

# **MORTGAGE LENDING WORK GROUP**

May 8, 2008  
10:00 a.m. – 12:00 noon  
Conference Room 260, Labor & Industries Building  
350 Winter Street NE, Salem, Oregon

## **Meeting Summary**

Lou Savage, Senior Policy Advisor, Department of Consumer and Business Services (DCBS), and work group facilitator called the meeting to order at 10:08 a.m.

New work group participants gave brief introductions.

Mr. Savage explained during the last work group on April 3 a set of principles were established and agreed upon that will be posted at each meeting. He said as the group discusses the issues that were identified, the goal will be to ensure they align with the principles.

Mr. Savage said the first issue the work group discussed was ‘benefits to the borrower if a loan is refinanced.’ A subcommittee was formed and has met twice to provide clarity to the issue and recommendations to the group. The subcommittee decided to bring the ideas discussed to the group to make sure they are on the right track.

Mr. Savage said if members do not get a chance to discuss the issues during this meeting, they can email comments and suggestions to the work group assistant, Kristen Miller.

### ***Subcommittee Report – Benefits to the Borrower if a Loan is Refinanced***

Phil Goldsmith, attorney with the Law Office of Phil Goldsmith, presented the ‘benefits to the borrower’ subcommittee report. Mr. Savage defined the issues for the subcommittee on how ‘benefits to the borrower if a loan is refinanced’ should be addressed, whether legislation is appropriate and if it is appropriate what should be the elements of the legislation.

The subcommittee is composed of three representatives of the industry; three consumer advocates; Representative Bonamici; and Kirsten Anderson and Lou Savage representing DCBS. Mr. Goldsmith said it was noteworthy after four hours of work that the subcommittee is in general agreement. The subcommittee hopes that the group will agree that they are headed in the right direction and allow them to continue and probe deeper down this path to come up with more specific and concrete suggestions.

Mr. Goldsmith said with the assistance of DCBS, the subcommittee received all 18 states’ laws that have adopted tangible net benefit statutes, regulations, and forms; some of which are mandated by states and some developed in the industry to comply with the laws. He said generally the other state laws say there has to be reasonable net tangible benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loan, the cost of the new loan, and the borrower’s circumstances. The sense of the subcommittee is that

the refinancing loans that are made should provide a benefit to the borrower. A number of states' laws say this only applies if there is a certain duration between the prior loan and the new refinancing loan. Mr. Goldsmith said there was agreement in the subcommittee if there is a law that requires a benefit it should not matter how far back the prior loan was, if it is not beneficial that would be a problem. He said there is a sense that the initial job to determine a benefit between the relationship of the new loan and the old loan is the loan originators.

Mr. Goldsmith said the subcommittee focused on the a model form for tangible net benefits for the loan originator to use when refinancing a loan. He said there are those situations where the borrower believes there is a benefit even though it appears to the loan originator there is not. The form reflects this decision on the part of the borrower. He also said there are two principles with general agreement among subcommittee members:

1. There must be a mechanism to translate the broad concept that can be used in individual loan transactions by people who are originating loans. A model form is important.
2. It is important to have a way to distinguish between predatory loans and loans made in good faith by honest and ethical business people. There should not be a fear of consequences for making a loan.

Mr. Goldsmith said the subcommittee would like to look at regulations in other states to learn what has and has not worked and what to avoid. He said subcommittee member Linda MacCoy, Mortgage You, Inc Academy of Lending & Consumer Finance, suggested that when the form is finalized some of the loan originators could volunteer to test the form to ensure it works as anticipated.

Eric Wiley, Pacific Residential Mortgage, LLC, presented the Tangible Net Benefit form to the work group. He said this form would be part of rulemaking and not part of legislation. Mr. Wiley explained the form is set up as an affirmative line by line process for the borrower to clearly see the difference between the borrower's current loan and the benefit of the refinance. The second section of the form allows for borrowers to confirm a benefit or no benefit of the refinance. Also, there are several lines on the form which allow the borrower to explain in writing why they wish to take the loan if there is no benefit.

Mr. Savage said the form can be clearer for a borrower and needs to be edited for plain language. He said the subcommittee would like some feedback from the work group on whether they are headed in the right direction.

Participants questioned and discussed the subcommittee's recommendations including the following:

- What is the loan originator certifying?
  - The purpose / definition of tangible net benefit (TNB)
- What are the consequences of signing the form? What are the enforcement mechanisms? What do other states do?
- Each borrower is weighed differently depending on the circumstances of the borrower.
- Acknowledgement versus Certification

- Should be more of a notice of acknowledgement instead of certification (Industry).
- Recommended adding to TNB form cash in (how much going to put down) and cash out (how much cash out of the loan) and the principle amount of the debt the borrower owes.
- Financial education – what information/education does the borrower need in order to learn how to qualify to refinance in a period of time (if they do not qualify initially)?

Mr. Goldsmith said the specifics of the form need to be massaged in the subcommittee before bringing it back to the work group. Also, the subcommittee charged the department to continue to research current information regarding tangible net benefits in other states.

### ***Presentation – Hypothetical Loan Application by Steve Emory***

Steve Emory with Pacific Sunset Mortgage, Inc. presented a hypothetical loan application. Mr. Emory went through the loan application step-by-step to show the work group what this process entails.

Mr. Savage said Mr. Emory was asked to present this so everyone would be on the same page and understand the analysis behind each loan application.

Comments regarding the loan application process include:

- Representative Schaufler mentioned the loan application is complicated and hard for anyone to understand.
- Comparison shopping like Mr. Emory presented rarely happens.

Representative Bonamici requested a change to the previous meeting summary. She clarified she did not say she was in favor of Washington's mortgage lending legislation; that she wished the work group would look into Washington's mortgage lending legislation.

Mr. Savage said the department clustered issues together from the issues list that was brainstormed in the previous meeting to discuss and focus the issues in the work group and form subcommittees.

### ***Issue Cluster #1: Obligations of Licensees to Borrowers & Best Loan for Borrower's Circumstances***

Participants created the following list to focus on for this issue cluster:

- Place borrower in best situation
  - Short term & long term
- Fair dealing / good faith
- Best effort to explain key features and terms of a loan
- Advantages / disadvantages associated with multiple loan options is the obligation of the licensee

- Ethics – steering borrowers to a loan that makes a higher fee for the loan originator/licensee (nothing currently in the law to prevent this)
- Advice – “this is the best deal for you”
- Strictures, consequences, enforcement mechanisms – Challenge: can standards be set and then separately figure out how to make the standards stick

Representative Bonamici raised a question for work group participants that work with Washington. What is the gap between the discussion in this group regarding good faith and fair dealing and the Washington legislation regarding the fiduciary obligation?

Various attendees from the lending industry explained that Washington’s legislation has caused them to discontinue business there. Not only the fiduciary obligation has caused this, but also the Class B Felony and the civic forfeiture of personal assets if sued. Additionally, most of the fiduciary obligation legislation in other states is directed at mortgage brokers and not banks, credit unions, etc. This is essentially wiping out the mortgage brokers. In metropolitan areas, this reduces competition, which can lead to higher costs and in the remote areas this reduces opportunity for credit.

Mr. Savage said he assumes some of the consumer advocates believe that the fiduciary concept is worth continuing to look at.

Cory Streisinger, Director, DCBS, said the work group may want to focus on the specific obligations with or without a label that are most important. Mr. Savage agreed this should specifically be addressed and worked out in a subcommittee.

Representative Bonamici would like to know the intent of Washington’s legislation. She believes the work group can reach similar intent without the same method and consequences.

Consumer advocate group members said these are not standard industry practices and it would be interesting to hear consumer advocate’s perspectives on the legislation passed in Washington.

Ms. Streisinger said it is almost impossible to discuss the obligations without discussing the enforcement mechanisms/consequences. It might be useful to work on both of these issues in a subcommittee.

Mr. Savage asked for volunteers to be on the “obligations of the licensee to the borrower and best loan for borrower’s circumstances” subcommittee. Several work group participants volunteered for the subcommittee: Todd Williams, Angela Martin, Laura Etherton, Dale Henson, Jim Markee, Rep. Bonamici, and Sybil Hebb. Mr. Savage asked if anyone else was interested to please email the committee assistant.

Mr. Savage thanked the work group participants for attending. The next work group meeting will be May 29, 2008, at 1:30 p.m. to 3:30 p.m., at the Labor & Industries Building, Conference Room 260.