


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.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Appraisal Management Company Regulation Emergency Act of 2019”.

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.

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

32 (4) “Appraisal management company” means a person, not including a
33 department or division of an entity that provides appraisal management services only to that
34 entity, that:

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

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

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

43 (5) “Appraisal management services” means one or more of the following:

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

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

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

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

53 (6) “Appraisal panel” means a network, list, or roster of licensed or certified
54 appraisers approved by an appraisal management company to perform appraisals as independent

55 contractors for the appraisal management company. Appraisers on an appraiser panel include
56 both appraisers accepted by the appraisal management company for consideration for future
57 appraisal assignments in covered transactions or for secondary mortgage market participants in
58 connection with covered transactions, and appraisers engaged by the appraisal management
59 company to perform one or more appraisals in covered transactions or for secondary mortgage
60 market participants in connection with covered transactions. An appraiser is an independent
61 contractor if the appraiser is treated as an independent contractor by the appraisal management
62 company for purposes of federal income taxation.

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

68 (A) A general examination for grammatical, typographical, or other
69 similar errors;

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

73 (8) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal
74 Financial Institutions Examination Council.

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

77 (10) "Controlling person" means:

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

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

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

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

89 (12) "Creditor" means:

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

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

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

98 (15) "Dwelling" means a residential structure that contains one to four units,
99 whether or not that structure is attached to real property. The term includes an individual
100 condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

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

105 (17) “Federally regulated appraisal management company” means an appraisal
106 management company that is owned and controlled by an insured depository institution, as
107 defined in 12 U.S.C. § 1813, and regulated by the office of the Comptroller of the Currency, the
108 Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance
109 Corporation.

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

116 (19) “Federally related transaction” means any real estate-related financial
117 transaction that involves an insured depository institution regulated by the Office of the
118 Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal
119 Deposit Insurance Corporation, or National Credit Union Administration and that requires the
120 services of an appraiser under the interagency appraisal rules.

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

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

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

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

139 (24) “State” includes the District of Columbia.

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

143 Sec. 102. Administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

191 Sec. 103. Appraisal panel size and calculation.

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

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

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

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

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

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

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

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

213 Sec. 104. Registration.

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

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

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

224 Sec. 105. Reporting requirements.

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

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

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

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

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

243 Sec. 106. Appraisal management company requirements.

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

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

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

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

257 (C) Be of good moral character; and

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

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

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

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

272 Sec. 107. Verification of licensure or certification.

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

276 (b) An appraisal management company seeking to be registered to renew a

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

281 Sec. 108. Retention of records.

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

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

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

294 Sec. 109. Payment to appraisers.

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

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

301 (b) An appraisal management company seeking to be registered or to renew an existing
302 registration in the District shall certify that the company will require appraisals to be conducted
303 independently as required by the appraisal independence standards under section 129E of the
304 Truth in Lending Act, including the requirement that a customary and reasonable fee be paid to
305 an independent appraiser who completes an appraisal in connection with a consumer credit
306 transaction secured by the principal dwelling.

307 Sec. 110. Prohibited conduct.

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

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

318 (b) Willfully violate this act or rules of the Department pertaining to this act.

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

- 322 (1) Withholding payment for appraisal services.
- 323 (2) Threatening to exclude an appraiser from future work or threatening to demote
324 or terminate in order to improperly obtain a desired result.
- 325 (3) Conditioning payment of an appraisal fee upon the opinion, conclusion, or
326 valuation to be reached.
- 327 (4) Requesting that an appraiser report a predetermined opinion, conclusion, or
328 valuation or the desired valuation of any person or entity.
- 329 (d) Alter, amend, or change an appraisal report submitted by an appraiser without the
330 appraiser's knowledge and written consent.
- 331 (e) Except within the first 90 days after an independent appraiser is added to
332 an appraiser panel, remove an independent appraiser from an appraiser panel without prior
333 written notice to the appraiser, with the prior written notice including evidence of the following,
334 if applicable:
- 335 (1) The appraiser's illegal conduct.
- 336 (2) A violation of USPAP, this act, or the rules adopted by the Department.
- 337 (3) Improper or unprofessional conduct.
- 338 (4) Substandard performance or other substantive deficiencies.
- 339 (f) Require an appraiser to sign any indemnification agreement that would require the
340 appraiser to defend and hold harmless the appraisal management company or any of its agents
341 or employees for any liability, damage, losses, or claims arising out of the services performed
342 by the appraisal management company or its agents, employees, or independent contractors and
343 not the services performed by the appraiser.
- 344 (g) Prohibit lawful communications between the appraiser and any other person who

345 the appraiser, in the appraiser’s professional judgment, believes possesses information that
346 would be relevant.

347 (h) Fail to timely respond to any subpoena or any other request for information.

348 (i) Fail to timely obey an administrative order of the Department.

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

350 Sec. 111. Disciplinary proceedings.

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

357 Sec. 112. Criminal history and background checks.

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

361 **TITLE II. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.**

362 Sec. 201. Fiscal impact statement.

363 The Council adopts the fiscal impact statement in the committee report as the fiscal
364 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
365 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

366 Sec. 202. Effective Date.

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