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Federal Law on predatory lending may be on its way
By Mary M. Shaffrey

North Carolina passed landmark legislation in 1999 barring unethical lending practices that take advantage of low-income people, often minorities.

Seven years later, some believe that Congress may finally be taking note.

N.C. Reps. Mel Watt, D-12th and Brad Miller, D-13th, have teamed to craft federal legislation modeled on North Carolina's predatory-lending law. Their bill was introduced in early 2005.

Although it appears unlikely to be voted on this year, the fact that other states are beginning to follow suit - most notably Ohio - makes them believe that Congress might not be far behind.

"It has added urgency to the discussions, and members are seeing that states are becoming more aggressive," Watt said. "The North Carolina standard is becoming the more moderate standard as opposed to it being something that is largely still unknown."

Miller, who served in the North Carolina Senate when the state law was passed, agreed.

He was not optimistic about his bill's chances this year, since it is June and elections are less than five months away. But he believes that the tide is turning. He credits Ohio's Republican legislature and Republican governor for changing the tone.

"This has largely been a party-line issue, with the Republicans more sympathetic to the industry side and the Democrats more concerned about the consumer side," Miller said. Republican leaders in Ohio taking action will influence leaders in Washington, he said.

Under the Ohio law that would take effect next year, subprime lenders would be policed. Also, certain predatory-lending practices, such as switching the terms of the loan at the last minute, would be barred. Republican Gov. Bob Taft has indicated that he will sign the bill.

Paul Stock, the executive vice president and counsel for the N.C. Bankers Association, said that it should not be difficult for Congress to use North Carolina as a guide. When the state passed its law in 1999, it had to make sure that it did not violate federal law in the process. Congress does not have to navigate the same mine fields, he said.

"I think the issues we addressed were universal, and in that regard it's very useful as a template ... but the details of our law were difficult to develop," he said.

"When Congress passes a law, it won't have to be as complex," he said.

Not all N.C. congressional members want to see state law becoming federal law. Rep. Patrick McHenry, R-10th, said that the state law goes too far.

"The North Carolina law is too restrictive on the flow of capital," he said. "With record homeownership, we don't need public policy restrictions on the flow of capital in the marketplace."

Something that might help Watt and Miller in their efforts, however, are recent data released by the Center for Responsible Lending, a nonpartisan research organization with offices in Durham, Washington and California. The data indicate that race had affected whether applicants received a subprime rate or a traditional loan. Predatory lending can be prevalent in the subprime-lending market.

"For most types of subprime home loans, African-American and Latino borrowers are at a greater risk for receiving higher rate loans than white borrowers," the report said.

During a June 13 hearing on recently collected data on home mortgages, Watt told a panel that included a member of the board of governors of the Federal Reserve that this was unacceptable.

"Discrimination in lending has got to stop," he said.

Mark Olson, a member of the board of governors of the Federal Reserve System, disputed the assertion that racism was widespread in the industry.

"To the extent (discrimination) still exists, it's very subtle," he told the panel.

McHenry, also a member of the committee, does not believe that discrimination exists in current lending practices. "In such a competitive marketplace, I believe minorities are not being denied access to capital," he said.

Doug Duncan, the chief economist for the Mortgage Bankers Association, said that he had serious problems with how the Center for Responsible Lending conducted its survey - notably that it included just income levels and not income-to-debt, which is how risk factors typically are determined.

He cautioned that because lenders set different rates for a variety of reasons, collecting accurate data is next to impossible. He said that he has not seen data that indicate that discrimination exists in the industry.

If a person is listed as a denial in a report because he was overqualified for a certain program, and is referred to a different program where he is offered financing, is it fair to say that he was denied?, Duncan asked. He noted there are examples where such instances had taken place.

"The nuances make it extremely difficult," he said.

The key to ensuring that consumers get the best loan is for them to educate themselves on the various programs available, he said.

But fair-housing advocates said that consumers can't educate themselves if they don't know what all their choices are.

Janis Bowdler, a housing analyst with the National Council of La Raza, submitted recent copies of a Spanish-language newspaper in the Washington area and the Washington Post real-estate section. The Spanish-language newspaper did not have a single ad for traditional loans, but the Post section had numerous ones.

Bowdler asked why lending institutions don't advertise to minorities. She also asked why all the lending institutions' ads are for 100 percent financing options and nothing else.

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