TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 15 FINANCIAL INSTITUTIONS - GENERAL
PART 5 HOME LOAN PROTECTION ACT - FLIPPING

12.15.5.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.15.5.1 NMAC - N, 06/30/2004]

12.15.5.2 SCOPE: All creditors subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003, as amended through 2004) ("Act").
[12.15.5.2 NMAC - N, 06/30/2004]

12.15.5.3 STATUTORY AUTHORITY: Section 58-21A-13 NMSA 1978.
[12.15.5.3 NMAC - N, 06/30/2004]

12.15.5.4 DURATION: Permanent.
[12.15.5.4 NMAC - N, 06/30/2004]

12.15.5.5 EFFECTIVE DATE: June 30, 2004, unless a later date is cited at the end of a section.
[12.15.5.5 NMAC - N, 06/30/2004]

12.15.5.6 OBJECTIVE: The objective of this rule is to provide guidance to creditors covered by the act regarding the application of Section 58-21A-4(B) NMSA 1978, which prohibits creditors from engaging in the unfair act or practice of flipping a home loan.
[12.15.5.6 NMAC - N, 06/30/2004]

12.15.5.7 DEFINITIONS: For purposes of this rule, the definitions set forth in the act and regulations adopted pursuant to the act shall apply unless otherwise noted.
[12.15.5.7 NMAC - N, 06/30/2004]

12.15.5.8 KNOWINGLY AND INTENTIONALLY ENGAGING IN THE ACT OR PRACTICE OF FLIPPING: For purposes of Section 58-21A-4(B) NMSA 1978, a creditor shall not have "knowingly and intentionally" engaged in the unfair act or practice of flipping a home loan when the new loan provides a "reasonable, tangible net benefit" to the borrower. A creditor shall have "knowingly and intentionally" engaged in the unfair act or practice of flipping a home loan when the new loan does not provide a "reasonable, tangible net benefit" to the borrower and the creditor made the new loan with the intent and knowledge that the new loan did not provide a reasonable, tangible net benefit to the borrower.
[12.15.5.8 NMAC - N, 06/30/2004]

12.15.5.9 REASONABLE, TANGIBLE NET BENEFIT TO THE BORROWER:

A. The reasonable, tangible net benefit" standard in Section 58-21A-4 B NMSA 1978, is inherently dependent upon the totality of facts and circumstances relating to a specific transaction. While the refinancing of certain home loans may clearly provide a reasonable, tangible net benefit, others may require closer scrutiny to determine whether a particular loan provides the requisite benefit to a borrower.

B. Because of the fact-specific nature of the "reasonable, tangible net benefit" inquiry, lenders are not expected to create a single one-size-fits-all test to use for every loan application. While the majority of loans may be evaluated using an appropriate economic analysis of the old and new loan, each lender should develop and maintain policies and procedures for evaluating loans in circumstances where an economic test, standing alone, may not be sufficient to determine that the transaction provides the requisite benefit.

C. In evaluating whether lenders are in compliance with the flipping provision, the financial institutions division will focus on whether a lender has policies and procedures in place and that were used to determine that borrowers received a reasonable, tangible net benefit in connection with the refinancing of loans. For example, lenders may wish to create procedures for additional upper-level management review in cases where the benefit to the customer is not clear based on a simple calculation of savings. Lenders may also wish to devise worksheets for collecting relevant information from the borrower such as the borrower's financial status, objectives for use of the funds and knowledge of other alternatives.

D. Examples of factors that could be relevant include, but are not limited to, the following:

(1) Terms of the new and old loan, including, but not limited to, note rate, amortization schedule, and balloon payment provisions, provided that costs associated with (and paid at or before closing of) the old loan, such as closing costs or points and fees other than prepayment penalties, are not normally relevant to the determination of flipping;

(2) Costs of the new loan, including points and fees charged on the new loan as well as other closing costs associated with the transaction as routinely disclosed on the closing statement;

(a) loan-to-value ratio of the new loan compared to that associated with the outstanding balance on the existing loan;

(b) debt-to-income ratio of the borrower before and after the transaction;

(c) amount of time that has lapsed between the new loan and the origination of the old loan or previous refinancing; and

(d) in cases where economic benefits do not demonstrably indicate that a reasonable, tangible net benefit has occurred, a significant reason that explains the need for, and proposed use of, the loan proceeds.

E. Lenders may use other management controls to assess whether a loan transaction provides the requisite benefit.

F. While the financial institutions division will not mandate that lenders use a prescribed form or system for evaluating the economic or non-economic benefits of a particular home loan, lenders are encouraged to maintain records in the loan file to demonstrate that they performed an analysis of the reasonable, tangible net benefit standard in each refinancing transaction.

G. Borrowers are responsible for the disclosure of information provided on the application for a home loan. Truthful disclosure of all relevant facts and financial information concerning the borrower's circumstances is required in order for lenders to evaluate and determine that the refinance loan transaction provides a reasonable, tangible net benefit to the borrower. Lenders cannot, however, disregard known facts and circumstances that may place in question the accuracy of information contained in the application.

H. An appropriate analysis reflected in the loan documentation can be helpful in determining that a lender satisfies the statutory requirement. As part of a lender's analysis, a lender may wish to obtain and document an explanation from the borrower regarding any non-economic benefits the borrower associates with the loan transaction. It should be noted, however, that because it is incumbent on the lender to conduct an analysis of whether the borrower received a reasonable, tangible net benefit, a borrower certification, standing alone, would not necessarily be determinative of whether a loan provided that benefit.
[12.15.5.9 NMAC - N, 06/30/2004]

HISTORY OF 12.15.5 NMAC: [RESERVED]