



Federal Preemption Favors Predatory Lending ***States Have an Edge in Protecting Homeowners***

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Federal preemption of state consumer protection laws is unnecessary and harmful to homeowners. Here's why:

Dangerous lending practices and loose underwriting in the subprime mortgage market have put 2.2 million families in danger of losing their homes to foreclosure.¹ These families are trapped in “exploding” adjustable-rate mortgages (ARMs) that are due to increase to unaffordable interest rates. In fact, hundreds of thousands of families face rate increases at the same time that their houses are worth less than the balance on their mortgage.

On a case-by-case basis, these losses represent a personal catastrophe to the families involved, but the negative results extend far beyond individuals. Entire communities will suffer because of the declines in property values that come with nearby foreclosures. Foreclosures can quickly transform neighborhoods from aspiring, stable communities to rows of boarded-up houses that become a breeding ground for crime.²

Since the late 1990s, states have been taking action to curb predatory lending and protect the wealth of homeowners and neighborhoods. And states have a longstanding interest in putting in place effective consumer protections. While federal policy has a key role to play in this effort, federal rules should supplement – not override – consumer protections in the states.

Federal law cannot adequately address “innovations” in predatory practices. Predatory lenders will always find a way to circumvent regulations and find loopholes. No matter how effective federal legislation seems today, inevitably it will be inadequate tomorrow. The federal government is far removed from the day-to-day market and slow to respond to changes; states are better able to identify and address new loan scams.

State efforts have been successful in addressing predatory lending. Research shows that state laws are effective at curbing abusive practices. For example, without New Mexico’s anti-predatory lending law, an additional four out of ten borrowers (38.5%) in the subprime market would have received home loans with abusive features—including prepayment penalties, balloon payments or being unfairly steered into a higher-cost loan. At the same time, among states with reforms, interest rates on fixed-rate mortgages showed no statistically significant difference in eight states and actually were lower in 19.

States must not be prevented from protecting their citizens from unscrupulous lending practices that erode the benefits of homeownership.

States need flexibility to respond to severe situations. Because predatory lenders often target neighborhoods, entire communities can be damaged. States faced with a foreclosure crisis should not be prohibited from responding to such situations.

State laws can better address market variations. Across the 50 states, there is tremendous variation in real estate prices and practices. For example, land values, foreclosure rates and the prevalence of prepayment penalties all vary widely. Effective laws would address predatory lending concerns while taking into account the special characteristics of local markets – an objective that simply isn't possible to achieve through broad federal legislation.

Lenders already navigate state laws. Industry representatives maintain that monitoring and adhering to varying state regulations will impose an undue burden. However, for years lenders have effectively navigated a wide range of differences in state real estate laws and practices, and they continue to do so every day. The purported convenience for lenders must be weighed against the high costs and devastation predatory lending imposes on families and communities.

FAST FACTS

- According to a University of North Carolina study, North Carolina's anti-predatory lending laws save families \$100 million each year.
- Congress enacted the Home Ownership and Equity Protection Act in 1994 and has not amended it yet. During that time, 30 or more states have enacted legislation – some more than once, as conditions have changed -- regarding predatory lending abuses
- While the interest rate differences are small, the interest rate savings for states with strong protections against predatory lending add up: A family with a \$200,000 loan typically saves \$1,000 or more over the first three years of the mortgage in a state with significant protections.
- All 50 Attorneys General, the Conference of State Bank Supervisors, the National Association of REALTORS®, AARP, and civil rights groups are among those who have voiced strong objections to federal preemption of state anti-predatory laws.
- Federal laws such as the Fair Housing Act and the Equal Credit Opportunity Act regulate the real estate finance market without broadly preempting comparable state regulations.

About the Center for Responsible Lending

The Center for Responsible Lending is dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. The CRL is a national nonprofit, nonpartisan research and policy organization that promotes responsible lending practices and access to fair terms of credit for low-wealth families. For additional information, please visit our website at www.responsiblelending.org or call us at 919-313-8500 / 202-349-1850.

H.R. 3915 stands up for homeowners by preserving states' rights to protect homeowners. Please support this bill, but stress that the bill can only work if it is strengthened, not weakened.

¹ Center for Responsible Lending, "Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners," December 2006, <http://www.responsiblelending.org/pdfs/foreclosure-paper-report-2-17.pdf>.

² Jim Rokakis, "The Shadow of Debt: Slavic Village is Fast Becoming a Ghost Town," *Washington Post* (September 30, 2007).