

Ney-Kanjorski Bill Is Much Tougher Than Original Ney-Lucas Bill

The new Ney-Kanjorski “Responsible Lending Act” contains much stronger consumer protections than H.R. 833, the original Ney-Lucas bill introduced in 2003. These enhancements, which reflect concerns raised in hearings and by Committee Members and consumer advocates, for example, would:

- **Extend Special Protections to Far More Loans** – The bill covers more loans by lowering the HOEPA “points and fees” trigger from 7% (or 6% for smaller loans) to 5% (or 6% for smaller loans); it also sweeps in many more loans by applying restrictions to loans for home purchases (not just refinances) and to open-end lines of credit and by counting prepayment penalties in the fee calculation if a refinancing involves a loan originally made by the same lender or an affiliate.
- **Strengthen Repayment Ability Test** – The bill lowers the debt-to-income ratio test from 53% to 50% and adds a separate residual income test to ensure borrowers have adequate repayment ability.
- **Toughen “Loan Flipping” Prohibition** – H.R. 833’s one-year refinancing limitation is replaced by a two-year “reasonable tangible benefit” test that will prohibit loan flipping far more effectively.
- **Increase Prepayment Penalty Limitations** – Instead of H.R. 833’s provisions that only limit prepayment penalties to a maximum term of 4 years, the new bill sets the maximum term at 3 years, and restricts the amount of the penalty to 80% of 6 months’ interest, like California law. In addition, it requires that the borrower be given a clear choice of a loan with and without a prepayment penalty and an explanation of the benefits/risks involved.
- **Prohibit “Steering”** – A significant new borrower safeguard in the bill prohibits lenders and brokers from “steering” borrowers who qualify for a less expensive loan to a more expensive loan than they qualify for.
- **Prohibit Mandatory Arbitration** - In response to the concerns raised by advocacy groups and many Members, the bill contains a prohibition on mandatory arbitration requirements for higher-cost loans.
- **Expedite Error Correction** – The bill ensures lenders will promptly correct errors and make borrowers whole without extended delay and costly litigation by adding error correction provisions.
- **Limit Financing of Points & Fees** – To help discourage excessive fees and to preserve borrowers’ equity, the bill adds a provision that prohibits the financing of points and fees in excess of 5% of the total loan amount.
- **Prohibit Balloon Payments** – Instead of H.R. 833’s provision limiting balloon payment terms of less than 5 years, the bill imposes a complete prohibition on balloon payments in higher-cost loans.
- **Limit Late Fees** – New restrictions are added to prevent borrowers from being subjected to excessive late fees.
- **Increase Home Improvement Scam Protections** – The bill adds requirements for inspections and completion certificates to help ensure home improvement work is done properly.

- **Broaden Prohibition on Single Premium Credit Insurance** – In addition to prohibiting traditional single premium credit insurance, the new legislation expands this restriction to cover comparable non-insurance products such as debt-cancellation agreements.
- **Require Better Disclosures & Recommended Credit Counseling** – Provisions are added to provide better disclosures/warnings and lenders are required to recommend that higher-cost loan borrowers seek credit counseling and to provide them with information on how to obtain it.
- **Impose New “Property Flipping” & Appraisal Safeguards** – The new legislation imposes new requirements for having appraisals in higher-cost loan transactions and also adds new provisions to strengthen the appraisal process and appraiser independence. These provisions will be especially helpful in preventing “property flipping” and mortgage fraud that has been occurring in many Members’ districts.
- **Require Escrow Accounts** – Most nonprime loans do not have escrow accounts so many borrowers end up lacking the cash to pay property taxes and insurance. The bill addresses this problem by requiring lenders and loan servicers to set up escrow accounts for most nonprime borrowers.
- **Add Mortgage Servicing Abuse Protections** – The bill adds a number of new restrictions to prevent various abuses that borrowers have experienced in the mortgage servicing process.
- **Facilitate Pre-Foreclosure Counseling** – A provision is included to help borrowers who get behind in their mortgage payments to promptly obtain pre-foreclosure counseling and avoid losing their homes.
- **Apply Much Tougher Penalties** – The new bill doubles the allowable statutory penalty dollar limits in current law from \$2,000 to \$4,000 in individual cases and from \$500,000 to \$1,000,000 in class actions.
- **Prohibit Waiver of Rescission Rights** – A new prohibition is added to prevent lenders from requiring or encouraging borrowers to waive their legal rights to rescind their loan transaction.
- **Greatly Enhance Housing Counseling Opportunities** – A new title is added that greatly increases housing counseling and financial education opportunities for borrowers and that improves HUD’s administration of such programs.