
A BILL FOR AN ACT

RELATING TO APPRAISAL MANAGEMENT COMPANIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in 2008, the
2 nation's economy was shaken by the collapse of the sub-prime
3 mortgage market, which threatened the country's financial
4 system. While investigating the causes that led to this
5 collapse, Congress determined one cause was the use of
6 appraisals that did not conform to generally accepted standards
7 of independence, objectivity, and impartiality. Extensive abuse
8 was also discovered in the mortgage origination industry, with
9 appraisers' close business relationships with lenders and the
10 use of biased appraisals to facilitate the lending process found
11 to be contributing factors.

12 In response, Congress enacted the Dodd-Frank Wall Street
13 Reform and Consumer Protection Act, Pub. L. No. 111-203 (Dodd-
14 Frank Act). The Dodd-Frank Act helped restore independence to
15 the appraisal process by separating the lending process and
16 appraisal functions and requiring these functions to be
17 autonomous.



1 The legislature further finds that appraisal management
2 companies, commonly referred to as AMCs, have proliferated as a
3 result of the Dodd-Frank Act. One way of maintaining
4 independence between the appraisal function and the loan
5 origination function of an appraisal process is to have an
6 intermediary separate from the lender that orders and receives
7 appraisals, a function that has been fulfilled by appraisal
8 management companies.

9 Section 1473 of the Dodd-Frank Act required six federal
10 regulatory agencies to jointly promulgate rules that establish
11 minimum requirements to be applied by states in the registration
12 and supervision of appraisal management companies. The
13 appraisal management companies final rule (AMC Final Rule) was
14 published in the Federal Register on June 9, 2015, (80 Federal
15 Register 32657 et seq.) and became effective August 10, 2015.
16 The AMC Final Rule outlines certain minimum registration and
17 oversight requirements for each state to adopt. While the AMC
18 Final Rule does not force a state to enact these minimum
19 requirements, it specifies that if a state fails to do so by
20 August 10, 2018, certain non-federally regulated appraisal
21 management companies will be barred from providing appraisal



1 management services for federally related transactions in that
2 state.

3 The legislature additionally finds that Hawaii's failure to
4 adopt regulations for appraisal management companies that
5 conform to the AMC Final Rule could have unintended and adverse
6 consequences for Hawaii consumers and others involved in the
7 residential appraisal process in the State. The legislature
8 notes that a large source of Hawaii's funding for residential
9 mortgages comes from outside the State, through either direct
10 lending or secondary market investments, which frequently use
11 appraisal management companies. Furthermore, if conforming
12 legislation is not enacted, there is a risk that direct lending
13 for residential mortgages from outside the State could come to a
14 standstill, since appraisal orders could not be placed by
15 mainland lenders and Hawaii is too small a market for a large
16 lender to customize a system for the State. There is also a
17 risk that mortgages may not be available to all people in the
18 State who need them. This potential restriction of available
19 mortgage funds could make home affordability even more elusive
20 for residents of Hawaii and could adversely impact home
21 ownership for many families.



1 Protection Act, Pub. L. No. 111-203, and the final regulations
2 published on June 9, 2015, at title 12 Code of Federal
3 Regulations, sections 1222.20, et seq., 80 Federal Register
4 32657 et seq. The purpose of this chapter is to establish
5 minimum requirements for the regulation of certain non-federally
6 regulated appraisal management companies.

7 § -2 Definitions. As used in this chapter, unless the
8 context otherwise requires:

9 "Affiliate" means any company that controls, is controlled
10 by, or is under control of another company, as defined under
11 title 12 United States Code section 1841, or any successor
12 federal statute.

13 "AMC national registry" means the registry of state-
14 registered appraisal management companies and federally
15 regulated appraisal management companies maintained by the
16 Appraisal Subcommittee.

17 "Appraisal management company" means a person that:

18 (1) Provides appraisal management services to creditors or
19 secondary mortgage market participants, including
20 affiliates;



1 (2) Provides appraisal management services in connection
2 with valuing a consumer's principal dwelling as
3 security for a consumer credit transaction or
4 incorporating these transactions into securitizations;
5 and

6 (3) Within a twelve-month calendar year, beginning January
7 1 of each year and ending on December 31 of each year,
8 oversees an appraiser panel of more than fifteen
9 state-certified or state-licensed appraisers in a
10 state or twenty-five or more state-certified or state-
11 licensed appraisers in two or more states, as
12 described in section -5.

13 "Appraisal management company" does not include a department or
14 division of an entity that provides appraisal management
15 services only to that entity.

16 "Appraisal management services" means one or more of the
17 following:

- 18 (1) Recruiting, selecting, and retaining appraisers;
- 19 (2) Contracting with state-certified or state-licensed
20 appraisers to perform appraisal assignments;



1 (3) Managing the process of having an appraisal performed,
2 including providing administrative services such as
3 receiving appraisal orders and appraisal reports,
4 submitting completed appraisal reports to creditors
5 and secondary market participants; collecting fees
6 from creditors and secondary market participants for
7 services provided; and paying appraisers for services
8 performed; and

9 (4) Reviewing and verifying the work of appraisers.

10 "Appraiser panel" means a network, list, or roster of
11 licensed or certified appraisers approved by an appraisal
12 management company to perform appraisals as independent
13 contractors for the appraisal management company. Appraisers on
14 an appraisal management company's "appraiser panel" include:

15 (1) Appraisers accepted by the appraisal management
16 company for consideration for future appraisal
17 assignments in covered transactions or for secondary
18 mortgage market participants in connection with
19 covered transactions; and

20 (2) Appraisers engaged by the appraisal management company
21 to perform one or more appraisals in covered



1 transactions or for secondary mortgage market
2 participants in connection with covered transactions.

3 For purposes of this chapter, an appraiser is an independent
4 contractor if the appraiser is treated as an independent
5 contractor by the appraisal management company for purposes of
6 federal income taxation.

7 "Appraisal review" means the process of developing and
8 communicating an opinion about the quality of another
9 appraiser's work that was performed as part of an appraisal
10 assignment or appraisal review assignment related to the
11 appraiser's data collection, analysis, opinions, conclusions,
12 estimate of value, or compliance with the Uniform Standards of
13 Professional Appraisal Practice.

14 "Appraisal review" does not include:

- 15 (1) A general examination for grammatical, typographical,
16 mathematical, or other similar errors; or
17 (2) A general examination for completeness, including
18 regulatory or client requirements as specified in the
19 agreement process, that does not communicate an
20 opinion of value.



1 "Appraisal Subcommittee" means the Appraisal Subcommittee
2 of the Federal Financial Institutions Examination Council
3 created pursuant to Title XI of the federal Financial
4 Institutions Reform, Recovery, and Enforcement Act of 1989.

5 "Consumer credit" means credit offered or extended to a
6 consumer primarily for personal, family, or household purposes.

7 "Controlling person" means:

8 (1) An officer, director, or owner of greater than a ten
9 per cent interest of a corporation, partnership, or
10 other business entity seeking to act as an appraisal
11 management company in the State;

12 (2) An individual employed, appointed, or authorized by an
13 appraisal management company who has the authority to:

14 (A) Enter a contractual relationship with other
15 persons for performance of services requiring
16 registration as an appraisal management company;
17 and

18 (B) Enter agreements with appraisers for the
19 performance of appraisals; or

20 (3) An individual who possesses, directly or indirectly,
21 the power to direct or cause the direction of the



1 management or policies of an appraisal management
2 company.

3 "Covered transaction" means any consumer credit transaction
4 secured by the consumer's principal dwelling.

5 "Creditor" means a person who regularly extends consumer
6 credit that is subject to a finance charge or is payable by
7 written agreement in more than four installments (not including
8 a down payment) and to whom the obligation is initially payable,
9 either on the face of the note or contract, or by agreement when
10 there is no note or contract.

11 A person regularly extends consumer credit if:

12 (1) The person extended credit (other than credit subject
13 to the requirements of title 12 Code of Federal
14 Regulations section 1026.32) more than five times for
15 transactions secured by a dwelling in the preceding
16 calendar year. If a person did not meet these
17 numerical standards in the preceding calendar year,
18 the numerical standards shall be applied to the
19 current calendar year; or

20 (2) In any twelve-month period, the person extends more
21 than one credit extension that is subject to the



1 requirements of title 12 Code of Federal Regulations
2 section 1026.32 or one or more such credit extensions
3 through a mortgage broker.

4 "Department" means the department of commerce and consumer
5 affairs.

6 "Director" means the director of commerce and consumer
7 affairs.

8 "Dwelling" means a residential structure that contains one
9 to four units, whether or not that structure is attached to real
10 property. "Dwelling" includes an individual condominium unit,
11 cooperative unit, mobile home, and trailer, if it is used as a
12 residence. A consumer can have only one principal dwelling at a
13 time. A vacation or other second home is not considered a
14 principal dwelling; provided that for purposes of this
15 definition, if a consumer buys or builds a new dwelling that
16 will become the consumer's principal dwelling within a year or
17 upon the completion of construction, the new dwelling shall be
18 considered the principal dwelling.

19 "Federally regulated appraisal management company" means an
20 appraisal management company that is owned and controlled by an
21 insured depository institution, as defined in title 12 United



1 States Code section 1813, and regulated by the Office of the
2 Comptroller of the Currency, the Board of Governors of the
3 Federal Reserve System, or the Federal Deposit Insurance
4 Corporation.

5 "Federally related transaction" means any real estate-
6 related financial transaction that involves an insured
7 depository institution regulated by the Office of the
8 Comptroller of the Currency, Board of Governors of the Federal
9 Reserve System, Federal Deposit Insurance Corporation, or
10 National Credit Union Administration, and that requires the
11 services of an appraiser under the interagency appraisal rules.

12 "Person" means a natural person or an organization,
13 including a corporation, partnership, proprietorship,
14 association, cooperative, estate, trust, or government unit.

15 "Real estate-related financial transaction" means any
16 transaction involving the sale, lease, purchase, investment in,
17 or exchange of real property, including interests in property or
18 the financing thereof, including the refinancing of real
19 property or interests in real property and the use of real
20 property or interests in property as security for a loan or
21 investment, including mortgage-backed securities.



1 "Secondary mortgage market participant" means a guarantor
2 or insurer of mortgage-backed securities or an underwriter or
3 issuer of mortgage-backed securities. "Secondary mortgage
4 market participant" only includes an individual investor in a
5 mortgage-backed security if that investor also serves in the
6 capacity of a guarantor, insurer, underwriter, or issuer for the
7 mortgage-backed security.

8 "Uniform Standards of Professional Appraisal Practice"
9 means the most recent iteration of the Uniform Standards of
10 Professional Appraisal Practice developed by the appraisal
11 standards board of the Appraisal Foundation and approved by the
12 director.

13 **§ -3 Appraisal management company registration program.**

14 There is established an appraisal management company
15 registration program subject to the real estate appraisal
16 program to be administered by the director in the director's
17 capacity as the program administrator for both programs.

18 **§ -4 Powers and duties of the director.** In addition to
19 any other powers and duties authorized by law, the director
20 shall have the following powers and duties:



- 1 (1) Review and approve or deny an appraisal management
2 company's application for initial registration;
- 3 (2) Renew or deny an appraisal management company's
4 registration periodically;
- 5 (3) Examine the books and records of an appraisal
6 management company operating in the State and require
7 the appraisal management company to submit reports,
8 information, and documents;
- 9 (4) Verify that the appraisers on the appraisal management
10 company's appraiser panel hold valid state licenses or
11 certifications, as applicable;
- 12 (5) Conduct investigations of appraisal management
13 companies to assess potential violations of applicable
14 appraisal-related laws, regulations, or orders;
- 15 (6) Discipline, suspend, terminate, or deny renewal of the
16 registration of an appraisal management company that
17 violates applicable appraisal-related laws,
18 regulations, or orders;
- 19 (7) Report an appraisal management company's violation of
20 applicable appraisal-related law, regulations, or
21 orders, as well disciplinary and enforcement actions



1 and other relevant information about an appraisal
2 management company's operations, to the Appraisal
3 Subcommittee; and

4 (8) Adopt, amend, and repeal rules, pursuant to chapter
5 91, as may be necessary to establish the appraisal
6 management company registration program and implement,
7 administer, and enforce this chapter.

8 **§ -5 Appraiser panel; annual size calculation.** (a) For
9 purposes of determining whether an appraisal entity meets the
10 size requirement of an appraisal management company, as that
11 term is defined in section -2, an appraiser shall be deemed
12 part of the appraisal management company's appraiser panel as of
13 the earliest date on which the appraisal management company:

14 (1) Accepts the appraiser for the appraisal management
15 company's consideration for future appraisal
16 assignments in covered transactions or for secondary
17 mortgage market participants in connection with
18 covered transactions; or

19 (2) Engages the appraiser to perform one or more
20 appraisals on behalf of a creditor for covered



1 transactions or a secondary mortgage market
2 participant in connection with covered transactions.

3 (b) An appraiser who is deemed part of the appraisal
4 management company's appraiser panel pursuant to subsection (a)
5 shall be deemed to remain on the appraiser panel until the date
6 on which the appraisal management company:

7 (1) Sends written notice to the appraiser removing the
8 appraiser from the appraiser panel, with an
9 explanation of the appraisal management company's
10 action; or

11 (2) Receives written notice from the appraiser asking to
12 be removed from the appraiser panel or notice of the
13 death or incapacity of the appraiser.

14 (c) If an appraiser is removed from an appraisal
15 management company's appraiser panel pursuant to subsection (b),
16 and the appraisal management company subsequently accepts the
17 appraiser for consideration for future assignments or engages
18 the appraiser at any time during the twelve months after the
19 appraiser's removal:

20 (1) The removal shall be deemed not to have occurred; and



1 (2) The appraiser shall be deemed to have been part of the
2 appraisal management company's appraiser panel without
3 interruption.

4 § -6 Registration required. (a) No person may directly
5 or indirectly engage or attempt to engage in business as an
6 appraisal management company, directly or indirectly perform or
7 attempt to perform appraisal management services, or advertise
8 or hold oneself out as engaging in or conducting business as an
9 appraisal management company without first being registered
10 pursuant to this chapter.

11 (b) An appraisal management company shall:

12 (1) Register with the real estate appraiser program
13 administered by the department pursuant to chapter
14 466K, Hawaii Revised Statutes;

15 (2) Engage only state-licensed or state-certified
16 appraisers for federally related transactions in
17 conformity with any federally related transaction
18 regulations;

19 (3) Establish and comply with processes and controls
20 reasonably designed to ensure that the appraisal
21 management company, in engaging an appraiser, selects



1 an appraiser who is independent of the transaction and
2 has the requisite education, expertise, and experience
3 necessary to competently complete the appraisal
4 assignment for the particular market and property
5 type;

6 (4) Direct an appraiser to perform the assignment in
7 accordance with the Uniform Standards of Professional
8 Appraisal Practice; and

9 (5) Establish and comply with processes and controls
10 reasonably designed to ensure that the appraisal
11 management company conducts its appraisal management
12 services in accordance with the requirements of
13 section 129E(a) through 129E(i) of the Truth in
14 Lending Act, title 15 United States Code sections
15 1639e(a) through 1639e(i), and regulations adopted
16 thereunder.

17 (c) This section shall not apply to:

18 (1) A person that exclusively employs appraisers on an
19 employer and employee basis for the performance of
20 appraisals in this State;

21 (2) A federally regulated appraisal management company;



- 1 (3) A department or unit within a financial institution
2 that is subject to direct regulation by an agency of
3 the federal government that is a member of the federal
4 financial institutions examination council or its
5 successor, or to regulation by an agency of the State,
6 that receives a request for the performance of an
7 appraisal from one employee of the financial
8 institution, and another employee of the same
9 financial institution assigns the request for the
10 appraisal to an appraiser that is an independent
11 contractor to the institution, except that an AMC that
12 is a wholly owned subsidiary of a financial
13 institution shall not be considered a department or
14 unit within a financial institution to which the
15 provisions of this chapter do not apply;
- 16 (4) An appraiser who enters into an agreement with another
17 appraiser for the performance of an appraisal that
18 upon completion results in a report signed by both the
19 appraiser who completed the appraisal and the
20 appraiser who requested the completion of the
21 appraisal.



1 (d) Any person, who engages in an activity requiring
2 registration as an appraisal management company issued by the
3 director and who fails to obtain the required registration, or
4 who uses any work, title, or representation to induce the false
5 belief that the person is registered to engage in said activity,
6 shall be guilty of a misdemeanor and shall be subject to a fine
7 of not more than \$1,000 or imprisoned not more than one year, or
8 both, and each day of violation shall be deemed a separate
9 offense.

10 (e) The director may maintain a suit to enjoin the
11 performance or the continuance of any act or acts by a person
12 acting without a registration where a registration is required
13 by law, and if injured thereby, for the recovery of damages.

14 § -7 **Registration process.** An applicant for
15 registration under this chapter shall file an application for
16 registration with the director on a form prescribed by the
17 director and pay a fee established by the director. The form
18 shall require any information necessary to determine eligibility
19 for registration.

20 § -8 **Criminal history record checks.** (a) The
21 application submitted pursuant to section -7 shall contain



1 the information and authorizations necessary to conduct a
2 criminal history record check in accordance with section 846-2.7
3 for:

- 4 (1) Each person applying for registration who owns more
5 than ten per cent of an appraisal management company;
6 and
7 (2) Each of the applicant's controlling persons.
8 (b) The information and authorizations shall be
9 accompanied by the appropriate payment of the applicable fee for
10 each record check.

11 **§ -9 Appraisal management company registration numbers.**

12 (a) The director shall issue a unique registration number to
13 each appraisal management company registered in this State.

14 (b) The director shall maintain a list of the appraisal
15 management companies that are registered with the director.

16 (c) An appraisal management company registered in this
17 State shall place its registration number on engagement
18 documents utilized by the appraisal management company to
19 procure appraisal services in this State.

20 **§ -10 Expiration of registration.** Registrations shall
21 expire on December 31 of each odd-numbered year. The expiration



1 date of the registration shall appear on the appraisal
2 management company registration certificate issued to the
3 registrant, and no other notice of its expiration need be given
4 to the registrant.

5 **§ -11 Compliance with the Uniform Standards of**
6 **Professional Appraisal Practice.** As a condition of registration
7 or renewal of registration, each appraisal management company in
8 the State shall certify that the company requires appraisers
9 completing appraisals at the company's request to comply with
10 the Uniform Standards of Professional Appraisal Practice.

11 **§ -12 Consent to service of process.** An applicant for
12 registration under this chapter that is not domiciled in the
13 State shall complete an irrevocable consent to service of
14 process, in a form approved by the attorney general.

15 **§ -13 Reporting requirements; non-federally regulated**
16 **appraisal management companies.** The director shall collect from
17 each appraisal management company registered or seeking
18 registration in the State all information and fees required by
19 the Appraisal Subcommittee to be submitted to the Appraisal
20 Subcommittee by the State, pursuant to regulations or guidance
21 promulgated by the Appraisal Subcommittee.



1 § -14 Reporting requirements; federally regulated
2 appraisal management companies; reporting information for
3 appraisal management companies. A federally regulated appraisal
4 management company operating in the State shall report to the
5 director the information required to be submitted by the State
6 to the Appraisal Subcommittee, pursuant to the Appraisal
7 Subcommittee's policies regarding the determination of the AMC
8 national registry fee. These reporting requirements shall
9 include:

10 (1) A notice of intent to operate in the State;
11 (2) Information related to whether the appraisal
12 management company is owned in whole or in part,
13 directly or indirectly, by any person who has had an
14 appraiser license or certification refused, denied,
15 cancelled, surrender in lieu of revocation, or revoked
16 in any state for a substantive cause, as determined by
17 the Appraisal Subcommittee; and
18 (3) If a person has had such action taken on the person's
19 appraisal license or certification, the director shall
20 collect information related to whether the license or
21 certification was revoked for a substantive cause and



1 if the license or certification has been reinstated by
2 the state or states in which the appraiser was
3 licensed or certified.

4 § -15 Owner requirements. (a) An appraisal management
5 company applying for, holding, or renewing a registration under
6 this chapter shall not be owned, in whole or in part, directly
7 or indirectly, by any person who has had an appraiser license or
8 certification refused, denied, canceled, surrendered in lieu of
9 revocation, or revoked in any state for a substantive cause, as
10 determined by the appropriate state appraiser certifying and
11 licensing agency; provided that an appraisal management company
12 may be registered under this chapter if the license or
13 certification of the appraiser with an ownership interest was
14 not revoked for a substantive cause and the license or
15 certification has been reinstated by the state in which the
16 appraiser was licensed or certified.

17 (b) Each person that owns more than ten per cent of an
18 appraisal management company and applies for, holds, or renews a
19 registration under this chapter shall:

20 (1) Be of good moral character; and



1 (2) Submit to a criminal history record check pursuant to
2 section -8.

3 § -16 **Controlling person.** An appraisal management
4 company applying for registration or renewal of registration in
5 the State shall designate one controlling person to serve as the
6 main contact for all communication between the department and
7 the company. The controlling person shall:

8 (1) Remain in good standing in the State and in any other
9 state that has at any time issued the controlling
10 person an appraiser license or certification; provided
11 that nothing in this chapter shall require that a
12 designated controlling person hold or continue to hold
13 an appraiser license or certification in any
14 jurisdiction;

15 (2) Never have had an appraiser license or certification
16 in this State or any other state refused, denied,
17 canceled, revoked, or surrendered in lieu of a pending
18 disciplinary proceeding in any jurisdiction and not
19 subsequently reinstated or granted;

20 (3) Be of good moral character; and



1 (4) Submit to a criminal history record check pursuant to
2 section -8.

3 § -17 **Appraiser engagement.** Before or at the time of
4 placing an assignment to appraise real property in the State
5 with an appraiser on the appraiser panel of an appraisal
6 management company, the appraisal management company shall
7 verify that the appraiser receiving the assignment holds an
8 appraiser license or certification in good standing in this
9 State and verify that the appraiser receiving the assignment
10 meets the competency rule of the uniform standards of
11 professional appraisal practice. An attestation provided by an
12 appraiser that such appraiser is geographically competent within
13 the appraiser's scope of practice will satisfy an appraisal
14 management company's responsibility under this section.

15 § -18 **Appraisal review.** Any employee of or independent
16 contractor to an appraisal management company who performs an
17 appraisal review for a property located in this State shall be a
18 licensed or certified appraiser in good standing in the State
19 and any other jurisdiction in which the appraiser is licensed or
20 certified.



1 **§ -19 Verification of licensure or certification.** (a)

2 An appraisal management company registered in the State may not
3 enter any contract or agreement with an appraiser for the
4 performance of appraisals in the State unless the company
5 verifies that the appraiser is licensed or certified in good
6 standing in the State.

7 (b) An appraisal management company seeking registration
8 or renewal of registration in the State shall certify that the
9 company has a system and process in place to verify that an
10 individual added to the appraiser panel of the company for
11 appraisal services holds an appraiser license or certification
12 in good standing in this State.

13 **§ -20 Fee disclosure.** An appraisal management company
14 registered in the State shall not prohibit an independent
15 appraiser who is part of the appraiser panel from recording the
16 fee that the appraiser was paid by the appraisal management
17 company for the performance of an appraisal within the
18 communication of the appraisal.

19 **§ -21 Retention of records.** (a) Each appraisal
20 management company seeking registration or renewal of
21 registration in the State shall certify that the appraisal



1 management company maintains a detailed record of each service
2 request the company receives for appraisals of real property
3 located in the State.

4 (b) An appraisal management company registered in the
5 State shall retain all records required to be maintained under
6 this chapter for at least five years after the file is submitted
7 to the appraisal management company or at least two years after
8 final disposition of any related judicial proceeding of which
9 the appraisal management company is provided notice, whichever
10 period expires last.

11 (c) All records required to be maintained pursuant to this
12 section shall be made available for inspection by the director
13 upon request.

14 **§ -22 Payments to appraisers.** (a) An appraisal
15 management company shall, except in bona fide cases of breach of
16 contract or substandard performance of services, make payment to
17 an independent appraiser for the completion of an appraisal or
18 valuation assignment within forty-five days of the date on which
19 the appraiser transmits or otherwise provides the completed
20 appraisal or valuation assignment to the appraisal management



1 company or the company's assignee, unless a mutually agreed-upon
2 alternate arrangement has been previously established.

3 (b) An appraisal management company seeking registration
4 or renewal of registration shall certify that the company will
5 require appraisals to be conducted independently, as required by
6 the appraisal independence standards under section 129E of the
7 Truth in Lending Act, title 15 United States Code section
8 1639(e), including the requirement that a customary and
9 reasonable fee be paid to an independent appraiser who completes
10 an appraisal in connection with a consumer credit transaction
11 secured by the principal dwelling.

12 § -23 **Appraiser independence.** (a) It shall be a
13 violation of this chapter for any employee, director, officer,
14 or agent of an appraisal management company registered in this
15 State to engage in any act or practice that violates appraisal
16 independence as described in or pursuant to the provisions of
17 this chapter.

18 (b) For purposes of subsection (a) acts or practices that
19 violate appraisal independence shall include:

20 (1) Any appraisal of a property offered as security for
21 repayment of the consumer credit transaction that is



1 conducted in connection with such transaction in which
2 a person with an interest in the underlying
3 transaction compensates, coerces, extorts, colludes,
4 instructs, induces, bribes or intimidates a person,
5 appraisal management company, firm or other entity
6 conducting or involved in an appraisal, or attempts to
7 compensate, coerce, extort, collude, instruct, induce,
8 bribe, or intimidate such a person, for the purpose of
9 causing the appraisal value assigned, under the
10 appraisal, to the property to be based on any fact or
11 other than the independent judgment of the appraiser;
12 (2) Mischaracterizing, or suborning any
13 mischaracterization of, the appraised value of the
14 property securing the extension of credit;
15 (3) Seeking to influence an appraiser or otherwise to
16 encourage a targeted value in order to facilitate the
17 making or pricing of the transaction; and
18 (4) Withholding or threatening to withhold timely payment
19 for an appraisal report or for appraisal services
20 rendered when the appraisal report or services are



1 provided= in accordance with the contract between the
2 parties.

3 (c) The requirements of subsections (a) and (b) shall not
4 be construed as prohibiting an appraisal management company,
5 employee of an appraisal management company, consumer or any
6 other person with an interest in a real estate transaction from
7 asking an appraiser to:

8 (1) Consider additional appropriate property information,
9 including the consideration of additional comparable
10 properties to make or support an appraisal;

11 (2) Provide further detail, substantiation or explanation
12 for the appraiser's consideration in the value
13 conclusion; or

14 (3) Correct objective errors in the appraisal report.

15 (d) Any appraisal management company, employee of an
16 appraisal management company or any other person involved in a
17 real estate transaction involving an appraisal in connection
18 with a consumer credit transaction who has a reasonable basis to
19 believe an appraiser is failing to comply with the uniform
20 standards of professional appraisal practice, is violating



1 applicable laws, or is otherwise engaging in unethical or
2 unprofessional conduct, shall refer the matter to the board.

3 (e) Every appraisal management company shall establish and
4 comply with processes and controls reasonably designed to ensure
5 that the appraisal management company, in engaging an appraiser,
6 selects an appraiser who is independent of the transaction and
7 who has the requisite education, expertise, and experience
8 necessary to competently complete the appraisal assignment for
9 the particular market and property type. Every appraisal
10 management company shall establish and comply with processes and
11 controls reasonably designed to ensure that the appraisal
12 management company conducts its appraisal management services in
13 accordance with the requirements of title 15 United States Code
14 section 1639e (a) through (i), and regulations adopted
15 thereunder.

16 § -24 **Mandatory reporting of violations.** An appraisal
17 management company that has a reasonable basis to believe an
18 appraiser has materially failed to comply with applicable laws
19 or rules or has materially violated the Uniform Standards of
20 Professional Appraisal Practice shall refer the matter to the



1 director in conformance with applicable federal laws and
2 regulations.

3 § -25 Prohibited conduct. (a) A violation of this
4 section may constitute grounds for discipline against an
5 appraisal management company registered in this State; provided
6 that nothing in this chapter shall prevent an appraisal
7 management company from requesting an appraiser to provide
8 additional information about the basis for a valuation, correct
9 objective factual errors in an appraisal report, or consider
10 additional appropriate property information.

11 (b) No employee, director, officer, agent, independent
12 contractor, or other third party acting on behalf of an
13 appraisal management company shall:

14 (1) Procure or attempt to procure a registration or
15 renewal by knowingly making a false statement,
16 submitting false information, or refusing to provide
17 complete information in response to a question in an
18 application for registration or renewal;

19 (2) Wilfully violate this chapter or rules adopted by the
20 department pursuant to this chapter;



- 1 (3) Improperly influence or attempt to improperly
2 influence the development, reporting, result, or
3 review of an appraisal through intimidation, coercion,
4 extortion, bribery, or any other manner, including but
5 not limited to:
- 6 (A) Withholding payment for appraisal services;
- 7 (B) Threatening to exclude an appraiser from future
8 work or threatening to demote or terminate the
9 appraiser in order to improperly obtain a desired
10 result;
- 11 (C) Conditioning payment of an appraisal fee upon the
12 opinion, conclusion, or valuation to be reached;
13 or
- 14 (D) Requesting that an appraiser report a
15 predetermined opinion, conclusion, or valuation
16 or the desired valuation of any person or entity;
- 17 (4) Alter, amend, or change an appraisal report submitted
18 by an appraiser without the appraiser's knowledge and
19 written consent;
- 20 (5) Except within the first ninety days after an
21 independent appraiser is added to an appraiser panel,



- 1 remove an independent appraiser from an appraiser
2 panel without prior written notice to the appraiser;
3 provided that the prior written notice shall include
4 the following if applicable:
- 5 (A) The appraiser's illegal conduct;
 - 6 (B) A violation of the Uniform Standards of
7 Professional Appraisal Practice, this chapter, or
8 rules adopted pursuant to this chapter;
 - 9 (C) Improper or unprofessional conduct; or
 - 10 (D) Substandard performance or other substantive
11 deficiencies;
- 12 (6) Require an appraiser to sign any indemnification
13 agreement that would require the appraiser to defend
14 and hold harmless the appraisal management company or
15 any of its agents or employees for any liability,
16 damage, losses, or claims arising out of the services
17 performed by the appraisal management company or its
18 agents, employees, or independent contractors, and not
19 the services performed by the appraiser;
- 20 (7) Prohibit lawful communications between the appraiser
21 and any other person who the appraiser, in the



1 appraiser's professional judgment, believes possesses
2 information that would be relevant;

3 (8) Engage in any other act or practice that impairs or
4 attempts to impair a real estate appraiser's
5 independence, objectivity, and impartiality;

6 (9) Fail to timely respond to any subpoena or other
7 request for information;

8 (10) Fail to timely obey an administrative order of the
9 director or department; or

10 (11) Fail to cooperate in any investigation.

11 § -26 **Disciplinary proceedings.** The director may deny,
12 suspend, or revoke the registration of an appraisal management
13 company; impose a monetary penalty of an amount not to exceed
14 \$5,000 per violation; issue a letter of reprimand; refuse to
15 issue or renew the registration of an appraisal management
16 company; or take other disciplinary action against an appraisal
17 management company for any one or more of the following acts or
18 conditions:

19 (1) The applicant is not of a good moral character;



- 1 (2) The applicant has had a registration revoked or
2 suspended for cause, or surrendered in lieu of
3 disciplinary proceedings;
- 4 (3) The applicant, upon renewal of registration, would not
5 be eligible for registration on a first application;
- 6 (4) The issuance of a registration would result in a
7 violation of this chapter or any rules adopted
8 pursuant to this chapter;
- 9 (5) In the conduct of affairs under the registration, the
10 registrant has demonstrated incompetency,
11 untrustworthiness, or conduct or practices rendering
12 the registrant unfit to carry on appraisal management
13 services; made continuance in the business detrimental
14 to the public interest; or is no longer in good faith
15 carrying on appraisal management services, and for
16 this conduct is found by the director to be a source
17 of detriment, injury, or loss to the public;
- 18 (6) The appraisal management company committed any act in
19 violation of this chapter;



1 (7) The appraisal management company violated any rule
2 adopted by the department in the interest of the
3 public and consistent with this chapter;

4 (8) The appraisal management company procured a
5 registration or renewal of registration for the
6 appraisal management company or intentionally
7 committed any other act by fraud, misrepresentation,
8 or deceit; or

9 (9) Violation of this chapter, chapter 436B, or any rule
10 or order of the director.

11 § -27 Fees; bonds. (a) The director may charge the
12 appraisal management company reasonable fees to offset costs of
13 operating the appraisal management company registration program
14 established pursuant to this chapter. The following fees shall
15 apply:

- 16 (1) Nonrefundable application fee = \$100;
- 17 (2) Biennial registration fee = \$5,000; and
- 18 (3) Biennial CRF fee = \$500.

19 In addition, upon the issuance of a new registration and at each
20 renewal period, each appraisal management company shall pay a
21 special assessment fee of \$390 that shall be deposited into the



1 compliance resolution fund established pursuant to section 26-
2 9(o). Fees assessed pursuant to this chapter shall be used to
3 defray costs incurred by the department in implementing this
4 chapter.

5 (b) Pursuant to section 26-9(1), the director shall
6 establish other fees relating to the administration of this
7 chapter by rule.

8 (c) The director may require a surety bond of not more
9 than \$25,000.

10 **§ -28 Federal registry requirements.** (a) The director
11 shall collect from each appraisal management company registered
12 or seeking to be registered in this State the information that
13 the Appraisal Subcommittee requires to be submitted to it by the
14 state pursuant to regulations or guidance adopted by the
15 Appraisal Subcommittee.

16 (b) A federally regulated appraisal management company
17 operating in this State shall report to the director the
18 information required to be submitted by the State to the
19 Appraisal Subcommittee, pursuant to the Appraisal Subcommittee's
20 policies regarding the determination of the appraisal management
21 company national registry fee. These reports shall include:



- 1 (1) A report to the director of the intent of the
2 federally regulated appraisal management company to
3 operate in this State;
- 4 (2) Information related to whether the appraisal
5 management company is owned in whole or in part,
6 directly or indirectly, by any person who has had an
7 appraiser license or certificate refused, denied,
8 canceled, surrendered in lieu of revocation, or
9 revoked in any state for a substantive cause, as
10 determined by the Appraisal Subcommittee; and
- 11 (3) If such person or persons has had such action taken on
12 their appraisal license, the director shall collect
13 information related to whether the license was revoked
14 for a substantive cause and if it has been reinstated
15 by the state or states in which the appraiser was
16 licensed.
- 17 § -29 **Exemption.** This chapter shall not apply to an
18 appraiser who enters an agreement with another appraiser for the
19 performance of an appraisal that, upon completion, results in a
20 report signed by the appraiser who completed the appraisal and
21 the appraiser who requested completion of the appraisal."



1 SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Criminal history record checks may be conducted by:

4 (1) The department of health or its designee on operators
5 of adult foster homes for individuals with
6 developmental disabilities or developmental
7 disabilities domiciliary homes and their employees, as
8 provided by section 321-15.2;

9 (2) The department of health or its designee on
10 prospective employees, persons seeking to serve as
11 providers, or subcontractors in positions that place
12 them in direct contact with clients when providing
13 non-witnessed direct mental health or health care
14 services as provided by section 321-171.5;

15 (3) The department of health or its designee on all
16 applicants for licensure or certification for,
17 operators for, prospective employees, adult
18 volunteers, and all adults, except adults in care, at
19 healthcare facilities as defined in section 321-15.2;

20 (4) The department of education on employees, prospective
21 employees, and teacher trainees in any public school



- 1 in positions that necessitate close proximity to
2 children as provided by section 302A-601.5;
- 3 (5) The counties on employees and prospective employees
4 who may be in positions that place them in close
5 proximity to children in recreation or child care
6 programs and services;
- 7 (6) The county liquor commissions on applicants for liquor
8 licenses as provided by section 281-53.5;
- 9 (7) The county liquor commissions on employees and
10 prospective employees involved in liquor
11 administration, law enforcement, and liquor control
12 investigations;
- 13 (8) The department of human services on operators and
14 employees of child caring institutions, child placing
15 organizations, and foster boarding homes as provided
16 by section 346-17;
- 17 (9) The department of human services on prospective
18 adoptive parents as established under section
19 346-19.7;
- 20 (10) The department of human services or its designee on
21 applicants to operate child care facilities, household



1 members of the applicant, prospective employees of the
2 applicant, and new employees and household members of
3 the provider after registration or licensure as
4 provided by section 346-154, and persons subject to
5 section 346-152.5;

6 (11) The department of human services on persons exempt
7 pursuant to section 346-152 to be eligible to provide
8 child care and receive child care subsidies as
9 provided by section 346-152.5;

10 (12) The department of health on operators and employees of
11 home and community-based case management agencies and
12 operators and other adults, except for adults in care,
13 residing in community care foster family homes as
14 provided by section 321-15.2;

15 (13) The department of human services on staff members of
16 the Hawaii youth correctional facility as provided by
17 section 352-5.5;

18 (14) The department of human services on employees,
19 prospective employees, and volunteers of contracted
20 providers and subcontractors in positions that place
21 them in close proximity to youth when providing



1 services on behalf of the office or the Hawaii youth
2 correctional facility as provided by section 352D-4.3;

3 (15) The judiciary on employees and applicants at detention
4 and shelter facilities as provided by section 571-34;

5 (16) The department of public safety on employees and
6 prospective employees who are directly involved with
7 the treatment and care of persons committed to a
8 correctional facility or who possess police powers
9 including the power of arrest as provided by section
10 353C-5;

11 (17) The board of private detectives and guards on
12 applicants for private detective or private guard
13 licensure as provided by section 463-9;

14 (18) Private schools and designated organizations on
15 employees and prospective employees who may be in
16 positions that necessitate close proximity to
17 children; provided that private schools and designated
18 organizations receive only indications of the states
19 from which the national criminal history record
20 information was provided pursuant to section 302C-1;



- 1 (19) The public library system on employees and prospective
2 employees whose positions place them in close
3 proximity to children as provided by section
4 302A-601.5;
- 5 (20) The State or any of its branches, political
6 subdivisions, or agencies on applicants and employees
7 holding a position that has the same type of contact
8 with children, vulnerable adults, or persons committed
9 to a correctional facility as other public employees
10 who hold positions that are authorized by law to
11 require criminal history record checks as a condition
12 of employment as provided by section 78-2.7;
- 13 (21) The department of health on licensed adult day care
14 center operators, employees, new employees,
15 subcontracted service providers and their employees,
16 and adult volunteers as provided by section 321-15.2;
- 17 (22) The department of human services on purchase of
18 service contracted and subcontracted service providers
19 and their employees serving clients of the adult
20 protective and community services branch, as provided
21 by section 346-97;



- 1 (23) The department of human services on foster grandparent
2 program, senior companion program, and respite
3 companion program participants as provided by section
4 346-97;
- 5 (24) The department of human services on contracted and
6 subcontracted service providers and their current and
7 prospective employees that provide home and community-
8 based services under section 1915(c) of the Social
9 Security Act, title 42 United States Code section
10 1396n(c), or under any other applicable section or
11 sections of the Social Security Act for the purposes
12 of providing home and community-based services, as
13 provided by section 346-97;
- 14 (25) The department of commerce and consumer affairs on
15 proposed directors and executive officers of a bank,
16 savings bank, savings and loan association, trust
17 company, and depository financial services loan
18 company as provided by section 412:3-201;
- 19 (26) The department of commerce and consumer affairs on
20 proposed directors and executive officers of a



- 1 nondepository financial services loan company as
2 provided by section 412:3-301;
- 3 (27) The department of commerce and consumer affairs on the
4 original chartering applicants and proposed executive
5 officers of a credit union as provided by section
6 412:10-103;
- 7 (28) The department of commerce and consumer affairs on:
- 8 (A) Each principal of every non-corporate applicant
9 for a money transmitter license;
- 10 (B) The executive officers, key shareholders, and
11 managers in charge of a money transmitter's
12 activities of every corporate applicant for a
13 money transmitter license; and
- 14 (C) The persons who are to assume control of a money
15 transmitter licensee in connection with an
16 application requesting approval of a proposed
17 change in control of licensee,
- 18 as provided by sections 489D-9 and 489D-15;
- 19 (29) The department of commerce and consumer affairs on
20 applicants for licensure and persons licensed under
21 title 24;



- 1 (30) The Hawaii health systems corporation on:
 - 2 (A) Employees;
 - 3 (B) Applicants seeking employment;
 - 4 (C) Current or prospective members of the corporation
 - 5 board or regional system board; or
 - 6 (D) Current or prospective volunteers, providers, or
 - 7 contractors,
 - 8 in any of the corporation's health facilities as
 - 9 provided by section 323F-5.5;
- 10 (31) The department of commerce and consumer affairs on:
 - 11 (A) An applicant for a mortgage loan originator
 - 12 license; and
 - 13 (B) Each control person, executive officer, director,
 - 14 general partner, and manager of an applicant for
 - 15 a mortgage loan originator company license,
 - 16 as provided by chapter 454F;
- 17 (32) The state public charter school commission or public
- 18 charter schools on employees, teacher trainees,
- 19 prospective employees, and prospective teacher
- 20 trainees in any public charter school for any position



- 1 that places them in close proximity to children, as
2 provided in section 302D-33;
- 3 (33) The counties on prospective employees who work with
4 children, vulnerable adults, or senior citizens in
5 community-based programs;
- 6 (34) The counties on prospective employees for fire
7 department positions which involve contact with
8 children or vulnerable adults;
- 9 (35) The counties on prospective employees for emergency
10 medical services positions which involve contact with
11 children or vulnerable adults;
- 12 (36) The counties on prospective employees for emergency
13 management positions and community volunteers whose
14 responsibilities involve planning and executing
15 homeland security measures including viewing,
16 handling, and engaging in law enforcement or
17 classified meetings and assisting vulnerable citizens
18 during emergencies or crises;
- 19 (37) The State and counties on employees, prospective
20 employees, volunteers, and contractors whose position
21 responsibilities require unescorted access to secured



1 areas and equipment related to a traffic management
2 center;

3 (38) The State and counties on employees and prospective
4 employees whose positions involve the handling or use
5 of firearms for other than law enforcement purposes;

6 (39) The State and counties on current and prospective
7 systems analysts and others involved in an agency's
8 information technology operation whose position
9 responsibilities provide them with access to
10 proprietary, confidential, or sensitive information;

11 (40) The department of commerce and consumer affairs on
12 [applicants]:

13 (A) Applicants for real estate appraiser licensure or
14 certification as provided by chapter 466K;

15 (B) Each person who owns more than ten per cent of an
16 appraisal management company who is applying for
17 registration as an appraisal management company,
18 as provided by section -8; and

19 (C) Each of the controlling persons of an applicant
20 for registration as an appraisal management
21 company, as provided by section -8;



- 1 (41) The department of health or its designee on all
2 license applicants, licensees, employees, contractors,
3 and prospective employees of medical marijuana
4 dispensaries, and individuals permitted to enter and
5 remain in medical marijuana dispensary facilities as
6 provided under sections 329D-15(a)(4) and
7 329D-16(a)(3);
- 8 (42) The department of commerce and consumer affairs on
9 applicants for nurse licensure or license renewal,
10 reactivation, or restoration as provided by sections
11 457-7, 457-8, 457-8.5, and 457-9;
- 12 [+](43)[+] The county police departments on applicants for
13 permits to acquire firearms pursuant to section 134-2
14 and on individuals registering their firearms pursuant
15 to section 134-3;
- 16 [+](44)[+] The department of commerce and consumer affairs on:
17 (A) Each of the controlling persons of the applicant
18 for licensure as an escrow depository, and each
19 of the officers, directors, and principals who
20 will be in charge of the escrow depository's
21 activities upon licensure; and



1 (B) Each of the controlling persons of an applicant
2 for proposed change in control of an escrow
3 depository licensee, and each of the officers,
4 directors, and principals who will be in charge
5 of the licensee's activities upon approval of
6 such application,

7 as provided by chapter 449; and

8 [†] (45) [†] Any other organization, entity, or the State, its
9 branches, political subdivisions, or agencies as may
10 be authorized by state law."

11 SECTION 4. Section 26H-4, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§26H-4 Repeal dates for newly enacted professional and**
14 **vocational regulatory programs.** (a) Any professional or
15 vocational regulatory program enacted after January 1, 1994, and
16 listed in this section shall be repealed as specified in this
17 section. The auditor shall perform an evaluation of the
18 program, pursuant to section 26H-5, prior to its repeal date.

19 (b) Chapter 436H (athletic trainers) shall be repealed on
20 June 30, 2018.



1 (c) Chapter 465D (behavior analysts) shall be repealed on
2 June 30, 2021.

3 (d) Chapter (appraisal management companies) shall be
4 repealed on June 30, 2023."

5 SECTION 5. The department of commerce and consumer affairs
6 may employ necessary personnel without regard to chapter 76,
7 Hawaii Revised Statutes, to assist with the implementation and
8 continuing function of this chapter.

9 SECTION 6. There is appropriated out of the compliance
10 resolution fund established pursuant to section 26-9(o), Hawaii
11 Revised Statutes, the sum of \$140,000 or so much thereof as may
12 be necessary for fiscal year 2018-2019 to implement the
13 appraisal management company registration program.

14 The sum appropriated shall be expended by the department of
15 commerce and consumer affairs for the purposes of this Act.

16 SECTION 7. The provisions of this Act shall be enforced to
17 the extent they are not held to conflict with any federal law.
18 If any provision of this Act is held in conflict with any
19 federal law, this Act in its entirety, shall be invalid.

20 SECTION 8. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 9. This Act shall take effect on January 1, 2018;
2 provided that section 6 of this Act shall take effect on July 1,
3 2017.



Report Title:

Appraisal Management Companies; Registration; Real Property

Description:

Establishes an Appraisal Management Company Registration Program within the Department of Commerce and Consumer Affairs to conform to minimum standards of the Appraisal Management Companies Final Rule and Dodd-Frank Wall Street Reform and Consumer Protection Act. Establishes registration requirements, standards, and penalties for violations. (HB50 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

