



January 17, 2023

VIA EMAIL

The Honorable Ronald D. Kouchi
Senate President
415 South Beretania Street
Hawaii State Capitol, Room 409
Honolulu, Hawaii 96813

VIA EMAIL

The Honorable Scott K. Saiki
Speaker, House of Representatives
415 South Beretania Street
Hawaii State Capitol, Room 431
Honolulu, Hawaii 96813

Re: Sunset Evaluation: Regulation of Appraisal Management Companies, Report No. 23-01

Dear President Kouchi and Speaker Saiki:

Please find attached a copy of Report No. 23-01, *Sunset Evaluation: Regulation of Appraisal Management Companies*, along with a copy of the Auditor's Summary.

Pursuant to Section 26H-4, Hawaii Revised Statutes (HRS), we conducted a sunset review of the regulation of appraisal management companies under Chapter 465D, HRS. Section 26H-4, HRS, requires the State Auditor to perform an evaluation of the regulatory program relating to appraisal management companies prior to its repeal date of June 30, 2023.

The report is accessible through our website at:
<https://files.hawaii.gov/auditor/Reports/2023/23-01.pdf>.

The summary is also accessible through our website at:
<https://files.hawaii.gov/auditor/Overviews/2023/23-01AuditorSummary.pdf>.

If you or other Legislators have any questions about the report or would like a printed version of the report, please let me know.

Very truly yours,

Leslie H. Kondo
State Auditor

LHK:emo

Attachments

cc/attach: Members of the Senate
Members of the House of Representatives
Carol Taniguchi, Senate Chief Clerk
Brian Takeshita, House Chief Clerk

Auditor's Summary

Sunset Evaluation: Regulation of Appraisal Management Companies

Report No. 23-01



Although registration of appraisal management companies does not comply with the State's policy for professional and vocational regulation, public interest likely justifies continued regulation.

REGULATION OF APPRAISAL MANAGEMENT COMPANIES (AMCs)

is set to “sunset,” or cease, on June 30, 2023. Chapter 26H-5, Hawai'i Revised Statutes (HRS), requires the Auditor to assess professions and vocations set to “sunset” to determine whether the current regulation complies with the State's policy for professional and vocational licensing as expressed in the Hawai'i Regulatory Licensing Reform Act. The statute also requires the Auditor to assess whether the law establishing the regulatory program should be reenacted, modified, or permitted to expire, and evaluate the effectiveness and efficiency of the regulatory program.

In Report No. 23-01, *Sunset Evaluation: Regulation of Appraisal Management Companies*, we conclude that the Hawai'i Regulatory Licensing Reform Act does not support the regulation of AMCs. AMCs are not a “profession” or “vocation” but are organizations whose business is to assist lenders in retaining appraisers. In addition, the work performed by AMCs does not reasonably affect the health, safety, or welfare of consumers of services provided by these companies.

Although we find the Hawai'i Regulatory Licensing Reform Act does not support regulation, we conclude that public interest likely justifies reenactment of the AMC registration program codified in Chapter 466L, HRS.



Although we find the Hawai'i Regulatory Licensing Reform Act does not support regulation, we conclude that public interest likely justifies reenactment of the AMC registration program codified in Chapter 466L, HRS.

What are Appraisal Management Companies?

AMCs ARE NOT APPRAISERS, but companies that serve an intermediate role between lenders and appraisers. AMCs assist lenders in obtaining appraisals by providing appraisal management services, which include contracting with licensed appraisers to perform appraisal assignments and managing the process of having an appraisal performed.

Hawai'i's AMC registration program applies to companies that oversee an appraisal panel of more than 15 appraisers in a state, or 25 appraisers in two or more states. If an AMC meeting this size threshold is not registered, they may not directly or indirectly engage or attempt to engage in business as an AMC, perform appraisal management services, or advertise or hold oneself out as engaging in or conducting business as an AMC.

Act 118, Session Laws of Hawai'i 2017, codified as Chapter 466L, HRS, established the Appraisal Management Company Registration Program (AMC registration program) to conform with the *Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203* (Dodd-Frank Act) requirements related to the regulation of AMCs. The Dodd-Frank Act required, among other things, federal regulatory agencies to establish minimum requirements for state registration and supervision of AMCs. While states were not required to enact AMC registration and supervision, if a state failed to do so by August 10, 2018, certain AMCs would be barred from providing appraisal management services for federally related transactions in the state.

Criteria not met

The Hawai'i Regulatory Licensing Reform Act, Chapter 26H, HRS, sets out the State's policy regarding the regulation of *professions and vocations*. AMCs are business entities, not professions or vocations; therefore, the State's policy with respect to professional and vocational licensing does not support regulation of AMCs.

We also considered whether the work performed by AMCs reasonably affects the health, safety, or welfare of consumers of that work, which is the threshold requirement for professional and vocational regulation in Hawai'i. In the context of the State's policy, we do not interpret "consumers" to mean the general public – i.e., home buyers who have applied for a loan through a financial institution that requires an appraisal report. Given the nature of appraisal management services provided by AMCs, consumers of these services are lending institutions, and regulation is not necessary to protect the public health, safety, or welfare.

Public interest may require regulation of AMCs be reenacted

Section 466L-1, HRS, states that regulation of AMCs reflects the Legislature's position that it was necessary to create a regulatory framework for AMCs in accordance with the Dodd-Frank Act.

Currently, all 50 states and the District of Columbia have opted to create an AMC registration program. Hawai'i would be the only state without an AMC registration program if Chapter 466L, HRS, is not reenacted. There are likely other consequences for AMCs contracted to perform appraisals in Hawai'i should the AMC registration program be allowed to expire. AMCs in a state that has not adopted regulation under the Dodd-Frank Act may be barred from providing appraisal management services for some federally related transactions.

From the limited information about AMCs noted above, including the 2017 Legislature's finding that a large source of Hawai'i's funding for residential mortgage loans are from outside Hawai'i, we believe the public interest likely supports continuing the AMC registration program.

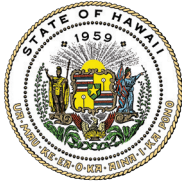
Sunset Evaluation: Regulation of Appraisal Management Companies

A Report to the Governor
and the Legislature of
the State of Hawai'i

Report No. 23-01
January 2023



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

Our Mission

To improve government through independent and objective analyses.

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management and expenditure of public funds.

Our Work

We conduct performance audits (also called management or operations audits), which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and make recommendations to the Governor and the Legislature to help them make informed decisions.

For more information on the Office of the Auditor, visit our website:
<https://auditor.hawaii.gov>

Foreword

This sunset evaluation represents our findings on whether the State's continued oversight of appraisal management companies complies with the State's policy for professional and vocational licensing as expressed in the Hawai'i Regulatory Licensing Reform Act. The Auditor is also required to assess whether the law establishing the regulatory program should be reenacted, modified, or permitted to expire, and evaluate the effectiveness and efficiency of the regulatory program.

We express our sincere appreciation to the Hawai'i Department of Commerce and Consumer Affairs for their assistance through the course of this assessment.

Leslie H. Kondo
State Auditor



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Sunset Evaluation: Regulation of Appraisal Management Companies

REGULATION OF APPRAISAL MANAGEMENT COMPANIES (AMCs) is set to “sunset,” or cease, on June 30, 2023. Chapter 26H-5, Hawai‘i Revised Statutes (HRS), requires the Auditor to provide an assessment of whether the current regulation complies with the State’s policy for professional and vocational licensing as expressed in the Hawai‘i Regulatory Licensing Reform Act. The Auditor is also required to assess whether the law establishing the regulatory program should be reenacted, modified, or permitted to expire, and evaluate the effectiveness and efficiency of the regulatory program.

AMCs are not appraisers; they serve an intermediate role between lenders and appraisers. AMCs assist lenders in obtaining appraisals by providing appraisal management services, which include contracting with licensed appraisers. An “appraisal” is a written or oral statement independently and impartially prepared, setting forth an opinion as to the market value of a property, supported by the presentation and analysis of relevant real estate market information. Appraisers in Hawai‘i are required to follow the Uniform Standards for Professional Appraisal Practice and must be licensed in accordance with the Hawai‘i real estate appraiser program.

AMCs are not appraisers; they serve an intermediate role between lenders and appraisers. AMCs assist lenders in obtaining appraisals by providing appraisal management services, which include contracting with licensed appraisers.

Appraisal Management Company as Defined in Chapter 466L, HRS

SECTION 466L-2, HRS, PROVIDES THE FOLLOWING DEFINITIONS:

“Appraisal management company” means a person that:

- (1) Provides appraisal management services to creditors or secondary mortgage market participants, including affiliates;
- (2) Provides appraisal management services in connection with valuing a consumer’s principal dwelling as security for a consumer credit transaction or incorporating these transactions into securitizations; and
- (3) Within a twelve-month calendar year, beginning January 1 of each year and ending on December 31 of each year, oversees an appraiser panel of more than fifteen state-certified or state-licensed appraisers in a state or twenty-five or more state-certified or state-licensed appraisers in two or more states.

“Appraisal management services” means one or more of the following:

- (1) Recruiting, selecting, and retaining appraisers;
- (2) Contracting with state-certified or state-licensed appraisers to perform appraisal assignments;
- (3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants; collecting fees from creditors and secondary market participants for services provided; and paying appraisers for services performed; and
- (4) Reviewing and verifying the work of appraisers.

Objectives of the Study

1. Assess whether the current regulation of AMCs is consistent with and supported by policies in the Hawai‘i Regulatory Licensing Reform Act, specifically, Section 26H-2, HRS, which limits regulation of professions to those where government oversight is reasonably necessary to protect the health, safety, or welfare of consumers of the profession’s services.
2. Assess whether the public interest requires the regulation of AMCs be reenacted, modified, or permitted to expire.
3. Evaluate the effectiveness and efficiency of the regulatory program.

Overview of the Appraisal Management Company Registration Program

The Dodd-Frank Act and the “Final Rule” – federal reforms led to state regulation of AMCs

Beginning in 2007, U.S. financial conditions deteriorated, leading to the near-collapse of the U.S. financial system in September 2008. Among other factors leading to the crash, the Federal Bureau of Investigation (FBI) found elevated mortgage fraud. Mortgage fraud perpetrators identified in the FBI’s 2010 report included appraisers. The *Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203* (Dodd-Frank Act) of 2010, enacted policies that made changes to nearly every federal financial regulatory agency to protect consumers, some of which were to address mortgage fraud and specifically fraudulent appraisals.

Regarding AMCs, the Dodd-Frank Act amended sections of the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989* (FIRREA). Act 118, Session Laws of Hawai‘i 2017, which established Hawai‘i’s AMC registration program, noted the Dodd-Frank Act helped restore independence to the appraisal process by separating the lending process and appraisal functions and requiring these functions to be autonomous. The FIRREA’s purpose entails promoting, through regulatory reform, a safe and stable system of affordable housing finance and strengthening the enforcement powers of federal regulators of depository institutions. The FIRREA contains *Title XI – Real Estate Appraisal Reform Amendments* (Title XI) whose purpose is to protect federal financial and public policy interests in real estate-related transactions by requiring that real estate appraisals be in writing, in accordance with uniform standards, and by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

The Dodd-Frank Act required federal regulatory agencies to establish minimum requirements for state registration and supervision of AMCs. In accordance with that requirement, the federal regulatory agencies, which include the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency, published the *Minimum Requirements for Appraisal Management Companies* (Final Rule) in the Federal Register, effective August 10, 2015.

The Final Rule established minimum requirements in Section 1124 of FIRREA for state registration and supervision of AMCs in participating states and required participating states to report certain AMC information to the Appraisal Subcommittee (ASC), the federal agency tasked to regulate state programs. ASC is a subsection of the Federal Financial Institutions Examinations Council (FFIEC)¹ that reviews state AMC programs and monitors state compliance with federal regulation and places emphasis on whether a state is maintaining an effective regulatory program.

States were not required to enact the minimum requirements according to the Final Rule; however, if a state failed to do so by August 10, 2018, certain non-federally regulated AMCs² would be barred from providing appraisal management services for federally related transactions³ in the state.

Act 118, Session Laws of Hawai‘i 2017, established regulation of AMCs in Hawai‘i

Act 118, Session Laws of Hawai‘i 2017, codified as Chapter 466L, HRS, established a regulatory framework for AMCs to conform with the Dodd-Frank Act’s requirements for the regulation of certain non-federally regulated AMCs. That framework is the Appraisal Management Company Registration Program (AMC registration program).

¹ FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau, and to make recommendations to promote uniformity in the supervision of financial institutions.

² A federally regulated AMC is an AMC owned and controlled by an insured depository institution that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

³ A federally related transaction is any real estate-related financial transaction that involves an insured depository institution regulated by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, or National Credit Union Administration, and that requires the services of an appraiser under the interagency appraisal rules.

The AMC registration program applies to companies that oversee an appraisal panel of more than 15 appraisers in a state, or 25 appraisers in two or more states. If an AMC meeting this size threshold is not registered, it may not directly or indirectly engage or attempt to engage in business as an AMC, perform appraisal management services, or advertise or hold itself out as engaging in or conducting business as an AMC. Violators of the registration requirement are guilty of a misdemeanor and shall be subject to a fine of no more than \$1,000.

The statute also outlines the director of the Department of Commerce and Consumer Affairs's (DCCA) powers and duties regarding the regulation of AMCs. Those powers and duties include: reviewing the AMC application for initial registration and renewals; examining the books and records of AMCs operating in the State; verifying that the appraisers on an AMC's appraiser panel hold valid state licenses or certifications; conducting investigations of AMCs to assess potential violations; disciplining, suspending, terminating, or denying renewal of the registration of an AMC; and reporting violations to the Appraisal Subcommittee.

The AMC registration program requires applicants to submit the following information:

- (1) If the AMC is a corporation, partnership, LLC, or LLP, applicants must submit a certificate of good standing or other proof that the entity is properly registered with DCCA's Business Registration Division.
- (2) A bond in the penal sum of \$25,000.
- (3) A copy of the AMC's process and controls designed to ensure that the AMC engages an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment.
- (4) A completed consent to service form for an AMC not domiciled in Hawai'i, and a letter of good standing from the state in which it is domiciled.

The AMC registration program also requires an applicant to pay the following fees:

- (1) Nonrefundable application fee: \$60;
- (2) Biennial registration fee: \$4,200;
- (3) Biennial compliance resolution fund fee: \$500 in an even-numbered year/\$250 in an odd-numbered year;
- (4) Special assessment fee: \$300;
- (5) Annual (national) registry fee: \$25 multiplied by the number of Hawai'i-licensed appraisers who performed appraisals on covered transactions in Hawai'i; and
- (6) Service charge: \$25.

In addition, AMC registrants must register biennially by submitting a renewal application and fees; all registrations expire on December 31 of each odd-numbered year. Registrations are submitted to DCCA's Professional & Vocational Licensing Division (PVL). As of September 2022, PVL reports there are 76 active mainland AMCs and 1 active in-state AMC registered in the AMC registration program.

DCCA's Regulated Industries Complaint Office (RICO) receives and processes complaints for the AMC registration program. Since December 1, 2017, RICO recorded two complaints from 2018 regarding registered AMCs; both were closed due to insufficient evidence. In addition, RICO has received three complaints to date involving possible unregistered AMCs engaging in activity requiring an AMC registration. Three separate legal actions were imposed in one of the cases.

This is our second study regarding AMCs. In September 2010, we published a *Sunrise Analysis: Real Estate Appraisal Management Companies*, Report No. 10-07. In Report No. 10-07, we concluded that the regulation of AMCs proposed in Senate Bill No. 1606 (2009) should not be enacted. The report found the purpose of the proposed regulation was not clearly articulated and designed to protect an industry, not consumers. The report further noted that by definition AMCs are business entities, not a profession or vocation, and concluded regulation was not warranted under Hawai'i's strict sunrise criteria.

The policies contained in Section 26H-2, Hawai'i Revised Statutes, do not apply to regulation of Appraisal Management Companies

The policies contained in Section 26H-2, HRS, apply to professions and vocations and are not applicable to AMCs

The Hawai'i Regulatory Licensing Reform Act requires the Auditor to assess whether a regulatory program complies with the policies established by Section 26H-2, HRS. Under the Act, “[t]he regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.”

The Hawai'i Regulatory Licensing Reform Act, Chapter 26H, HRS, sets out the Legislature's policies regarding the regulation of *professions and vocations*.

While AMCs are defined in statute to mean a “person” that provides appraisal management services to creditors or secondary mortgage market participants, and oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in two or more states, it is clear from the definition of AMCs, as well as the definition of “person” in Chapter 466L, HRS, that AMCs include business organizations or entities and are not individuals practicing a profession or vocation. “Person” is defined in the statute to include a “natural person or an organization.” Moreover, the application developed by PVL requires applicants to provide proof of business registration and good standing, and information on officers, managers, and members of business entities, which suggests that PVL understands AMCs to include organizations or business entities, not only individuals.

In 2010, we noted that AMCs are business entities, not professions or vocations. We reach that same conclusion in this report, and for that reason the State's policy with respect to professional and vocational licensing does not support regulation of AMCs.

Regulation of AMCs is not reasonably necessary to protect the health, safety, or welfare of consumers of their services; nor is the health, safety, or welfare of the consumer jeopardized by the nature of services provided by AMCs

While we conclude that the Hawai‘i Regulatory Reform Act, Chapter 26H, HRS, applies to people practicing a profession or vocation and not to the regulation of a business entity, we considered whether the work performed by AMCs reasonably affects the health, safety, or welfare of consumers of that work, which is the threshold requirement for professional and vocational regulation in Hawai‘i. We found that it did not.

As noted in Report No. 10-07, although “consumers of the services” usually equates to members of the general public, in the case of AMCs, consumers of AMC services are lenders – that is, financial institutions, such as banks or savings and loan companies in the business of providing home mortgage loans. The State’s policy requires that regulation shall be undertaken *only where reasonably necessary to protect the health, safety, or welfare of consumers of the services*. The policy limits regulation of professions and vocations to those that may jeopardize the health, safety, or welfare of the consumer because of the nature of the services offered by the provider. In the context of the State’s policy, we do not interpret “consumers” to mean the general public – specifically, home buyers who have applied for a mortgage, which requires an appraisal report. Given the nature of appraisal management services provided by AMCs, consumers of these services are lending institutions and not individuals or the general public, and regulation is not necessary to protect health, safety, or welfare.

Public interest may require regulation of AMCs be reenacted

Section 466L-1, HRS, states that regulation of AMCs is essential to protect consumers, mirroring the purpose stated in the Dodd-Frank Act. That section also reflects the Legislature's intent to create a regulatory framework for AMCs in accordance with the Dodd-Frank Act and the Final Rule:

§ 466L-1 Findings and purpose. The legislature finds that the regulation of appraisal management companies is essential to protect consumers. The legislature further finds that it is necessary to establish a regulatory framework for appraisal management companies in the State in conformity with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, and the final regulations published on June 9, 2015, at title 12 Code of Federal Regulations, sections 1222.20, et seq., 80 Federal Register 32657 et seq. The purpose of this chapter is to establish minimum requirements for the regulation of certain nonfederally regulated appraisal management companies.

Hawai'i would be the only state without an AMC registration program if the AMC registration program is not reenacted.

Currently, all fifty states and the District of Columbia have opted to create an AMC registration program. Hawai'i would be the only state without an AMC registration program if the AMC registration program is not reenacted.

There are likely other consequences for AMCs contracted to perform appraisals in Hawai'i should the AMC registration program be allowed to expire. AMCs in a state that has not adopted regulation under the Dodd-Frank Act and the Final Rule may be barred from providing appraisal management services for some federally related transactions. The 2017 Legislature found that a large source of Hawai'i's funding for residential mortgage loans comes from lenders outside the State which frequently employ AMCs to perform appraisals relating to those loans. Those AMCs will not be able to perform appraisals in Hawai'i without a state registration program. According to the *Hawai'i Consumer Debt Report: 2019 Update* issued by the Department of Business, Economic Development and Tourism's Research and Economic Analysis Division, mortgage loan debt comprises the largest share of total consumer debt. Because mortgage debt comprises approximately 76% of total consumer debt in Hawai'i, it may be helpful to provide additional lending options to the general public.

From the limited information about AMCs noted above, including the 2017 Legislature's finding that a large source of Hawai'i's funding for residential mortgage loans are from outside Hawai'i, we believe the public interest supports continuing the AMC registration program to allow AMCs to provide the appraisal management services for federally related transactions in the State.

The effectiveness and efficiency of the AMC regulatory program is regularly assessed by a federal Appraisal Subcommittee

The effectiveness and efficiency of Hawai‘i’s AMC registration program is subject to oversight by the Appraisal Subcommittee (ASC), a federal agency tasked with enforcing and assessing compliance of state regulation of AMCs under the Dodd-Frank Act. As Hawai‘i’s regulatory program is already subject to this federal review, rather than duplicate this work, we present the following information as to effectiveness and efficiency.

ASC regulates states through a federal Compliance Review process which includes on-site visits to state programs. ASC provides findings for each state as to whether the state is maintaining an effective regulatory program in compliance with federal laws. A list of ASC findings and rating criteria for each finding category is found in Appendix A.

The last Compliance Review of Hawai‘i’s AMC regulatory program was conducted between December 3-5, 2019 for a review period from December 2017 to December 2019. The Hawai‘i AMC regulatory program was awarded an ASC Finding of “Excellent,” and ASC placed Hawai‘i on a two-year review cycle. In addition, ASC found no areas of concern in its review. On-site visits to the State have been suspended due to ongoing safety precautions related to the COVID-19 pandemic.

According to PVL and RICO, ASC planned to conduct a State Off-Site Assessment (SOA) for the State’s AMC regulatory program in December 2022. SOAs are used in lieu of a Compliance Review when on-site visits are restricted due to travel restrictions, as during the COVID-19 pandemic. The purpose of the SOA is to provide feedback to state staff, but does not result in findings regarding compliance or a program rating. During an SOA, ASC will request Pre-SOA materials similar to a regular Compliance Review and the state will be provided a questionnaire. The materials will be analyzed by Policy Managers assigned to the SOA and ASC legal staff. ASC staff will assess consistency with federal regulations, ASC Policy Statements, Real Property Appraiser Qualifications Criteria, and for the AMC Programs, the interagency AMC Rule, and the AMC Registry Fee Rule.

Conclusion

We evaluated the regulation of AMCs under Chapter 466L, HRS, against the criteria set forth in Section 26H-5, HRS. Under those criteria, regulation of AMCs is not warranted, primarily because AMCs are not a profession or a vocation. We also conclude that regulation is not warranted under that criteria because the work performed by AMCs does not reasonably affect the health, safety, or welfare of the consumers of AMCs' services.

Although we find regulation as a profession or vocation under Hawai'i's Regulatory Licensing Reform Act may not be warranted, there are public interest reasons for the Legislature to reenact Chapter 466L, HRS. While states are not required to establish an AMC registration and supervision program, AMCs providing services in Hawai'i may be barred from providing some appraisal management services for federally related transactions if Hawai'i's AMC registration program is not reenacted. The Dodd-Frank Act and the Final Rule require state registration of AMCs before AMCs are allowed to provide appraisal management services for certain federally related transactions in the state, which was the impetus for the enactment of Hawai'i's AMC registration program, Chapter 466L, HRS.

Appendix A ASC Finding Descriptions

Source: Appraisal Subcommittee

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> State meets all Title XI mandates and complies with requirements of ASC Policy Statements State maintains a strong regulatory Program Very low risk of Program failure 	2-year
Good	<ul style="list-style-type: none"> State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements Deficiencies are minor in nature State is adequately addressing deficiencies identified and correcting them in the normal course of business State maintains an effective regulatory Program Low risk of Program failure 	2-year
Needs Improvement	<ul style="list-style-type: none"> State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies State regulatory Program needs improvement Moderate risk of Program failure 	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing State regulatory Program has substantial deficiencies Substantial risk of Program failure 	1-year
Poor	<ul style="list-style-type: none"> State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies High risk of Program failure 	Continuous monitoring

*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

Office of the Auditor's Comments on the Department of Commerce and Consumer Affairs' Response

WE TRANSMITTED A DRAFT of this report to the Department of Commerce and Consumer Affairs (DCCA) on December 16, 2022. As required by Section 26H-5, Hawai'i Revised Statutes, DCCA was afforded 30 days to review and comment on the report. On December 28, 2022, we received a response from DCCA in which they provided comments and suggested changes. DCCA's response is included in its entirety as Attachment 1.

We made some minor edits to the report based on DCCA's response. However, we disagree with one of DCCA's suggested revisions, which we reproduce below with the difference between the report language and DCCA's suggestion underlined:

Draft Report - Page 3

Auditor's comment:

States were not required to enact the minimum requirements according to the Final Rule; however, if a state failed to do so by August 10, 2018, certain non-federally regulated AMCs would be barred from providing appraisal management services for federally related transactions in the State.

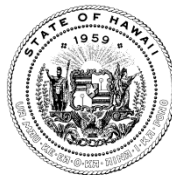
DCCA response: For accuracy, the statement should be revised as follows:

States were not required to enact the minimum requirements according to the Final Rule; however, if a state failed to do so by August 10, 2018, federally regulated AMCs would be barred from providing appraisal management services for federally related transactions in the State.

DCCA's characterization of the effect of the Final Rule is incorrect. Both the Final Rule and the Hawai'i Revised Statutes define federally regulated AMCs as AMCs owned and controlled by an insured depository institution that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation. According to the Final Rule, federally regulated AMCs are *not* required to register with a state, but are subject to the same minimum requirements as state-regulated AMCs.

Under the Final Rule, if a state chose not to adopt an AMC registration program, AMCs located in that state may not provide appraisal management services for federally related transactions, unless federally regulated or is a smaller AMC with an appraiser panel fewer than 15 appraisers in a state or 25 appraisers in two or more states. Therefore, our use of the term "certain non-federally regulated AMCs" is accurate. However, we did add a footnote in the report to clarify the definition of "federally regulated AMCs."

DCCA also recommended that AMCs are not appropriately regulated under the Professional and Vocational Licensing Division and encouraged the Legislature to move the regulation of AMCs to a regulatory entity with the appropriate expertise.



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December 28, 2022

Mr. Leslie H. Kondo
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Mr. Kondo:

Thank you for the opportunity to comment on the Draft Report entitled, *DRAFT Sunset Evaluation: Regulation of Appraisal Management Companies*. We have reviewed the report and respectfully provide the following comments:

Draft Report - Page 1

Auditor's comment:

AMCs are not appraisers; they serve an intermediate role between lenders and appraisers. AMCs assist lenders in obtaining appraisals by providing appraisal management services, which include contacting with licensed appraisers. An "appraisal" is written or oral statement independently and impartially prepared, setting for an opinion as the market value of property as of a specific date(s), supported by the presentation and analysis of relevant real estate market information. Appraisers in Hawai'i are required to follow the Uniform Standards for Appraisal Practice and must be licensed in accordance with the Hawai'i real estate appraiser program.

DCCA response: For accuracy, the reference to the Uniform Standards for Appraisal Practice, should be revised as follows:

Appraisers in Hawai'i are required to follow the Uniform Standards of Professional Appraisal Practice (USPAP), and must be licensed in accordance with the Hawai'i real estate appraiser program.

Draft Report - Page 3

Auditor's comment:

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States were not required to enact the minimum requirements according to the Final Rule; however, if a state failed to do so by August 10, 2018, certain non-federally regulated AMCs would be barred from providing appraisal management services for federally related transactions in the State.

DCCA response: For accuracy, the statement should be revised as follows:

States were not required to enact the minimum requirements according to the Final Rule; however, if a state failed to do so by August 10, 2018, federally regulated AMCs would be barred from providing appraisal management services for federally related transactions in the State.

Draft Report - Page 4

Auditor's comment:

The AMC registration program also requires an applicant to pay the following fees:

- (1) Nonrefundable application fee \$60;
- (2) Biennial registration fee \$4,200;
- (3) Biennial compliance resolution fund fee \$500 even-numbered year;
- (4) Special assessment fee \$300;
- (5) Annual (national) registry fee which is calculated as \$25 multiplied by the number of Hawai'i-licensed appraisers who performed appraisals on covered transaction in Hawai'i

DCCA response: Revise as follows:

- (3) Biennial compliance resolution fund fee \$500 even-numbered year/\$250 odd-numbered year;

Add

- (6) Service Charge \$25

Draft Report - Page 4

Auditor's comment: DCCA's Regulated Industries Complaints Office (RICO) receives and processes complaints for the AMC registration program. Since December 1, 2017, RICO recorded two complaints from 2018 regarding registered AMCs; both were involving possible unregistered AMCs engaging in activity requiring an AMC registration. Legal action was taken on one of the cases.

DCCA response: Revise as follows:

DCCA's Regulated Industries Complaints Office (RICO) receives and processes complaints for the AMC registration program. Since December 1, 2017, RICO recorded two complaints from 2018 regarding registered AMCs; both were involving possible unregistered AMCs engaging in activity requiring an AMC registration. Three separate legal actions were imposed in one of the cases.

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Auditor's comment: The policies contained in Section 26H-2, Hawai'i Revised Statutes do not apply to regulation of Appraisal Management Companies.

The policies contained in Section 26H-2, HRS, apply to professions and vocations and are not applicable to AMCs

DCCA Response: We agree that AMCs are not appropriately regulated under the umbrella of Professional Vocational Licensing Division. We encourage the Legislature to move the regulation of AMCs to a regulatory entity with the appropriate expertise.

Again, we appreciate the opportunity to comment on the draft report. Should you or your staff have additional questions regarding the subject of this draft report, please feel free to contact me at (808) 586-2850.

Sincerely,



NADINE Y. ANDO
Director