

OVERVIEW

Sunrise Analysis: Real Estate Appraisal Management Companies

Report No. 10-07, September 2010

Summary

In Senate Concurrent Resolution No. 53, Senate Draft 1, the 2009 Legislature asked the Auditor to conduct a “sunrise” analysis of Senate Bill No. 1606 (S.B. No. 1606). The bill proposes to require real estate appraisal management companies (AMCs) to register with the Real Estate Commission of the Department of Commerce and Consumer Affairs (DCCA). The Hawai‘i Licensing Reform Act, Chapter 26H, Hawai‘i Revised Statutes (HRS), requires the Auditor to evaluate proposals to regulate previously unregulated professions or vocations prior to enactment. Although AMCs are not professions or vocations per se, we used the criteria in Section 26H-2, HRS, to evaluate the need to regulate AMCS.

Based on a strict application of the statutory criteria, we found that regulation as proposed in S.B. No. 1606 is not warranted. However, the federal Wall Street financial reform bill enacted into law in July 2010, now requires all states to register and supervise AMCs. States have 36 months *after* federal regulators promulgate final rules to comply with amendments to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3331 et seq.

An appraisal management company is a business entity that, for a fee, administers a network of independent appraisers to fulfill real estate appraisal assignments on behalf of mortgage lending institutions (lenders). In recent years lenders have increasingly outsourced to AMCs the responsibility for engaging appraisers and overseeing the administrative functions involved in ordering, tracking and delivering appraisal reports to lenders. There are 200 to 350 AMCS nationwide, but none are physically located in the state. In Hawai‘i, individual appraisers are regulated under the Real Estate Appraiser Program, Chapter 466K, HRS, administered by the DCCA. Appraisers provide a written opinion (appraisal) of the market value of real estate. As of July 2010, there were 602 credentialed appraisers (41 licensed and 561 certified), of which 539 were qualified to perform residential appraisals.

Senate Bill No. 1606 does not meet the statutory criteria in Chapter 26H, HRS, for several reasons. Chief among them, we found the purpose to protect consumers is not clearly articulated; instead, the bill is primarily designed to protect appraisers. The risk of harm to consumers and evidence of abuses by AMCs in Hawai‘i are lacking. Therefore, little weight was given to three pending lawsuits against AMCs on the mainland to warrant regulation. Although required by law, the regulatory program outlined in S.B. No. 1606 would not be self-sustaining. For example, the DCCA estimates that an AMC regulatory program would cost \$201,804 in the first year and \$187,804 annually thereafter. Dividing the total cost of the program by an assumed number of registrants (75) would result in an initial fee of approximately \$2,690 and annual renewals of \$2,500.



The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 expands the purview of the Appraisal Subcommittee (part of the Federal Financial Institutions Examination Council created under Title XI of the FIRREA) to oversee state appraiser regulatory programs; oversee the registration and supervision of AMCs by states; and create a national registry of AMCs. The act requires that AMC registration programs be under a state appraiser certifying and licensing agency. In Hawai'i, this means the Real Estate Appraiser Program administered by the DCCA director in accordance with Chapter 466K, HRS. The DCCA must establish an AMC regulatory program within three years after the federal regulations are adopted that set the minimum qualifications for states to apply relating to the registration, supervision, and reporting of AMC activities. Unless registered, AMCs may not do business in the state. Senate Bill No. 1606 is not an appropriate vehicle as it places the regulation of AMCs under the Real Estate Commission, a regulatory entity within DCCA's Real Estate Branch that oversees real estate licensees statewide. Given that states must now regulate AMCs, we recommend that the federal requirements be examined and that DCCA work with appraiser and AMC interests to arrive at an appropriate vehicle for complying with the federal law.

Recommendations and Response

Senate Bill No. 1606 of the 2009 legislative session should not be enacted. The Legislature should ask the DCCA to submit, after federal rules are adopted, a written analysis to accompany suggested language for a new bill to comply with applicable provisions of the FIRREA. The Legislature should then pass conforming legislation.

The DCCA agreed in part, and disagreed in part, with our recommendations. The department did not believe a study comparing S.B. No. 1606 to the federal requirements was relevant and necessary. Instead, the DCCA proposed the Legislature need merely mirror language that regulates real estate appraisers in Section 466K-1, HRS. Given DCCA's response, we modified recommendation no. 2. We maintain the Legislature needs from the department supporting analysis on the impact of expanding regulation to include AMCs, the cost of implementation, and means of financing.

Marion M. Higa
State Auditor
State of Hawai'i

Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawai'i 96813
(808) 587-0800
FAX (808) 587-0830