

# **MORTGAGE LENDING WORK GROUP**

August 8, 2008

1:30 p.m. – 3:30 p.m.

Labor & Industries Building, Conf. Rm 260

350 Winter Street NE, Salem, Oregon

## **Meeting Summary**

Lou Savage, work group facilitator, called the meeting to order at 1:35 p.m.

New work group participants introduced themselves.

Mr. Savage said the department wanted work group members to be aware of the September 15<sup>th</sup> deadline for submission of legislative language to Legislative Counsel.

Mr. Savage introduced the comparison of mortgage lending work group discussion items with federal proposals chart. The chart is intended to help identify areas that were not covered by TILA, RESPA, and HR 3221. He identified the following gaps where federal actions do not cover items that were discussed in the work group:

- Ability to pay: non high cost / prime loans
- Reasonable tangible benefit comparison form (GFE)
- Good faith and fair dealing
- Prepayment penalties: non high cost / prime loans; negative amortization
- Notice for non-English speakers

Mr. Savage asked additional comments to be emailed within the next week.

Representative Mike Schaufler is concerned the work group is morphing into something other than it was initially set to do. He said first the concern was subprime and now the focus is prime loans.

Cory Streisinger, Director, Department of Consumer & Business Services (DCBS), said the kind of loans the work group recommendations would apply to was identified as an open issue.

Mr. Savage continued discussing identifying areas where the feds have not acted. The work group members added the following areas:

- There is nothing specific in the federal legislation that states good faith and fair dealing, however, there are many acts included that would push people towards good faith and fair dealing.
- HUD will address the ability to pay issue and do research.
- ORS Chapter 86 should be re-examined for mandatory reserves of taxes and insurance.

- Increasing the ability of consumers to recover, when they have a right to recover, which is either increasing the bond amount or a provision of liability.

Mr. Savage said the work group will go forward with looking into what is missing from federal proposals. There was some objection noted to further discussion outside federal proposals.

Sarah Hackett, Division of Finance & Corporate Securities (DFCS), DCBS, presented information from the mortgage lending work group discussion items with federal proposals chart regarding the ability to pay. Work group members made the following comments on this issue:

- From a policy perspective, extending the ability to pay to nontraditional, in particular payment option loans, which are most likely not covered by the definition of the high cost loan, negative amortization, or interest only loans. From a state perspective, Oregon has been a leader in offering payment option loans.
- Ms. Streisinger said to industry participants this will require a significant change or retool in business practice; when that retooling is done, what is the additional burden to extend it to other loans? How do the loans divvy up? Do people get in one line of business and not the other?
- Industries members said to the extent that Oregon has different rules than TILA certain lenders will refuse to offer Oregon specific loan products and will make a whole set of Oregon specific procedures.
- Participants expressed concern that some of the small lenders, like state charter banks that do modest mortgage lending, might get out of mortgage lending if the regulatory burden is too much and begins to extend into the products they make.
- 80/20 loans should be provided first loan protections. A lender may slit an initial or refinanced loan into a separate first and second loan for financial purposes. For consumer protection, these loans should be treated as primary loans.
- Senator Suzanne Bonamici asked regulators where the problems have been with the Home Equity Lines of Credit (HELOC). Have there been many complaints with HELOCs? Kirsten Anderson, DFCS, DCBS, said the problems have not moved to a level where you can tell if they stem from a HELOC vs. a first mortgage.

Ms. Anderson presented the reasonable tangible benefit comparison form from the mortgage lending work group discussion items with federal proposals chart. Work group members made the following comments on this issue:

- Mr. Savage said the subcommittee spent lots of time to look at this issue and requiring a form. He asked participants if the reasonable tangible benefit comparison form is useful?
- Some industry members are supporters of the form as protection for them, but are worried about how much change can be absorbed with all of the new federal proposals already making huge changes in the mortgage industry.
- A comment was made that the feds have changed more in 30 days than in 20 years.
- Senator Bomamici asked industry members what is their timing or are they starting to implement this now? How soon until they begin to implement the new regulations? Some industry members replied they do not implement before the effective date. The

trickle starts above and moves below. However, some of the banks that fund their own loans will begin to look at changes in advance of the effective date.

- There appeared to be no consensus among industry participants to implement a side-by-side comparison form for Oregon.

Rick Blackwell, DFCS, DCBS, presented good faith and fair dealing from the mortgage lending work group discussion items with federal proposals chart. Work group members made the following comments on this issue:

- A work group member pointed out HR 3221 does use 'fiduciary' when it comes to servicers in the processing of a loan modification or reduction in interest rates. This is certainly good faith and fair dealing.
- Ms. Anderson asked industry members when does the broker do a transaction with a consumer as a contract that would identify good faith and fair dealing?
- Ms. Streisinger asked when is the formation of the contract for brokerage services? Does it make sense to advance the formation of this contract earlier in the process? When is there a contractual relationship with the broker and the borrower? Industry members said statute requires this at application and once the executed loan application is received, the broker has entered a contractual relationship with the borrower.
- A participant mentioned looking at Washington's consumer protection act, which forbids all unfair deceptive practices in commerce.
- Ms. Streisinger pointed out Chapter 59 already has broad anti-fraud protection for consumers in connection with a mortgage lender or mortgage broker business.
- Ms. Anderson said there is a perception that consumers that would have qualified for prime rate mortgages are getting loans at a higher interest rate or paying higher fees than they otherwise would pay if they were aware of other opportunities. The requirement to act in good faith and fair dealing would ensure the borrower is told they can get certain products here and there. Most of the contracts say they do not have a duty to get the borrower the best loan. This allows for backing out of an obligation that already exists by having this clause in mortgage agreements.

Mr. Savage presented prepayment penalties from the mortgage lending work group discussion items with federal proposals chart. Work group members discussed the following on this issue:

- A participant mentioned most negative amortization loans are Adjustable Rate Mortgages (ARMS) by definition. Prepayment penalties on prime loans is only approximately 1% across the nation.
- Ms. Streisinger said right now the prepayment penalties only apply to higher priced mortgage loans. Are there any loans that should be included for which Oregon should limit prepayment penalties?
- The new rules require different levels of disclosures for different products.
- Representative Schaufler asked what is the definition of high priced loan? Work group members clarified the definition today is anything above 7.5 or 8 percent interest is considered a high priced loan.

- A participant pointed out Chapter 86, which includes state law requirements for disclosure of prepayment penalties. They said there are restrictions on prepayment penalties that are different in this chapter.

Mr. Savage asked participants whether providing notice to non-English speakers, which sets out some basic requirements, should be included since federal proposals did not address this? Work group members discussed the following on this issue:

- Mr. Savage said the argument is if a mortgage lender or broker does business with someone in another language, they should at least be given notice of basic rights in their own language.
- Representative Schaufler suggested the department have a notice of rights, privileges, obligations, and options to ensure people's rights are not being violated online in different languages for the lender to print out and hand to the borrower.
- Mr. Savage asked could the department require the lender to supply the notice in the borrower's own language?
- Participants said the market place is already working to help the large Spanish, Russian, and Polish communities.
- Senator Bonamici said one possible approach is to provide a notice, which would be simply a caution for the borrower that the loan documents will not be provided in another language and they would need to find an interpreter or another way to understand them. She mentioned Beaverton School District has documented 82 different languages spoken.
- Ms. Streisinger said if the requirement is the notice be provided in five different languages it is reasonable to expect the department to provide the notice to everyone.
- Consumer advocates mentioned it would be good to have the disclosures and even the reasonable tangible benefit form provided in another language if the entire loan negotiation is done in a language other than English.
- An industry member mentioned California had unintended consequences for providing different documents in different languages.
- Another industry participant said they agreed with consumer advocates, if a loan originator wants to do business with people in a foreign language there should be disclosures available in that language.
- There was concern that people will have information overload by providing more papers.

### **Enforcement of TILA & HR 3221 Loans on the State Level – Lou Savage**

Mr. Savage said the State of Oregon does not necessarily have the ability to enforcement the federal regulations. Ms. Streisinger said under state law currently the department has some ability to enforce some TILA issues but not all. David Tatman, Administrator, DFCS, DCBS, said the division needs to update the regulations currently so it makes sense to do a blanket fix and include enforcement of all the federal rules and regulations.

There was a request that the department provide a brief summary of where they have current enforcement ability and areas where they do not. Ms. Anderson verbally provided current enforcement ability to the work group.

### **Consumer Education Effort – Sarah Hackett**

Ms. Hackett, DFCS, DCBS, said the Credit Union Association of Oregon (CUAO) has a conceptual idea of a financial literacy summit. She said the department is very interested in making a commitment and meeting with others to improve financial literacy at the level of the state. May have a working group that the department can help put together.

Pam Leavitt, CUAO, mentioned that Financial Education and Civics Task Force report is due to the legislature and the summit meeting will be after this so they can report at this event. The task force will have good recommendations to the legislature. The concept is to have an initial meeting in November and December and then get a meeting date out for other participants to join.

### **HR 3221 Loan originator Licensing Title V – David Tatman**

Mr. Tatman said Title V of House Resolution 3221 is the implementation of the national mortgage lending data system and process for loan originators and loan officers. The database is built into a flowery concept. Nineteen states were going to do it voluntarily, but because of this bill it is now mandatory to be implemented within two years for biannual legislature. The states will have to adopt certain standards to comply with a licensing process for loan originators, mortgage lenders, consumer finance companies, and a separate one time registry process for banks and credit unions. He said this changes the landscape to a certain degree. It is good on one hand to get a national system for people to get licensed at multiple locations. On the other hand, because it is a national process it might require certain elements that Oregon did not see necessary to comply with. He said the department will have to comply with it.

Ms. Streisinger said there are two legislative concept placeholders and the department anticipated the possibility of the licensing database as one of them to conform to federal standards.

Ms. Leavitt asked if the department already has bills?

Ms. Streisinger said now that we have the federal rule what does the landscape look like? Are there still gaps? Is there certain state legislation we don't need? The department has not really formulated anything because we wished to have this discussion with the work group. With the timeline approaching, internally the department will need to get proposals together. Whatever is in the bill it will reflect work from the mortgage lending work group. She said it is time to put some proposals on the table and have a discussion about it at the next meeting.

Meeting adjourned at 3:28 p.m.