



SIGNIFICANCE OF THE RESPONSIBLE LENDING ACT

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For at least the last five years, momentum has been building for the adoption of national mortgage lending standards to replace the confusing patchwork of state and local law requirements.

The opportunity has now presented itself with the introduction of HR. 1295, The Responsible Lending Act, by Congressmen Bob Ney (R-Ohio) and Paul Kanjorski (D-Penn.). This bill, which is gathering bi-partisan support, will bring about significant changes to the Home Ownership Equity Protection Act (“HOEPA”) and the Real Estate Settlement Procedures Act (“RESPA”). The bill also would create significant changes in the mortgage servicing process.

To understand the necessity for federal legislation, one need only review recent bills, regulations and laws introduced or passed in the several states just since the last edition of *Equity Magazine* was published.

These include:

- Pennsylvania House Bill 967, introduced to amend Pennsylvania’s current law pertaining to “covered loans”;
- Montana’s amendment of the Montana Consumer Loan Act and the Montana Loan and Interest Law, signed by the Governor of Montana on March 24, 2005;
- the February ‘17, 2005, introduction into the Michigan House of Representatives of a bill that will amend the Consumer Mortgage Protection Act and rename it the Home Loan Protection Act, and that will place limitations on loan terms and lending practices in connection with home loans and high-cost home loans;
- the March 7, 2005, Iowa Senate introduction of a bill that, if adopted, will create the Iowa Home Loan Protection Act;
- the Georgia Legislature considering enactment of the “Georgia Predatory Lending Prevention Act” introduced into the Georgia House similar to last year’s Georgia legislation that was passed and subsequently amended;
- Tennessee re-adopting registration and fee requirements for mortgage loan originators on March 8, 2005;
- the New York Banking Department amending Part 41 of the Banking Board’s General Regulations regarding high-cost home loans, effective February 22, 2005;
- Wyoming enacting its Residential Mortgage Practices Act that was signed by the Governor on February 24, 2005;
- the New Mexico Legislature considering an amendment to its Home Loan Protection Act as the result of a Senate bill introduced on February 14, 2005; and

- Tennessee's consideration of a bill regarding disbursement of funds in loan transactions.

All of this activity has been reported just in the last couple of months.

The bi-partisan Ney-Kanjorski Bill is the culmination of years of effort to pass legislation that will protect consumers in the mortgage loan process while at the same time keeping loans affordable for consumers. Consumer groups argue for consumer protections. Lenders argue for uniform national standards. This bill provides both.

The HOEPA triggers on interest rate would be reduced from the current level of 8% over the T-bill rate to 5%; and, the number of loans being refinanced will go down in light of a tougher, two-year reasonable tangible benefit test designed to prevent loan flipping.

Cost to borrowers

Prepayment penalty restrictions will be extended to almost all nonprime loans. A limit of three years is imposed ensuring that lenders can recoup their origination cost, while still affording borrowers a reasonable opportunity to refinance. Elimination of prepayment fees would cost our borrowers a full 100 basis points.

The financing by lenders of points and fees will be limited. Such financing will not be allowed in excess of 5% of the loan amount if a loan is in excess of \$40,000, and 6% if \$40,000 or less.

Higher-cost loans will require actual physical appraisal to help prevent property flipping schemes.

Servicers of mortgage loans will be required to report to credit bureaus, give payoff statements within seven business days of request, limit late fees to 5% and limit deferral and loan modification fees.

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And, certain practices are banned entirely, including:

- single-premium insurance,
- steering borrowers to more expensive loans,
- balloon payments,
- negative amortization,
- increasing interest upon default,
- encouraging default, and
- mandatory arbitration.

In exchange for these and many other consumer protections, lenders are afforded federal preemption of state laws occupying the field.

The importance of passing a responsible lending bill cannot be exaggerated. For too long, nonprime mortgage lenders, now making \$608 billion of loans -almost 25% of all mortgage loans in the U.S. - have been unfairly painted with the brush of “predatory lending.”

The Ney-Kanjorski Bill will bring an end to the bad practices of the tiny minority of mortgage lenders who engage in them. This can, and will, be accomplished without upsetting the capital markets and without making nonprime mortgage loans unaffordable for our customers. Reasonable regulation of prepayment fees, yield spread premium, and the financing of discount points and fees, will ensure the health of the industry and affordability for the American consumer.