

Mortgage Lending Work Group
Good Faith & Fair Dealing in Mortgage Lending Transactions
June 20, 2008

--Discussion Draft --

Homebuyers need information and guidance to make an informed decision on a mortgage loan. Mortgage lenders play a fundamental role in ensuring that borrowers have the right tools they need to make informed financial decisions. The Mortgage Lending Work Group has reached conceptual agreement to set minimum standards of conduct for mortgage lenders working with borrowers and to help them make better decisions.

The subcommittee met twice to introduce and consider options for further discussion.

Items discussed without any specific agreement:

1. Whether to require all parties in a mortgage transaction to use principles of “good faith and fair dealing” in all communications and transactions – standard could be to look at overall fair treatment for the person for whom sales efforts are directed
2. Possible conduct requirements in connection with a mortgage transaction, such as
 - a. Recommending all types of loans for which the borrower may qualify, taking into consideration the borrower’s information and needs
 - b. Telling all borrowers whether she or he would be eligible for a fixed-rate product
 - c. Making reasonable efforts to secure a mortgage loan from lenders with whom the party regularly does business with rates, charges and terms that are advantageous to the borrower [i.e., Ohio’s approach]
 - d. Calculating all loan estimates to close on the same day of the month with consistent terminology to ensure easier and accurate comparisons
 - e. Articulating the purpose of a prepayment penalty clause in the loan contract
 - f. Disclosing all front-end and back-end compensation to broker at settlement, including disclosing the actual dollar amount of yield spread premiums as part of the broker’s compensation rather than a ‘payment outside closing’ (consistent with RESPA proposed changes and other states laws addressing topic)ⁱ
 - g. Allowing only small (up to 10%) deviations between the final federal Good Faith Estimate (GFE) and costs of loan at settlement, consistent with proposed RESPA changesⁱⁱ
3. The subcommittee discussed whether certain prepayment penalties should be in a mortgage transaction. Options include:
 - a. Prepayment penalty clauses in effect longer than five years

Mortgage Lending Work Group
Good Faith & Fair Dealing in Mortgage Lending Transactions
June 20, 2008

- b. Prepayment penalty clauses that remain in force sixty days before a possible interest rate reset
 - c. Prepayment penalties that restrict refinancing to the lender of the first loan (i.e., loan ‘flipping’)ⁱⁱⁱ
4. How to enforce violations of standards of conduct, including–
- a. Giving DCBS the authority to take license action for single, willful violations
 - b. Repeated violations over any span of time might be considered a pattern or practice, which could lead to license suspension/revocation and civil penalties

Items not yet discussed:

- 5. Whether to make a record of the transaction on an Oregon-specific “supplemental purchase” form to accompany and augment the federal GFE on new mortgage loans
- 6. Whether single violations of good faith and fair dealing regulations would subject a party to civil penalty, license suspension/revocation, and/or cease-and-desist orders
- 7. Whether prohibiting the recommendation of loans that – when at their fully amortized rate – would be beyond the borrower’s financial capacity to repay should be a topic for another subcommittee

ⁱ 73 Fed. Reg. 14042 (2008); S.C. Code Ann. § 37-23-45; 765 ILCS 77/72; [Wash. SHB 2770 (2008)]

ⁱⁱ 73 Fed. Reg. 14038 (2008)

ⁱⁱⁱ 73 Fed. Reg. 1694 (2008)