

110th CONGRESS

2d Session

S. 2860

To diminish predatory lending by enhancing appraisal quality and standards, to improve appraisal oversight, to ensure mortgage appraiser independence, to provide for enhanced remedies and enforcement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

April 15, 2008

Mr. CASEY (for himself and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To diminish predatory lending by enhancing appraisal quality and standards, to improve appraisal oversight, to ensure mortgage appraiser independence, to provide for enhanced remedies and enforcement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Fair Value and Independent Appraisal Act'.

SEC. 2. PROPERTY APPRAISAL REQUIREMENTS.

(a) In General- Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end the following new subsection:

^ (m) Property Appraisal Requirements-

^ (1) IN GENERAL- A creditor may not extend credit in the form of a mortgage referred to in section 103(aa) to any consumer, without first obtaining a written appraisal of the property to be mortgaged, prepared in accordance with the requirements of this subsection.

^ (2) APPRAISAL REQUIREMENTS-

^ (A) PHYSICAL PROPERTY VISIT- An appraisal of property to be secured by a mortgage referred to in section 103(aa) does not meet the requirements of this subsection unless it is performed by a qualified appraiser who conducts a physical property visit of the interior of the mortgaged property.

^ (B) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES-

^ (i) IN GENERAL- If the purpose of a mortgage referred to in section 103 (aa) is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the date of purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

^ (ii) NO COST TO CONSUMER- The cost of any second appraisal required under clause (i) may not be charged to the consumer.

^ (C) QUALIFIED APPRAISER DEFINED- For purposes of this subsection, the term 'qualified appraiser' means a person who--

^ (i) is certified or licensed by the State in which the property to be appraised is located; and

^ (ii) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

^ (3) FREE COPY OF APPRAISAL- A creditor shall provide 1 copy of each appraisal conducted in accordance with this subsection in connection with a mortgage referred to in section 103(aa) to the consumer without charge, at least 3 days prior to the transaction closing date.

^ (4) CONSUMER NOTIFICATION- At the time of the initial mortgage application, the consumer shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the consumer may choose to have a separate appraisal conducted at their own expense.

^ (5) VIOLATIONS- In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this subsection shall be liable to the consumer for the sum of \$2,000.'

(b) Equal Credit Opportunity Act Amendment- Section 701(e) of the Equal Credit Opportunity Act (15 U.S.C. 1691(e)) is amended to read as follows:

^ (e) Copies Furnished to Applicants-

^ (1) IN GENERAL- Each creditor shall furnish to an applicant, a copy of all appraisal reports and valuations developed in connection with the applicant's application for a loan that is or would have been secured by a lien on residential real property.

^ (2) PROCEDURES- Appraisal reports shall be furnished under this subsection upon written request by the applicant, made within a reasonable period of time of the application and before closing.

^ (3) REIMBURSEMENT- The creditor may require the applicant to pay a reasonable fee for the provision of copies of appraisal reports under this subsection.

^ (4) NOTIFICATION TO CONSUMERS- The creditor shall notify (pursuant to regulations prescribed by the Board) an applicant in writing of the right to receive a copy of each appraisal report, under this subsection.'

(c) Unfair and Deceptive Acts and Practices Relating to Certain Consumer Credit Transactions- Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129 the following new section:

^ SEC. 129A. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

^ (a) In General- It shall be unlawful, in providing any mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or any mortgage brokerage services for such a transaction, to engage in any unfair or deceptive act or practice.

^ (b) Appraisal Independence- For purposes of subsection (a), unfair and deceptive acts or practices shall include--

^ (1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction, in which a person with an interest in the underlying transaction coerces, bribes, extorts, colludes, or otherwise improperly influences a person conducting or involved in an appraisal, or attempts to coerce, bribe, extort, collude, or otherwise improperly influence such a person, for the purpose of causing the appraised value assigned under the appraisal to the property to be based on any factor other than the independent judgment of the appraiser;

^ (2) mischaracterizing or suborning any mischaracterization of, the appraised value of the property securing the extension of credit;

^ (3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

^ (4) failing to timely compensate an appraiser for a completed appraisal, regardless of whether the transaction closes.

^ (c) Exceptions- The requirements of subsection (b) may not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, or any other person with an interest in a real estate transaction from asking an appraiser to correct errors in the appraisal report.

^ (d) Rulemaking Proceedings- The Board and the Federal Trade Commission--

^ (1) shall jointly prescribe regulations defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), and (c); and

` (2) may jointly issue interpretive guidelines and general statements of policy with respect to unfair or deceptive acts or practices in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), and (c).

` (e) Definitions- For purposes of this section--

` (1) the terms ` mortgage brokerage services' and ` mortgage lending services', have the meanings given such terms in section 13(f) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2611(f)); and

` (2) the term ` improperly influence' means any attempt to manipulate, through coercion, extortion, collusion, intimidation, non-payment for services rendered, direct or indirect compensation, or bribery, the development, reporting, result, or review of a property appraisal.

` (f) Penalties-

` (1) FIRST VIOLATION- In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than \$10,000 for each day during which any such violation continues.

` (2) SUBSEQUENT VIOLATIONS- In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting ` \$20,000' for ` \$10,000' with respect to all subsequent violations.

` (3) ASSESSMENT- The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.'.

(d) Clerical Amendment- The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129 the following new item:

` Sec. 129A. Unfair and deceptive practices and acts relating to certain consumer credit transactions.'.

END