

Mortgage Lending Work Group Discussion
Reasonable Tangible Benefit in Mortgage Loan Refinancing
June 19, 2008

-- Discussion Draft --

If a borrower decides to refinance a mortgage loan, the borrower should not be placed in a worse position in a refinancing transaction. However, the “benefit” to a homeowner will vary by individual circumstances. Ultimately, a borrower should be able to identify the benefit they will receive in a refinanced transaction. Therefore, borrowers need the information and guidance necessary to make an informed decision. Mortgage lenders play a role in ensuring that borrowers have the right tools they need to make informed financial decisions. The Mortgage Lending Work Group has discussed requiring written documentation to ensure that a borrower can decide whether a loan will benefit.

The subcommittee has discussed a provision that:

1. Requires a standardized form that shows a “side-by-side” comparison displaying new and refinanced loan terms for the borrower to review, to be developed in rulemaking, tracking with the components of the new HUD Good Faith Estimate (GFE) proposal.
2. Requires mortgage lender to consider factors that show a reasonable tangible benefit, including the terms of the mortgage loan(s) currently in force, as provided by the borrower [unless known by the originator], and refinanced mortgage loan, the cost of the new loan, and the borrower’s circumstances. **(Comment) In those instances where the originator knows the terms (e.g., it originated the prior loan), it should be required to provide accurate information from its records rather than relying on the possibly inaccurate memory or records of the borrower.*
3. Allows the mortgage lender and borrower to discuss reasonable and tangible benefit. The “side-by-side” form would provide the basis for review and discussion.
4. The borrower must acknowledge their perceived benefit from the refinancing, even if the mortgage lender does not believe the borrower will have a reasonable tangible benefit from the refinanced loan.
 - a. The borrower articulates, in their own words, the perceived benefits of the new loan, and the mortgage lender certifies that they reviewed possible detriments of the refinancing with the borrower.
 - b. The mortgage lender certifies that they have reviewed all of the information with the borrower. This information may be provided by the borrower, may be found in public records, or may be provided by the mortgage lender if they made the loan that is currently in force. If the mortgage lender uses information found in the public record or from their own lending records, they will certify that the information presented is correct to the best of their knowledge, and that they reviewed possible detriments of the refinancing with the borrower.
5. Requires reasonable tangible benefit to apply, without at any time after the current mortgage loan(s) was made, with no waiting period for the requirement to take effect.
6. Timing of completion of form (to be developed).
7. Enforcement for DCBS authority to enforce intentional violations including:
 - a. A single, willful violation could result in license action; and
 - b. Repeated violations over any span of time could be considered a pattern or practice, which could lead to license suspension/revocation and civil penalties.