

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

In response, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (Dodd-Frank Act). The Dodd-Frank Act helped restore independence to the appraisal process by separating the lending process and appraisal functions and requiring these functions to be autonomous.

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

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

The legislature additionally finds that Hawaii's failure to adopt regulations for appraisal management companies that conform to the AMC Final Rule could have unintended and adverse consequences for Hawaii consumers and others involved in the residential appraisal process in the State. The legislature notes that a large source of Hawaii's funding for residential mortgages comes from outside the State, through either direct lending or secondary market investments, which frequently use appraisal management companies. Furthermore, if conforming legislation is not enacted, there is a risk that direct lending for residential mortgages from outside the State could come to a standstill, since appraisal orders could not be placed by mainland lenders and Hawaii is too small a

market for a large lender to customize a system for the State. There is also a risk that mortgages may not be available to all people in the State who need them. This potential restriction of available mortgage funds could make home affordability even more elusive for residents of Hawaii and could adversely impact home ownership for many families.

The legislature also finds that at least forty other states have acted to preserve the flow of residential lending capital into their communities by enacting legislation in conformance with the AMC Final Rule. The legislature concludes that Hawaii must also enact legislation in conformity with the AMC Final Rule before the August 10, 2018, deadline.

Accordingly, the purpose of this Act is to establish a regulatory framework for appraisal management companies in Hawaii, which conforms with the minimum regulatory requirements of the AMC Final Rule and the Dodd-Frank Act.

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.

“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. Appraisers on an appraisal management company’s “appraiser panel” include:

- (1) 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
- (2) 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.

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

“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.

“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.

A person regularly extends consumer credit if:

- (1) The person 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. If a 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 such 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. A consumer can have only one principal dwelling at a time. A vacation or other second home is not considered a principal dwelling; provided that for purposes of this definition, if a consumer buys or builds a new dwelling that will become the consumer’s principal dwelling within a year or upon the completion of construction, the new dwelling shall be considered the principal dwelling.

“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.

“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" only 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 requirements of section 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 perfor-

mance 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 such action 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 such appraiser is geographically competent within the appraiser's scope of practice will 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 such 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 such a 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 section 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) Except within the first ninety days after an independent appraiser is added to an appraiser panel, 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 in good faith carrying on appraisal

management services, 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 will 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. 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 manage-

ment 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 appraisal management company 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 such person or persons has had such action 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 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 foster boarding 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 public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess 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 po-

- sitions 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 serving clients of the adult protective and community services branch, as provided by section 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) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license; and
    - (C) The persons who are to assume control of a money transmitter licensee in connection with an application requesting approval of a proposed change in control of 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; and



- (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license, 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 which involve contact with children or vulnerable adults;
- (35) The counties on prospective employees for emergency medical services positions which 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 [applicants]:
  - (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 -7; and
  - (C) Each of the controlling persons of an applicant for registration as an appraisal management company, as provided by section -7;
- (41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical marijuana dispensaries, and individuals permitted to enter and remain in medical marijuana 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 and on individuals registering their firearms pursuant to section 134-3;
- [(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 such application, as provided by chapter 449; and
- [(45)] Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 4. 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 its repeal date.

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

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

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

SECTION 5. 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 6. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$140,000 or so much thereof as may be necessary for fiscal year 2017-2018 to implement the appraisal management company registration program.

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

SECTION 7. 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 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

(Approved July 10, 2017.)