

MAINE BUREAU OF FINANCIAL INSTITUTIONS
MAINE BUREAU OF CONSUMER CREDIT PROTECTION
SUPERINTENDENT'S
NOTICE TO INTERESTED PARTIES

The Bureau of Financial Institutions and the Bureau of Consumer Credit Protection have proposed a rule delineating the concepts of "reasonable, tangible net benefit" and "ability to pay" as set forth in an Act to Protect Maine Homeowners from Predatory Lending. Notice of this proposed rule is being published by the Secretary of State. Interested parties may submit written comments to the Bureau of Financial Institutions, 36 State House Station, Augusta, Maine 04333-0036 or to the Bureau of Consumer Credit Protection, 35 State House Station, Augusta, Maine 04333-0035 by October 29, 2007. A public hearing for this proposed rule will be held at 10:00 a.m. on Wednesday, October 17, 2007 at the Gardiner Annex, 124 Northern Avenue, Gardiner, Maine in the Central Conference Room.

030 BUREAU OF CONSUMER CREDIT PROTECTION CHAPTER 550
029 BUREAU OF FINANCIAL INSTITUTIONS CHAPTER 144 (REG. 44)

MORTGAGE LENDING: GUIDELINES FOR DETERMINING REASONABLE,
TANGIBLE NET BENEFIT

SECTION 1: Summary

The Bureau of Consumer Credit Protection and the Bureau of Financial Institutions adopted this Chapter in 2007 to delineate the concepts of "reasonable, tangible net benefit" and "ability to pay" set forth in the "Act to Protect Maine Homeowners from Predatory Lending," Chapter 273 of the Public Laws of 2007.

In January 2008, the Maine Legislature passed "An Act Relating to Mortgage Lending and Credit Availability," which included an amendment to the 2007 enactment limiting applicability of the "ability to pay" provision to instances when a subprime mortgage loan is made. In June 2009, the Maine Legislature passed "An Act to Conform State Mortgage Laws with Federal Laws," which

repealed the term “subprime mortgage loan” and replaced it with a new term contained in federal law, “higher-priced mortgage loan.” The June 2009 enactment also replaced the “ability to pay” provision in Maine law with a new “ability to repay” provision modeled after federal law.

SECTION 2: Authority

1. Title 9-A M.R.S. § 6-104(1)(E) permits the Administrator to adopt, amend, and repeal rules to carry out the specific provisions of the Consumer Credit Code.

2. Title 9-B M.R.S.A. § 215 permits the Superintendent of the Bureau of Financial Institutions to implement rules relating to the supervision of financial institutions or their subsidiaries, or financial institution holding companies or their subsidiaries.

3. Pursuant to Title 9-A M.R.S. § 8-206-I(1)(D), the Administrator must adopt rules defining with reasonable specificity the requirements for compliance with the prohibition against flipping a residential mortgage loan, and such rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

SECTION 3: Purpose

This amendment updates the rule so that its provisions are consistent with Congressional and Legislative enactments postdating the rule’s original adoption.

SECTION 4: Definitions

For the purpose of this Chapter, the following terms have the following meanings:

1. “Administrator” has the same meaning as set forth in 9-A M.R.S. §§ 1-301(2);
2. “Borrower” has the same meaning as set forth in 9-A M.R.S. § 8-103(1-A)(F);
3. “Creditor” has the same meaning as set forth in 9-A M.R.S. § 8-103(1-A)(L) and includes a mortgage broker;
4. “Flipping a residential mortgage loan” has the same meaning as set forth in 9-A M.R.S. § 8-103(1-A)(P);
5. “Fully indexed rate” means the index rate prevailing at origination plus the margin* that will apply after the expiration of an introductory interest rate.

6. "Open-end credit" has the same meaning as set forth in 9-A M.R.S. § 1-301(26);
7. "Residential mortgage loan" has the same meaning as set forth in 9-A M.R.S. § 8-103 (1-A)(W);
8. "Higher-priced mortgage loan" has the same meaning as set forth in 9-A M.R.S. § 8-103(1-A)(Q-1);
9. "Points and fees" has the same meaning as set forth in 9-A M.R.S. § 8-103(1-A)(U);
10. "Mortgage broker" has the same meaning as set forth in 9-A M.R.S. 8-103(1-A) (S);
11. "Refinancing" has the same meaning as 12 C.F.R. 226.20(a) but, for purposes of the reasonable, tangible net benefit analysis, includes open-end credit transactions.

* DRAFTING NOTE: The "index rate" is a published interest rate to which the interest rate on an adjustable rate mortgage is tied. Some commonly used indices include the 1-Year Constant Maturity Treasury Rate (CMT); the 6-Month London Interbank Offered Rate (LIBOR); the 11th District Cost of Funds (COFI); and the Moving Treasury Average (MTA), a 12-Month moving average of the monthly average yields of U.S. Treasury securities adjusted to a constant maturity of one year. The margin is the number of percentage points a creditor adds to the index value to calculate the adjustable rate mortgage interest rate at each adjustment period.

SECTION 5: General Provisions

1. A creditor may not knowingly or intentionally engage in the act or practice of "flipping" a residential mortgage loan.
2. The factors to be considered by a creditor in determining if a borrower receives a reasonable, tangible net benefit must include, but are not limited to, the following:
 - A. Whether the borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees as disclosed on the HUD settlement statement, if one is used;
 - (1) If the new or old residential mortgage loan is not a conventional fixed rate residential mortgage loan, the borrower's monthly payment is the payment that fully amortizes the loan at the fully indexed rate. For open-end credit loans, the

new monthly payment must be based on the amount drawn by the borrower at the time the new residential mortgage loan is made;

(2) In determining whether or not the borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees as disclosed on the HUD settlement statement, if one is used, the time for recouping the costs and fees as disclosed in the HUD settlement statement, if one is used, shall be calculated over a period of three (3) years and this amount shall be added to the borrower's new monthly payment. The costs and fees as disclosed on the HUD settlement statement, if one is used, shall include all costs and fees, whether or not they are incorporated into and financed through the new residential mortgage loan(s);

B. Whether there is a change that is beneficial to the borrower in the amortization period of the new higher-priced mortgage loan;

C. Whether the borrower, or a person designated by the borrower, receives a reasonable amount of cash in excess of the costs and fees paid by the borrower as disclosed on the HUD settlement statement, if one is used, as part of the refinancing. The costs and fees paid by the borrower as disclosed on the HUD settlement statement, if one is used, shall include all costs and fees, whether or not they are incorporated into and financed through the new higher-priced mortgage loan;

D. Whether the borrower's rate of interest is reduced or, in the event that more than one loan is being refinanced, the weighted average of the rates of interest of the previous loans is reduced;

E. Whether there is a change from an adjustable to a fixed rate loan; and

F. Whether the refinancing is necessary to respond to a *bona fide* personal need, as reasonably determined by the borrower, or an order of a court of competent jurisdiction.

While all the factors set forth above must be considered, some may not show that the borrower is receiving a reasonable, tangible net benefit. There may be circumstances in which only one factor is sufficient to provide the borrower with a reasonable, tangible net benefit, considering all the circumstances.

3. A creditor shall provide the borrower with a written disclosure conspicuously stating the name, address, and telephone number of the creditor; briefly describing the new higher-priced mortgage loan; and identifying the factors considered by the creditor in determining whether the borrower is receiving a reasonable, tangible net benefit from the new higher-priced mortgage loan. The form must be signed and dated by both the creditor and the borrower. A disclosure in the same form as found in Attachment "A" complies with this

subsection as does a form that otherwise meets the requirements of this subsection.

4. The creditor shall explain its reasonable, tangible net benefit analysis to the borrower, and shall present the reasonable, tangible net benefit form to the borrower for signing, prior to or upon making the new higher-priced mortgage loan.

5. When the fully indexed rate for an adjustable rate mortgage loan based on a lagging index (*e.g.*, MTA rate) is significantly different from the rate on a comparable 30-year fixed rate product, a credible market rate should be used to qualify the borrower and determine repayment capacity

6. Once the reasonable, tangible net benefit form has been duly completed and signed by the creditor and the borrower, the creditor shall immediately provide a copy of the form to the borrower.

7. A duly completed and signed form that reflects a reasonable, tangible net benefit is evidence of compliance with this subsection.

SECTION 6: ENFORCEMENT

Failure to comply with the provisions of this Chapter may result in imposition of damages, penalties, and other remedial actions, as set forth in 9-A M.R.S. §§ 8-108, 8-109, 8-206-E, 8-208, 8-209, and all other applicable provisions of law.