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Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Finance
Tuesday, February 27, 2024
2:00 p.m.
Conference Room 308 and Videoconference

On the following measure:
H.B. 2641, H.D. 1, RELATING TO APPRAISAL MANAGEMENT COMPANIES

Chair Yamashita and Members of the Committee:

My name is Shelley Choy, and I am the Executive Officer of the Department of Commerce and Consumer Affairs' (Department) Professional Vocational Licensing Division, Appraisal Management Company Program (Program). The Department offers comments on this bill.

The purposes of this bill are to: (1) reestablish the appraisal management company registration program within the Department of Commerce and Consumer Affairs, to begin September 30, 2024; and (2) appropriate funds from the compliance resolution fund for the Program.

The Department acknowledges the public's desire for the reestablishment of the Program, and offers the following comments:

The Department has been working with representatives from the Real Estate Valuation Advocacy Association (REVAA). The Department appreciates the amendments made in the H.D. 1, and is not opposed to it as currently drafted. The

Testimony of DCCA
H.B. 2641, H.D. 1
Page 2 of 2

Department requests the amounts of \$23,000 for each fiscal year be appropriated to cover the costs of re-establishing and maintaining the Program.

Thank you for the opportunity to testify on this bill.

February 27, 2024

The Honorable Kyle T. Yamashita, Chair

House Committee on Finance

State Capitol, Conference Room 308 & Videoconference

RE: House Bill 2641 HD1, Relating to Appraisal Management Companies

HEARING: Tuesday, February 27, 2024, at 2:00 p.m.

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 11,000 members. HAR **supports** House Bill 2641 HD1, which reestablishes the appraisal management company registration program within the Department of Commerce and Consumer Affairs, to begin September 30, 2024. Appropriates funds from the compliance resolution fund for the program. Effective 7/1/3000.

An Appraisal Management Company ("AMC") is a business that organizes independent appraisers to complete property evaluations for lenders. It acts as a go-between to make sure there's no influence between the appraiser and the loan provider. AMCs play a crucial role in residential transactions by coordinating appraisals, managing a group of qualified appraisers, ensuring independence between appraisers and lenders, and checking the quality of appraisals.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 instructed federal financial agencies to create rules for the minimum requirements for states to register AMCs. The final rules, effective from August 10, 2015, did not make it mandatory for states to adopt it, but if a state did not comply by August 10, 2018, non-federally regulated AMCs could not offer appraisal management services for federally-related transactions in that state.

In 2017, the Legislature passed and the Governor signed into law Act 118, which established an AMC structure in Hawaii. However, the Act sunsetted on June 30, 2023. HAR believes that not having a program in place could lead to unintended consequences for Hawaii consumers because a significant portion of Hawaii's funding for residential mortgage loans originates from out-of-state lenders. These lenders often engage AMCs to conduct assessments for these loans.

For the foregoing reasons, HAR supports reestablishing the AMC registration program and making it permanent. Mahalo for the opportunity to testify.



February 27, 2024

Representative Kyle Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: REVAA Support for H.B. 2641, H.D. 1 (Appraisal Management Companies)

Dear Chair Yamashita, Vice Chair Kitagawa, and distinguished Committee Members:

On behalf of the Real Estate Valuation Advocacy Association (REVAA), I am pleased to share our strong support for the passage of H.B. 2641, H.D. 1 (Appraisal Management Companies). In addition, we strongly support the proposed new amendments submitted by the Hawaii Financial Services Association (HFSA).

REVAA is a national collaborative of Appraisal Management Companies (AMC) offering residential real estate valuation services including appraisal management, Broker Price Opinions (BPO), Evaluations, Automated Valuation Models (AVM) and others on behalf of national, state and local lenders. AMCs are licensed in every state, except Hawaii, in accordance with federal and state legal and regulatory requirements.

In 2017, REVAA worked with industry stakeholders on the original enabling legislation that established AMC licensing. From 2018 to 2023, AMCs were licensed by the Department of Commerce and Consumer Affairs (DCCA). Since the program was shut down, REVAA has worked with HFSA, DCCA, and other stakeholders to re-establish a federally compliant AMC licensing program in the State of Hawaii.

We firmly believe that the licensing of AMCs in Hawaii is an important consumer protection. As outlined in this testimony, REVAA is seeking passage of this pro-consumer bill to immediately re-establish the successful program that existed from 2018- 2023.

H.B. 2641, H.D. 1 accomplishes the following:

- re-establishes the Appraisal Management Company Registration Program within the Department of Commerce and Consumer Affairs to conform with the minimum standards of the Appraisal Management Companies Final Rule and federal Dodd-Frank Wall Street Reform and Consumer Protection Act,
- re-establishes registration requirements, standards, and penalties for violations, and
- makes an appropriation from the Compliance Resolution Fund.

About AMCs

An AMC is a third party hired by mortgage lenders to facilitate the process of obtaining residential property valuations including appraisals. For appraisals, AMCs engage state credentialed appraisers on behalf of lenders to facilitate the completion of an appraisal in compliance with state and federally mandated requirements.

AMCs aid consumer protection, mortgage lending and secondary markets:

- Ensure lender compliance with federal and state AMC, banking and mortgage regulations
- Safeguard appraiser independence
- Provide quality controls to help ensure the integrity of a supportable, dependable and credible appraisal
- Follow consumer protection and fair housing laws

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 added Appraisal Management Company (AMC) Minimum Requirements to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI). It directed federal financial and consumer agencies to establish, by

administrative rule, minimum requirements for state registration and supervision of AMCs. These rules were promulgated and became effective in 2015.

Until Hawaii sunsetted its program in 2023, all 50 states and the District of Columbia had federally compliant AMC licensing programs in place. Hawaii has joined Puerto Rico, Virgin Islands, Guam and the Northern Marianas Islands as the only United States jurisdictions without an AMC licensing program.

Hawaii's AMC Licensing Program

Hawaii's AMC Registration Program was established in 2017 through Act 118, Session Laws of Hawaii 2017, and codified as Chapter 466L of the Hawaii Revised Statutes. Enacting the Program reflected the Legislature's finding that it was necessary to create a regulatory framework for AMCs in accordance with the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 ("Dodd-Frank Act") and "that doing so was essential to protect consumers."

The Program was administered by the Department of Commerce and Consumer Affairs ("DCCA") Professional and Vocational Licensing Division ("PVL"). In 2023, there were 77 AMCs registered by the DCCA.

Hawaii's AMC program was given a finding of "Excellent" by the Appraisal Subcommittee, a federal agency that enforces and assesses compliance of state regulation of AMCs under the federal Dodd-Frank Act. The Appraisal Subcommittee is a part of the Federal Financial Institutions Examinations Council that reviews state AMC programs and monitors state compliance with federal regulation. It determines whether a state, like Hawaii, is maintaining an effective regulatory program.

The last Compliance Review by the Appraisal Subcommittee of Hawaii's AMC Program was in December 2019 for the period from December 2018 to December 2019. The AMC Program was given a finding of "Excellent" by the Appraisal Subcommittee. The Subcommittee didn't find any areas of concern in its review. The Subcommittee's finding of "Excellent" for Hawaii's AMC Program is the highest of 5 possible findings. (The possible findings are Excellent, Good, Needs Improvement, Not Satisfactory, and Poor.)

The Hawaii AMC law had a June 30, 2023 sunset date. There was no legislation introduced at any legislative session (2018-2023) to extend or remove the sunset date. On August 29, 2023, AMC licensees were notified by the DCCA by mail that their licensure ceased because of the June 30, 2023 sunset of Hawaii's AMC law. Lenders were immediately notified by AMCs about the sunset.

Hawaii Auditor's Sunset Review Report and the "Public Interest" for a Continued Program.

Act 118 included a June 30, 2023 sunset date for the Program. In January 2023, Hawaii's Office of the Auditor completed a sunset review report of Chapter 466L and provided it to the Legislature.

The auditor report did not recommend the end of AMC licensing. Instead, the Auditor's report concluded that "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 Auditor's report noted that: (1) regulation of AMCs reflects the Legislature's position that it was necessary to create a regulatory framework for AMCs in accordance with the federal Dodd-Frank Act; (2) all 50 states and the District of Columbia had opted to create an AMC registration program, and Hawaii would be the only state without an AMC registration program if HRS Chapter 466L is not reenacted; (3) AMCs that had been contracted to perform appraisals in Hawaii may be barred from providing appraisal management services for some federally related transactions; and (4) a large source of Hawaii's funding for residential mortgage loans are from outside Hawaii and those lenders frequently use AMCs for those loans.

The Negative Impact of the Sunset of Hawaii's AMC Registration Program.

Nationally, AMCs are registered or licensed in 49 states and the District of Columbia (Hawaii was the 50th state before sunseting AMC licensing). Lenders in those states/jurisdictions can utilize AMCs to facilitate a residential appraisal for both a federally related transaction ("FRT") and a non-federally related transaction ("non-FRT").

Federal banking law (12 U.S.C.A. § 3350) defines a "federally related transaction" as: "Any real estate-related financial transaction which: (A) a federal financial institutions regulatory agency or the Resolution Trust

Corporation engages in, contracts for, or regulates; and (B) requires the services of an appraiser.” The federal financial agencies have outlined 13 exemptions that change a FRT to a Non-FRT.

- A Non-FRT is generally a conforming mortgage that meets the dollar limits set by the Federal Housing Finance Agency (FHFA) and the funding criteria of Freddie Mac and Fannie Mae.
 - GSE guidelines consist of a maximum loan amount (in Hawaii it is \$1,089,300), suitable properties, down payment requirements, and credit requirements, among other factors. Conforming loans typically offer lower interest rates than other types of mortgages.
 - Non-FRTs include transactions that are insured by a government agency (VA, FHA, USDA).
 - Conforming loans are packaged and sold in the secondary mortgage market.
- A FRT is generally a nonconforming mortgage that does not meet the guidelines of government-sponsored enterprises (GSE) such as Fannie Mae and Freddie Mac and, therefore, cannot be sold to them. Mortgages that the GSEs cannot buy are inherently riskier for banks to write. These difficult-to-sell loans either stay in the bank’s portfolio or are sold to entities specializing in the secondary market for nonconforming loans.

Other FRTs include residential transactions not insured by a government agency (VA, FHA, USDA); home loans over \$1,089,300 (jumbo loan); homes in Hawaii located in high risk lava zones; complex loans; default portfolios; and some alternative valuations.

- A nonconforming mortgage is a home loan that does not adhere to government-sponsored enterprises (GSE) guidelines and, therefore, cannot be resold to agencies such as Fannie Mae or Freddie Mac. These loans often carry higher interest rates than conforming mortgages.
- Mortgages exceeding the conforming loan limit are nonconforming (i.e., jumbo mortgages).
- Beyond loan size, mortgages may become nonconforming based on a borrower’s high loan-to-value ratio (down payment size); high debt-to-income ratio; low credit score and problematic credit history; and documentation requirements.
- Property type may determine if a mortgage is nonconforming. For example, condominium buyers often learn a unit is nonconforming because the complex is considered non-warrantable. That includes condominium associations where a single entity (i.e., developer) owns more than 10% of the units or if a majority of the units are not owner-occupied. Condominiums in a condominium project may also be nonconforming because they are uninsurable/underinsured (e.g., for wind or hurricane).

Because of the sunset of the Hawaii Program, consumers, AMCs, appraisers, and others have been negatively impacted. Lenders that serve Hawaii mortgage consumers, and that have outsourced the responsibility to an AMC to facilitate an appraisal assignment, can no longer use an AMC to perform a FRT in Hawaii.

This means:

- There are fewer choices and less competition among lenders for Hawaii consumers if some lenders choose not to provide FRT loans.
- Direct lending for residential mortgages from outside Hawaii has now been put at risk and may result in a shortage of mortgage availability for as long as there is no AMC registration program in place.
- These restrictions on lending capital may adversely impact home affordability and ownership in Hawaii.

REVAA Strongly Supports the Amendments Proposed by Hawaii Financial Services Association (HFSA)

The following proposed revisions to H.B. 2641, H.D. 1 by the Hawaii Financial Services Association seek to clarify the requested appropriation for the Department of Commerce and Consumer Affairs, Division of Professional and Vocational Licensing, and the date that the AMC licensing program will begin.

Beginning on page 62, line 14 through page 64, line 2:

SECTION 6. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of **\$23,000** or so much thereof as may be necessary for fiscal year 2023-2024 to implement the appraisal management company registration program pursuant to this Act.

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

SECTION 7. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of **\$23,000** or so much thereof as may be necessary for fiscal year 2024-2025 to implement the appraisal management company registration program pursuant to this Act.

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

SECTION 8. The provisions of this Act shall be enforced to the extent they are not held to conflict with any federal law. If any provision of this Act is held in conflict with any federal law, this Act in its entirety shall be invalid.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect ~~[on July 1, 3000]~~ **upon its approval**; provided that:

- (1) The appraisal management company registration program established pursuant to this Act shall ~~[not commence until September 30, 2024]~~ **commence on August 1, 2024**;
- (2) Section 6 shall take effect ~~[en, 2024]~~ **upon approval of this Act**; and
- (3) Section 7 shall take effect on July 1, 2024.

Thank you for considering our testimony. Please let me know if you have questions.

Sincerely,



Executive Director



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 26, 2024

TO: Representative Kyle T. Yamashita
Chair, Committee on Finance

FROM: Tiffany Yajima / Mihoko Ito

RE: **H.B. 2641, HD1 – Relating to Appraisal Management Companies**
Hearing Date: Tuesday, February 27, 2024 at 2:00 p.m.
Conference Room: 308

Dear Chair Yamashita, Vice-Chair Kitagawa, and Members of the Committee on Finance:

We submit this testimony on behalf of the Hawaii Bankers Association (HBA). HBA represents seven Hawai'i banks and one bank from the continent with branches in Hawai'i.

HBA is in **support** of this measure to permanently reenact the appraisal management company registration program that was established by Act 118 in 2017.

In 2022 there were 77 appraisal management companies operating in Hawaii that were registered with the DCCA. These companies would be barred from providing appraisal management services should this law not be reenacted. Appraisal management companies serve as intermediaries between lenders and appraisers. These companies assist lenders in obtaining appraisals by providing appraisal management services, including contracting with licensed appraisers to perform appraisal assignments in a manner that is compliant with federal and state laws. If this program is not reenacted, Hawaii would be the only state without an AMC registration program and these companies would be barred from providing appraisal management services for federally related transactions in the state.

HBA agrees with the testimony submitted by the lending community and understands that the Hawaii Financial Services Association has offered proposed amendments. We are in support of these amendments and ask the committee to pass this measure.

Thank you for the opportunity to submit testimony in support of this bill.



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

February 26, 2024

The Honorable Kyle T. Yamashita, Chair
The Honorable Lisa Kitagawa, Vice Chair
Members of the House Committee on Finance

Hearing Date: February 27, 2024
Hearing Time: 2:00 pm

Re: HB 2641-HD1 Relating to Appraisal Management Companies

I am Victor Brock, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

The MBAH SUPPORTS THIS BILL. This Bill is pro-consumer and allows lenders the flexibility to use Appraisal Management Companies ("AMCs") when they do not have the internal resources to vet and manage a list of appraisers. The program that was formerly in place under HRS Chapter 466L was sunsetted on June 30, 2023, but written notification to the AMC's that were registered by the DCCA of the termination of their registration status was not provided until August 29, 2023. Therefore, there was a period during which lenders may have used unlicensed AMCs for "Federally related mortgage loans" ⁽¹⁾ and unknowingly violated Dodd-Frank regulations which specify that only licensed AMCs may be used for these transactions. "Federally related mortgage loans" include mortgages that total upwards of half of all residential mortgage transactions in Hawaii. Hence, retroactive re-establishment of the same licensure program that was in place under HRS Chapter 466L is essential.

The risks to lenders if the program cannot be retroactively re-established are substantial and more fully described in the attached memo from the Mortgage Bankers Association (national association) dated February 21, 2024. If retroactivity is not possible, inclusion of the following statement may provide clarity on the state's intent to provide a safe harbor for any transactions during this gap period:

“Any state-registered appraisal management company whose registration status lapsed as a result of the statutory sunset on June 30, 2023 shall be deemed to be in compliance with the minimum requirements of the state for purposes of 12 U.S.C. 3353(a), where such entity renews its license or registration status within 180 days of commencement.”

We request expedited passage of this Bill by the Legislature, the signing by the Governor of this Bill into law, the re-establishment by DCCA of the same licensure program that was in existence for 6 years, and the re-registration by DCCA of the AMCs that had been registered before June 30, 2023 as soon as operationally viable with retroactive effectivity or with a written safe harbor as described above.

We also support the amendments to the Bill as proposed in testimony submitted by MARVIN S.C. DANG as Attorney for Hawaii Financial Services Association.

(1) <https://www.consumerfinance.gov/rules-policy/regulations/1024/2/#b-9>

Thank you for the opportunity to present this testimony.

Victor Brock
Mortgage Bankers Association of Hawaii

Attachment



MORTGAGE BANKERS ASSOCIATION

February 21, 2024

To: Mortgage Bankers Association of Hawaii
From: William Kooper and Liz Facemire
Subject: Expiration of Hawaii's Minimum AMC Standards

Thank you for requesting information about the federal policy context for the issues the Hawaii MBA and other stakeholders are facing regarding Appraisal Management Company (AMC) licensing in the state. AMCs perform essential functions in many residential real estate transactions, including coordinating appraisal completion, maintaining a roster of qualified appraisers, maintaining appraiser independence by serving as a liaison between the appraiser and lender, and performing a quality control review of the appraisal before sending it to the lender. More than 60 percent of all residential appraisals ordered each year are ordered through AMCs.

Congress established a framework for licensing AMCs as part of the Dodd-Frank Act (Dodd-Frank).¹ Under this framework, an interagency group consisting of the Federal Reserve Board, Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency (FHFA), Consumer Financial Protection Bureau (CFPB), National Credit Union Administration (NCUA), and the Office of Comptroller of the Currency (OCC) were charged with jointly establishing minimum standards for both federally regulated and non-federally regulated AMCs, including minimum standards that states must follow when establishing AMC license requirements.² Importantly, the states were not required to establish their own licensing requirements. However, in a state without these requirements, AMCs are barred from providing appraisal management services for federally-related transactions, unless they are owned and controlled by a federally-regulated depository institution.³ "Federally-related" transactions include the affordable housing program of the federal government. These include mortgages securitized by Fannie Mae or Freddie Mac, insured by the Federal Housing Administration (FHA), or guaranteed by the Veterans Administration or the U.S. Department of Agriculture. A majority of residential mortgage transactions in Hawaii fall into this category. These minimum standards rules became effective on August 10, 2018, and have remained in force since then.

¹ Section 1124 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

² 12 U.S.C. § 3353.

³ 12 U.S.C. § 3353(f)(1).

The Hawaii Legislature issued their AMC minimum requirements under HRS Chapter 466L. This came about as the result of an industry-led adoption campaign in states that did not meet the minimum federal standards. Hawaii's program sunset in state statute on June 30, 2023. However, written notification to the AMCs that were registered by the Department of Commerce and Consumer Affairs about the termination of their registration status was not provided until August 29, 2023. Because of this, there was a period during which lenders operating in good faith may have used unlicensed AMCs for federally-related mortgage loans and unknowingly violated Dodd-Frank.

Providing appraiser services as an unlicensed AMC carries several possible penalties. The CFPB has the power to bring enforcement actions against AMCs and lenders for violating federal consumer financial law and can pursue both equitable and monetary relief.⁴ Civil monetary penalties are assessed for each day the law is violated, along three tiers of intent. The penalties are \$5,000 per day for a violation of the law, \$25,000 per day for recklessly violating the law, and \$1,000,000 each day for knowingly violating the law. Additionally, the CFPB must notify the relevant state Attorney General that they are bringing an enforcement action. The Attorney General may also bring an enforcement action against an AMC.

With approximately two-thirds of loan originations being federally-related, there is a significant economic impact. Given this market scope, the risks to MBA members operating in the state, and most importantly the need for first time home buyers to have access to these vital affordable housing programs, we understand your concern and support your efforts to reauthorize the AMC licensing law. To solve this regulatory gap and limit the legal risk to AMCs and lenders, the Hawaiian Legislature should immediately reestablish the same Dodd-Frank licensure requirements that were in place under HRS Chapter 466L. Importantly, the Legislature should apply these licensing requirements retroactively from the sunset date. If retroactive licensure is not feasible, the following alternative language would provide legal protection for AMCs and lenders affected by the lapse of these requirements.

“Any state-registered appraisal management company whose registration status lapsed as a result of the statutory sunset on June 30, 2023 shall be deemed to be in compliance with the minimum requirements of the state for purposes of 12 U.S.C. 3353(a), where such entity renews its license or registration status within [90] days of enactment of this section.”

Please let us know if you have any questions.

⁴ 12 U.S.C. § 5564-5.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

February 27, 2024

Rep. Kyle T. Yamashita, Chair
Rep. Lisa Kitagawa, Vice Chair
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **H.B. 2641, H.D. 1 (Relating to Appraisal Management Companies)**
Hearing Date/Time: Tuesday, February 27, 2024, 2:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **strongly supports this Bill and offers proposed amendments.**

This Bill: (a) reestablishes the appraisal management company registration program within the Department of Commerce and Consumer Affairs, to begin September 30, 2024, (b) appropriates funds from the compliance resolution fund for the program; and (c) has a “defective” effective date of July 1, 3000 (HD1).

THIS IS A PRO-CONSUMER BILL.

Appraisal Management Companies (AMCs) are intermediaries between lenders and appraisers. AMCs are not appraisers.

Hawaii’s Appraisal Management Company Registration Program (“AMC Registration Program” or “Program”) sunsetted 7 months ago on June 30, 2023 when the Program’s law was repealed.

As explained in this testimony, because of the sunset of the Program, there is a negative impact to consumers, AMCs, appraisers, and others.

This bill is a pro-consumer bill to quickly re-establish the AMC Registration Program and to quickly re-register the AMCs that had been registered when the Program sunsetted.

ENACTMENT OF THE 2017 AMC REGISTRATION PROGRAM WAS TO PROTECT CONSUMERS.

Hawaii’s AMC Registration Program was established in 2017 through Act 118, Session Laws of Hawaii 2017, and codified as Chapter 466L of the Hawaii Revised Statutes. Enacting the Program reflected the Legislature’s finding that it was necessary to create a regulatory framework for AMCs in accordance with the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (“Dodd-Frank Act”) and “that doing so was essential to protect consumers.”

HAWAII’S AMC PROGRAM WAS GIVEN A FINDING OF “EXCELLENT” BY THE APPRAISAL SUBCOMMITTEE.

The Program was **administered by the Department of Commerce and Consumer Affairs (“DCCA”) Professional and Vocational Licensing Division (“PVL”)**. In 2022, there were 77 AMCs registered by the DCCA.

When the Program was administered by the DCCA PVL it was subject to oversight by the Appraisal Subcommittee, which is a federal agency that enforces and assesses compliance of state regulation of AMCs under

the federal Dodd-Frank Act. The Appraisal Subcommittee is a part of the Federal Financial Institutions Examinations Council.

The Appraisal Subcommittee conducted a Compliance Review of Hawaii's AMC Program in December 2019 for the period from December 2017 to December 2019. The AMC Program was given a finding of "Excellent" by the Appraisal Subcommittee. The Subcommittee didn't find any areas of concern in its review.

The Appraisal Subcommittee's finding of "Excellent" for the Program is the highest of 5 possible findings. (The possible findings are Excellent, Good, Needs Improvement, Not Satisfactory, and Poor.)

HAWAII AUDITOR'S SUNSET REVIEW REPORT AND THE "PUBLIC INTEREST" FOR A CONTINUED AMC REGISTRATION PROGRAM.

Because Act 118 (2017) included a June 30, 2023 sunset date for the Program, Hawaii's Office of the Auditor completed a sunset review report of HRS Chapter 466L and submitted it to the Legislature in January 2023.

The auditor report did not recommend the end of AMC licensing. Instead, the Auditor's report concluded that "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 Auditor's report noted that: (1) regulation of AMCs reflects the Legislature's position that it was necessary to create a regulatory framework for AMCs in accordance with the federal Dodd-Frank Act; (2) all 50 states and the District of Columbia had opted to create an AMC registration program, and Hawaii would be the only state without an AMC registration program if HRS Chapter 466L is not reenacted; (3) AMCs that had been contracted to perform appraisals in Hawaii may be barred from providing appraisal management services for some federally related transactions; and (4) a large source of Hawaii's funding for residential mortgage loans are from outside Hawaii and those lenders frequently use AMCs for those loans.

THE SUNSET OF THE PROGRAM.

Despite the conclusions in the Auditor's report, there was no legislation introduced to extend or remove the sunset date of June 30, 2023.

On August 29, 2023, the registered AMCs were notified by mail from the DCCA that their Hawaii registration ceased because of the June 30, 2023 sunset of HRS Chapter 466L.

THE NEGATIVE IMPACT OF THE SUNSET OF HAWAII'S AMC REGISTRATION PROGRAM.

Nationally, AMCs are registered or licensed in 49 states and the District of Columbia (Hawaii was the 50th state before sunseting AMC licensing). Lenders in those states/jurisdictions can utilize AMCs to facilitate a residential appraisal for both a **federally related transaction ("FRT")** and a **non-federally related transaction ("non-FRT")**.

A FRT involves non-conforming mortgages that don't meet the guidelines of Fannie Mae and Freddie Mac (government-sponsored enterprises), unlike a non-FRT which involves conforming loans. Some examples of a FRT are jumbo home loans over \$1,149,825, homes in high-risk lava zones, and complex loans. Loans involving nonconforming properties would also be a FRT, such as a condominium apartment in a condominium project that is considered non-warrantable (e.g., where the majority of the units are not owner-occupied, or where the project is uninsurable or underinsured for wind or hurricane coverage or for other coverage).

Because of the sunset of the Hawaii Program, consumers, AMCs, appraisers, and others have been negatively impacted. Lenders that serve Hawaii mortgage consumers, and that have outsourced the responsibility to an AMC to facilitate an appraisal assignment, can no longer use an AMC to perform a FRT in Hawaii.

This means there are fewer choices and less competition among lenders for Hawaii consumers if some lenders choose not to provide FRT loans. Direct lending for residential mortgages from outside Hawaii has now been put at risk and may result in a shortage of mortgage availability for as long as there is no AMC registration program in place. These restrictions on lending capital may adversely impact home affordability and ownership in Hawaii.

IMMEDIATE NEED TO RE-ESTABLISH HAWAII'S AMC REGISTRATION PROGRAM AND RE-REGISTER AMCS.

For this **pro-consumer bill**, time is of the essence in re-establishing Hawaii's AMC Registration Program. The following needs to be expedited: the passage of this Bill by the Legislature, the signing by the Governor of this Bill into law, the re-establishment by DCCA of the same Program that was in existence for 6 years, and the re-registration by DCCA of the AMCs that had been registered immediately before June 30, 2023.

PROPOSED AMENDMENTS.

We strongly support H.B. 2641, H.D. 1 which aligns with S.B. 2728, S.D. 1 (Appraisal Management Companies) and with what we anticipate will be a forthcoming S.D. 2 version of S.B. 2728. We also propose substantive amendments and some non-substantive amendments.

Here are the reasons for two of the substantive amendments:

1. SECTION 6 (beginning on page 62, line 14) and SECTION 7 of the Bill (beginning on page 63, line 1) have blank dollar appropriations from DCCA's Compliance Resolution Fund. That's because on the date of the hearing and decision-making on this Bill by the House Committee on Labor & Government Operations (February 2, 2024), DCCA didn't provide the dollar amount of the appropriations needed for FY 2023-2024 and FY 2024-2025 from DCCA's Compliance Resolution Fund for the AMC program to be re-established.

However, at the subsequent hearing and decision-making by the House Committee on Commerce & Consumer Protection on Wednesday, February 14, 2024, DCCA's testimony stated: "The Department requests the amounts of \$23,000 for each fiscal year be appropriated to cover the costs of re-establishing and maintaining the Program." Additionally, the CPC Committee Report filed on February 16, 2024 stated: "Your Committee respectfully requests your Committee on Finance, should it deliberate on this measure, to consider an appropriation amount of \$23,000 for each fiscal year."

2. SECTION 10 of the Bill (beginning on page 63, line 15) provides: "The appraisal management company registration program established pursuant to this Act shall not commence until September 30, 2024".

On February 15, 2024 (the day after the CPC hearing) at a meeting between DCCA, the Hawaii Financial Services Association, and the Real Estate Valuation Advocacy Association, DCCA agreed to advance the commencement date to **September 1, 2024 (from September 30, 2024).** That September 1, 2024 date was based on the assumption that the Bill would pass the Legislature on a regular course at the end of April before the May 3, 2024 adjournment and the Bill would be signed into law by the Governor on a regular course by July 10, 2024.

However, it seems that if this Bill can be fast-tracked or expedited through the Legislature and then quickly signed into law by the Governor in a late May/early June, 2024 time frame, the commencement date for the re-established program should be a month earlier than September 1, 2024, i.e., it should be **August 1, 2024.**

We also request that the “defective” effective date of “July 1, 3000” be changed to “upon approval.”

Accordingly, below are the proposed amendments to be made to the Bill beginning on page 62, line 14 through page 64, line 2 for SECTION 6, SECTION 7, and SECTION 10:

SECTION 6. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$**23,000** or so much thereof as may be necessary for fiscal year 2023-2024 to implement the appraisal management company registration program pursuant to this Act.

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

SECTION 7. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$**23,000** or so much thereof as may be necessary for fiscal year 2024-2025 to implement the appraisal management company registration program pursuant to this Act.

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

SECTION 8. The provisions of this Act shall be enforced to the extent they are not held to conflict with any federal law. If any provision of this Act is held in conflict with any federal law, this Act in its entirety shall be invalid.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.


SECTION 10. This Act shall take effect ~~[on July 1, 3000]~~ **upon its approval**; provided that:

- (1) The appraisal management company registration program established pursuant to this Act shall ~~[not commence until September 30, 2024]~~ **commence on August 1, 2024**;
- (2) Section 6 shall take effect ~~[on _____, 2024]~~ **upon approval of this Act**; and
- (3) Section 7 shall take effect on July 1, 2024.

CONCLUSION.

We respectfully request that you pass this Bill with our proposed amendments.

Thank you for considering our testimony.


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