

Explanation of Kanjorski Amendment to H.R. 1728

In general, the comprehensive amendment to H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, offered by Congressman Paul E. Kanjorski would modify the legislation's provisions affecting escrows, mortgage servicing and appraisals. Congressman Kanjorski successfully added these provisions to an earlier version of this mortgage lending reform legislation, which passed on the House floor in November 2007.

Much has happened in these fields since the full House last debated these matters, including the adoption of new rules by the Federal Reserve on escrowing, crediting payments, payoff statements, and appraisal independence, as well as the appraisal reform agreement of New York Attorney General Andrew Cuomo with Fannie Mae and Freddie Mac, also known as the Home Valuation Code of Conduct. In addition to modifying existing provisions of the bill to reflect the work of these parties, the Kanjorski amendment also takes steps to address newly identified or emerging issues in the field of appraisals. Major elements of the Kanjorski amendment are discussed below.

Mandatory Escrows

The base bill requires the establishment of escrow accounts to pay for taxes and insurance for borrowers meeting any one of a series of conditions. The amendment pares back these conditions for determining what constitutes a subprime loan needing an escrow account in light of the Federal Reserve Board's rulemaking under the Home Ownership and Equity Protection Act (HOEPA), finalized in July 2008. Among other things, this rule established a streamlined test for determining what constitutes a subprime loan, and the Kanjorski amendment adopts the language in the rule on these matters for the percentage point test above a standard index for first lien mortgages. The amendment also adopts the Federal Reserve Board's exception language for cooperatives and condominiums.

Prompt Crediting of Payments and Provision of Loan Payoff Amounts

The base bill amends the Real Estate Settlement Procedures Act (RESPA) to require the prompt crediting of mortgage payments by servicers and mandate that servicers provide payoff amounts within 7 days of a request. The Federal Reserve Board's HOEPA rulemaking, however, established consumer safeguards under the Truth in Lending Act (TILA) to address these very same issues. The Kanjorski amendment therefore recasts these provisions to be amendments to TILA, rather than RESPA. In the case of the prompt crediting of payments provision, the amendment codifies the final rule developed by the Federal Reserve. In the instance the provision of payoff statements, the amendment keeps the 7 day deadline found in the original bill, but incorporates the Federal Reserve's "reasonable time" language.

Qualified Written Request Response Timeframes

The Kanjorski amendment would shorten the timeframes for a servicer to respond to a qualified written request under RESPA based on the best practices developed by the HOPE Now coalition for processing loan modification requests. Generally, the amendment would require servicers to acknowledge receipt of the qualified written response within 5 days (down from 20 days) and require resolution of the request within 45 days total (down from a maximum of 60 days).

Mandatory Appraisals by Appraisers

The Federal Housing Administration has stringent tests for the required use of certified and licensed appraisers for loans guaranteed by the agency. Under the base bill, the consumers with a HOEPA-covered mortgage loan are also protected with the requirement to receive a physical property visit by an appraiser, who must prepare a written appraisal report. The Kanjorski amendment extends these consumer protections to include all subprime borrowers, using streamlined tests for determining a subprime loan developed by the Federal Reserve as part of its 2008 HOEPA rulemaking.

Appraisal Independence

The Kanjorski amendment builds upon the work of the Federal Reserve HOEPA rule and the Home Valuation Code of Conduct to protect the independence of appraisers in serving as an honest referee for determining a home's value. Specifically, the Kanjorski amendment places all of the bill's appraiser independence standards in a stand-alone section within TILA. It also ensures that appraisers cannot have an interest in the dwellings that they appraise and mandates reporting to State certifying and licensing agencies in cases where someone involved in a mortgage transaction has a reasonable basis to believe that an appraiser is violating the Uniform Standards of Professional Appraisal Practice. The Kanjorski amendment additionally adopts the Federal Reserve's HOEPA rulemaking limitations on extending credit when the creditor knows, at or before loan consummation, of a violation of appraisal independence standards.

Consumer Protection Mandate

The Kanjorski amendment clarifies the bill's application of a consumer protection mandate with respect to the Appraisal Subcommittee, an entity within the Federal Financial Institutions Examination Council consisting of the designees of Federal financial institution regulatory agencies and the Department of Housing and Urban Development. The Appraisal Subcommittee monitors the work of State appraiser certifying and licensing agencies.

Annual Report of Appraisal Subcommittee

The Kanjorski amendment reinstates the requirement that the Appraisal Subcommittee prepare for Congress an annual report. It also adds new provisions to this annual report regarding the results of all audits of State appraiser certifying and licensing agencies and details about disapprovals and warnings.

Appraisals and Appraisal Reviews

The Kanjorski amendment 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

Appraisal management companies now touch 64 percent of written appraisals, and they are expected to grow in influence as the Home Valuation Code of Conduct 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. Because Congressman Kanjorski believes that we can no longer allow anyone to play in the dark corners of our financial markets, 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 complete appraisal fraud or those who lose their licenses or certificates cannot turn around and establish appraisal management companies. The amendment additionally puts in place a parallel Federal system for an appraisal management company that is a subsidiary of a financial institution overseen by a Federal regulator. The Kanjorski amendment further establishes a system for collecting fees from appraisal management companies to support the additional work of the Appraisal Subcommittee.

Grants to States

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.

Monitoring of State Agencies

The Kanjorski amendment 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 appraiser certifying and licensing agencies that fail to have effective appraiser regulatory programs. The Kanjorski amendment also adds funding and staffing to the criteria that the Appraisal Subcommittee must consider when evaluating a State's appraisal regulatory program. The amendment additionally requires the Appraisal Subcommittee to monitor efforts to protect appraisal independence in the States.

Professional Appraisal Designations

To promote greater professionalism and advanced training within the appraisal industry, the Kanjorski amendment codifies language now found in the GSE selling guides to allow for the consideration when making appraisal assignments of education achieved, sample appraisals, references, experience, and membership in a nationally recognized professional appraisal organization, but lack of such membership shall not be the sole bar against consideration for an appraisal assignment.

Appraisal Complaint Hotline

If no national hotline exists to receive complaints about non-compliance with appraisal independence standards within one year of enactment, the Appraisal Subcommittee is required to put in place a national hotline, which shall consist of a toll-free phone number and e-mail address. The Appraisal Subcommittee must refer complaints received by the national hotline to the appropriate State or Federal regulator, or other appropriate legal authorities.

Automated Valuation Models Quality Control Standards

To enhance confidence in the results produced by automated valuation models 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.

Broker Price Opinion Limitations

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.

Composition of the Appraisal Subcommittee

The Kanjorski amendment expands the membership of the Appraisal Subcommittee to include the Federal Housing Finance Agency. The amendment also requires that at all times at least one member of the Appraisal Subcommittee shall be a certified or licensed appraiser.

Appraisal Study

The Kanjorski amendment enlarges the scope of the bill's study of appraisal issues by the Government Accountability Office to include matters related to the quality of appraisals produced through different mechanisms and different distribution channels. It also requires an analysis and statistical breakdown of the enforcement actions taken during the last decade against different types of appraisers. The study must additionally examine the need to create a national repository to collect data related to real estate property collateral valuations performed in the United States.

Consumer Access to Appraisal Reports and Home Valuations

The Kanjorski amendment brings the bill's requirements to provide consumers with access to a written appraisal report three days before closing in line with the requirements of the Home Valuation Code of Conduct. It also requires consumers with access to any other valuation report developed in conjunction with a mortgage transaction.

Appraisal Fee Disclosures

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.