


Chairman Phil Mendelson

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require, on an emergency basis, the Department of Insurance, Securities, and Banking to provide for the licensing of certain entities providing appraisal management services in the District of Columbia and to require an annual registration fee to be paid by those entities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Appraisal Management Company Regulation Congressional Review Emergency Act of 2020”.

TITLE I. APPRAISAL MANAGEMENT COMPANY REGULATIONS

Sec. 101. Definitions.

For purposes of this act, the term:

(1) “Affiliate” means any company that controls, is controlled by, or is under common control of another company.

(2) “AMC National Registry” means the registry of state-registered appraisal management companies and federally regulated appraisal management companies maintained by the Appraisal Subcommittee.

32 (3) "Appraisal Foundation" means the Appraisal Foundation established on
33 November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

34 (4) "Appraisal management company" means a person, not including a
35 department or division of an entity that provides appraisal management services only to that
36 entity, that:

37 (A)(i) Provides appraisal management services to creditors or to secondary
38 mortgage market participants, including affiliates; or

39 (ii) Provides appraisal management services in connection with
40 valuing a consumer's principal dwelling as security for a consumer credit transaction or
41 incorporating such transactions into securitizations; and

42 (B) At any time in a 12-calendar month period oversees an appraiser panel
43 of more than 15 state-certified or state-licensed appraisers in a state or 25 or more state-certified
44 or state-licensed appraisers in 2 or more states, as described in section 103.

45 (5) "Appraisal management services" means one or more of the following:

46 (A) Recruiting, selecting, and retaining appraisers;

47 (B) Contracting with state-certified or state-licensed appraisers to perform
48 appraisal assignments;

49 (C) Managing the process of having an appraisal performed, including
50 providing administrative services such as receiving appraisal orders and appraisal reports,
51 submitting completed appraisal reports to creditors and secondary market participants, collecting
52 fees from creditors and secondary market participants for services provided, and paying
53 appraisers for services performed; and

54 (D) Reviewing and verifying the work of appraisers.

55 (6) “Appraisal panel” means a network, list, or roster of licensed or certified
56 appraisers approved by an appraisal management company to perform appraisals as independent
57 contractors for the appraisal management company. Appraisers on an appraiser panel include
58 both appraisers accepted by the appraisal management company for consideration for future
59 appraisal assignments in covered transactions or for secondary mortgage market participants in
60 connection with covered transactions, and appraisers engaged by the appraisal management
61 company to perform one or more appraisals in covered transactions or for secondary mortgage
62 market participants in connection with covered transactions. An appraiser is an independent
63 contract or if the appraiser is treated as an independent contractor by the appraisal management
64 company for purposes of federal income taxation.

65 (7) “Appraisal review” means the act or process of developing and
66 communicating an opinion about the quality of another appraiser's work that was performed as
67 part of an appraisal assignment and is related to the appraiser's data collection, analysis,
68 opinions, conclusions, estimate of value, or compliance with the uniform standards of
69 professional appraisal practice. This term does not include:

70 (A) A general examination for grammatical, typographical, or other
71 similar errors;

72 (B) A general examination for completeness, including regulatory or client
73 requirements as specified in the agreement process that does not communicate an opinion of
74 value.

75 (8) “Appraisal Subcommittee” means the Appraisal Subcommittee of the Federal
76 Financial Institutions Examination Council.

77 (9) "Consumer credit" means credit offered or extended to a consumer primarily
78 for personal, family, or household purposes.

79 (10) "Controlling person" means:

80 (A) An officer, director, or owner of greater than a 10% interest of a
81 corporation, partnership, or other business entity seeking to act as an appraisal management
82 company;

83 (B) An individual employed, appointed, or authorized by an appraisal
84 management company that has the authority to enter a contractual relationship with other persons
85 for the performance of services requiring registration as an appraisal management company and
86 has the authority to enter agreements with appraisers for the performance of appraisals; or

87 (C) An individual who possesses, directly or indirectly, the power to direct
88 or cause the direction of the management of policies of an appraisal management company.

89 (11) "Covered transaction" means any consumer credit transaction secured by the
90 consumer's principal dwelling.

91 (12) "Creditor" means a person who regularly extends consumer credit that is
92 subject to a finance charge or is payable by written agreement in more than 4 installments (not
93 including a down payment), and to whom the obligation is initially payable, either on the face of
94 the note or contract, or by agreement when there is no note or contract. A person regularly
95 extends consumer credit if, in any 12-month period, the person originates more than one credit
96 extension for transactions secured by a dwelling.

97 (13) "Department" means the Department of Insurance, Securities, and Banking.

98 (14) "District" means the District of Columbia.

99 (15) “Dwelling” means a residential structure that contains one to 4 units,
100 regardless of whether that structure is attached to real property. The term includes an individual
101 condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

102 (16) “Federal financial institutions regulatory agency” includes the Consumer
103 Financial Protection Bureau, the Federal Housing Finance Agency, the Board of Governors of
104 the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the
105 Comptroller of the Currency, and the National Credit Union Administration.

106 (17) “Federally regulated appraisal management company” means an appraisal
107 management company that is owned and controlled by an insured depository institution, as
108 defined in section 3(c)(2) of the Federal Deposit Insurance Act, approved September 21, 1950
109 (64 Stat. 873; 12 U.S.C. § 1813(ϕ)(2)), and regulated by the Office of the Comptroller of the
110 Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance
111 Corporation, or the National Credit Union Administration.

112 (18) “Federally regulated transaction regulations” means regulations established
113 by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve
114 System, the Federal Deposit Insurance Corporation, or the National Credit Union
115 Administration, pursuant to sections 1112, 1113, and 1114 of the Financial Institutions Reform,
116 Recovery, and Enforcement Act of 1989, approved August 9, 1989 (103 Stat. 183; 12 U.S.C. §§
117 3341-3343).

118 (19) “Federally related transaction” means any real-estate-related financial
119 transaction that involves an insured depository institution regulated by the Office of the
120 Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal

121 Deposit Insurance Corporation, or National Credit Union Administration and that requires the
122 services of an appraiser under the interagency appraisal rules.

123 (20) "Person" means a natural person or an organization, including a corporation,
124 partnership, proprietorship, association, cooperative, estate, trust, or government unit.

125 (21) "Principal dwelling" means the primary residence of a consumer. For
126 purposes of this act, a consumer may only have one principal dwelling. A vacation or other
127 second home shall not be considered a principal dwelling. However, if a consumer buys or builds
128 a new dwelling that will become the consumer's primary residence within one year or upon
129 completion of the construction, the new residence shall be considered the principal dwelling for
130 purposes of this act.

131 (22) "Real-estate-related financial transaction" means any transaction involving
132 the sale, lease, purchase, investment in, or exchange of real property, including interests in
133 property or the financing thereof; the refinancing of real property or interests in real property; or
134 the use of real property or interests in property as security for a loan or investment, including
135 mortgage-backed securities.

136 (23) "Secondary mortgage market participant" means a guarantor or insurer of
137 mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. The term
138 includes an individual investor in a mortgage-backed security only if that investor also serves in
139 the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

140 (24) "State" includes the District of Columbia.

141 (25) "Uniform Standards of Professional Appraisal Practice" or "USPAP" means
142 the appraisal standards as promulgated by the Appraisal Standards Board of the Appraisal
143 Foundation.

144 Sec. 102. Administration.

145 (a) The Department shall have the authority to adopt rules that are reasonably necessary
146 to establish an appraisal management company licensing program and implement, administer,
147 and enforce the provisions set forth under this act.

148 (b) The Department shall charge appraisal management companies operating in the
149 District reasonable fees to administer this act. The Department's fees shall be established by rule.

150 (c) The Department shall perform the following functions:

151 (1) Review and approve or deny an appraisal management company's application
152 for initial registration in the District;

153 (2) Periodically review and renew or review and deny an appraisal management
154 company's registration;

155 (3) Examine the books and records of an appraisal management company
156 operating in the District and require the appraisal management company to submit reports,
157 information, and documents;

158 (4) Verify that the appraisers on the appraiser panel of an appraisal management
159 company operating in the District hold valid District certifications or licenses, as applicable;

160 (5) Conduct investigations of appraisal management companies operating in the
161 District to assess potential violations of applicable appraisal-related laws, regulations, or orders;
162 and

163 (6) Report an appraisal management company's violation of applicable appraisal-
164 related laws, regulations, or orders, as well as disciplinary and enforcement actions and other
165 relevant information about the operations of an appraisal management company operating in the
166 District.

167 (d) The Department shall impose requirements on appraisal management companies
168 operating in the District that are not owned and controlled by an insured depository institution
169 and not regulated by a federal financial institutions regulatory agency to:

170 (1) Register with and be subject to supervision by the Department;

171 (2) Engage only state-certified or state-licensed appraisers for federally related
172 transactions in conformity with any federally regulated transaction regulations;

173 (3) Establish and comply with processes and controls reasonably designed to
174 ensure that the appraisal management company, in engaging an appraiser, selects an appraiser
175 who is independent of the transaction and who has the requisite education, expertise, and
176 experience necessary to competently complete the appraisal assignment for the particular market
177 and property type;

178 (4) Direct appraisers to perform assignments in accordance with Uniform
179 Standards of Professional Appraisal Practice; and

180 (5) Establish and comply with processes and controls reasonably designed to
181 ensure that the appraisal management company conducts its appraisal management services in
182 accordance with the requirements of section 129E(a)-(i) of the Truth in Lending Act, approved
183 July 21, 2010 (124 Stat. 2187; 15 U.S.C. § 1639e(a)-(i)), and regulations thereunder.

184 (e) The Department shall maintain a list of the appraisal management companies that are
185 registered in the District.

186 (f) The Department shall issue a unique registration number to each appraisal
187 management company that is registered in the District pursuant to regulations or guidance
188 promulgated by the Department.

189 (g) The Department shall require an appraisal management company registered in the
190 District to place its registration number on engagement documents utilized by the appraisal
191 management company to procure appraisal services in the District.

192 Sec. 103. Appraisal panel size and calculation.

193 (a) For purposes of determining whether a person is an appraisal management company
194 within the meaning of section 101(4), an appraiser is deemed part of an appraiser panel as of the
195 earliest date on which the person overseeing the appraisal panel:

196 (1) Accepts the appraiser for consideration for future appraisal assignments in
197 covered transactions or for secondary mortgage market participants in connection with covered
198 transactions; or

199 (2) Engages the appraiser to perform one or more appraisals on behalf of a
200 creditor for covered transactions or secondary mortgage market participant in connection with
201 covered transactions.

202 (b) An appraiser who is deemed part of an appraiser panel pursuant to subsection (a) of
203 this section is deemed to remain on the panel until the date on which the person overseeing the
204 appraisal panel:

205 (1) Sends written notice to the appraiser removing the appraiser from the
206 appraiser panel, with an explanation of its action; or

207 (2) Receives written notice from the appraiser asking to be removed from the
208 appraiser panel or notice of the death or incapacity of the appraiser.

209 (c) If an appraiser is removed from an appraiser panel pursuant to subsection (b)(2) of
210 this section, but the person overseeing the appraisal panel subsequently accepts the appraiser for
211 consideration for future assignments or engages the appraiser at any time during the 12 months

212 after the appraiser's removal, the removal will be deemed not to have occurred, and the appraiser
213 will be deemed to have been part of the appraiser panel without interruption.

214 Sec. 104. Registration.

215 (a) It shall be unlawful for a person to directly or indirectly engage or to attempt to
216 engage in business as an appraisal management company in the District, or to advertise or hold
217 itself out as engaging in or conducting business as an appraisal management company in the
218 District without first obtaining a registration issued by the Department.

219 (b) An applicant for registration as an appraisal management company in the District
220 shall submit to the Department an application on forms prescribed by the Department and pay a
221 fee established by the Department. The forms shall require information necessary to determine
222 eligibility for registration.

223 (c) Upon registration of an appraisal management company in the District, the
224 Department may require a surety bond of not more than \$25,000.

225 Sec. 105. Reporting requirements.

226 (a) The Department shall collect from each appraisal management company registered or
227 seeking to be registered in the District the information and fees that the Department requires to
228 be submitted to it pursuant to regulations or guidance promulgated by the Department.

229 (b) A federally regulated appraisal management company operating in the District must
230 report to the Department the information required to be submitted by the District to the Appraisal
231 Subcommittee, pursuant to the Appraisal Subcommittee's policies regarding the determination of
232 the appraisal management company National Registry fee. These reporting requirements will be
233 set forth by the Department by rule, and will include:

234 (1) A report to the Department on a form prescribed by the Department of intent
235 to operate in the District of Columbia;

236 (2) Information related to whether the appraisal management company is owned
237 in whole or in part, directly or indirectly, by any person who has had an appraiser license or
238 certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked in any state for
239 a substantive cause, as determined by the Appraisal Subcommittee; and

240 (3) If such a person has had such action taken on his or her appraisal license,
241 information related to whether the license was revoked for a substantive cause and whether it has
242 been reinstated by the state or states in which the appraiser was licensed or certified.

243

244 Sec. 106, Appraisal management company requirements.

245 (a) An appraisal management company operating in the District shall meet the following
246 requirements at all times:

247 (1) At the time of applying for registration or renewing registration in the District,
248 the appraisal management company shall designate one of its controlling persons to serve as the
249 main contact for all communication between the Department and the company. The designated
250 controlling person shall:

251 (A) Remain in good standing in the District and in any other state that has
252 issued the controlling person an appraiser license or certification; however, nothing in this act
253 shall require that a designated controlling person hold or continue to hold an appraiser license or
254 certification in any jurisdiction;

255 (B) Never have had an appraiser license or certification in the District or
256 any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending
257 disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted; and

258 (C) Be of good moral character;

259 (2) Before or at the time of placing an assignment to appraise real property in the
260 District with an appraiser on the appraiser panel of the appraisal management company, the
261 appraisal management company shall verify that the appraiser receiving the assignment holds an
262 appraiser license or certification in good standing in the District;

263 (3) Any employee of or independent contractor to the appraisal management
264 company who performs an appraisal review for a property located in the District must be a
265 certified or licensed appraiser in good standing in the District; and

266 (4) An appraisal management company registered in the District shall place its
267 registration number on engagement documents utilized by the appraisal management company to
268 procure appraisal services in the District of Columbia.

269 (b) An appraisal management company that has a reasonable basis to believe an appraiser
270 has materially failed to comply with applicable laws or rules or has materially violated the
271 USPAP shall refer the matter to the Department in conformance with applicable federal laws and
272 regulations.

273 Sec. 107. Verification of licensure or certification.

274 (a) An appraisal management company registered in the District may not enter into any
275 contract or agreement with an appraiser for the performance of appraisals in the District unless
276 the company verifies that the appraiser is licensed or certified in good standing in the District.

277 (b) An appraisal management company seeking to be registered or to renew a registration
278 in the District shall certify to the Department on a form prescribed by the Department that the
279 company has a system and process in place to verify that an individual being added to the
280 appraiser panel of the company for appraisal services holds an appraiser license or certification
281 in good standing in the District.

282 Sec. 108. Retention of records.

283 (a) Each appraisal management company seeking to be registered or to renew an existing
284 registration in the District shall certify to the Department on a form prescribed by the
285 Department that the company maintains a detailed record of each service request that the
286 company receives for appraisals of real property located in the District.

287 (b) An appraisal management company registered in the District shall retain all records
288 required to be maintained under this act for at least 5 years after the file is submitted to the
289 appraisal management company or for at least 2 years after final disposition of any related
290 judicial proceeding of which the appraisal management company is provided notice, whichever
291 period expires later.

292 (c) All records required to be maintained by the registered appraisal management
293 company shall be made available for inspection by the Department on reasonable notice to the
294 appraisal management company.

295 Sec. 109. Payment to appraisers.

296 (a) An appraisal management company shall, except in bona fide cases of breach of
297 contract or substandard performance of services, make payment to an independent appraiser for
298 the completion of an appraisal or valuation assignment no later than 45 days after the date on
299 which the appraiser transmits or otherwise provides the completed appraisal or valuation

300 assignment to the company or its assignee unless a mutually agreed-upon alternate arrangement
301 previously has been established.

302 (b) An appraisal management company seeking to be registered or to renew an existing
303 registration in the District shall certify that the company will require appraisals to be conducted
304 independently as required by the appraisal independence standards under section 129E of the
305 Truth in Lending Act, approved July 21, 2010 (124 Stat. 2187; 15 U.S.C. § 1639e), including the
306 requirement that a customary and reasonable fee be paid to an independent appraiser who
307 completes an appraisal in connection with a consumer credit transaction secured by a principal
308 dwelling.

309 Sec. 110. Prohibited conduct.

310 A violation of this section may constitute grounds for discipline against an appraisal
311 management company registered in the District. However, nothing in this act shall prevent an
312 appraisal management company from requesting that an appraiser provide additional information
313 about the basis for a valuation, correct objective factual errors in an appraisal report, or consider
314 additional appropriate property information. No employee, director, officer, agent, independent
315 contractor, or other third party acting on behalf of an appraisal management company may do
316 any of the following:

317 (a) Procure or attempt to procure a registration or renewal by knowingly making a false
318 statement, submitting false information or refusing to provide complete information in response
319 to a question in an application for registration or renewal;

320 (b) Willfully violate this act or rules of the Department pertaining to this act;

321 (c) Improperly influence or attempt to improperly influence the development, reporting,
322 result, or review of an appraisal through intimidation, coercion, extortion, bribery, or any other
323 manner, including:

324 (1) Withholding payment for appraisal services;

325 (2) Threatening to exclude an appraiser from future work or threatening to demote
326 or terminate the appraiser in order to improperly obtain a desired result;

327 (3) Conditioning payment of an appraisal fee upon the opinion, conclusion, or
328 valuation to be reached by the appraiser; or

329 (4) Requesting that an appraiser report a predetermined opinion, conclusion, or
330 valuation, or the desired valuation of any person or entity;

331 (d) Alter, amend, or change an appraisal report submitted by an appraiser without the
332 appraiser's knowledge and written consent;

333 (e) Except within the first 90 days after an independent appraiser is added to an appraiser
334 panel, remove an independent appraiser from an appraiser panel without prior written notice to
335 the appraiser, with the prior written notice including evidence of the following, if applicable:

336 (1) The appraiser's illegal conduct;

337 (2) A violation of USPAP, this act, or the rules adopted by the Department
338 pursuant to this act;

339 (3) Improper or unprofessional conduct; or

340 (4) Substandard performance or other substantive deficiencies;

341 (f) Require an appraiser to sign any indemnification agreement that would require the
342 appraiser to defend and hold harmless the appraisal management company or any of its agents or
343 employees for any liability, damage, losses, or claims arising out of the services performed by

344 the appraisal management company or its agents, employees, or independent contractors and not
345 the services performed by the appraiser;

346 (g) Prohibit lawful communications between the appraiser and any other person whom
347 the appraiser, in the appraiser's professional judgment, believes possesses information that
348 would be relevant;

349 (h) Fail to timely respond to any subpoena or any other request for information;

350 (i) Fail to timely obey an administrative order of the Department; or

351 (j) Fail to fully cooperate in any investigation.

352 Sec. 111. Disciplinary proceedings.

353 The Department may deny, suspend, or revoke the registration of an appraisal
354 management company; impose a monetary penalty of an amount not to exceed \$5,000 per
355 violation; issue a letter of reprimand; refuse to issue or renew the registration of an appraisal
356 management company; or take other disciplinary action against an appraisal management
357 company when an appraisal management company engages in conduct prohibited under section
358 110.

359 Sec. 112. Criminal history checks.

360 The Department shall require any controlling person or persons to submit to a criminal
361 history record check. All costs associated with obtaining a background check shall be the
362 responsibility of the appraisal management company.

363 **TITLE II. APPLICABILITY; FISCAL IMPACT STATEMENT; EFFECTIVE**
364 **DATE.**

365 Sec. 201. Applicability

366 This act shall apply as of July 9, 2020.

367 Sec. 202. Fiscal impact statement.

368 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
369 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
370 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

371 Sec. 203. Effective date.

372 This act shall take effect following approval by the Mayor (or in the event of a veto by
373 the Mayor, action by the Council to override the veto), and shall remain in effect for no longer
374 than 90 days, as provided for emergency acts of the Council of the District of Columbia in
375 section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87
376 Stat. 788; D.C. Official Code § 1-204.12(a)).