

H.R. 833 IS NO PROTECTION FROM PREDATORY LENDING

The 108th Congress is expected to act on legislation that would preempt state anti-predatory lending laws and establish a weak federal standard as the only protection from abusive home lending practices. Representative Robert Ney (R-OH) has introduced H.R. 833, pending in the Committee on Financial Services.

Predatory lending costs American homeowners an estimated \$9.1 billion annually.

The Ney bill would allow many abusive practices to continue.

Under its provisions, unscrupulous lenders would be permitted to carry out many egregious actions without penalty, including the following:

- Charge and finance exorbitant points and fees to strip hard-earned home equity;
- Impose onerous prepayment penalties on subprime home loans;
- Deny homeowners an ability to challenge an illegal loan secured by their house in court by inserting boiler plate mandatory arbitration clauses in home loans;
- Flip borrowers through refinance loans, churning a borrower to garner fee income without providing any net tangible benefit to the homeowner.
- Push debt cancellation and debt suspension agreements, which are used to circumvent prohibitions on the financing of single premium credit insurance; and
- Pay kickbacks to brokers for steering borrowers into high-rate loans, since the definition of points and fees used to determine when a loan is “high cost” excludes yield spread premiums and other indirect broker compensation.

The Ney bill would preempt existing state laws that regulate mortgage lending.

H.R. 833 would prohibit states from enacting any law stronger than federal law. Preemption of state laws is undesirable and unnecessary.

- **States should be able to protect their homeowners.** Preemption would set a ceiling for states instead of a floor upon which states may build.
- **Rising foreclosure rates may demand immediate state action.** Many communities are being ravaged by a rise in foreclosures due, in part, to increases in predatory lending practices. Wealth building is the most effective way to deal with complex social problems, and homeownership is the best way to help families build wealth. States faced with a foreclosure crisis should be permitted to respond.
- **States are able to respond to new challenges more quickly than the federal government.** Predatory lenders find new practices to replace prohibited ones. The federal government is too far removed to keep up with new loan scams that state-chartered finance companies and other non-depository lenders invent, while state governments can act quickly as new predatory practices arise.
- **Lenders already navigate different state laws** Mortgage companies routinely monitor changes in state laws. For instance, mortgage companies have to keep up with changes in local property tax rates to pay taxes out of escrow. Mortgage companies must also deal with different state insurance regulations and foreclosure procedures. Compliance with different state laws is a routine task.
- **Historically, consumer protection has been a state issue.** The federal government should partner with states in stopping predatory lending instead of pushing states out of the picture.