

COUNCIL AGENDA: 06-28-05
ITEM: 3.11

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Lee Price, City Clerk

SUBJECT: STATE AND FEDERAL
LEGISLATION RELATED TO
PREDATORY MORTGAGE LENDING

DATE: 06-28-05

RECOMMENDATION

As recommended by the Rules Committee on June 22, 2005, support AB 901 and H.R. 1182 and oppose H.R. 1295.

BACKGROUND

See the attached Rules Committee report for more information.

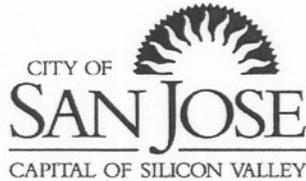
PUBLIC OUTREACH

This matter was on the Rules Committee Agenda on June 22nd. The meeting was open to the public.

COORDINATION

This item was coordinated with the Administration.


LEE PRICE, CMC
City Clerk



Memorandum

TO: RULES COMMITTEE

FROM: Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: June 15, 2005

Approved

Date

6-16-05

COUNCIL DISTRICT: Citywide
SNI: All

SUBJECT: STATE AND FEDERAL LEGISLATION RELATED TO PREDATORY MORTGAGE LENDING

RECOMMENDATION

The purpose of this memo is for the Rules Committee to recommend that the City Council:

- Support AB 901 and H.R. 1182, and;
- Oppose H.R. 1295.

BACKGROUND

Since 2003, the City of San José has been weighing options to better protect its residents from predatory mortgage lending practices, while not discouraging the origination of beneficial home loans. Strengthening the State anti-predatory mortgage lending law through AB 901 and supporting the Federal "Prohibit Predatory Lending Act" (H.R. 1182) are two such options. In contrast, the Federal "Responsible Lending Act" (H.R. 1295) would reduce protections against predatory mortgage lending practices currently provided under federal and State laws.

ANALYSIS

AB 901 – Amendment to California's Covered Loan Law

AB 901's most significant amendment to California's anti-predatory mortgage lending law would be to increase the loan cap for covered loans from \$250,000 to the Federal National Mortgage Association limit (currently \$359,650.) Because 65% of the loans originated in San José in 2003 were not covered by the \$250,000 covered loan limit, support for the protections under AB 901 is recommended. (Please see Attachment A for bill details.)

Supporters of the bill include the California Reinvestment Coalition, the Center for Responsible

RULES COMMITTEE

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Lending, Consumers Union, and the cities of Los Angeles and Oakland. Organizations opposed to the bill include, the California Bankers Association, the California Mortgage Association, and the California Mortgage Bankers Association.

H.R. 1182 – the Prohibit Predatory Lending Act

H.R. 1182 would amend the federal Truth in Lending Act (TILA) and the Home Ownership Equity Protection Act (HOEPA), which were enacted to protect consumers during credit transactions. Because H.R.1182 would increase federal consumer protections against predatory mortgage lending practices, without preempting the State's ability to protect its residents through additional legislation, support for this bill is recommended. (Please see Attachment B for bill details.)

Supporters of the bill include Consumers Union, AFL-CIO, the Center for Responsible Lending, National Fair Housing Alliance, the Consumer Federation of America, the National Community Reinvestment Coalition, and the National Association for the Advancement of Colored People. Opponents of the bill include Option One Mortgage, the Coalition for Fair and Affordable Lending, the Mortgage Bankers Association, the Appraisal Institute, the American Society of Appraisers, and the Bond Market Association.

H.R. 1295 – the Responsible Lending Act

H.R. 1295 would also amend TILA and HOEPA. However, because many of the provisions of H.R. 1295 would diminish consumer protections against predatory mortgage lending practices on both the federal and State level, opposition to this bill is recommended. (Please see Attachment C for bill details.)

Supporters of H.R. 1295 include the American Financial Services Association, the National Association of Mortgage Brokers, the Coalition for Fair and Affordable Lending, and Option One Mortgage Corporation. Opponents of H.R. 1295 include the Center for Responsible Lending, the National Community Capital Association, Consumers Union, the National Fair Housing Alliance, the National Counsel of La Raza, the American Federation of State, County and Municipal Employees, the National Association for the Advancement of Colored People, and the Consumer Federation of America.

CONCLUSION

If passed, AB 901 and H.R 1182 would provide San José residents with additional protections against predatory mortgage lending practices. However, the changes imposed to both federal and State law by H.R. 1295 would likely reduce the protections provided to the City's residents. (Please see Attachment D for a comparison of H.R. 1182 and H.R. 1295.)

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PUBLIC OUTREACH

On June 9, 2005, the Housing Advisory Commission voted 7-0 to support staff's recommendation on AB 901, and 6-1 to support staff's recommendations on H.R. 1182 and H.R. 1295.

COORDINATION

Preparation of this memorandum was coordinated with the Office of the City Attorney, the Director of Intergovernmental Relations, and the City's State and Federal lobbyists.

A handwritten signature in black ink, appearing to read 'Leslye Corsiglia', with a stylized flourish at the end.

LESLYE CORSIGLIA
Director of Housing

Attachments (4)

Attachment A: AB 901 – Amendment to California’s Covered Loan Law

AB 901 would make three significant amendments to California’s anti-predatory mortgage lending law:

- 1) **Increase the loan cap for covered loans:** If put into effect, this bill would raise the maximum loan amount covered under the law from \$250,000 to the Federal National Mortgage Association limit (currently \$359,650). According to data collected under the Home Mortgage Disclosure Act, in 2003, of the 184,759 mortgage loans originated in San José, 120,697, or 65% of the loans, were over the \$250,000 loan limit, and therefore not covered by the protections provided under the State’s anti-predatory lending law.
- 2) **Require annual activity reports from originators of covered loans:** This bill would require persons who originate eight or more covered loans in any 12-month period to file an annual activity report with its licensing agency.
- 3) **Require annual reports from county District Attorneys on their actions to fight real estate fraud:** Under current law, county board of supervisors may adopt a resolution to charge a two-dollar recording fee on real estate transactions to be used to fight real estate fraud. District Attorneys in counties that establish this Real Estate Prosecution Trust Fund, including Santa Clara County, must prepare an annual report for their board of supervisors detailing how the funds were used. AB 901 would require that these reports also be submitted to the State Legislature in order to provide them with a better understanding of the occurrences of real estate fraud in the State.

Supporters of the bill include the California Reinvestment Coalition, the Center for Responsible Lending, Consumers Union, and the cities of Los Angeles and Oakland. The supporters argue that, by expanding the protections of current law to include more loans, AB 901 would allow more Californians to protect their home equity rather than risking it to pay for unnecessarily high cost loans on unfavorable terms.

Organizations opposed to the bill include, the California Bankers Association, California Mortgage Association, and California Mortgage Bankers Association. The California Bankers Association opposes the increase in the covered loan limit because: (1) Expanding the number of loans subject to the covered loan law will discourage more lenders from the market and reduce competition; and (2) The purpose of the original covered loan law was to protect financially unsophisticated lower income borrowers who would not qualify for loans upwards of \$360,000.

Attachment B: H.R. 1182 – the Prohibit Predatory Lending Act

H.R. 1182 would amend the federal Truth in Lending Act (TILA) and the Home Ownership Equity Protection Act (HOEPA), which were enacted to protect consumers during credit transactions. Key provisions of H.R. 1182 would amend TILA and HOEPA as follows:

- 1) Expand the scope of the Act by covering purchase money loans and open-end loans;
- 2) Lower the points and fees threshold in the definition of “high-cost loans”, and include yield-spread premiums and prepayment penalties in the definition of points and fees;
- 3) Prohibit, for high-cost loans, lending without regard for the borrower’s ability to repay, encouraging a borrower to default, specified late fees, certain accelerations of debt, modification and deferral fees, mandatory arbitration, and balloon loans;
- 4) Place restrictions on financing points and fees on high-cost loans;
- 5) Mandate pre-loan counseling for high-cost loans;
- 6) Prohibit flipping and single premium credit insurance for all home loans;
- 7) Double civil financial penalties for certain violations; and
- 8) Specify that the provisions do not affect or supersede state laws.

Supporters of the bill include, Consumers Union, AFL-CIO, Center for Responsible Lending, National Fair Housing Alliance, the Consumer Federation of America, the National Community Reinvestment Coalition, the National Association for the Advancement of Colored People. Supporters claim that North Carolina’s anti-predatory mortgage lending law, on which H.R. 1182 is modeled, has proven effective at ending many abusive mortgage lending practices while allowing the subprime market to continue to thrive.

Opponents of the bill include Option One Mortgage, the Coalition for Fair and Affordable Lending, the Mortgage Bankers Association, the Appraisal Institute and the American Society of Appraisers, and the Bond Market Association. Opponents of the bill object to its allowance of a patchwork of state laws, and the inclusion of prepayment penalties and yield spread premiums in the points and fees trigger calculations.

Attachment C: H.R. 1295 – the Responsible Lending Act

H.R. 1295 would also amend TILA and HOEPA. Key provisions of the bill would:

- 1) Decrease the points and fees trigger for coverage under TILA, but remove some broker and lender compensation fees from the definition of “points and fees”;
- 2) Add home equity lines of credit and home purchase loans to the types of credit covered;
- 3) Reduce the time period that prepayment penalties may be charged on all home loans from 5 to 3 years, but exclude prepayment penalties from the definition of “points and fees”;
- 4) Amend the prohibition on balloon payments from high-cost loans with terms of less than 5 years, to high-cost loans with any term length, but add exceptions;
- 5) Remove the prohibition of negative amortization in high-cost loans to allow its occurrence during periods of temporary forbearance;
- 6) Allow creditors to finance up to 5 percent of the total loan amount on high-cost loans;
- 7) Provide exceptions to the “ability to repay” requirement for high-cost loans;
- 8) Prohibit, for high-cost loans only, single premium credit insurance and mandatory arbitration;
- 9) Replace, for high-cost loans, the one-year ban on loan flipping, with a two-year ban, unless the new loan provides a “reasonable tangible benefit to the consumer”;
- 10) Add new disclosure warnings explaining the difference between high-cost loans and prime loans, and the associated risks;
- 11) Lessen the due diligence requirements that a purchaser or assignee of a high-cost loan must undertake in order to remove themselves from liability;
- 12) Establish mortgage broker licensing standards, a national broker registry, and an Office of Housing Counseling, and create uniform national standards that would preempt state laws that seek to prevent mortgage lending abuses; and
- 13) Require creditors to provide consumers of high-cost loans information on the benefits of home ownership and credit counseling services, including the location of such services.

Supporters of H.R. 1295 include the American Financial Services Association, National Association of Mortgage Brokers, Coalition for Fair and Affordable Lending, and Option One Mortgage Corporation. Supporters of the bill claim that it will curb abusive lending practices, replace the variety of inconsistent state and local predatory mortgage lending laws with a uniform federal law, while preserving consumer’ access to affordable credit.

Opponents of the H.R. 1295 include the Center for Responsible Lending, National Community Capital Association, Consumers Union, National Fair Housing Alliance, National Counsel of La Raza, American Federation of State, County and Municipal Employees, National Association for the Advancement of Colored People, and the Consumer Federation of America. Bill opponents claim that rather than curbing predatory mortgage lending practices, H.R. 1295 could actually increase these practices by dismantling current prohibitions in federal law, and preempting effective state laws with a weak federal standard.

Attachment D: Comparison of H.R. 1182 and H.R. 1295

Comparison of Some Provisions of the Federal Anti-Predatory Lending Bills			
<i>Provision</i>	<i>Current Law</i>	<i>H.R. 1182</i>	<i>H.R. 1295</i>
Points and fees trigger for "high-cost" loan protections	Triggered when the total points and fees exceed the greater of 8% of the loan amount or \$400; definition of "points and fees" include all items included in the finance charge except interest or the time-price differential; all compensation paid to mortgage brokers, fees or premiums for title examination, or title insurance; fees for preparation of loan-related documents; fees for notarizing deeds and other documents; appraisal fees related to any pest infestation or flood hazard inspections; and credit reports -except where the charges are reasonable, the creditor receives no direct or indirect compensation, or the charge is paid to a third party unaffiliated with the creditor	Triggered when points and fees exceed 5% of the loan amount; includes under the definition of "points and fees" - prepayment penalties, yield spread premiums and other indirect broker compensation, premiums or other charges for single premium credit insurance, excludes up to 2 bona fide discount points for loans that are close to prime rate	Triggered when points and fees exceed 5% of the loan amount; in most cases, does not include under the definition of "points and fees" charges paid to affiliates of the lender, yield-spread premiums and other indirect compensation received by mortgage brokers, prepayment penalties, and excludes up to 2 "bona fide" discount points under the trigger calculations
Prepayment Penalties	Prohibits prepayment penalties in high cost loans except when the loan's monthly payments are less than 50% of the consumer's monthly gross income and the income and expenses of the consumer are verified; the penalty applies only to a prepayment made from funding other than a refinancing by the original creditor under the mortgage or an affiliate of the creditor; and the penalty applies within the first 5 years of the loan	Includes prepayment penalties in points and fees; prepayment penalties in excess of 2% of the loan amount or longer than 2 ½ years trigger the high-cost loan protections; prohibits prepayment penalties on high-cost loans with amounts less than the Federal Housing Authority mortgage limits.	Does not include prepayment penalties in points and fees, unless the lender is refinancing its own loan; prohibits prepayment penalties on all loans after 3 years; limits the maximum prepayment penalty to 6 months interest on 80% of the outstanding loan balance
Loan flipping	Prohibits the refinancing of mortgage loans that are associated with abusive lending practices, or otherwise not in the interest of the borrower	On all home loans, allows flipping only if there is a reasonable tangible net benefit to the borrower	Requires a reasonable tangible benefit to the borrower on high-cost loans only; provides a series of safe harbors or exemptions to the "reasonable tangible benefit" requirement; the requirement only applies if the refinance is within two years of the original loan
Mandatory Arbitration	Not addressed	Bans mandatory arbitration on all home loans	Prohibits mandatory arbitration clauses in high cost loans only. Allows arbitration if the consumer "voluntarily" agrees to the arbitration.

Attachment D: Comparison of H.R. 1182 and H.R. 1295 (continued)

Comparison of Some Provisions of the Federal Anti-Predatory Lending Bills			
<i>Provision</i>	<i>Current Law</i>	<i>H.R. 1182</i>	<i>H.R. 1295</i>
Limits on Liability for Secondary Market	Requires any person who purchases or is otherwise assigned a high-cost mortgage to be subject to all claims that the consumer could assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates, by a preponderance of evidence, that a reasonable person exercising ordinary due diligence, could not determine, that the mortgage was a high-cost mortgage	Maintains existing protections under HOEPA	Applies assignee liability when the purchaser knew or should have know that violations had occurred in the origination of loans with a number of exceptions
Financing Points and fees	Not addressed	Prohibits financing any fees on a high-cost loan	On high-cost loans, allows the financing of points and fees up to 5% of the loan amount if the mortgage is over \$40,000, and 6% of the loan amount \$40,000 or less
Pre-Loan Counseling	No pre-loan counseling requirement	Requires counseling prior to obtaining a high-cost loan	Requires that lenders making a high-cost loan provide the borrower a written statement recommending counseling and a list of HUD – or state-approved counselors
Balloon Payments	Prohibits balloon payments on high-cost loans with a term of less than 5 years	Prohibits balloon payments on high-cost mortgages; does not apply to payment schedules adjusted for the seasonal or irregular income of the consumer	Prohibits balloon payments on high-cost loans; does not apply to payment schedules adjusted for the seasonal or irregular income of the consumer or if the loan is a “bridge loan”; provides additional exceptions if the balloon payment is disclosed to the consumer
Single Premium Credit Insurance	Not addressed	Prohibits single premium credit insurance for all home loans	Prohibits single premium credit insurance for high-cost loans only
Preemption/Responsibility	Provisions do not annul, alter, or affect the applicability of the laws of any state, nor exempt any persons from complying with any state laws, except where there is an inconsistency between the provisions and the state law	Establishes a national standard for mortgage lending while preserving the ability of states to implement additional protections for borrowers and set standards for lenders	Creates uniform national standards that preempt state laws, establishes national mortgage broker licensing standards, a national broker registry, and an Office of Housing Counseling