Minimal Broker Licensing Standards Will Not Affect Abusive Lending Practices

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On September 29, the House Committee on Financial Services will hold a hearing focused on mortgage brokers ("Licensing and Registration in the Mortgage Industry"). The Ney-Kanjorski bill (H.R. 1295) -- Title V -- attempts to address mortgage broker abuses by requiring states to pass uniform broker licensing requirements. Title V ignores the most serious and common abuses by mortgage brokers and overlooks the fact that 48 states already require licensing for mortgage broker companies. For consumers, <u>Title V is a dangerous proposal that would produce these harmful outcomes</u>:

A mandatory <u>weak</u> standard. Title V mandates that state laws conform to a "uniform standard" within three years or federal rules will apply.[1] The problem is that many states already have stronger and more effective laws than the prescribed uniform standard.
<u>Result</u>: Effective preemption of good state laws. Title V would wipe out many existing state protections and prevent states from taking further action to protect their citizens from broker abuses.

Limited coverage. The definition of "mortgage broker" in Title V is limited and includes numerous exceptions.
<u>Result</u>: De facto deregulation of thousands of brokers now covered by state laws.

Protection for disreputable brokers. Broker information collected in a database under Title V cannot be disclosed to the public unless the broker waives confidentiality.[2] Brokers that want to hide bad business practices are least likely to grant waivers. The information will be collected, but consumers will have little or no access.
<u>Result</u>: Disreputable brokers are shielded from public scrutiny.

Unnecessary regulation. Title V does not address critical issues behind broker abuses and accomplishes little: Only Colorado and Alaska have not enacted licensing laws; 48 states already require broker companies to be licensed, and about half the states require individual licensing.
<u>Result</u>: Limited action that leaves consumers unprotected from common broker abuses.

H.R. 1295 ignores critical broker issues: excessive fees, broker kickbacks ("yield spread premiums") and steering into high-cost loans.

[1] Title V requires licensing, background checks and continuing education – narrow standards that do not address excessive fees and other abuses.
[2] Damages for improper disclosure would be greater than penalties for bad business practices that hurt consumers.

Brokers are key in determining whether mortgage loans benefit or harm borrowers.

- Most mortgages are brokered. HUD estimates that brokers are involved in about 60% of all mortgage loans.

- Brokers in the subprime market have no incentive to provide beneficial mortgages. Because they are compensated through upfront fees and not ongoing loan payments, brokers have no long-term interest in the quality of loans. Further, kickbacks from lenders ("yield spread premiums") that increase with the interest rate mean brokers have an incentive to put borrowers in higher-cost loans when they could qualify for a more affordable product.

- Brokers have always been regulated by the states. Brokers are local. As with most consumer protection, the states are in the best position to license and regulate broker activity.

- Many states have taken action. In conjunction with broader predatory lending laws, many states are finding effective ways to address abusive lending practices by brokers while supporting abundant access to credit. Several states have implemented broker duties to their customer, others have regulated broker fees, and numerous state anti-predatory lending laws include provisions that apply to brokers.

RECOMMENDATIONS

* Any effective regulation of brokers should be done in conjunction with broader state actions against predatory mortgage lending.

* Any effective regulation of brokers must address broker kickbacks ("yield spread premiums"), excessive points and fees, and establish reasonable duties to borrowers. For example, at least seven states have taken direct action to limit kickbacks to brokers.

* Federal regulations on broker licensing could establish a floor, not a ceiling. (This would only result in enactment new rules in Colorado and Alaska.) Other states could be encouraged to strengthen their laws and improve enforcement.

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, one of the nation's largest community development financial institutions.

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