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As sure as April showers bring May flowers, financial and banking crises bring new legislation. And with the sub-prime mortgage mess and credit crunch being blamed for a large chunk of the current economic downturn, lawmakers are paying special attention to the way mortgages were written in the past few years and the relationship between lenders and appraisers. In short, inflated appraisals are being blamed for a portion of the current crisis.

There are a couple of new pieces of legislation in the works that focus on the appraiser-lender relationship. The one getting the most headlines these days is the so called "Cuomo Agreement." The agreement, between the New York State Attorney General, Fannie Mae/Freddie Mac, and the Office of Federal Housing Enterprise Oversight (OFHEO) signed on March 3rd seeks to eliminate the pressure on appraisers to inflate values.

The agreement establishes the "Home Valuation Protection Code of Conduct" which creates requirements governing appraiser selection, solicitation, compensation, conflicts of interest and corporate independence. Under this new code: mortgage brokers will be prohibited from selecting appraisers; lenders will be prohibited from using "in house" staff appraisers to conduct initial appraisals; lenders will be prohibited from using appraisal management companies (AMCs) that they own or control. If lenders want to sell their loans to Fannie Mae and Freddie Mac they will be required to conform to the code beginning January 1, 2009 or sooner.

As with most "crisis" legislation, the concept behind the new laws is generally sound and can be helpful. But there are always "unintended consequences" from these new laws. The FIRREA legislation that arose from the Savings & Loan crisis of the late 1980s and early 1990s, which brought us appraiser licensure, was a good concept. However, in reality the law reduced the ability of lenders to choose appraisers based upon recognized achievement in the industry (designations from the Appraisal Institute), skill level and experience. Rather, it put many entry level appraisers on the same level, in terms of perceived skill and competence, with those established in the industry as being able to handle the most difficult appraisal assignments.

The new "Cuomo Agreement" is seen as reducing the direct pressure from lenders on appraisers. However, the pressure may simply be shifted to AMCs. Who's to say that lenders won't simply pressure the AMCs to inflate values? If an AMC can't continually produce appraisers that "meet value" might these AMC's be dropped from lenders lists? Therefore the AMCs might then pressure the appraiser to inflate values.

The other perceived risk with the Cuomo Agreement is that AMCs may become too powerful. They may simply continue the trend of the "Walmartization" of the industry, making lowest price and quickest turnaround time the most important criteria of hiring an appraiser. Why don't any of these pieces of legislation make competency the first criteria when hiring an appraiser? Why not hold lenders responsible for hiring incompetent and inexperienced appraisers that were given

assignments simply because they quoted the lowest fee or quickest turnaround time?

There are two other pieces of proposed "anti appraiser pressure" legislation floating around the U.S. congress as well. They are currently known as S.2452 and H.R. 3915. H.R. 3915, backed and advanced by the Appraisal Institute, passed the house of representatives last year and now awaits action in the senate. The other bill, S. 2452 contains a provision that potentially could put thousands of appraisers out of work. It requires appraisers to carry a bond, which according to insurance lenders consulting with the AI, would result in \$10,000 - \$40,000 annual out-of-pocket expenses per appraiser! The bonding requirement is part of the proposal to give consumers a private right of action against residential appraisers. Needless to say the Appraisal Institute is against this provision and is urging appraisers to call and write their legislators to eliminate this provision.

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