

Sarbanes Sets Steep Standards For Preemption

The American Banker

May 2nd, 2002

BY MICHELE HELLER

Senate Banking Committee Chairman Paul Sarbanes said Wednesday that he would consider federal preemption of state and local anti-predatory-lending laws only under very strict circumstances -- ones that may be too onerous even for industry officials willing to deal.

"I can understand why industry people want a national standard, but I think I have been very clear about where I stand on that in terms of preemption: It must be coupled with very strong, substantive standards," the Maryland Democrat said at a news conference where he unveiled a comprehensive anti-predatory-lending bill that he introduced with 14 Democratic co-sponsors.

He described the bill as a starting point for debate, and said a final call could only be made much later in the process.

"I would have to be at the final product in order to make that call" of whether to include a preemption provision in the bill, which he said was a "vehicle on which we can have the benefit of people's comments as we seek to further define this matter." The bill is almost identical to one Sen. Sarbanes introduced in 2000 and a companion measure introduced last year by Rep. John J. LaFalce of New York, the ranking Democrat on the House Financial Services Committee.

The latest bill would increase the number of loans subject to special disclosures by defining "high-cost" mortgages as those with interest rates at least six percentage points higher than those of comparable Treasury securities. (The current trigger is 8 percentage points.) It would also restrict the financing of points and fees, ban balloon payments, and limit prepayment penalties, single premium credit insurance, and mandatory-arbitration clauses.

Financial services industry officials say the bill would drive legitimate subprime lenders out of the business.

"When you start dictating the types of products we're going to offer, it leaves the consumer with very little choice," said James C. Ballentine, the director of community development for the American Bankers Association.

At current Treasury rates, the bill would define any loan with an interest rate of 12% or more as high-cost, he said. "For some individuals, that is all their credit rating will allow them to have."

Sen. Sarbanes countered by saying the bill's triggers "leave plenty of room for responsible

lenders to make money."

He also threw at least one bone to the industry. The bill would ban prepayment penalties larger than the difference between 3% of the loan amount and the total closing costs and fees that are financed. However, financial institutions that refinance loans originated by another firm would not have to count the originator's prepayment penalties toward the fee limit.

The bill faces an uphill battle this year, because Sen. Sarbanes' committee is dominated by center-right lawmakers, but ironically, the next forum for debate may actually be the House Financial Services Committee.

That panel's chairman, Rep. Michael G. Oxley, has said that he has no interest in taking up Rep. LaFalce's legislation. However, last month the Ohio Republican said that the hearings he is planning to discuss an overhaul of the Real Estate Settlement Procedures Act and other housing issues would likely become a forum for Democrats who are advocating tighter anti-predatory-lending laws.

Separately at the news conference, Sen. Sarbanes said he has talked with Fannie Mae about his "concerns" about reports that the secondary mortgage financier has sought exemptions from state laws on predatory lending.

In a press statement issued Wednesday, Fannie, which has denied that it has sought such exemptions, announced that it would stop lobbying state legislators on lending laws.

"We will monitor anti-predatory-lending legislative efforts at the state level, but will not take an active role in shaping such legislation," the statement said.

Rep. Jan Schakowsky, D-Ill., met with Fannie vice chairman Jamie Gorelick on the issue Tuesday.

"Fannie Mae must not interfere with or seek exemptions from state and local regulations and statutes that protect consumers from predatory lending," Rep. Schakowsky said in a press statement Wednesday. "I am very pleased that Fannie Mae, in no uncertain terms, has made it clear to me that they... will not seek to influence state legislation." ?

Copyright c 2002 Thomson Media. All Rights Reserved.