

Mortgage Lending Work Group
Good Faith & Fair Dealing in Mortgage Lending Transactions
July 17, 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 according to standards of good faith and fair dealing.

The subcommittee has discussed the following for a legislative concept:

- All parties in a mortgage transaction must 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
- Possible conduct requirements in connection with a mortgage transaction, such as
 - Following reasonable and lawful instructions from borrowers
 - Acting with reasonable skill, care and diligence
 - Making reasonable efforts to secure a mortgage loan from lenders with whom the broker regularly does business with rates, charges and terms that are advantageous to the borrower
 - [RYB1]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
 - Re-disclosure with corrected Good Faith Estimate (GFE) within 3 business days of material change in the terms of the loan (such as closing cost increase of more than \$300, APR changes, etc.)
 - May not knowingly present written statements that are materially false or conceal material information regarding the mortgage loan
 - If borrower’s first language is not English, give borrower notice that informs them in their language to seek assistance.
- Certain aspects of prepayment penalties should be disallowed in a mortgage transaction, but not a total ban prepayment penalties. Options include:
 - Restricting prepayment penalty clauses in effect longer than five years
 - Restricting prepayment penalty clauses that remain in force sixty days before a possible interest rate reset
 - Restricting prepayment penalties that restrict refinancing to the lender of the first loan (i.e., loan ‘flipping’)ⁱⁱ
 - Requiring broker or banker to articulate the purpose of a prepayment penalty clause in the loan contract
 - Restricting the use of prepayment penalties in negative amortization loans to 1-2 years after loan closing

Mortgage Lending Work Group
Good Faith & Fair Dealing in Mortgage Lending Transactions
July 17, 2008

- Enforcement of violations of standards of conduct, including—
 - Giving DCBS the authority to take license action for single, willful violations
 - Repeated violations over any span of time might be considered a pattern or practice, which could lead to license suspension/revocation and civil penalties
 - Allow homeowners to bring suit against licensee. The degree of intentional conduct and/or knowledge by the licensee that would trigger liability is still under discussion. Options for award of attorney's fees could be to the plaintiff only, or the prevailing party.
 - Allow DCBS to get access to a licensee's surety bond for restitution, if no homeowners have made claims against the bond

Items not yet discussed:

- 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
- Whether prohibiting the recommendation of loans that – when at their fully amortized rate – would be beyond the borrower's financial capacity to repay.
- Defining "subprime mortgage" to determine duties for different types of loans

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. 1694 (2008)