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Pending reforms are good for the economy and appraisers

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Just when things look the darkest for appraisers, new developments are occurring in Washington, DC that have the potential to positively impact our profession in significant ways. A number of bills have been introduced in the 111th Congress that address the downturn in the real estate market, some of which also address appraisal regulatory reform and appraisal independence. The most significant bill is House Resolution 1728, The Mortgage Reform and Anti-Predatory Lending Act of 2009, which was introduced in the House on March 26th and referred to the House Financial Services Committee.

H. R. 1728, introduced by rep. Brad Miller (D-NC) represents a solution to predatory lending/mortgage fraud. The bill includes the following appraisal provisions:

* Promote appraisal independence by banning improper influence of appraisers through acts such as coercion, extortion, collusion, compensation, instruction, inducement, intimidation, non-payment or bribery. Civil penalties: first offense: $10,000, second offense: $20,000.
* Promote more transparency of the Appraisal Subcommittee (ASC) by requiring more detailed annual reports.
* Give the ASC the authority to issue binding rules and regulations, after public notice and opportunity for comment, in the areas of temporary practice, national registry, information sharing and enforcement.
* Create a national registry for state appraisal agencies to report license or certification suspensions or revocations.
* Increase appraiser license registration fees from $25 to $40, and allow the ASC to use the fees to make grants to state appraisal agencies to help defray enforcement costs.
* Authorize the ASC the authority to monitor funding and staffing levels of the state appraiser certifying and licensing agencies so they are at proper levels.
* Authorize the ASC the authority to impose interim sanctions and suspensions on state appraiser certifying and licensing agencies if they are found to be out of compliance.
* Permit special consideration of appraisers' designations or training from professional appraisal organizations as an indication of their proficiency.
* Call for a Government Accountability Office study on improving the appraisal process and the effectiveness of state compliance efforts. Additionally, the study would examine the existing de minimis and the effectiveness of BPOs and AVMs.

On April 28, the House Financial Services Committee began consideration on H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009 and unanimously approved an amendment sponsored by rep. Paul Kanjorski (D-PA). In general, the comprehensive amendment to H.R. 1728 offered by congressman Kanjorski would modify the legislation's provisions affecting escrows, mortgage servicing and appraisals. Major elements of the Kanjorski amendment relevant to appraisers include the following.

The Kanjorski amendment builds upon the work of the Federal Reserve 2008 Home Owners Equity Protection Act (HOEPA) rule and the HVCC to protect the independence of appraisers in serving as disinterested third party for determining a home's value. The Kanjorski amendment also clarifies who may conduct an appraisal within a state and makes it clear that only certified or licensed appraisers may perform appraisal review functions.

Appraisal management companies now are involved in 64% of written appraisals and are expected to grow in influence as the HVCC is implemented. Appraisal management companies, however, are subject to little direct supervision, as only three states (Utah, Arkansas, and New Mexico) have adopted laws requiring their registration and oversight. The amendment would establish a state-by-state system for monitoring appraisal management companies to be put in place within three years. The Kanjorski amendment also ensures that those who commit appraisal fraud or those who lose their licenses or certificates cannot turn around and establish appraisal management companies.

The Kanjorski amendment builds upon the base bill's provisions authorizing the Appraisal Subcommittee to make grants to states for the purposes of improving enforcement activities and obtaining data related to the disciplinary actions taken against certified and licensed appraisers. The Kanjorski amendment also expands the scope of the Appraisal Subcommittee's responsibilities for monitoring state appraiser certifying and licensing agencies. Significantly, the Kanjorski amendment allows the Appraisal Subcommittee to impose interim sanctions, short of program decertification, against state appraisers certifying and licensing agencies that fail to have effective appraiser regulatory programs.

To enhance confidence in the results produced by automated valuation models (AVM) used to develop estimates of home values, the Kanjorski amendment establishes minimum standards and requires the development and enforcement of rules by Federal financial institutions regulators and the Appraisal Subcommittee.

To address concerns about the quality of home value estimates developed by real estate brokers that are used for collateral purposes, the Kanjorski amendment adopts a policy recently put in place by Freddie Mac to prohibit their use as a sole method for determining the value of a loan origination.

Finally, the Kanjorski amendment modifies RESPA to require the disclosure to consumers of the fees paid to licensed and certified appraisers, as well the fees paid to appraisal management companies. These disclosures will help interested parties, including regulators, to make better determinations about the quality of appraisals facilitated by an appraisal management company.

H.R. 1728 is not law yet but promises to be a major step in correcting the various abuses within the mortgage lending industry that greatly contributed to the current economic downturn. I urge all appraisers to contact their Congressional representatives to indicate support for H.R. 1728.

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