



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

February 28, 2024

The Honorable Donovan M. Dela Cruz, Chair  
The Honorable Sharon Y. Moriwaki, Vice Chair  
Members of the Senate Ways and Means Committee

Hearing Date: March 1, 2024  
Hearing Time: 9:55 am

Re: SB 2728-HD1 Relating to Appraisal Management Companies

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

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

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

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

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

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

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

Thank you for the opportunity to present this testimony.

Victor Brock  
Mortgage Bankers Association of Hawaii

Attachment



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MORTGAGE BANKERS ASSOCIATION

February 21, 2024

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

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

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

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<sup>1</sup> Section 1124 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

<sup>2</sup> 12 U.S.C. § 3353.

<sup>3</sup> 12 U.S.C. § 3353(f)(1).

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

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

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

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

Please let us know if you have any questions.

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<sup>4</sup> 12 U.S.C. § 5564-5.