



The Ney-Kanjorski Bill

Replaces effective state protections against predatory lending with a weak federal standard

CRL Bill Analysis: H.R. 1295

March 16, 2005

Representatives Robert Ney (R-OH) and Paul Kanjorski (D-PA) have introduced legislation that would preempt state anti-predatory mortgage lending laws that have proven effective at curbing abusive lending practices and would replace these state laws with a weak federal standard that falls far short of principles for effective legislation to eliminate predatory lending.

The Ney and Kanjorski bill would fail to protect borrowers from predatory lending. Existing state laws, federal legislation proposed by Representatives Miller, Watt and Frank, and current practices of responsible lenders provide much stronger and more effective protections for borrowers.

PROBLEMS WITH THE NEY-KANJORSKI BILL

Fails to take comprehensive approach to excessive points and fees.

The Ney-Kanjorski bill excludes almost all prepayment penalties and appears to exclude yield spread premiums from the calculation of whether a loan has points and fees at a level that triggers the protections in the Act.

- Protections for high-cost loans are only meaningful if all lender and broker compensation is included in the calculation to determine if a loan is a high-cost loan. Otherwise, unscrupulous lenders will evade the bill's scope simply by shifting compensation to these excluded fees.
- The Miller-Watt-Frank bill takes the approach of numerous state laws to include these fees, ensuring that all borrowers who receive high-cost loans are protected by anti-predatory lending legislation.
- Prepayment penalties on subprime loans strip hard-earned home equity, trap borrowers in unaffordable loans, and are tied by research to increased foreclosures. Under the Ney-Kanjorski proposal, penalties for paying off the home loan early are not counted towards whether a borrower has received a "high-cost" loan, except in rare circumstances where a lender refinances its own loan.
- Kickbacks to mortgage brokers, known as yield spread premiums, encourage the steering of borrowers into higher-priced loans than borrowers qualify for, but it appears this form of broker compensation is not treated like other fees in determining whether a borrower has received a "high-cost" loan in the Ney-Kanjorski proposal.

Fails to effectively address abusive loan flipping.

The Ney-Kanjorski bill addresses flipping only for high-cost loans, allowing lenders to repeatedly flip borrowers into loans that provide no net benefit as long as the upfront fees are only 4.99% of the loan amount each time and only applying the prohibition when a refinance is

within two years of the original loan. The bill's exceptions to its flipping provision create a road map for abusive flips that would be permitted under the law. In contrast, Miller-Watt-Frank have followed the successful approach of North Carolina and other states, prohibiting abusive flipping practices on all home loans.

Fails to prevent equity-stripping for borrowers who receive high-cost loans.

Protections for high-cost loans apply only in those rare circumstances when borrowers incur more than 5% of the loan amount in points and fees or interest rates above approximately 12.5% in today's market, loans that put borrowers at extreme risk of equity loss or foreclosure. The Ney-Kanjorski bill would allow a lender to finance up to 5% of the loan amount in conjunction with a high-cost loan, and would not require any counseling prior to obtaining a loan.

- In many high-cost loans, borrowers never realize the significance of the exorbitant hidden fees on the loan because they don't pay for them in cash, but instead finance the points into the loan. Limits on financing high fees and a counseling requirement for high-cost loans are essential to deterring equity stripping through fees, making it much more difficult for lenders to mislead a borrower into agreeing to an overpriced loan and encouraging lenders to put risk into interest rate, a cost that is much more transparent to the borrower.
- The state of North Carolina and the Miller-Watt-Frank bill prohibit the financing of any fees on a high-cost loan, encouraging lenders to express any additional risk in the loan in terms of interest rate, rather than requiring borrowers to finance a loan with high fees out of their home equity. Many other states have adopted a similar approach, allowing only 2-3% of the loan amount to be financed on a loan with high fees.
- Similarly, the Miller-Watt-Frank bill and at least seven states, including Arkansas, Georgia, Massachusetts, North Carolina, New Jersey, New Mexico, and South Carolina require counseling for loans that have an extremely high interest rate or excessive points and fees.

Fails to ban mandatory arbitration on all home loans.

The Ney-Kanjorski proposal bans mandatory arbitration on high-cost home loans only, while the Miller-Watt-Frank bill prohibits the use of mandatory arbitration clauses in all home loans. Most of the leading subprime lenders, including Ameriquest, Countrywide, Option One, New Century, and Washington Mutual, prohibit mandatory arbitration on subprime loans, including subprime loans that fall well below any high-cost definition. As a result, the Ney-Kanjorski bill falls short of best practices in the industry.

Fails to prevent abusive prepayment penalties on subprime loans.

While the bill limits prepayment penalties on all home loans to 3 years, it permits lenders to charge a high prepayment fee (typically 4%-5% of the loan). An increasing number of subprime lenders have reduced the amount of these penalties, and the Ney-Kanjorski bill lags behind the market leaders. For instance, HSBC (Household) limits prepayment penalties to 2% of the loan amount. As a result, the bill endorses a practice that requires borrowers who have loans with higher interest rates to pay bigger prepayment penalties in order to refinance into a more

affordable loan. Further, if enacted, the proposal would preempt laws in the majority of states that have prohibited or further limited prepayment penalties.

Significantly reduces assignee liability protections under existing federal law.

The Ney-Kanjorski bill would roll back protections available under current federal law that allow borrowers with high-cost loans to seek recourse if their loan has been sold on the secondary market. Because most subprime loans are sold, these severe limitations on assignee liability will mean that many borrowers will be unable to defend their home against foreclosure if they have received a predatory loan. In contrast, numerous states, including Illinois, Massachusetts, New Mexico, and North Carolina have found an effective approach to assignee liability that balances the ability of the secondary market to purchase subprime loans and the need for borrowers to be able to protect their home against abusive practices. Further, the Miller-Watt-Frank bill would maintain existing protections in the Home Ownership and Equity Protection Act (HOEPA) that have been in place and successful since 1994.

Broadly preempts state protections for homeowners.

Rather than preserve and strengthen existing state and federal protections for homeowners, the Ney-Kanjorski bill wipes out state anti-predatory lending laws that have been proven effective at preventing abusive practices and significantly weakens some protections available under the federal law today.

Includes numerous loopholes that undercut the stated purpose of the bill.

- While the Ney-Kanjorski bill purports to lower the points and fees threshold, changes to the definition of points and fees make the definition less inclusive than current federal law under HOEPA.
- Exceptions to a prohibition against subterfuge would in fact encourage loan-splitting, allowing lenders to avoid making a high-cost loan and thereby triggering protections for such loans.
- Exceptions to the ability to repay provision would limit its effectiveness and preempt ongoing state efforts to address such abuses.

About the Center for Responsible Lending

The Center for Responsible Lending (CRL) is a national nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, the nation's largest community development financial institution.

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