

MORTGAGE LENDING WORK GROUP

May 29, 2008

1:30 p.m. – 3:30 p.m.

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 1:37 p.m.

Mr. Savage reminded participants whatever direction the group is moving should be consistent with the principles that were set by the group during the initial meeting.

Subcommittee #1 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. He said the new reasonable tangible benefit form was not the main focus of the discussion. Mr. Goldsmith requested for work group members that see other issues that should be included in the subcommittee discussion to bring them forward.

The majority of the meeting, members discussed questions and issues that were raised in the last work group meeting. Also, they discussed what statutory language should include.

Mr. Goldsmith reported DCBS staff’s research for other states’ experiences with tangible net benefit (TNB) forms. He said they reported other states’ staff generally believed their requirements and forms were not creating an undue burden on lenders operating in their state. The department would have expected to hear more from these other states if their TNB provisions were a hardship on the industry.

The subcommittee discussed the following:

- Whether a requirement could be made more specific?
- Senator Bonamici pointed out a regulation in New Mexico, which says because of the fact specific nature of the reasonable tangible net benefit inquiry, lenders are not expected to create a single one size fit all test for every loan application.
- Should the form allow the originator to say no, there is not a benefit in this loan and allow the borrower to say yes they do think there is a benefit and here is why? The majority of the subcommittee agree the form should allow these options.
- What does certify mean? The larger question is what is the industry committing themselves to if they make that statement.
- All were in agreement that a major portion of the structure of this form tells people objective facts about their loan and forces some disclosures. This form and disclosures will enable people to make choices to protect themselves.
- Discussing the form is a great idea when sitting across from the client one-on-one.

- What do you do when loan originates through phone, Internet, fax, etc.?
- What if there are two loans made on the refinance on a single loan?

The work group posed questions and discussed the following pertaining to the reasonable tangible benefit form:

- When should this form be used?
- If the loan originator says on the form they do not believe there is a reasonable tangible benefit to the borrower, then it is not likely that any wholesale lenders will fund the loan. This could be a consequence of having that particular part on the form.
- Representative Mike Schaufler asked for clarification on the meeting summary from May 8th regarding the form - will it be part of rulemaking or statute? Cory Streisinger, Director, DCBC, responded that the department would need to determine if it is necessary to implement this in the statutes or through rulemaking.
- Has the subcommittee found out how many states have placed similar forms into statute? Mr. Goldsmith recalled from research provided to the subcommittee that none of the forms were placed into statute.
- Ms. Streisinger said the idea is to have in the statute what the expectations are, but the unintended consequences issue is something to be concerned about. There are likely things we are not thinking about and locking ourselves in where it would take two years to change anything would not serve in anyone's interest.
- At what point does a loan originator say there is enough of a benefit based on the way the form is set up currently? How much has to be a benefit in order for the originator to say it has a benefit?
- A solution was offered for the form instead of a check the box option, which might be better in protecting originators, to have a narrative section to state why they believe there is or is not a benefit to the borrower.

Concerns were raised regarding the industry's anxiety in using the proposed reasonable tangible benefit form.

Some members of the mortgage lending industry disliked the role of the loan originator's use of the form to recommend or not recommend a loan to a borrower based on reasonable tangible benefit. They prefer the form to help borrowers make educated decisions and not allow sales persons to make determinations.

Mr. Savage explained the form is intended for the loan originator to go over with the borrower and it would be in the loan file to prove that the originator had gone over the reasonable tangible benefit with the borrower in a refinance. He said this is not a certification or discussing a net tangible benefit any longer. The point is should there be documentation in the file that there was a discussion with the borrower about whether the loan is a benefit? He said if the industry is not in agreement with this concept, then it would be beneficial to know that now instead of spending more hours working in the subcommittee.

Todd Williams, Oregon Association of Mortgage Professionals (OAMP), was concerned that the form presented legal liability and he said the OAMP's position is they do not want the loan officer making the determination on whether a loan is a benefit to the borrower or not.

Mr. Savage said the subcommittee will be meeting to discuss the issues brought up by work group members.

***Subcommittee #2 Report – Obligations of licensees to borrowers /
Best loan for borrower's circumstances***

David Tatman, Administrator, Division of Finance and Corporate Securities, DCBS, presented the second subcommittee report. The subcommittee looked at the responsibility of a loan officer or mortgage broker or banker to a borrower and some of the discussion had to do with best offer. Best offer meaning do they have the obligation to tell the borrower the best offer loan available to them.

Some general concepts discussed at the subcommittee meetings were:

- Focusing on residential purchases and owner occupied.
- Would this include all loans or just subprime loan? General consensus with the subcommittee that every loan should have the relationship situation so the borrower is put in the best financial situation they qualify for.
- Looked at what qualifies a person, such as a credit score, income, assets, etc., and what kind of information is needed to make to determine what is the best potential loan for a person.
- Responsibilities of a relationship should be, as seen through other states, the act of good faith and fair dealing. General agreement that there should be an expectation that licensees and loan originators would engage in conduct of good faith and fair dealing.
- What is the responsibility of the loan originator to find the best offer? Should the loan originator have to go out and search for the best loan in which the borrower qualifies for? It was agreed this was not practical – the originator is obligated to look within their realm of access.
- Should the loan officer have to certify or affirm this is the best offer? The group generally agreed with the question is the borrower in a position to make an informed decision? Have they been provided enough information to make a determination that this is the best offer for their circumstances?
- Certain conducts that should be prohibited:
 - Steering certain products that benefit the licensee and doesn't benefit the borrower.
 - Looked at a formula where closing a loan by a certain amount, above what had been previously disclosed, without giving information within a certain number of days before the loan closed would not be fair dealing or good faith.
- Disclosure of fee, yield spread premium, what has to be disclosed, what does not, etc.

- Enforcement – what will be acceptable? General sense of subcommittee maybe have another form incorporated into the benefit to borrower form?

Representative Schaufler was concerned with adding another form to an already overwhelming pile of loan documents. He explained he has received numerous complaints from constituents that have trouble understanding the agreement packages. A vast majority of home mortgage borrowers are never going to understand the complexities of the loan. He said even if they understand the tangible benefit, how are people ever to sign truthfully that they understand the loan documents.

Kirsten Anderson, Mortgage Lending Program Manager, Division of Finance & Corporate Securities, DCBS, said at the state level there is only one form that is specific to Oregon and that is the lock/float. All the other forms are required by federal legislation, such as RESPA, TILA, and ECOA. Mr. Savage asked if the lock/float could be incorporated into something new. Ms. Anderson said it has not been considered.

Steve Emory, Pacific Residential Mortgage, provided federal forms to the work group to consider. These include the Good Faith Estimate, a comparison document, and a basic fact mortgage loan document from Washington. He said the Good Faith Estimate revision is in response to the federal reserve rules for truth and lending.

Angela Martin, Our Oregon, agreed with Representative Schaufler and said her recommendation would be a fiduciary duty that does not require a disclosure. It is the responsibility of the loan originator to make sure they are offering a loan that fits the borrower's circumstances. From the advocate's perspective, less forms are better.

Mr. Savage asked work group members how they deal with loans over the phone, fax, and Internet. Assuming there is some documentation, wanted to know how these issues are gone over with the borrower.

Mr. Williams said loan originators are federally bound within three business days to provide the loan documents to the borrower. He said email and fax confirmations, post marks, and third party verification are used to ensure the borrower receives the documents. Mr. Emory said there is no Federal or State requirement to keep proof you have met this three day requirement when mailing out loan packages. He said it may be best business practice, but it is not a federal or state requirement. Ms. Anderson pointed out there is a difference between the legal requirement and proving that you have complied with the legal requirement.

There was discussion regarding the Wallstreet Journal article from December of 2007.

Mr. Emory said the more forms created and more things to do will make it easier for unethical mortgage people to rip borrowers off.

Mr. Savage said assuming there is general agreement in terms of the regulatory role of the department, how would the department determine whether in fact people were behaving themselves? Some work group members suggested using one form that can be used for all loans. Mr. Savage said that the subcommittee will be meeting to discuss the issues brought up by work group members.

General Discussion on Issue Cluster #3 – Clear disclosure of all fees, terms and costs / Compensation, fees, terms / Use of prepayment penalties

Mr. Savage opened up discussion asking the work group what is disclosed now and how is it disclosed?

The following are disclosed now:

- ARM Disclosures
- Good Faith Estimate
- Truth and Lending Disclosure

Ms. Streisinger said there are disclosures made at the three days after application that are estimates and best practice, but it is not required to update the disclosures on an ongoing basis as terms change. Mr. Williams added there is federal requirement to provide a new one at closing.

Ms. Streisinger clarified that the borrower never gets solid nailed down terms and costs until they are signing. She asked at what point would it be feasible to get actual nailed down terms, costs, and fees? Paul Cosgrove, Oregon Financial Services Association, said all of the costs of closing don't happen until closing.

The work group discussed the following:

- Pro-rates change on a daily basis. Loan terms and interest rates, escrow and third party fees, lenders fees, and loan terms under federal statute require disclosure at close of settlement.
- The loan terms can be set pretty early in comparison to the end of the transaction.
- The proposed rules have very specific requirements as to how much variance there can be in the new forms. Observing the proposed federal rules, the work group can have some discussion on something that can be used at the state level.

Ms. Streisinger said disclosures serve a couple of purposes, one is so the borrower knows what they are buying and second is for comparison shopping purposes. Closing or even three days before closing is too late for comparison shopping. She asked what can be moved reasonably early so that educated borrower can make high quality decisions.

Mr. Williams said the loan summary document or revised lock/float agreement provided as a shopping document in conjunction with the good faith estimate would be a good tool to give the borrower to make the high quality decisions.

The work group discussed the following regarding prepayment penalties:

- Duration
- Amount
- Loan type
- Fair compensation for lender
- Looking closely at the federal requirements for prepayment penalties; if there are significant revisions to the TILA disclosures then Oregon will need to seriously think about repealing or matching up our own.
- Look at whether there is a distinction between subprime loans and prime loans with prepayment penalties.

Some concerns were raised, as an all encompassing concept, that any forms/documents that come out of the work group should be available in other languages. Participants asked if the federal forms are available in multiple languages. The federal forms are available in other languages, but it is not a requirement that loan originators use them.

A consumer advocate said that most deals are negotiated orally in the clients native language. The first subcommittee discussed translators could be certified to avoid misinterpretation or a bad deal for the borrower.

Representative Schaufler clarified that if there are changes made to whether there is a prepayment penalty or not in the long run it could actually cost the homeowner more money. He said he is confident the federal government will do something right.

There was a request to limit the number of subcommittees and do more meetings as a work group. In addition, the whole work group receiving through email, all the materials emailed out to all the subcommittees.

Mr. Savage said the third issue cluster will be added to the second subcommittee issues to discuss. Anyone wishing to join the subcommittees, please contact the work group assistant, Kristen Miller. Subcommittee meetings will be scheduled in the next week.

The next work group meeting will take place on June 23, 2008, at 10:00 a.m.

The meeting adjourned at 3:27 p.m.