

**ACT 80**

H.B. NO. 2641

A Bill for an Act Relating to Appraisal Management Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that appraisal management companies, commonly referred to as AMCs, are not appraisers. Instead, appraisal management companies serve as an intermediary between lenders and appraisers. Appraisal management 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.

The legislature also finds that in 2017, the legislature determined that it was necessary to create a regulatory framework for appraisal management companies to conform with the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (Dodd-Frank Act), and that doing so was essential to protect consumers. For the regulation of appraisal management companies, the Dodd-Frank Act helped to restore independence to the appraisal

process by separating the lending process and the appraisal functions. Among other things, the Dodd-Frank Act required federal regulatory agencies to promulgate rules that established minimum requirements for state registration and supervision of appraisal management companies. The appraisal management companies final rule of the Dodd-Frank Act became effective on August 10, 2015, and outlined certain minimum registration and oversight requirements for each state to adopt. While states were not required to enact appraisal management company registration and supervision laws, if a state did not do so by August 10, 2018, certain appraisal management companies would be barred from providing appraisal management services for federally related transactions in that state.

The legislature also finds that in 2017, the legislature determined that failure to adopt regulations for appraisal management companies could have unintended and adverse consequences for Hawaii consumers since a large source of Hawaii's funding for residential mortgages, which frequently uses appraisal management companies, comes from outside the State. If conforming legislation is not enacted, direct lending for residential mortgages from outside Hawaii could be put at risk, resulting in a shortage of mortgage availability. The legislature recognized that the potential restriction in lending capital could make home affordability more elusive for Hawaii residents and could adversely impact homeownership for many families.

The legislature also finds that based on those determinations, the legislature enacted Act 118, Session Laws of Hawaii 2017, codified as chapter 466L, Hawaii Revised Statutes, which established the appraisal management company registration program (AMC registration program). The AMC registration program was administered by the director of commerce and consumer affairs and applied to companies that oversee an appraisal panel of more than fifteen appraisers in a state, or twenty-five or more appraisers in two or more states. An appraisal management company that meets this size threshold was required to register to directly or indirectly engage or attempt to engage in business as an appraisal management company, perform appraisal management services, or advertise or hold itself out as engaging in or conducting business as an appraisal management company.

The legislature additionally finds that pursuant to section 26H-4, Hawaii Revised Statutes, chapter 466L, Hawaii Revised Statutes, was repealed on June 30, 2023. Before that date, the Hawaii Regulatory Licensing Reform Act, codified in chapter 26H, Hawaii Revised Statutes, required the office of the auditor to provide an assessment of whether chapter 466L, Hawaii Revised Statutes, should be reenacted, modified, or permitted to expire and to evaluate the effectiveness and efficiency of the AMC registration program.

The legislature additionally finds that in January 2023, the auditor completed Report No. 23-01, "Sunset Evaluation: Regulation of Appraisal Management Companies" (auditor's report), and submitted it to the governor and the legislature. The auditor's report concluded that the Hawaii Regulatory Licensing Reform Act does not support the regulation of appraisal management companies because appraisal management companies are not individuals practicing a "profession" or "vocation" since appraisal management companies are organizations or business entities. The auditor's report also concluded that the work performed by appraisal management companies does not reasonably affect the health, safety, or welfare of the consumers of appraisal management companies' services.

The legislature additionally finds that despite those conclusions, the auditor's report nevertheless did not recommend repealing the AMC registration program. The auditor's report instead separately concluded that there were pub-

lic interest reasons for the legislature to reenact chapter 466L, Hawaii Revised Statutes. The auditor's report also stated that if Hawaii's AMC registration program is not reenacted, Hawaii would be the only state, including the District of Columbia, without an AMC registration program. If Hawaii's AMC registration program is repealed, appraisal management companies in Hawaii may be barred from providing appraisal management services for some federally related transactions. The auditor's report noted that mortgage loan debt comprises the largest share of total consumer debt in Hawaii and "it may be helpful to provide additional lending options to the general public." The auditor's report further stated that "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 legislature further finds that the auditor's report noted that, as of September 2022, there were seventy-seven active appraisal management companies registered in the AMC registration program. Additionally, the AMC registration program remained statutorily unchanged from its creation in 2017 until its repeal on June 30, 2023.

The legislature further finds that, notwithstanding the auditor's report in January 2023, there was no legislation introduced during the regular session of 2023 to reenact chapter 466L, Hawaii Revised Statutes, by either extending or removing the repeal date. On August 29, 2023, appraisal management company registrants in Hawaii were notified by the department of commerce and consumer affairs by mail that regulation and licensure of appraisal management companies ceased on June 30, 2023.

The legislature additionally finds that the repeal of Hawaii's AMC registration program on June 30, 2023, has had adverse consequences for Hawaii consumers and others involved in the residential appraisal process in Hawaii. Because of the registration of appraisal management companies in forty-nine states and the District of Columbia, lenders in those other jurisdictions can utilize an appraisal management company to facilitate a residential appraisal for both a federally related transaction and a non-federally related transaction. However, lenders that serve Hawaii mortgage consumers and have outsourced the responsibility to an appraisal management company to facilitate an appraisal assignment can no longer use an appraisal management company to perform an appraisal for a federally related transaction in Hawaii.

The legislature additionally finds that title 12 United States Code section 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 legislature additionally finds that a non-federally related transaction is generally a conforming mortgage that meets the dollar limits set by the Federal Housing Finance Agency and the funding criteria of the Federal National Mortgage Association, commonly known as Fannie Mae, and the Federal Home Loan Mortgage Corporation, commonly known as Freddie Mac.

The legislature additionally finds that, in contrast to a non-federally related transaction, a federally related transaction is generally a nonconforming mortgage that does not meet the guidelines of government-sponsored enterprises, such as Fannie Mae and Freddie Mac, and, therefore, cannot be sold to them. These loans either stay in the lender's portfolio or are sold to entities specializing in the secondary market for nonconforming loans. Other federally related transactions include residential transactions not insured by a government agency such as the United States Department of Veterans Affairs, Federal Housing Adminis-

tration, United States Department of Agriculture; home loans over \$1,149,825; homes in Hawaii located in high-risk lava zones; complex loans; default portfolios; and some alternative valuations. Property type may determine if a mortgage is nonconforming and, therefore, a federally related transaction. For example, a condominium apartment could be nonconforming because the condominium project is considered non-warrantable. That includes condominium associations in which a single entity, such as a developer, owns more than ten per cent of the units or if a majority of the units are not owner-occupied. Condominiums could also be nonconforming because they are uninsurable or underinsured for wind or hurricane coverage.

The legislature additionally finds that deregulation and non-registration of appraisal management companies may mean fewer choices and less competition among lenders for Hawaii consumers if some lenders choose not to provide mortgage loans that are federally related transactions. Further, this deregulation and non-registration of appraisal management companies could impact the cost of appraisals to cover expenses to reverse appraisal management company outsourcing. Although lenders in Hawaii might still use an appraisal management company for a non-federally related transaction, those appraisal management companies will no longer be regulated by the State to mediate issues or complaints.

Accordingly, the purpose of this Act is to reenact, as a new chapter of the Hawaii Revised Statutes, the version of the AMC registration program that originally existed within the department of commerce and consumer affairs under chapter 466L, Hawaii Revised Statutes.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## “CHAPTER APPRAISAL MANAGEMENT COMPANIES

**§ -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 non-federally regulated appraisal management companies.

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

“Affiliate” has the same meaning as defined under title 12 United States Code section 1841, or any successor federal statute.

“AMC national registry” means the registry of state-registered appraisal management companies and federally regulated appraisal management companies maintained by the Appraisal Subcommittee.

“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, as described in section -5.

“Appraisal management company” does not include a department or division of an entity that provides appraisal management services only to that entity.

“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.

“Appraisal review” means the process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal assignment or appraisal review assignment related to the appraiser’s data collection, analysis, opinions, conclusions, estimate of value, or compliance with the Uniform Standards of Professional Appraisal Practice.

“Appraisal review” does not include:

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

“Appraisal Subcommittee” means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council created pursuant to title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

“Appraiser panel” means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. As used in this definition, “licensed or certified appraiser approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company”:

- (1) Means an appraiser that is treated as an independent contractor by the appraisal management company for purposes of federal income taxation; and
- (2) Includes:
  - (A) Appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; and
  - (B) Appraisers engaged by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions.

“Consumer credit” means credit offered or extended to a consumer primarily for personal, family, or household purposes.

“Controlling person” means:

- (1) An officer, director, or owner of greater than a ten per cent interest of a corporation, partnership, or other business entity seeking to act as an appraisal management company in the State;
- (2) An individual employed, appointed, or authorized by an appraisal management company who has the authority to:
  - (A) Enter a contractual relationship with other persons for performance of services requiring registration as an appraisal management company; and
  - (B) Enter agreements with appraisers for the performance of appraisals; or
- (3) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

“Covered transaction” means any consumer credit transaction secured by the consumer’s principal dwelling.

“Creditor” means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment) and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. As used in this definition, “regularly extends consumer credit” means that either:

- (1) The person has extended credit (other than credit subject to the requirements of title 12 Code of Federal Regulations section 1026.32) more than five times for transactions secured by a dwelling in the preceding calendar year; provided that if the person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year; or
- (2) In any twelve-month period, the person extends more than one credit extension that is subject to the requirements of title 12 Code of Federal Regulations section 1026.32 or one or more credit extensions through a mortgage broker.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property. “Dwelling” includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

“Federally regulated appraisal management company” means an appraisal management company that is owned and controlled by an insured depository institution, as defined in title 12 United States Code section 1813, and 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.

“Federally related transaction” means 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.

“Person” means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

“Principal dwelling” means the sole dwelling used by the consumer as the consumer’s only or main residence. “Principal dwelling” includes any new dwell-

ing bought or built by a consumer that will become the consumer's principal dwelling within a year or upon the completion of construction. "Principal dwelling" does not include vacation or other second homes.

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

"Secondary mortgage market participant" means a guarantor or insurer of mortgage-backed securities or an underwriter or issuer of mortgage-backed securities. "Secondary mortgage market participant" includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

"Uniform Standards of Professional Appraisal Practice" means the most recent iteration of the Uniform Standards of Professional Appraisal Practice developed by the appraisal standards board of The Appraisal Foundation and approved by the director.

**§ -3 Appraisal management company registration program.** There is established an appraisal management company registration program, subject to the real estate appraiser program established pursuant to section 466K-2, to be administered by the director in the director's capacity as the program administrator for both programs.

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

- (1) Review and approve or deny an appraisal management company's application for initial registration;
- (2) Renew or deny an appraisal management company's registration periodically;
- (3) Examine the books and records of an appraisal management company operating in the State and require the appraisal management company to submit reports, information, and documents;
- (4) Verify that the appraisers on the appraisal management company's appraiser panel hold valid state licenses or certifications, as applicable;
- (5) Conduct investigations of appraisal management companies to assess potential violations of applicable appraisal-related laws, regulations, or orders;
- (6) Discipline, suspend, terminate, or deny renewal of the registration of an appraisal management company that violates applicable appraisal-related laws, regulations, or orders;
- (7) Report an appraisal management company's violation of applicable appraisal-related law, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an appraisal management company's operations, to the Appraisal Subcommittee; and
- (8) Adopt, amend, and repeal rules, pursuant to chapter 91, as may be necessary to establish the appraisal management company registration program and implement, administer, and enforce this chapter.

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

- (1) Accepts the appraiser for the appraisal management company's consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or
  - (2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for covered transactions or a secondary mortgage market participant in connection with covered transactions.
- (b) An appraiser who is deemed part of the appraisal management company's appraiser panel pursuant to subsection (a) shall be deemed to remain on the appraiser panel until the date on which the appraisal management company:
- (1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of the appraisal management company's action; or
  - (2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.
- (c) If an appraiser is removed from an appraisal management company's appraiser panel pursuant to subsection (b), and the appraisal management company subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the twelve months after the appraiser's removal:
- (1) The removal shall be deemed not to have occurred; and
  - (2) The appraiser shall be deemed to have been part of the appraisal management company's appraiser panel without interruption.

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

- (b) An appraisal management company shall:
- (1) Register with the real estate appraiser program administered by the department pursuant to chapter 466K;
  - (2) Engage only state-licensed or state-certified appraisers for federally related transactions in conformity with any federally related transaction regulations;
  - (3) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company, in engaging an appraiser, selects an appraiser who is independent of the transaction and has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;
  - (4) Direct an appraiser to perform the assignment in accordance with the Uniform Standards of Professional Appraisal Practice; and
  - (5) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company conducts its appraisal management services in accordance with the require-



ments of sections 129E(a) through 129E(i) of the Truth in Lending Act, title 15 United States Code sections 1639e(a) through 1639e(i), and regulations adopted thereunder.

(c) This section shall not apply to:

- (1) A person that exclusively employs appraisers on an employer and employee basis for the performance of appraisals in this State;
- (2) A federally regulated appraisal management company;
- (3) A department or unit within a financial institution that is subject to direct regulation by an agency of the federal government that is a member of the Federal Financial Institutions Examination Council or its successor, or to regulation by the commissioner of financial institutions under chapter 412, that receives a request for the performance of an appraisal from one employee of the financial institution, and another employee of the same financial institution assigns the request for the appraisal to an appraiser that is an independent contractor to the institution, except that an appraisal management company that is a wholly owned subsidiary of a financial institution shall not be considered a department or unit within a financial institution to which the provisions of this chapter do not apply; or
- (4) An appraiser who enters into an agreement with another appraiser for the performance of an appraisal that upon completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested the completion of the appraisal.

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

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

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

**§ -8 Criminal history record checks.** (a) The application submitted pursuant to section -7 shall contain the information and authorizations necessary to conduct a criminal history record check in accordance with section 846-2.7 for:

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

**§ -9 Appraisal management company registration numbers.** (a) The director shall issue a unique registration number to each appraisal management company registered in this State.

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

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

**§ -10 Expiration of registration.** Registrations shall expire on December 31 of each odd-numbered year. The expiration date of the registration shall appear on the appraisal management company registration certificate issued to the registrant, and no other notice of its expiration need be given to the registrant.

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

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

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

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

- (1) A notice of intent to operate in the State;
- (2) Information related to whether the appraisal management company is owned in whole or in part, directly or indirectly, by any person who has had an appraiser license or certification refused, denied, canceled, surrendered in lieu of revocation, or revoked in any state for a substantive cause, as determined by the Appraisal Subcommittee; and
- (3) If a person has had an action described in paragraph (2) taken on the person's appraisal license or certification, the director shall collect information related to whether the license or certification was revoked for a substantive cause and if the license or certification has been reinstated by the state or states in which the appraiser was licensed or certified.

**§ -15 Owner requirements.** (a) An appraisal management company applying for, holding, or renewing a registration under this chapter shall not be owned, in whole or in part, directly or indirectly, by any person who has had an appraiser license or certification refused, denied, canceled, surrendered in lieu of revocation, or revoked in any state for a substantive cause, as determined by the appropriate state appraiser certifying and licensing agency; provided that an appraisal management company may be registered under this chapter if the

license or certification of the appraiser with an ownership interest was not revoked for a substantive cause and the license or certification has been reinstated by the state in which the appraiser was licensed or certified.

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

- (1) Be of good moral character; and
- (2) Submit to a criminal history record check pursuant to section -8.

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

- (1) Be in good standing in the State and in any other state that has at any time issued the controlling person an appraiser license or certification; provided that nothing in this chapter shall require that a designated controlling person hold or continue to hold an appraiser license or certification in any jurisdiction;
- (2) Never have had an appraiser license or certification in this State or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not have had the license or certification subsequently reinstated or granted;
- (3) Be of good moral character; and
- (4) Submit to a criminal history record check pursuant to section -8.

**§ -17 Appraiser engagement.** Before or at the time of placing an assignment to appraise real property in the State with an appraiser on the appraiser panel of an appraisal management company, the appraisal management company shall verify that the appraiser receiving the assignment holds an appraiser license or certification in good standing in this State and verify that the appraiser receiving the assignment meets the competency rule of the Uniform Standards of Professional Appraisal Practice. An attestation provided by an appraiser that the appraiser is geographically competent within the appraiser's scope of practice shall satisfy an appraisal management company's responsibility under this section.

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

**§ -19 Verification of licensure or certification.** (a) An appraisal management company registered in the State may not enter into any contract or agreement with an appraiser for the performance of appraisals in the State unless the company verifies that the appraiser is licensed or certified in good standing in the State.

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

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

§ -21 **Retention of records.** (a) Each appraisal management company seeking registration or renewal of registration in the State shall certify that the appraisal management company maintains a detailed record of each service request the company receives for appraisals of real property located in the State.

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

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

§ -22 **Payments to appraisers.** (a) An appraisal management company shall, except in bona fide cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within forty-five days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation assignment to the appraisal management company or the company's assignee, unless a mutually agreed-upon alternate arrangement has been previously established.

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

§ -23 **Appraiser independence.** (a) It shall be a violation of this chapter for any employee, director, officer, or agent of an appraisal management company registered in this State to engage in any act or practice that violates appraisal independence as described in subsection (b).

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

- (1) Any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with a transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate the person, for the purpose of causing the appraisal value assigned, under the appraisal, to the property to be based on any fact other than the independent judgment of the appraiser;
- (2) Mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of credit;

- (3) Seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and
- (4) Withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided in accordance with the contract between the parties.

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

- (1) Consider additional appropriate property information, including the consideration of additional comparable properties to make or support an appraisal;
- (2) Provide further detail, substantiation, or explanation for the appraiser's consideration in the appraisal; or
- (3) Correct objective errors in the appraisal report.

(d) Any appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the director.

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

**§ -24 Mandatory reporting of violations.** An appraisal management company that has a reasonable basis to believe an appraiser has materially failed to comply with applicable laws or rules or has materially violated the Uniform Standards of Professional Appraisal Practice shall refer the matter to the director in conformance with applicable federal laws and regulations.

**§ -25 Prohibited conduct.** (a) No employee, director, officer, agent, independent contractor, or other third party acting on behalf of an appraisal management company shall:

- (1) Procure or attempt to procure a registration or renewal by knowingly making a false statement, submitting false information, or refusing to provide complete information in response to a question in an application for registration or renewal;
- (2) Wilfully violate this chapter or rules adopted by the director pursuant to this chapter;
- (3) Improperly influence or attempt to improperly influence the development, reporting, result, or review of an appraisal through intimidation, coercion, extortion, bribery, or any other manner, including but not limited to:

- (A) Withholding payment for appraisal services;
  - (B) Threatening to exclude an appraiser from future work or threatening to demote or terminate the appraiser in order to improperly obtain a desired result;
  - (C) Conditioning payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached; or
  - (D) Requesting that an appraiser report a predetermined opinion, conclusion, or valuation or the desired valuation of any person or entity;
- (4) Alter, amend, or change an appraisal report submitted by an appraiser without the appraiser's knowledge and written consent;
  - (5) Remove an independent appraiser from an appraiser panel without prior written notice to the appraiser; provided that the prior written notice shall include the following, if applicable:
    - (A) The appraiser's illegal conduct;
    - (B) The appraiser's violation of the Uniform Standards of Professional Appraisal Practice, this chapter, or rules adopted pursuant to this chapter;
    - (C) The appraiser's improper or unprofessional conduct; or
    - (D) The appraiser's substandard performance or other substantive deficiencies;
  - (6) Require an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents or employees for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company or its agents, employees, or independent contractors, and not the services performed by the appraiser;
  - (7) Prohibit lawful communications between the appraiser and any other person to whom the appraiser, in the appraiser's professional judgment, believes possesses information that would be relevant;
  - (8) Engage in any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, and impartiality;
  - (9) Fail to timely respond to any subpoena or other request for information;
  - (10) Fail to timely obey an administrative order of the director or department; or
  - (11) Fail to cooperate in any investigation.
- (b) Nothing in this chapter shall prevent an appraisal management company from requesting an appraiser to provide additional information about the basis for a valuation, correct objective factual errors in an appraisal report, or consider additional appropriate property information.

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

- (1) The applicant is not of a good moral character;
- (2) The applicant has had a registration revoked or suspended for cause, or surrendered in lieu of disciplinary proceedings;
- (3) The applicant, upon renewal of registration, would not be eligible for registration on a first application;

- (4) The issuance of a registration would result in a violation of this chapter or any rules adopted pursuant to this chapter;
- (5) In the conduct of affairs under the registration, the registrant has demonstrated incompetency, untrustworthiness, or conduct or practices rendering the registrant unfit to carry on appraisal management services; made continuance in the business detrimental to the public interest; or is no longer carrying on appraisal management services in good faith, and for this conduct is found by the director to be a source of detriment, injury, or loss to the public;
- (6) The appraisal management company committed any act in violation of this chapter;
- (7) The appraisal management company violated any rule adopted by the department in the interest of the public and consistent with this chapter;
- (8) The appraisal management company procured a registration or renewal of registration for the appraisal management company or intentionally committed any other act by fraud, misrepresentation, or deceit; or
- (9) The appraisal management company violates this chapter, chapter 436B, or any rule or order of the director.

**§ -27 Fees; bond required.** (a) The director may charge the appraisal management company reasonable fees to offset costs of operating the appraisal management company registration program established pursuant to this chapter. The following fees shall apply:

- (1) Nonrefundable application fee...\$60;
- (2) Biennial registration fee...\$4,200; and
- (3) Biennial compliance resolution fund fee...\$500.

In addition, upon the issuance of a new registration and at each renewal period, each appraisal management company shall pay a special assessment fee of \$300 that shall be deposited into the compliance resolution fund established pursuant to section 26-9(o). Fees assessed pursuant to this chapter shall be used to defray costs incurred by the department in implementing this chapter.

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

(c) Each appraisal management company applying for or renewing a registration shall post with the director and maintain a surety bond in the amount of \$25,000 as follows:

- (1) The bond shall be in a form satisfactory to the director;
- (2) The bond shall accrue to the program for the benefit of a claimant against the registrant to secure the faithful performance of the registrant's obligations under applicable laws and rules and to a real estate appraiser who has performed an appraisal for the registrant for which the appraiser has not been paid;
- (3) The aggregate liability of the surety shall not exceed the principal sum of the bond;
- (4) A party having a claim against the registrant may bring suit directly on the surety bond, or the director may bring suit on behalf of the party having a claim against the registrant, either in one action or in successive actions;
- (5) A claim reducing the face amount of the bond shall be annually restored upon renewal of the registrant's registration;
- (6) The bond shall remain in effect until cancellation, which may occur only after ninety days' written notice to the program administrator.

Cancellation shall not affect any liability incurred or accrued during that period; and

- (7) Upon termination or cancellation of the bond required in this subsection, a registered appraisal management company shall file a replacement bond or shall surrender its registration to do business in the State and shall immediately cease operation as an appraisal management company in the State. A registered appraisal management company that voluntarily ceases operations in this State shall ensure a surety bond remains in place for no less than two years after the registered appraisal management company ceases operations.

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

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

- (1) A report to the director of the intent of the federally regulated appraisal management company to operate in this State;
- (2) Information related to whether the appraisal management company is owned in whole or in part, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked in any state for a substantive cause, as determined by the Appraisal Subcommittee; and
- (3) If a person or persons has had an action described in paragraph (2) taken on their appraisal license, the director shall collect information related to whether the license was revoked for a substantive cause and if it has been reinstated by the state or states in which the appraiser was licensed.

§ -29 **Exemption.** This chapter shall not apply to an appraiser who enters an agreement with another appraiser for the performance of an appraisal that, upon completion, results in a report signed by the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal.”

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

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

~~[(b) Chapter 466L (appraisal management companies) shall be repealed on June 30, 2023.~~

~~[(e)]~~ (b) Chapter 457J (midwives) shall be repealed on June 30, 2025.”

SECTION 4. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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



- (1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
- (2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health or health care services as provided by section 321-171.5;
- (3) The department of health or its designee on all applicants for licensure or certification for, operators for, prospective employees, adult volunteers, and all adults, except adults in care, at healthcare facilities as defined in section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
- (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and resource family homes as provided by section 346-17;
- (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (10) The department of human services or its designee on applicants to operate child care facilities, household members of the applicant, prospective employees of the applicant, and new employees and household members of the provider after registration or licensure as provided by section 346-154, and persons subject to section 346-152.5;
- (11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section 321-15.2;
- (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (16) The department of corrections and rehabilitation on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility as provided

- by section 353-1.5 and the department of law enforcement on employees and prospective employees whose duties involve or may involve the exercise of police powers including the power of arrest as provided by section 353C-5;
- (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
  - (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
  - (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
  - (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
  - (21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;
  - (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees and volunteers, as provided by sections 346-2.5 and 346-97;
  - (23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
  - (24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
  - (25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
  - (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
  - (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
  - (28) The department of commerce and consumer affairs on:
    - (A) Each principal of every non-corporate applicant for a money transmitter license;
    - (B) Each person who upon approval of an application by a corporate applicant for a money transmitter license will be a principal of the licensee; and

- (C) Each person who upon approval of an application requesting approval of a proposed change in control of licensee will be a principal of the licensee,  
as provided by sections 489D-9 and 489D-15;
- (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (30) The Hawaii health systems corporation on:
  - (A) Employees;
  - (B) Applicants seeking employment;
  - (C) Current or prospective members of the corporation board or regional system board; or
  - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- (31) The department of commerce and consumer affairs on:
  - (A) An applicant for a mortgage loan originator license, or license renewal; and
  - (B) Each control person, executive officer, director, general partner, and managing member of an applicant for a mortgage loan originator company license or license renewal,  
as provided by chapter 454F;
- (32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;
- (33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;
- (34) The counties on prospective employees for fire department positions that involve contact with children or vulnerable adults;
- (35) The counties on prospective employees for emergency medical services positions that involve contact with children or vulnerable adults;
- (36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;
- (37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;
- (38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;
- (39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;
- (40) The department of commerce and consumer affairs on:
  - (A) Applicants for real estate appraiser licensure or certification as provided by chapter 466K;
  - (B) Each person who owns more than ten per cent of an appraisal management company who is applying for registration as an

- appraisal management company, as provided by section ~~[466L-7;] -7;~~ and
- (C) Each of the controlling persons of an applicant for registration as an appraisal management company, as provided by section ~~[466L-7;] -7;~~
- (41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical cannabis dispensaries, and individuals permitted to enter and remain in medical cannabis dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3);
- (42) The department of commerce and consumer affairs on applicants for nurse licensure or license renewal, reactivation, or restoration as provided by sections 457-7, 457-8, 457-8.5, and 457-9;
- (43) The county police departments on applicants for permits to acquire firearms pursuant to section 134-2, on individuals registering their firearms pursuant to section 134-3, and on applicants for new or renewed licenses to carry a pistol or revolver and ammunition pursuant to section 134-9;
- (44) The department of commerce and consumer affairs on:
- (A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who will be in charge of the escrow depository's activities upon licensure; and
- (B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of the application, as provided by chapter 449;
- (45) The department of taxation on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 231-1.6;
- (46) The department of labor and industrial relations on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 383-110;
- (47) The department of human services on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, and on current or prospective employees, volunteers, contractors, or contractors' employees or volunteers, subcontractors, or subcontractors' employees or volunteers, whose position places or would place them in close proximity to minors, young adults, or vulnerable adults, as provided by section 346-2.5;
- (48) The child support enforcement agency on current or prospective employees, or contractors who have access to federal tax information in order to comply with federal law, regulation, or procedure, as provided by section 576D-11.5;
- (49) The department of the attorney general on current or prospective employees or employees or agents of contractors who have access to federal tax information to comply with requirements of federal law, regulation, or procedure, as provided by section 28-17;
- (50) The department of commerce and consumer affairs on each control person, executive officer, director, general partner, and manag-

- ing member of an installment loan licensee, or an applicant for an installment loan license, as provided in chapter 480J;
- (51) The [University] university of Hawaii on current and prospective employees and contractors whose duties include ensuring the security of campus facilities and persons; and
  - (52) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 5. Chapter 466L, Hawaii Revised Statutes, is repealed.

SECTION 6. The department of commerce and consumer affairs may employ necessary personnel without regard to chapter 76, Hawaii Revised Statutes, to assist with the implementation and continuing function 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 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 8. 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 9. 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 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval; provided that:

- (1) The appraisal management company registration program established pursuant to this Act shall commence on September 1, 2024;
- (2) Section 7 shall take effect upon approval of this Act; and
- (3) Section 8 shall take effect on July 1, 2024.

(Approved June 21, 2024.)