent to the petitioner.

- g)** The VAB should seek an advisory opinion regarding whether insufficient staffing constitutes a conflict pursuant to DOR Rule 12D-9.019(4)(c) F.A.C.
- h)** The VAB should seek an opinion from the DOR regarding whether a petitioner should be charged with their one-time rescheduling without cause after the PAO has requested cancellation of the hearing.

C. Are special magistrate assignments creating biases in favor of the tax agents?

The OIG examined the VAB process of appointing special magistrates. We assessed special magistrate qualifications and potential conflicts, and conducted background checks of all special magistrates appointed by the VAB for the 2013 tax hearings. The OIG analyzed data supplied by the VAB of all instances where special magistrates have recused themselves from hearing certain appeals. Additionally, the OIG interviewed some of the VAB special magistrates, VAB staff, tax agents and PAO staff concerning appointments, assignments, conflicts, and recusals. The OIG also reviewed the process of scheduling appeals before special magistrates. The OIG evaluated the most frequent assignments of specific tax agents before particular magistrates, and if such pairings resulted in favorable decisions for the tax agents.

1. Special Magistrate Qualifications

Acting on behalf of the VAB, special magistrates must hold certain qualifications in order to make determinations about the valuation of property and legal exemptions. Furthermore, special magistrates may not be employees, or elected or appointed officials of the county whose VAB they are serving, of a special taxing district (e.g., a municipality or a school district), or of the State of Florida. The specific qualifications for a special magistrate differ depending on the types of appeals they are appointed to hear.

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Table 7: Special Magistrate Qualifications - Florida Statutes §194.035(1)

Value Appeals of Real Property	A state certified real estate appraiser with not less than 5 years of experience in real property valuation
Value Appeals of Tangible Personal Property	A member of a nationally recognized appraiser's organization ²⁴ with not less than 5 years of experience in tangible personal property valuation
Legal Appeals of Exemptions & Classifications	A member of the Florida Bar with no less than 5 years of experience in the area of ad valorem taxation

Special magistrates are appointed by the VAB annually. Before appointing a special magistrate, the VAB is required to verify the qualifications of each applicant. The requirements for serving as a special magistrate are found in DOR Rule 12D-9.010(4), F.A.C.

The Miami-Dade County VAB has increased the qualification requirements for real estate appraiser special magistrates by requiring that they be a state-certified general appraiser. A certified general appraiser is a higher certification than a certified real estate appraiser. Furthermore, according to the instructions stated on the Miami-Dade County VAB application, all appraiser special magistrates must be qualified and willing to hear all types of real estate as well as personal property valuation cases.

In addition to routine questions regarding experience, qualifications, designations, and licenses, the Miami-Dade County VAB application also requires applicants to disclose their current business entity and/or employer, and list "major former employers" and appraisal activities for the last five (5) years. The application itself has a section where the applicant is required to state, by percentage, the amount of time devoted to appraisal activities.²⁵

²⁴ As identified in its application for Special Magistrates, Miami-Dade County's Value Adjustment Board recognizes the following three professional organizations: Appraisal Institute (MAI Sr. only; SRPA and SREA designations); American Society of Appraisers (Fellows and Sr. members only); and the National Society of Real Estate Appraisers.

²⁵ The application asks: How much time do you devote to appraising? It then lists four categories where the applicant is requested to state a percentage of his or her time. The four categories are: 1) real estate non-income property appraisals; 2) real estate income property appraisals; 3) tangible personal property appraisals; and 4) other appraisal activities.

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The OIG conducted background checks on all current special magistrates retained by the Miami-Dade VAB, who presided over the 2013 tax roll appeals. These checks included verifying their professional licenses and employment (reported wages), running corporate checks (e.g., officer, principal, registered tax agent status, etc.), and obtaining other reports to look for potential conflicts. The application instructions, prior to this year, required that appraiser special magistrates must spend over 50% of their time devoted to appraisal activities. The OIG found that all applicants stated on their application forms that they were engaged in performing appraisal activities.²⁶ The OIG did not find any issues that would have precluded any of the applicants from being a special magistrate for the VAB, and found the VAB qualification requirements exceed the standards.

2. Special Magistrate Recusals

Disqualification or recusal of a special magistrate is governed by DOR Rule 12D-9.022 F.A.C. Both petitioners (taxpayers or their tax agents) and the PAO representative may seek to have a special magistrate disqualified or recused. Grounds for disqualification include that the special magistrate does not possess the statutory qualifications to conduct a particular proceeding. A party can seek recusal by communicating a reasonable belief that the special magistrate has a bias, prejudice, or conflict of interest. In the former case, the VAB, or its legal counsel, will make the determination of the special magistrate's qualifications. In the latter case, if the special magistrate agrees with the request, then the magistrate shall recuse himself; if the special magistrate disagrees, then the matter is referred to the VAB's legal counsel for a determination. Independent of any motion made by either of the parties, special magistrates are required to "recuse themselves from hearing a petition when they have a conflict of interest or an appearance of a conflict of interest." DOR Rule 12D-9.022(3) F.A.C.

Through interviews with special magistrates, the OIG learned that some magistrates recuse themselves from hearing a petition if they've appraised the petitioned property during the same tax year. One magistrate interviewed provided an example where he "inherited" an agenda due to a recusal and realized that he too may have a conflict as he had performed an appraisal on the property 8 to 10 years ago. This magistrate disclosed this fact to the parties, and no one objected to him presiding over the hearing. Another special magistrate stated that even several years after she had appraised a property, she would feel uncomfortable presiding as the magistrate because she might have information that the PAO representative

²⁶ As of 2014, the requirement is deleted from the instructions.

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doesn't know. She too would disclose, and let the parties decide. There is no rule or guideline that specifies the number of years that must have passed before a conflict is dissipated. The magistrates interviewed gave further examples of situations they felt required recusals: presiding over a petition involving a neighbor's property, or if the magistrate's family member is employed by a tax agent's firm appearing before that magistrate.

In addition to the recusal rules, certain restrictions apply to special magistrates when representing individuals before the VAB. Florida Statute §194.035 states "A special magistrate may not represent a person before the Board in any tax year during which he or she has served that Board as a special magistrate." The Miami-Dade County VAB has interpreted this statute to "apply to all persons who are partners, employees or other similar business associates of special magistrates who may, directly or indirectly, receive a financial benefit from representing taxpayers before the VAB."²⁷ Under this interpretation, a magistrate must recuse him/herself when a business partner or an employee appears before the magistrate, presumably as a petitioner or tax agent.

The OIG examined data provided by the VAB, and was able to extract information regarding all special magistrate recusals on real estate valuation hearings for the tax years 2011, 2012, and 2013. In 2011, there were 19 recusals involving six (6) separate special magistrates. In 2012, there were eight (8) recusals involving five (5) separate special magistrates. For 2013 (through November 20, 2014 – five (5) months of hearings), there were 35 recusals involving four (4) separate magistrates. What the data does not show is the number of times where a potential conflict was disclosed by the special magistrate and neither party objected to the magistrate continuing to hear the case. Based on the data and the interviews conducted, it is clear that there is a system in place to handle conflicts as they arise.

3. Assigning Special Magistrates

According to VAB staff interviewed by the OIG, special magistrates are contacted to determine their availability one to two weeks prior to the actual hearing date. The magistrates are randomly assigned to a Board on a rotational basis. The entry of the assignments into the computer system by VAB staff is sometimes done as late as the day before. Those assignments are not known to anyone other than a few VAB staff members. The ability to view special magistrate assignments in the

²⁷ Miami-Dade County VAB Appraiser Special Magistrate application materials.

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computer system is restricted to only a few individuals with scheduling duties and to the VAB Manager.

Magistrate assignments are first published the morning of the hearing. Neither the tax agents, taxpayers, nor the PAO representatives know who will be the assigned special magistrate for a particular Board until the day of the hearing. The special magistrates do not know which agendas they will be hearing until the day of the hearing.

4. Frequency of Appearances by a Tax Agent before a Special Magistrate

The OIG reviewed the concern that select tax agents are getting reductions in the property's market value because of the relationship they have with the magistrate hearing their appeals. Another way of articulating the concern was whether the frequency of appearance before a particular special magistrate gives rise to the perception that tax agents are receiving favorable treatment by that magistrate. The OIG examined summarized data of the 2012 tax year hearings provided by M-DCPS auditors that showed the percentage of a tax agent's appeals heard by a particular special magistrate. The data, which analyzes the tax agent's appearances by individual parcel/folio, shows that some tax agents have a large percentage of their appeals heard by only a handful of special magistrates.

A parcel/folio denotes a piece of property that has its own taxable value, such as a single detached home or a condominium unit. Most often, a petition is filed for one (1) parcel/folio, resulting in one (1) agenda number assigned to that one (1) parcel/folio. However, because a single petition/agenda can cover multiple parcels/folios, such as all the units in a condominium building, the corresponding number of agendas was also examined, as the OIG considers agendas to be more representative of the scheduling process.

The OIG chose the five tax agents with the highest frequency of appearances (by parcel/folio) before a particular magistrate during the 2012 tax year, as identified in the M-DCPS data. For each pairing, we looked to the disposition and justification for each parcel/folio (in other words, whether the special magistrate reduced the market value below the assessed value on each parcel/folio being appealed). The results of these five (5) examinations showed no pattern that demonstrates bias or that the dispositions were skewed in favor of the tax agent. (See OIG Schedules 1-5 for the specific results of our examination of these five pairings.)

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In a separate analysis, the OIG plotted the frequency that a tax agent appeared before a special magistrate, based on the number of agendas heard by that magistrate, because agendas²⁸ are deemed by the OIG to be more representative of the scheduling process. We looked at all the agendas scheduled for the top 23 registered tax agents.²⁹ The highest percentage of a tax agent's hearings before an individual magistrate was 43 percent.³⁰ We found that for 94 percent of the hearings reviewed, a tax agent appeared before the same magistrate for less than 10 percent of the tax agent's total agendas. The remaining 6% of the hearings reviewed ranged from 10% to 43% of the tax agent's total agendas. (See OIG Schedule 6 for our analysis of pairings by number of agendas.) Based on the analysis, the randomness in scheduling is evident.

5. Scheduling Hearings via Agent Boards

The OIG also examined whether the rotation of the Agent Boards, which started during the 2012 tax year hearings, among a limited pool of magistrates created the perception of special relationships between them and the tax agents. Even though the pool was limited to eight (8) special magistrates, the assignments were still made randomly.³¹ The OIG interviewed all the parties involved in the Agent Board process. Agent Boards are fast paced and have a high volume of agendas. The OIG was advised that some tax agents actually attend two back-to-back Boards in the same day (one in the morning and one in the afternoon). These back-to-back Boards are conducted by different magistrates, and have a separate PAO representative assigned to each Board. During the 2013 tax year hearings, Agent Board assignments were rotated among all the magistrates. According to VAB staff, some problems arose because not all magistrates were able to keep up with the pace.

Overall, tax agents and magistrates agree that Agent Boards are the most efficient process for handling the appeals. PAO representatives interviewed, also acknowledged the Agent Boards are an efficient process to resolve large volumes of agendas. Although efficient, not all tax agents prefer the Boards. Some tax agents feel they are putting all their eggs in one basket and risk unfavorable decisions for all

²⁸ The OIG calculations are based on real estate value agendas excluding withdrawn agendas.

²⁹ The OIG limited its review to registered tax agents having 100 or more real estate value agendas heard by a special magistrate.

³⁰ This pairing also made the top five (5) selected pairings based on parcels/folios, and is represented in OIG Schedule 4.

³¹ These magistrates were selected by the VAB based on their experience and willingness to participate in the Agent Boards.

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their agendas on that Board. Similarly, not all magistrates prefer the Boards. One experienced magistrate explained that they are too fast paced and do not allow enough time to hear the individual agendas. He mentioned that agreeing to hear an Agent Board in the afternoon includes added stress. If the morning Board falls behind schedule there is added pressure to finish the afternoon Board by 5 pm. Failure to finish in the time allotted results in having to reschedule agendas to be heard another day.

The OIG's review concerning the appointments, assignments, conflicts, qualifications, recusals, and process of scheduling appeals before special magistrates found no evidence of bias favoring tax agents or petitioners. It is worth noting all VAB hearings are video and audio recorded. If there are any allegations of impropriety, bias, favoritism, or lack of justification, etc., the documents submitted during the hearing as well as the video and audio recordings are available for review. In addition, the parties can request reconsideration by the magistrate. Petitioners may also appeal to the Circuit Court pursuant to §194.171, Fla. Stat.; the PAO may similarly appeal subject to the restrictions in §194.036, Fla. Stat.

6. Recommendations

- a) The VAB should request DOR guidance and training for special magistrates regarding conflicts requiring recusal.
- b) The OIG acknowledges the VAB's recent efforts to minimize the perception of bias regarding Agent Boards by expanding Agent Board assignments to all special magistrates. In order to improve the efficiency of the Agent Board system, the VAB should implement training guides for those special magistrates that have never handled Agent Boards.
- c) The OIG recommends that the VAB perform an annual evaluation of the magistrates. The evaluation should focus on the efficiency, timeliness, and completeness of the dispositions by the special magistrates. The annual evaluation should be sent to the Board to assist in making the following year's appointments.

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VII. RESPONSES TO THE DRAFT REPORT & OIG COMMENTS

This report, as a draft, was provided to the Honorable Pedro Garcia, Miami-Dade County Property Appraiser and Mark Martinez, Director of the VAB, for their review and submission of discretionary written responses. The OIG received a response from the Property Appraiser. It is attached as Appendix A. The OIG also received a response from the VAB Director, which is attached as Appendix B. The VAB Director's response indicated that certain recommendations should be addressed by the VAB Attorney. As such, the OIG provided a copy of the draft to VAB Attorney Manuel Blanco for his review and submission of a discretionary written response. The OIG did not receive a response from the VAB Attorney. A summary of the two responses received and the OIG's comments follows.

A. Response of the Honorable Pedro Garcia, Miami-Dade County Property Appraiser

The Property Appraiser's response, which is attached as Appendix A, addresses the four recommendations directed to the Property Appraiser's Office. The Property Appraiser agrees with the OIG's recommendations to establish a staffing formula [see Section VI. B.7d] and to send copies of rescheduling requests directly to the petitioner in accordance with DOR Rule 12D-9.019(4)(c) [see Section VI.B.7f]. Further, the PA indicates his office is already implementing the OIG's recommendation to document the analysis undertaken by staff in arriving at settlements [see Section VI.B.7b].

While noting the importance of the OIG's recommendation to develop an action plan to complete the hearings by a target date [see Section VI.B.7a], the PA asserts that external factors will affect the "VAB and PAO's ability to create a plan that guarantees the targeted objectives will be met." Specifically, the PAO states:

In Miami-Dade County, a very high percentage of VAB petitions (approximately 95%) are filed by tax agents. Agents are compensated on a contingency basis as a percentage of the total tax reduction achieved through the VAB appeal process. The payment of 12% APR interest on the overpaid amount, as required by State law, constitutes a strong incentive for both petitioners and their agents to file an appeal with the VAB and to reschedule their petition to the latest possible date in an effort to delay their appearance and lengthen the period

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of time during which interest accrues on their tax refund. This incentive, along with the petitioners'/agents' ability to reschedule without cause, negatively affects the VAB Manager's ability to efficiently schedule petitions and timely complete the VAB hearings.

The OIG's review of the 2011, 2012, and 2013 tax year rescheduled hearings, found that the statutory provision allowing a one-time rescheduling without cause is a contributing factor that impacts the time needed to complete the VAB cycle. However, the OIG disputes the PAO's implication that tax agents are abusing the statutory rescheduling provision in order to obtain the statutorily provided payment of 12% APR interest on overpaid amounts.

Pursuant to §194.014(2), Fla. Stat., "If the value adjustment board determines that a refund is due, the overpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent pursuant to s. 197.333 until a refund is paid. Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice issued pursuant to s. 197.322."

The statute also provides that "[i]f the value adjustment board determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent pursuant to s. 197.333 until the unpaid amount is paid."

Under the statute's provisions, a delay by the petitioner can be costly, not just profitable. The motivation to delay in order to seek the 12% interest carries the accompanying risk of having to pay 12% interest. More importantly, the PA's assessment that tax agents, due to their contingency arrangement, would seek a delay to increase their fees with the additional 12% interest is incorrect.

The OIG has interviewed several tax agents, including some of the tax agents that file the largest number of petitions each year before the VAB, and the tax agents that have requested the greatest number of one-time rescheduling requests. The tax agents interviewed stressed to the OIG that the faster the hearings are heard, the faster they can bill and collect from their clients. The fees collected are based on a percentage of any reduction in the assessment and do not include interest due to the taxpayer. Several of the tax agents interviewed stated that their advice to clients is to pay their tax bills in full, in order to avoid the risk of having to pay 12% interest on unpaid amounts.

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In addition, the OIG reviewed several of the contingency fee agreements of licensed tax agents. Per the agreements, agent fees are based on a percentage of the tax savings realized from a reduction in the assessment—not on the interest payments on overpaid amounts. In addition, any refunds due to the taxpayer are mailed to the taxpayer not the tax agents. Interest payments due based on overpaid amounts are processed separately after the tax refund payments, and are also mailed directly to the taxpayer. Although incorrect as to the tax agent's fees, the VAB and PAO must nevertheless be mindful of the 12% interest payment issue. A plan, as recommended by the OIG, with a targeted completion date for the hearings will assist in reducing the County's exposure to interest payments.

The PA asserts in his response that it will be difficult to formulate an action plan, and a staffing formula, due to the timing requirements of his office's budget. The PAO's budget, including staffing levels, must be submitted and approved before the number of petitions and the required boards are known.

The OIG believes the action plan is critical. The action plan recommended by the OIG is to be developed yearly after the number of petitions has been determined and based on the exact number of PAO staff available at that time. The goal of the action plan is to ensure hearings are timely set, a target date of completion is clear to all parties, and that settlement initiatives do not halt the hearing process. The plan would set the number of Boards, based on available staff, needed to certify the tax roll by June 1st of each year. The ultimate goal is to eliminate the two year delay and allow the County and the School District to timely determine their revenues in order to sufficiently budget and fund services.

The creation of a staffing formula (a ratio of staff necessary to handle a certain number of hearings within a given time period) will ensure that, but for another catastrophic event in the real estate market, sufficient staff is available to handle the petitions filed in any given year. The staffing formula and yearly action plan should complement each other to allow the VAB and PAO to complete the VAB hearings and certify the tax roll in a timely manner. The plan needs to be formulated through the cooperation and coordination of both the VAB and the PAO.

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B. Response of Mark Martinez, VAB Director

The VAB Director's response, which is attached as Appendix B, addresses some of the recommendations directed to the VAB and left others to be answered by the VAB Attorney.

The OIG's recommendations regarding the registration of tax agents and the establishment of a central complaint repository were accepted by the VAB and will be implemented [see Section VI.A.7b-e]. In response to the OIG's recommendation that the VAB ensure that petitions filed by unlicensed tax agents should contain the taxpayer's signature or be accompanied by written authorization from the taxpayer in accordance with DOR regulations [see Section VI.A.7a], the VAB Director states that the VAB will "follow the directive" of the Board in reference to the OIG's recommendation.

The VAB's response indicates a reservation to comply with this requirement. In fact, the Director's response states that the "efficiency and productivity was discussed [with the Board] referencing the time to evaluate petitions filed by unlicensed tax agents not signed or accompanied by written authorization which, if implemented, would cause significant delays in comparison to the number of instances that this happens." The OIG reminds the VAB that it has a duty, imposed by law, to ensure that the petitions filed by unlicensed tax agents contain the required signature or are accompanied by written authorization. It is unacceptable to ignore the legal mandate in the name of "efficiency and productivity." Further, the argument that to review petitions for completeness would cause significant delays is unpersuasive. First, the VAB already reviews petitions to ensure payment, that there are no changes to folio numbers, and that duplicate petitions are not filed. Second, if a signature or authorization is missing, DOR regulations provide a time period for the petitioner to correct the deficiency, this additional time should in no way hinder or delay the scheduling of the remaining properly filed petitions.

Regarding the OIG's recommendation jointly made to the VAB and PAO for a yearly action plan [see Section VI.B.7a], the VAB Director concurs with the OIG and adds that the "estimated completion date will be given to the VAB attorney and/or the VAB." The VAB Director also concurs with recommendations regarding upgrading the VAB's computer and software system, and revisions to the current coding system. While the VAB is currently identifying requirements for a new VAB computer system, the response indicates the VAB will contact the Information

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Technology Department to implement the recommendations prior to the procurement of a new system.

Two of the recommendations regarding the VAB's scheduling process suggest the VAB seek DOR guidance [see Section VI.B.7g & h]. One recommendation is to seek a DOR opinion regarding whether a petitioner should be charged with their one-time rescheduling without cause after the PAO has requested cancellation of the hearing. In response, the VAB Director states "[o]ur office, as a practice, will charge the PAO with a reschedule when the PAO requests a cancellation of a hearing." The OIG's findings are contrary to that assertion. In fact, for the sample week of August 25, 2014, on a total of 33 petitions, the PAO was not charged with their requested cancellations. The VAB's response further states that they "...will follow the directive of the VAB or VAB attorney if an Opinion is needed."

The OIG also recommends that the VAB seek an advisory opinion regarding DOR Rule 12D-9.019(4)(c), which provides for rescheduling requests by the PAO [see Section VI.B.7g]. The recommendation is made in light of the PAO's assertion that insufficient staffing constitutes a conflict allowing for a rescheduling of hearings. It is the VAB's statutory responsibility to schedule hearings. In interpreting the statutory scheduling and rescheduling requirements, the VAB should be relying on the guidance of the DOR and the VAB attorney, and not the PAO's interpretation. The response received from the VAB Director states: "[t]his recommendation should be responded to by the VAB Attorney."

Similarly, the VAB Director states that the VAB Attorney should respond to the three recommendations relating to Special Magistrates. These recommendations suggest 1) training and guidance for special magistrates in the area of conflicts of interest and recusals, 2) training specific to handling the rigors of an Agent Board, and 3) implementing formal evaluations of special magistrates [see Section VI.C.6a-c]. Although the VAB Director writes that, as to two of the suggested actions, the Board has previously discussed and adopted similar recommendations, the Director states that the VAB Attorney should respond. The OIG expected that the response of the VAB Director would have been formulated with the input of all VAB staff knowledgeable of the issues, including the VAB attorney. The OIG is very concerned with the lack of internal communication, which we believe is contributing to the inefficiencies in the VAB process.

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VIII. CONCLUSION

The Value Adjustment Board serves an important function in Miami-Dade County. As a quasi-judicial body it ascertains facts, holds hearings, weighs evidence, and makes conclusions from the facts presented that will directly impact Miami-Dade County citizens. The purpose of the VAB is to provide our citizens with a neutral and transparent review.

The OIG has identified historical and systemic conditions that laid the foundation for the current two-year delay in certifying the tax roll. This report highlights a number of issues that, if corrected, can increase the efficiency and accuracy in the VAB process. In total, the OIG made sixteen recommendations. We addressed the need for written action plans, staffing formulas, accurate coding, enhancements to the scheduling and rescheduling process, and documenting the analysis supporting settlements by the PAO. Additionally, the OIG recommended the establishment or enhancements of systems to intake petitions, register tax agents, log complaints, as well as guidance, training and formal evaluations for special magistrates.

The objective of our recommendations is not merely to revamp process and procedure. It is to ensure that the VAB timely concludes the hearings to allow for timely certification of the tax rolls. Eliminating the delay will allow the taxing authorities to accurately budget and fund the services they provide to the public.

The OIG requests the VAB and the PAO provide a status report within 90 days detailing actions that have been or will be taken to address each of the recommendations. We respectfully request the status report on or before December 14, 2015.

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OIG Schedule 1

In Sample Pairing 1, a single magistrate heard 63% of all the parcels/folios appealed by that tax agent for the 2012 tax year. This amounted to 80 of 126 parcels/folios whose assessed values were challenged by this tax agent. All 80 parcels/folios were contained within one agenda that was heard on November 6, 2013. The parcels were all part of a single family home subdivision, and the taxpayer was the builder/developer of the subdivision. The special magistrate did not find in favor of the petitioner.

SAMPLE PAIRING 1 – RESULTS

Date	No. of Agendas	No. of Parcels	Disposition	Comment/Justification
11/6/2013	1	80	No change on all 80 parcels	PA sales supported value, tax agent accepted PA value for tax year 2012.

This one (1) agenda comprised 5.9% of all this tax agents' agendas scheduled for hearings during the 2012 tax year. In total, this tax agent had 17 agendas. The tax agent's remaining 16 agendas comprising of 46 parcels/folios were heard before five (5) other magistrates.

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OIG Schedule 2

In Sample Pairing 2, a single magistrate heard 42% of all the parcels/folios appealed by that tax agent for the 2012 tax year. This amounted to 283 of 677 parcels/folios whose assessed values were challenged by this tax agent. These 283 parcels/folios were contained in 19 agendas heard by this magistrate on six different hearing dates. The magistrate did not rule in favor of the petitioner on 94% of the parcels/folios.

SAMPLE PAIRING 2 – RESULTS

Date	No. of Agendas	No. of Parcels	Disposition	Comment/Justification
7/24/2013	4	4	No change	Sales by PA support the assessment.
8/5/2013	1	1	(1) Reduced below assessed value	Justification reads: See page 2. (No page 2 available on VAB Results webpage.)
10/3/2013	2	265	(12) Reduced below assessed value	This one agenda was comprised of one condominium. The justification is the same for all 264 parcels, which reads: Sales support the assessment on the majority of sales. Some of the units warranted a slight reduction as recommended by the PA.
			(253) No change	
11/15/2013	4	1	(1) No change	Sales support the assessment
		4	(3) No change	Sales support the assessment
11/19/2013	1	1	(1) Reduced below assessed value	Sales support a reduction
			(1) No change	Sales support the assessment
12/2/2013	4	4	(3) No change	Sales support the assessment
			(1) Reduced below assessed value	Sales support a reduction
12/13/2013	3	3	(1) No change	Sales support the assessment
			(1) No change	Tax agent not able to overcome the preponderance of evidence
			(1) Reduced below assessed value	Greatest weight placed on appraisal report & subject sale

These 19 agendas comprised 6.2% of all this tax agents' agendas scheduled for hearing during the 2012 tax year. In total, this tax agent had 308 agendas. The tax agent's remaining 289 agendas, comprising of 394 parcels/folios, were heard before 17 other magistrates.

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OIG Schedule 3

In Sample Pairing 3, a single magistrate heard 86% of all the parcels/folios appealed by that tax agent for the 2012 tax year. This amounted to 182 of 212 parcels/folios whose assessed values were challenged by this tax agent. These 182 parcels/folios were contained in two (2) agendas heard by this magistrate on two separate hearing dates. The special magistrate did not find in favor of the petitioner.

SAMPLE PAIRING 3 – RESULTS

Date	No. of Agendas	No. of Parcels	Disposition	Comment/Justification
10/7/2013	1	181	No change to all 181 parcels	Taxpayer failed to rebut PA's presumption of correctness and/or evidence supports
1/8/2014	1	1	No change	No show

These two (2) agendas comprised 7.4% of all this tax agents' agendas scheduled for hearings during the 2012 tax year. In total, this tax agent had 27 agendas. The tax agent's remaining 25 agendas, comprising of 30 parcels/folios, were heard before 11 other magistrates.

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OIG Schedule 4

In Sample Pairing 4, a single magistrate heard 43% of all the parcels/folios appealed by that tax agent for the 2012 tax year. This amounted to 88 of 204 parcels/folios whose assessed values were challenged by this tax agent. These 88 parcels/folios were contained in 88 agendas heard by this magistrate on four (4) separate hearing dates. While the majority of the dispositions favored the tax agent, 74 parcels were part of the same professional business center where the same rationale for the reduction applied to all 74 parcels.

SAMPLE PAIRING 4 – RESULTS

Date	No. of Agendas	No. of Parcels	Disposition	Comment/Justification
6/26/2013	1	1	Reduced below assessed value	See testimony
7/22/2013	10	10	(9) Reduced below assessed value	Various justifications, including the notation “see testimony”
			(1) Reduced but not below assessed value	Based on difference between total value and land value
8/2/2013	74	74	(74) Reduced below assessed value	All 74 parcels are part of same professional business center. Sales were of finished units and a reduction is based on \$226 per sq. ft. for a finished unit, less \$26 per sq. ft. for finish out allowance.
2/28/2014	3	3	(1) Reduced below assessed value	Both PA sales and Tax agent sales within the appraisal
			(1) Reduced but not below assessed value	10% cost of sale supports reduction
			(1) No change	Last sale is best sale; 10% cost of sale supports no reduction

These 88 agendas comprised 43% of all this tax agents’ agendas scheduled for hearings during the 2012 tax year. In total, this tax agent had 204 agendas. The tax agent’s remaining 116 agendas, comprising of 116 parcels/folios, were heard before 15 other magistrates.

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OIG Schedule 5

In Sample Pairing 5, a single magistrate heard 97% of all the parcels/folios appealed by that tax agent for the 2012 tax year. This amounted to 179 of 184 parcels/folios whose assessed values were challenged by this tax agent. All 179 parcels/folios (parcels of vacant land) were contained in 38 agendas heard by this magistrate on one day. The results were quite mixed.

SAMPLE PAIRING 5 – RESULTS

Date	No. of Agendas	No. of Parcels	Disposition*	Comment/Justification
12/10/2013	38	179	96 parcels Reduced below assessed value	Various reasons cited for each agenda.
			83 parcels Reduced but not below assessed value	The same reason was cited for each agenda: "PA sales are from peak in market. Demand has decreased, cannot compare sales of small tracts to subject. Obtaining of permits has been hindered."

* Some of the parcels/folios contained within an agenda have varying dispositions. The OIG found that for some multi-folio agendas, the disposition displayed on the first page of the VAB's website (listing the Special Magistrate's Findings of Facts) did not accurately represent the findings as to each parcel/folio. The dispositions were accurately recorded in the addendum pages on the website.

These 38 agendas comprised 95% of all of this tax agents' agendas scheduled for hearings during the 2012 tax year. In total, this tax agent had 40 agendas. The tax agent's remaining two (2) agendas, comprising of five (5) parcels/folios, were heard before two (2) other magistrates.

**OIG SCHEDULE 6
2012 Tax Agent/Magistrate Pairings by Agenda**

Registered Agents with 100+ Agendas	ABRAHAM	GRAY	JANE	ALVAREZ	ARMADA	NEER	SPOOL	FLORENCE	LEWIS	BLANCO	PETROLE	VALERA	MIKUS	ORTEGA	GONZALEZ	LOPEZ	CULPEPPER	DELGADO	GALIS-MENENDEZ	DELGADO JR.	THOMPSON	RILEY
FPTS (2697)	0	6.4	5.6	6	3.9	0.03	6.2	6.7	4.3	5.9	6.3	9.9	4.4	4.7	3.4	2.9	0	5.8	5	3	5.9	2.5
APPEL (1094)	0	9.6	3.9	3.3	3.5	0.09	6.4	4.7	5.9	8.4	7.7	2.7	3.1	7.5	8.9	6.6	0	2.3	7	3.4	3.7	1.5
FIGUERAS (1073)	0	9.8	4.6	3.3	3.6	1.5	6.8	7	3.7	6.2	3.1	8.7	7	4.4	3.5	3.4	0	5.4	6.8	6.1	3.6	1.7
BLOOM (748)	0	6.7	8.7	4.5	2.4	0	7	7.4	8.6	5.2	5.2	6.1	4.8	3.1	3.5	3.7	0	2.8	10.6	5.3	2.7	1.7
COPELAND (4181)	0	7.2	3.7	3.4	2.7	0	7.5	4.5	7.9	4	6.6	5.5	4.5	5.2	3.2	4.9	0	9.7	4.7	4.4	6.7	4.3
VELOZ (772)	0	4.4	0.1	1.2	7.4	0	24.6	5.7	1.3	7	6.3	3.4	7.1	0	0.1	6.2	0	3.2	12.6	8	0.9	0.5
GARCIA (138)	0	12.3	5.8	8.7	1.4	0	4.3	0.7	0.7	7.2	2.2	8	3.6	5.1	8	0	0	2.9	0	10.9	4.3	13.8
DIXON (975)	0	2.6	4.4	6.2	0.5	0.3	7.6	7.4	12.6	8.1	5.7	5	2.3	4.6	4.1	3.2	0	8.4	7.3	3.3	1.5	4.8
GUTIERREZ (940)	0	7.4	8.8	4.3	1.8	0.6	4.8	6.3	6.1	7	2.2	6.4	2.8	8.3	3.1	2.9	0	5.6	5.5	7	7.6	1.5
FELDMAN (211)	0	3.8	1	7.1	1	0	2.4	4.7	8.5	7.6	2.4	1	2.4	8.5	5.2	17	0	7.1	4.7	3.8	7.6	4.3
MANDLER (1040)	0	4.9	8.8	4.1	6.9	0.1	6.4	7.2	4.3	4.5	3.6	10.6	5.3	6.7	6.2	3	1.5	3.1	1.6	2.1	6.2	2.8
HOUSMAN (164)	0	9.8	10.4	9.1	7.9	0	7.3	3.7	8.5	5.5	0	1.8	4.9	0.6	4.9	0	0	11	4.3	1.2	7.9	1.2
POST (301)	0	10	2.7	3	4.7	0	13.6	5	7.3	8	1.3	5.6	4.7	5.3	6.6	1.7	0	0.3	10.6	2.7	1.3	5.6
BECK (2675)	1.8	0	17.5	8.6	0	0	6.2	3.7	1	9	4.4	14.5	2.4	3.5	0	0	0	10.6	4.3	2.8	9.4	0.2
MONTERO (207)	0	6.8	14	6.8	0	0	9.7	3.4	8.7	6.8	3.9	3.9	6.3	5.3	2.4	3.4	0	4.8	4.8	2.9	6.3	0
PUYANIC (3838)	0	3.9	12.7	11.2	0	0.3	7.5	3.8	2.1	8.8	4.5	4.7	3.8	10	3.9	4.2	0	3.9	2.1	4.2	7.1	1.3
FEINER (1426)	0	6.2	7.9	6.3	0	0.6	2	2.2	0.4	8	6.7	7.8	2.1	15.6	8.5	9.3	0	3.4	0.07	5.7	7.3	0
ZIRLIN (2806)	0	5.2	3.6	4.5	1.7	0.4	7.4	7	7	3	5.3	4.7	8.4	8.2	2.4	2.7	0	5.5	6.3	5	9.1	2.5
WEISS (615)	0	5.4	6.2	9.8	1.5	0	2.8	27	4.4	3.4	1.3	4.9	7	4.7	2	4	0	5.2	4.6	1.6	2.1	2.8
THOBANI (204)	0	3	4.9	11.8	4.4	0	43.1	2	5.9	0	0.5	3.4	1	2.9	0.5	0	0	3.9	0	3.9	2	6.9
SHARPE (308)	0	7.5	11	4.5	0	0	5.8	4.5	7.5	9.1	1.3	2.6	1.3	0.6	1	3.2	0	3.6	19.2	6.2	9.4	1.6
HART (123)	0	4.9	4.1	10.6	2.4	0	0.8	2.4	2.4	14.6	0.8	4.1	8.9	4.9	4.9	0.8	0	25.2	3.3	3.3	0	1.6
BALTAR (210)	0	3.8	1.4	5.7	6.2	0	7.6	6.2	7.6	3.8	1.4	1.4	8.1	3.3	2.4	5.7	0	4.3	15.2	7.1	7.1	1.4

Numbers represent the percentage of scheduled agendas for each agent heard by individual special magistrate

0-10%

Between 10 & 20%

Over 20%

Miami-Dade County
Office of the Inspector General



Appendix A

Miami-Dade County Property Appraiser's Response

OIG Review of the Value Adjustment Board

IG14-13



MIAMI-DADE COUNTY
PROPERTY APPRAISER
ADMINISTRATIVE DIVISION

PEDRO J. GARCIA
PROPERTY APPRAISER

August 12, 2015

Ms. Mary T. Cagle, Inspector General
Miami-Dade County
Office of the Inspector General
19 West Flagler Street, Suite 220
Miami, Florida 33130

Re: Response to OIG Draft Report, IG14-13

Dear Ms. Cagle:

As Miami-Dade County Property Appraiser, I am steadfastly committed to working together with the Value Adjustment Board (VAB) in an effort to create a more efficient and effective VAB appeal process for the benefit of all Miami-Dade County residents. In order to achieve this goal, my Office has implemented a number of initiatives including procedural changes and a greater allocation of staff to my Office's Appeals Division. This year alone, we increased our appeals staff by another 24 positions in addition to the 18 positions added last year. This represents an increase of over 50% in the last two years. By instituting these changes, we hope to complete the 2014 VAB petition cycle before the end of this year and the 2015 cycle by June of next year, which would make the VAB appeals cycle current.

I want to thank you and your staff for objectively and diligently considering the integral factors surrounding the VAB appeals process.

Attached please find a brief response to your recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pedro J. Garcia", is written over a light blue horizontal line.

Pedro J. Garcia, MNAA
Property Appraiser

cc: Lazaro Solis, Deputy Property Appraiser



MIAMI-DADE COUNTY
PROPERTY APPRAISER
ADMINISTRATIVE DIVISION

PEDRO J. GARCIA
PROPERTY APPRAISER

Response to OIG Draft Report, IG14-13
August 12, 2015

Page 36, 7(a) Once the number of petitions for the tax year has been determined, the VAB and PAO should agree on a written action plan that includes the amount and frequency of Boards needed to complete the process by a target date, regardless of any settlement process. Deciding on a plan and a target date will allow the PAO to implement settlement initiatives and ensure that the VAB meets its responsibility of scheduling hearings. Most of all, it will ensure the process moves forward and is not delayed, as it was in 2012.

While we agree with the importance of developing an action plan that includes the amount and frequency of boards needed to complete by a target date, there are external factors that affect the VAB and PAO's ability to create a plan that guarantees the targeted objectives will be met.

In Miami-Dade County, a very high percentage of VAB petitions (approximately 95%) are filed by tax agents. Agents are compensated on a contingency basis as a percentage of the total tax reduction achieved through the VAB appeal process. The payment of 12% APR interest on the overpaid amount, as required by State law, constitutes a strong incentive for both petitioners and their agents to file an appeal with the VAB and to reschedule their petition to the latest possible date in an effort to delay their appearance and lengthen the period of time during which interest accrues on their tax refund. This incentive, along with the petitioners'/agents' ability to reschedule without cause, negatively affects the VAB Manager's ability to efficiently schedule petitions and timely complete the VAB hearings.

Additionally, the Property Appraiser must submit to the Florida Department of Revenue (DOR) his or her proposed budget, including staffing levels, for the fiscal year beginning on October 1st on or before June 1st, prior to the commencement of the new fiscal year. The proposed budget is then reviewed and approved by the DOR by August 15th. The TRIM Notices are mailed no later than August 24th and the VAB petitions must be filed within 25 days of the TRIM Notices being mailed. Therefore, the number of petitions filed and required boards is not known until well after the PAO's budget is submitted and approved by the DOR for the coming fiscal year. Although the PAO uses its best efforts to shift staff from other areas in the office, this practice can be disruptive to the PAO's other legal responsibilities.

Page 37, 7(b) The PAO should document the analysis undertaken by staff in arriving at settlements. The OIG recognizes that some of the information contained in a taxpayer's file maintained by the PAO is confidential under Florida law, the analysis should be written to allow for transparency and consistency.

The PAO strives to maintain transparency in all its decisions and actions. Therefore, we have already implemented this practice for the 2014 appeal cycle, which started in June 2015.

Page 37, 7(d) The PAO should establish a staffing formula. Using the historical data available, the PAO should be able to establish a staffing formula that ensures that the necessary personnel are available to staff Boards. Having the aforementioned written action plan [Recommendation 7(a)] will assist the PAO in establishing said staffing formula, i.e., determining the number of staff necessary to complete the hearings by a target date.

The PAO agrees that having the appropriate level and type of staff is essential and to that end has increased the appeals staff by over 50% in the past two years. However, increased staffing alone is not the solution to expediting the VAB petition cycle. As stated in the PAO's response to 7(a), the PAO's budget is approved by the DOR in August and the total number of VAB petitions filed is not known until early October. This makes it increasingly difficult for the PAO to hire and allocate sufficient staff between the Appeals Division and other areas in the office to effectively execute all of the Property Appraiser's constitutional duties. That being said, the PAO is striving to achieve such a balance by using historical information and current trends to create a staffing formula that meets the demands of the annual VAB appeal cycle.

Page 38, 7(f) The PAO should ensure that copies of any requests to reschedule hearings sent to the VAB are provided to the petitioner in accordance with DOR Rule 12D-9.019(4)(c) F.A.C., and maintain documentation of the copy sent to the petitioner.

Through custom and usage, as neither taxpayers nor agents notify the PAO of any schedule requests, the PAO has relied on the VAB clerk to relay to the petitioner the PAO's request to reschedule in the same manner as the clerks relay a petitioner's request. However, going forward, the PAO will ensure that copies of any requests to reschedule hearings will be sent directly to the petitioner and that a copy of such request be maintained.

Miami-Dade County
Office of the Inspector General



Appendix B

Value Adjustment Board's Response

OIG Review of the Value Adjustment Board

IG14-13



CLERK OF COURTS AND COUNTY COMMISSION
Eleventh Judicial Circuit
Dade County, Florida

HARVEY RUVIN
Clerk

DADE COUNTY COURTHOUSE
ROOM 242
73 West Flagler Street
Miami, Florida 33130
Telephone: (305) 375-3333

August 19, 2015

Mary T. Cagle, Inspector General
Office of the Inspector General
Miami-Dade County

Re: OIG Review of the Value Adjustment Board

Dear Ms. Cagle,

Thank you for the opportunity to respond to the latest Audit Report that we received on July 29, 2015. The following responses follow the order of the issues presented in the findings:

Recommendations of Tax Agents Filing Petitions that are not Authorized by the Taxpayers.

Recommendation a) The VAB should consider establishing an intake system ensuring all petitions are "complete" within the definition of Florida Statutes and DOR Regulations, particularly the petitions filed by unlicensed tax agents should be signed or accompanied by written authorization from the taxpayer.

Response: The Miami-Dade Value Adjustment Board (VAB) is currently addressing our protocols for handling petitions filed by unlicensed tax agents not signed or accompanied by written authorization by the taxpayer. In the previous VAB meeting, the efficiency and productivity was discussed referencing the time to evaluate petitions filed by unlicensed tax agents not signed or accompanied by written authorization which, if implemented, would cause significant delays in comparison to the number of instances that this happens. As such, we will follow the directive of the VAB in reference to this recommendation.

Recommendation b) The VAB should consider adding a designation to the tax agent registration number to differentiate licensed from unlicensed tax agents. It may be as simple as adding an "L" or a "U" as a suffix or a prefix to the number. The designation will assist the VAB in complying with its authorization requirements.

Response: We will make this a requirement in the procurement of a new VAB system. In the meantime, we will contact Information Technology Department (ITD) to see if this can be done in our current VAB system without delaying the procurement of a new system.

Recommendation c) The VAB should consider lowering the number of petitions triggering registration. While anyone can represent a taxpayer, it is unlikely that tax agents representing more than a couple of taxpayers are individuals assisting friends or family members. A lower threshold, of 10 instead of 25, would ensure that the VAB maintains records of tax agents acting as a business enterprise. Adding agents to the registration system will also improve the scheduling process.

Response: We will comply and make the changes in our procedures.

Recommendation d) The VAB should periodically review and update its registration data to ensure tax agent information is current and accurate. Periodic notices and reminders to tax agents to update their information, or a system of deleting tax agents after a number of years of inactivity, will ensure an accurate registry is maintained.

Response: While it is the agent's responsibility to keep their information updated, we will comply by sending periodic notices or reminders to tax agents to update their information.

Recommendation e) The VAB should establish a system to track complaints and their resolutions. Without a formal complaint system, the VAB was not able to provide, other than anecdotally, any actual complaint regarding unauthorized representations or other issues. Meaningful review of problems cannot be made without a system in place that tracks the types of complaints and records the resolutions.

Response: We will comply by creating a manual repository where written complaints are kept and logged in.

Recommendations of VAB Scheduling Process

Recommendation a) Once the number of petitions for the tax year has been determined, the VAB and PAO should agree on a written action plan that includes the amount and frequency of Boards needed to complete the process by a target date, regardless of any settlement process. Deciding on a plan and a target date will allow the PAO to implement settlement initiatives and ensure that the VAB meets its responsibility of scheduling hearings. Most of

all, it will ensure the process moves forward and is not delayed, as it was in 2012.

Response: We concur. Our office and the Property Appraiser's Office will continue to have meetings to strategize the scheduling of VAB hearings prior to each tax year and periodically thereafter to monitor progress. The estimated completion date will be given to the VAB attorney and/or VAB.

Recommendation b) The PAO should document the analysis undertaken by staff in arriving at settlements. The OIG recognizes that some of the information contained in a taxpayer's file maintained by the PAO is confidential under Florida law, the analysis should be written to allow for transparency and consistency.

Response: This recommendation should be responded to by the Property Appraiser's Office.

Recommendation c) The VAB should seek to upgrade its computer system and software. The software updates should include the ability to group agendas to be heard together, either by allowing the PAO access to do those groupings, or by having the PAO provide its methodology or parameters for such groupings. Such functionality would allow the VAB to independently schedule Boards and still maintain the efficiencies that PAO believes are essential.

Response: We concur and are currently identifying all business processes and requirements to create a Scope of Work for a new VAB system.

Recommendation d) The PAO should establish a staffing formula. Using the historical data available, the PAO should be able to establish a staffing formula that ensures that the necessary personnel are available to staff Boards. Having the aforementioned written action plan {Recommendation 7 (a)} will assist the PAO in establishing said staffing formula, i.e. determining the number of staff necessary to complete the hearings by a target date.

Response: This recommendation should be responded to by the Property Appraiser's Office.

Recommendation e) The VAB should review its criteria for rescheduling and ensure that staff has sufficient categories and indicator codes to accurately track the reasons for rescheduling a hearing. While the OIG understands that many of the scheduling and coding problems arise from an antiquated

computer system, there are measures that could be taken immediately. Using the existing system, the VAB can re-categorize the indicator codes to allow for accurate recording of the rescheduling. Using the same indicator codes and criteria within the VAB's various reporting systems would be a first step in ensuring consistency and accuracy.

Response: We will make this a requirement in the procurement of a new VAB system. In the meantime, we will contact ITD to see if this can be done either in whole or in part in our current VAB system without delaying the procurement of a new system.

Recommendation f) The PAO should ensure that copies of any requests to reschedule hearings sent to the VAB are provided to the petitioner in accordance with DOR Rule 12D-9.019(4) (c) F.A.C., and maintain documentation of the copy sent to the petitioner.

Response: This recommendation should be responded to by the Property Appraiser's Office.

Recommendation g) The VAB should seek an advisory opinion regarding whether insufficient staffing constitutes a conflict pursuant to DOR Rule 12D-9.019(4) (c) F.A.C.

Response: This recommendation should be responded to by the VAB Attorney.

Recommendation h) The VAB should seek an opinion from the DOR regarding whether a petitioner should be charged with their one-time rescheduling without cause after the PAO has requested cancellation of the hearing.

Response: Our office, as a practice, will charge the PAO with a reschedule when the PAO requests a cancellation of a hearing. We will follow the directive of the VAB or VAB attorney if an Opinion is needed.

Recommendations on Special Magistrates

Recommendation a) The VAB should request DOR guidance and training for special magistrates regarding conflicts requiring recusal.

Response: This recommendation should be responded to by the VAB Attorney.

Recommendation b) The OIG acknowledges the VAB's recent efforts to minimize the perception of bias regarding Agent Boards by expanding Agent Board assignments to all special magistrates. In order to improve the efficiency of the Agent Board system, the VAB should implement training guides for those special magistrates that have never handled Agent Boards.

Response: This recommendation should be responded to by the VAB Attorney. In the previous VAB meeting, this recommendation was discussed and adopted.

Recommendation c) The OIG recommends that the VAB perform an annual evaluation of the magistrates. The evaluation should focus on the efficiency, timeliness, and completeness of the disposition by the special magistrates. The annual evaluation should be sent to the Board to assist in making the following year's appointments.

Response: This recommendation should be responded to by the VAB Attorney. In the previous VAB meeting, this recommendation was discussed and adopted.

If you require any further information, please do not hesitate to contact me.

Sincerely,

HARVEY RUVIN, CLERK
CIRCUIT AND COUNTY COURTS

By: Mark A. Martinez, Senior Deputy

cc: Harvey Ruvin, Clerk of Courts
Liza Saboya Fernandez, Director, Clerk's Strategic Management and Budget