Consumers Union
Nonprofit Publisher of Consumer Reports

Assembly Bill 1830 (Lieu) Fact Sheet
California Mortgage Lending Reform

Assembly Bill 1830, authored by Assembly member Ted Lieu, provides much needed protections to address some of the serious failures in the higher priced mortgage lending market, many of which are responsible for today's mortgage crisis. The bill, which received broad support from consumer organizations and labor, was approved by the California Legislature on August 31, 2008 and now awaits a signature from the Governor to enact the measure into law.

The Need: An unprecedented number of California homeowners have lost or are predicted to lose their homes in foreclosure as a result of mortgages which were originated without the protections AB 1830 would put in place. According to Realtytrac.com, California is the top foreclosure state in the nation. In 2008 alone, there have been 337,861 new foreclosure filings with 188,128 homes sold in foreclosure.[1] While Consumers Union believes more needs to be done to rein in abusive mortgage lending, AB 1830 is a significant step in the right direction to protect the public from the dire economic and social consequences of another mortgage meltdown.

The Protections: AB 1830 enacts duties, requirements and prohibitions applicable to mortgage brokers engaged in brokering "higher priced mortgage loans," as defined by recently enacted Federal mortgage lending rules.[2] According to the Federal Reserve, "the rule's definition of "higher-priced mortgage loans" will capture virtually all loans in the subprime market, but generally exclude loans in the prime market."[3]

AB 1830 protects Californians and our communities in several meaningful ways. Specifically, the bill:

- **Holds brokers to a fiduciary duty to put a borrower's interest first, regardless of whether the broker is acting as an agent for any other party in connection with the loan transaction.** Under AB 1830, violations of this duty will be considered a violation of the mortgage broker's licensing law. This helps address the serious problem of brokers acting in their own self-interest, rather than the borrowers', resulting in many borrowers being sold inappropriate loans with a higher risk of failure.
- **Prohibits brokers from steering borrowers to more costly or disadvantageous loans ensuring that borrowers get the best loan for which they qualify**, not one that is more expensive because it returns a higher commission to the broker. AB 1830 specifically prohibits a mortgage broker from steering, counseling or directing a borrower to accept a loan at a higher cost than that which a borrower could qualify based upon the loans offered by the person with whom the broker regularly does business.

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1 See http://www.realtytrac.com/states/California.html

2 A loan is "higher-priced" if it is a consumer-purpose, closed-end loan secured by a consumer's principal dwelling, with an APR that exceeds the average prime offer rates for a comparable transaction published by the Federal Reserve Board by at least 1.5% for first lien loans and 3.5% for subordinate lien loans. This includes home purchase loans, refinancings, and home equity loans, but excludes HELOCs, reverse mortgages, construction loans, and bridge loans. See http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20080714a1.pdf at p. 3. This definition is more inclusive than the category of loans covered by California's existing "covered loan law," enacted in 2001, which covers only a small portion of all subprime mortgage loans. See http://info.sen.ca.gov/pub/01-02/bill/asm/ab_0451-0500/ab_489_bill_20011011_chaptered.pdf

3 See http://www.federalreserve.gov/newsevents/press/bcreg/20080714a.htm

- **Eliminates compensation incentives that can lead to steering.** AB 1830 prohibits paying compensation to a broker for arranging a higher priced loan with a **prepayment penalty** than is more than what would have been received for arranging a higher priced loan without a prepayment penalty. It also prohibits a broker from receiving higher compensation for placing a borrower into a loan that contains a **yield spread premium**, regardless of whether the broker is paid by the borrower, lender, or a third party.
- **Bans higher priced negative amortization loans,** except for the purposes of a loan modification.
- **Places caps on the amount of pre-payment penalties that can be charged to the borrower for paying off a loan early.** Preserving the ability of borrowers to refinance out of abusive loans is a key protection. AB 1830 builds upon the recently enacted Federal rules limiting the duration of the prepayment penalties that can be applied to higher cost loans to two years. To enhance this protection, AB 1830 places a cap on the amount that can be charged during this limited duration. Under AB 1830, a borrower cannot be charged more than 2% of the principle balance prepaid during the first 12 months, or 1% of the principle balance of the loan during the second year.
- **Prohibits brokers from making false or misleading statements** regarding higher priced loans.
- **Provides the appropriate licensing agency the authority to bring an enforcement action** against its licensee engaged in brokering higher cost loans with a civil penalty of $10,000 per violation.
- **Provides for a private right of action by borrowers** against offending mortgage brokers and provides for the **recovery of attorney's fees when the borrower prevails.** Deterring future abuses through powerful mechanisms to enforce the law, including the recovery of attorneys' fees for borrowers who prevail, is necessary to protect against mortgage lending abuses.
- **The bill's provisions would apply to "higher-priced mortgage loans" originated on or after July 1, 2009.**

What's not covered: As a result of the legislative process, AB 1830 has yielded several helpful protections for consumers, but leaves other critical issues not fully addressed. Rather than banning the payment of yield spread premiums to brokers and prepayment penalty assessments on borrowers, a position which Consumers Union supports, AB 1830 allows the practices but limits their application. AB 1830 does not address how to protect borrowers when loans are negotiated in a language other than English but the loan documents are presented only in English. AB 1830 does not hold assignees and investors liable for financing illegal loans. These are concerns that will have to be addressed in subsequent legislation.

On balance, AB 1830 represents a significant advancement towards promoting common-sense lending practices that benefit the public interest.

View the bill text at http://info.sen.ca.gov/pub/07-08/bill/asm/ab_1801-1850/ab_1830_bill_20080822_amended_sen_v92.pdf