

Mortgage Lending Work Group Discussion
Reasonable Tangible Benefit in Mortgage Loan Refinancing
July 17, 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 “reasonable tangible 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 provide a benefit.

The subcommittee has discussed the following for a legislative concept:

- 1) A model disclosure form that allows the mortgage lender and borrower to discuss the reasonable, tangible benefits when refinancing a mortgage using a “side-by-side” comparison displaying current and refinanced loan terms.
- 2) Reasonable tangible benefit to be based on the terms of the mortgage loan(s) currently in force, the proposed refinancing costs and terms, and the borrower’s circumstances.
- 3) Requirements consistent with federal requirements, including the provisions of the proposed HUD Good Faith Estimate (GFE) written in plain language.
- 4) Requiring the mortgage lender to be responsible for the accuracy of information on current loan(s) if they held the current loan(s) or locate the terms of the current loan(s) from a public record. If the terms of the current loan(s) are not available from these resources, the mortgage lender can rely on information provided by the borrower, but are responsible for ensuring the accuracy of this information to the best of their knowledge.
- 5) The form should include the following loan terms:
 - a. The initial loan balance;
 - b. The loan terms, expressed in years, including the new maturity date;
 - c. The initial interest rate;
 - d. The initial monthly amount owed for principal, interest and mortgage insurance, if any;
 - e. The rate lock period;
 - f. Whether the interest rate may rise;
 - g. Whether the loan balances may rise;
 - h. Whether the monthly amount owed for principal, interest, and mortgage insurance, if any, may rise;
 - i. The presence of a prepayment penalty;
 - j. The presence of a balloon payment;

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- k. The presence of monthly payments for escrow, property taxes or other obligations;
 - l. The fully-amortized monthly loan payment amount,
 - m. The monthly debt payment, the pre-payment penalty, and
 - n. The loan to value and the debt-to-income ratio.
- 6) The borrower must acknowledge her or his perceived benefit from the refinancing, regardless of whether the mortgage lender believes the borrower will receive a reasonable tangible benefit. The borrower must articulate, in the borrower's own words, the perceived benefits of the new loan(s).
- 7) The mortgage lender must acknowledge that it has exercised its best efforts to review the information, including benefits and detriments, with the borrower, that the information about the refinanced loan is accurate, and that any perceived benefits recognized by the borrower are factually consistent with the terms of the new loan(s).
- 8) The mortgage lender must exercise its best efforts to review this information with the borrower within three business days of the initial application to refinance the existing mortgage loan(s). If there are material changes to the loan terms, the mortgage lender must also provide a new form within three business days following the change or later than three business days prior to the loan's closing, whichever occurs first.
- 9) Enforcement authority for DCBS for licensees, those who should have been licensed and loan originators, would include:
- a. License action or civil penalties if the lender or loan originator knew or should have known that the refinance would not provide a reasonable, tangible benefit to the borrower; and
 - b. License suspension/revocation and/or civil penalties for repeated violations over any span of time could be considered a pattern or practice.