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Chairman Phil Mendelson

A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To require, on an emergency basis, the Department of Consumer and Regulatory Affairs to mandate the licensing of Appraisal Management Companies in the District of Columbia and 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.

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

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

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

 (B) Within a 12-month calendar year, beginning October 1 of each year and ending on September 30 of the following year, oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in two or more states, as described in section 103(a).

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

 (A) Recruiting, selecting, and retaining appraisers;

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

 (C) 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

 (D) Reviewing and verifying the work of appraisers.

 (6) “Appraisal 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 appraiser panel include both 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 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. 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.

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

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

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

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

 (9) “Board” means the District of Columbia Board of Real Estate Appraisers established pursuant to D.C. Official Code § 47-2853.06(g).

 (10) “Consumer credit” means credit offered or extended to a consumer primarily for personal, family, or household purposes.

 (11) “Controlling person” means:

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

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

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

 (12) “Covered transaction” means any consumer credit transaction secured by the consumer's principal dwelling.

 (13) “Creditor” means

 (A) 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.

 (B) A person who regularly extends consumer credit if the person extended credit (other than credit subject to the requirements of 12 C.F.R. § 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. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of 12 C.F.R. 1026.32 or one or more such credit extensions through a mortgage broker.

 (14) “Department” means the Department of Consumer and Regulatory Affairs.

 (15) “District” means the District of Columbia.

 (16) “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. For purposes of this act, a consumer may have only one principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, 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 is considered the principal dwelling for purposes of this act.

 (17) “Federally regulated appraisal management company” means an appraisal management company that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. § 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.

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

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

 (20) “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.

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

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

 (22) “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; the refinancing of real property or interests in real property; or the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

 (23) “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.

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

 Sec. 102. Administration.

 (a) The Department of Consumer and Regulatory Affairs shall charge appraisal management companies operating in the District of Columbia reasonable fees to administer this act. The Department's fees shall be established by rule.

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

 (c) The Board shall perform the following functions:

 (1) Review and approve or deny an appraisal management company’s application for initial registration;

 (2) Review and renew or review and deny an appraisal management company’s registration periodically;

 (3) Examine the books and records of an appraisal management company operating in the District of Columbia 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 District of Columbia certifications or licenses, as applicable;

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

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

 (d) The Board shall impose requirements on appraisal management companies operating in the District of Columbia that are not owned and controlled by an insured depository institution and not regulated by a Federal financial institutions regulatory agency to:

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

 (2) Engage only state-certified or state-licensed 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 who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

 (4) Direct appraisers to perform assignments in accordance with Uniform Standards of Professional Appraisal Practices; 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 l 29E(a)-(i) of the Truth in Lending Act, approved July 21, 2010 (124 Stat. 2187; 15 U.S.C. § l639e(a)-(i)), and regulations thereunder.

 (e) The Department of Consumer and Regulatory Affairs shall issue a unique registration number to each appraisal management company that is registered in the District of Columbia.

 (f) The Board shall maintain a list of the appraisal management companies that are registered with the Department of Consumer and Regulatory Affairs.

 (g) The Board shall require an appraisal management company registered in the District of Columbia to place its registration number on engagement documents utilized by the appraisal management company to procure appraisal services in the District of Columbia.

 Sec. 103. Appraisal size and calculation.

 (a) For purposes of determining whether a person is an appraisal management company within the meaning of section 101(4), and specifically whether, within a 12-month calendar year, beginning October 1 of each year and ending on September 30 of the following year, a person oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in two or more states:

 (1) An appraiser is deemed part of an appraiser panel as of the earliest date on which the person overseeing the appraisal panel:

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

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

 (b) An appraiser who is deemed part of an appraiser panel pursuant to

subsection (a) of this section is deemed to remain on the panel until the date on which the person overseeing the appraisal panel:

 (1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its 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 appraiser panel pursuant to subsection (b)(2) of this section, but the person overseeing the appraisal panel subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the 12 months after the appraiser’s removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the appraiser panel without interruption.

 Sec. 104. Registration.

 (a) It shall be unlawful for a person to directly or indirectly engage or to attempt to engage in business as an appraisal management company in the District of Columbia, to directly or indirectly perform or to attempt to perform appraisal management services in the District of Columbia, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in the District of Columbia without first obtaining a registration

issued by the Board.

 (b) An applicant for registration as an appraisal management company in the District of Columbia shall submit to the Board an application on forms prescribed by the Board and pay a fee established by the Department of Consumer and Regulatory Affairs. The forms shall require information necessary to determine eligibility for registration.

 (c) Upon registration of an appraisal management company in the District of Columbia, the Department of Consumer and Regulatory Affairs may require a surety bond of not more than $25,000.

 Sec. 105. Reporting requirements.

 (a) The Department of Consumer and Regulatory Affairs shall collect from each appraisal management company registered or seeking to be registered in the District of Columbia the information and fees that the Board requires to be submitted to it pursuant to regulations or guidance promulgated by the Board.

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

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

 (2) Information related to whether the AMC 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 ASC; and

 (3) If such a person has had such action taken on his or her appraisal license, the

Board 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 or certified.

 Sec. 106. Appraisal management company requirements.

 (a) An Appraisal Management Company shall maintain the following requirements at all times:

 (1) An appraisal management company applying for a registration or for renewal of a registration in the District of Columbia shall designate one controlling person that shall serve as the main contact for all communication between the board and the company. The controlling person shall:

 (A) Remain in good standing in the District of Columbia and in any other state that has at any time issued the controlling person an appraiser license or certification: however, nothing in this Chapter shall require that a designated controlling person hold or continue to hold an appraiser license or certification in any jurisdiction;

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

 (C) Be of good moral character; and

 (D) Submit to a criminal background investigation for an initial application or as required by the Board.

 (2) Before or at the time of placing an assignment to appraise real property in the District of Columbia 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 the District.

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

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

 (b) 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 USP AP shall refer the matter to the Board in conformance with applicable federal

laws and regulations.

 Sec. 107. Verification of licensure or certification.

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

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

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

 Sec. 108. Retention of records.

 (a) Each appraisal management company seeking to be registered or to renew an existing

registration in the District of Columbia shall certify to the Board on a form prescribed by the Board that the company maintains a detailed record of each service request that the company receives for appraisals of real property located in the District.

 (b) An appraisal management company registered in the District of Columbia shall retain all records required to be maintained under this Chapter for at least five (5) years after the file is submitted to the AMC or at least two (2) years after final disposition of any related judicial proceeding of which the AMC is provided notice, whichever period expires last.

 (c) All records required to be maintained by the registered appraisal management

company shall be made available for inspection by the Board on reasonable notice to the appraisal management company.

 Sec. 109. Payment 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 45 days of the date on which

the appraiser transmits or otherwise provides the completed appraisal or valuation assignment to

the company or its assignee unless a mutually agreed-upon alternate arrangement has been

previously established.

 (b) An appraisal management company seeking to be registered or to renew an existing

registration in the District of Columbia shall certify that the company will require appraisals to be conducted independently as required by the appraisal independence standards under section 129E of the Truth in Lending Act, 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.

 Sec. 110. Prohibited conduct.

 (a) A violation of this section may constitute grounds for discipline against an appraisal

management company registered in the District of Columbia. However, nothing in this Chapter shall prevent an appraisal management company from requesting that an appraiser provide additional information about the basis for a valuation, correct objective factual errors in an appraisal report, or consider additional appropriate property information. No employee, director, officer, agent, independent contractor, or other third party acting on behalf of an appraisal management company may do any of the following:

 (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) Willfully violate this Act or rules of the Board of Real Estate Appraisers

pertaining to this Act.

 (b) Improperly influence or attempt to improperly influence the development,

reporting, result, or a review of an appraisal through intimidation, coercion, extortion, bribery, or

any other manner, including:

 (1) Withholding payment for appraisal services.

 (2) Threatening to exclude an appraiser from future work or threatening to demote

or terminate in order to improperly obtain a desired result.

 (3) Conditioning payment of an appraisal fee upon the opinion, conclusion, or

valuation to be reached.

 (4) Requesting that an appraiser report a predetermined opinion, conclusion, or

valuation or the desired valuation of any person or entity.

 (c) Alter, amend, or change an appraisal report submitted by an appraiser without the

appraiser's knowledge and written consent.

 (d) Except within the first ninety (90) 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, with the prior written notice including evidence of the following, if applicable:

 (1) The appraiser's illegal conduct.

 (2) A violation of USPAP, this Chapter, or the rules adopted by the Board.

 (3) Improper or unprofessional conduct.

 (4) Substandard performance or other substantive deficiencies.

 (e) 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.

 (f) Prohibit lawful communications between the appraiser and any other person who

the appraiser, in the appraiser’s professional judgment, believes possesses information that

would be relevant.

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

 (h) Fail to timely obey an administrative order of the Board.

 (i) Fail to fully cooperate in any investigation.

 Sec. 111. Disciplinary proceedings.

 (a) The Board may deny, suspend, or revoke the registration of an AMC; 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 AMC; or take other disciplinary action against an

AMC when:

 (1) The applicant is not of good moral character.

 (2) The applicant has been the holder of a registration revoked or suspended for

cause, or surrendered in lieu of disciplinary proceedings.

 (3) The applicant, in the case of an application for renewal of any registration,

would not be eligible for such registration on a first application.

 (4) The issuance of the registration applied for would result in a violation of any provision of this Chapter or the rules adopted by the Board.

 (5) In the conduct of affairs under the registration, the registrant demonstrated

incompetency, or untrustworthiness, or conduct or practices rendering the registrant unfit to

carry on appraisal management services, or making continuance in the business detrimental to the public interest, or that the licensee is no longer in good faith carrying on appraisal management services, and for this conduct is found by the Board to be a source of detriment, injury, or loss to the public.

 (6) The AMC committed any act in violation of this Chapter.
 (7) The AMC violated any rule or regulation adopted by the Board in the interest of the public and consistent with the provisions of this Chapter.

 (8) The AMC procured a registration or a renewal of a registration for the appraisal management company or intentionally committed any other act by fraud, misrepresentation, or deceit.

 Sec. 112. Criminal history and background checks.

 (a) The Board shall require each person that owns more than ten percent of an AMC

applying for registration under this Act and the applicant's controlling person or persons to

submit to a criminal history record check. All costs associated with obtaining a background

check are the responsibility of the applicant.”.

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

 Sec. 201. Fiscal impact statement.

 The Council adopts the fiscal impact statement in the committee report as the fiscal

impact statement required by section 4a of the General Legislative Procedures Act of 1975,

approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

 Sec. 202. Effective Date.

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