

Tangible Net Benefit

STATE	REGULATION
Alabama	Not applicable.
Alaska	Not applicable.
Arizona	Not applicable.
Arkansas	<p>§ 23-39-513</p> <p>It is a prohibited act or practice "To broker or make a refinancing of a residential mortgage loan when the refinancing charges additional points and fees, within a twelve-month period after the original loan agreement was signed, unless the refinancing results in a reasonable, tangible net benefit to the borrower, considering all of the circumstances surrounding the refinancing;</p> <p>§ 23-53-104</p> <p>(1) No creditor may engage in the unfair act or practice of "flipping" a home loan. (2) "Flipping" a loan is the making of a high-cost home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. In addition, home loan refinancings shall be presumed to be flippings if: (A) The primary tangible benefit to the borrower is an interest rate lower than the interest rate or rates on debts satisfied or refinanced in connection with the home loan, and it will take more than four (4) years for the borrower to recoup the costs of the points and fees and other closing costs through savings resulting from the lower interest rate; or (B) The new loan refinances an existing home loan that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit organization, that either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one (1) or more of the benefits of the special mortgage.</p>
California	Not applicable.
Colorado	Not applicable.
Connecticut	Not applicable.
Delaware	Not applicable.
District of Columbia	Not applicable.
Florida	Not applicable.
Georgia	§ 7-6A-4

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	<p>(a) No creditor may knowingly or intentionally engage in the unfair act or practice of "flipping" a home loan. Flipping a home loan is the consummating of a high-cost home loan to a borrower that refinances an existing home loan that was consummated within the prior five years when the new loan does not provide reasonable, tangible net benefit to the borrower considering all of the circumstances including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.</p>
	<p>(b) The home loan refinancing transaction shall be presumed to be a flipping where a high-cost home loan refinances an existing home loan that was consummated within the prior five years and that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government or a nonprofit organization, which either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage. Notwithstanding any provision to the contrary contained in this chapter, home loan refinancing transactions of first mortgage loans originated by, purchased by, or assigned to the Georgia Housing and Finance Authority shall not be presumed to be a flipping under</p>
Hawaii	Not applicable.
Idaho	Not applicable.
Illinois	<p>815 § 137/45</p> <p>Refinancing prohibited in certain cases. No lender shall refinance any high risk home loan where such refinancing charges additional points and fees within a 12-month period after the original loan agreement was signed, unless the refinancing results in a tangible net benefit to the borrower.</p> <p>No financial institution, in connection with or in contemplation of any loan to any person, may:</p> <p>(e) Engage in equity stripping or loan flipping.</p> <p>815 ILCS 120/3</p> <p>"Loan flipping" means to assist a person in refinancing a loan secured by the person's principal residence for the primary purpose of receiving fees related to the refinancing when (i) the refinancing of the loan results in no tangible benefit to the person and (ii) at the time the loan is made, the financial institution does not reasonably believe that the refinancing of the loan will result in a tangible benefit to the person.</p> <p>815 ILCS 120/2</p>

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Indiana	Not applicable.
Iowa	Not applicable.
Kansas	Not applicable.
Kentucky	Not applicable.
Louisiana	Not applicable.
Maine	Not applicable.
Maryland	Not applicable.
Massachusetts	<p>209 CMR 53.01 et seq.</p> <p>A lender is prohibited under M.G.L. c. 183, § 28C from knowingly refinancing a home loan that was consummated within the prior 60 months unless the refinancing is in the borrower's interest. 209 CMR 53.00 is intended to provide such factors, classifications, differentiations or other provisions, or such adjustments and exceptions for classes of transactions necessary to carry out M.G.L. c. 183, § 28C.</p> <p>209 MA ADC 53.01</p> <p>Pursuant to M.G.L. c. 183, § 28C, a lender shall not knowingly refinance a home loan that was consummated within 60 months prior to the lender's receipt of an application for a new home loan, unless the refinancing is in the borrower's interest.</p> <p>209 MA ADC 53.03</p> <p>Determining Borrower's Interest</p> <p>(1) A home loan shall be in compliance with 209 CMR 53.03 if it meets any of the following:</p> <p>(a) The new home loan is guaranteed, originated, or funded by the Federal Housing Administration, the Department of Veterans Affairs, or other State or federal housing finance agencies;</p> <p>(b) The annual percentage rate of the new home loan at consummation does not exceed by more than 2.5 percentage points for closed-end first-lien home loans, or by more than 3.5 percentage points for closed-end subordinate-lien home loans, the yield on United States Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the lender;</p> <p>(c) The new home loan is an open-end home loan and the annual percentage rate under the agreement will not exceed at any time the Prime rate index as published in the Wall Street Journal plus a margin of one percentage point; or</p>

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	(d) The borrower is able to recoup the costs of refinancing the home loan within two years, taking into account the costs and fees, and the interest rate on the new home loan is reduced without increasing the amortization period of the new home loan compared to the original amortization term of the old home loan.
	(2) A refinancing which does not meet the provisions of 209 CMR 53.04(1) shall not be presumed to be a violation of 209 CMR 53.03.
	(3) A lender making a home loan which is not exempt under 209 CMR 53.04(1) shall not knowingly refinance the home loan unless the lender shall have determined that the refinancing is in the borrower's interest. Factors to be considered by a lender in determining if the refinancing is in the borrower's interest include, but are not limited to the following:
	(a) the borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;
	(b) there is a change in the amortization period of the new loan compared to the original amortization term of the old home loan;
	(c) the borrower receives cash in excess of the costs and fees of refinancing;
	(d) the borrower's note rate of interest is reduced;
	(e) there is a change from an adjustable to a fixed rate loan, taking into account costs and fees;
	(f) the refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction; or
	(g) the time it takes to recoup the costs of refinancing, taking into account the costs and fees.
	209 MA ADC 53.04
	Demonstration and Documentation of Compliance
	(1) A lender shall develop policies and procedures to demonstrate compliance with 209 CMR 53.00. Such policies and procedures shall include, at a minimum, a worksheet or other document to be dated at or before closing by the lender indicating how the lender determined that the home loan is in the borrower's interest. Such worksheet or other document shall include, at a minimum:

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	(a) if a lender determines that a home loan meets one of the factors in 209 CMR 53.04(1), the lender shall indicate specifically how the home loan fulfills such factor; or
	(b) if a home loan does not meet one of the factors in 209 CMR 53.04(1), a lender shall indicate specifically how the lender determined that the home loan was in the borrower's interest.
	A lender may request that a borrower acknowledge receipt of such a worksheet or other documentation; provided, however, a lender shall not shift the burden to the borrower to demonstrate that a home loan is in the borrower's interest; and provided further that a lender shall not require a borrower to sign a waiver of future claims under M.G.L. c. 183, § 28C or 209 CMR 53.00.
	(2) A lender shall maintain the documentation required under 209 CMR 53.07(1) for a period of three years and shall make such documentation available for inspection by the Commissioner.
	(3) A mortgage broker may not make an affirmative determination that a home loan is in the borrower's interest. Nothing herein shall prohibit a mortgage broker from requesting information from a borrower on behalf of the lender or from transmitting information to the borrower on behalf of the lender.
	209 MA ADC 53.07
Michigan	Not applicable.
Minnesota	Not applicable.
Mississippi	Not applicable.
Missouri	Not applicable.
Montana	Not applicable.
Nebraska	Not applicable.
Nevada	Not applicable.
New Hampshire	Not applicable.
New Jersey	Not applicable.
New Mexico	§ 58-21A-4
	No creditor shall knowingly and intentionally engage in the unfair act or practice of flipping a home loan. As used in this subsection, "flipping a home loan" means the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan and the borrower's circumstances.
	REASONABLE, TANGIBLE NET BENEFIT TO THE BORROWER:

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	<p>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.</p>
	<p>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.</p>
	<p>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.</p>
	<p>D. Examples of factors that could be relevant include, but are not limited to, the following:</p>
	<p>(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;</p>
	<p>(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;</p>
	<p>(a) loan-to-value ratio of the new loan compared to that associated with the outstanding balance on the existing loan;</p>
	<p>(b) debt-to-income ratio of the borrower before and after the transaction;</p>
	<p>(c) amount of time that has lapsed between the new loan and the origination of the old loan or previous refinancing; and</p>
	<p>(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.</p>
	<p>E. Lenders may use other management controls to assess whether a loan transaction provides the requisite benefit.</p>

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	<p>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.</p> <p>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.</p> <p>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.</p>
	NM ADC 12.15.5
New York	<p>Banking Law § 6-l</p> <p>No "loan flipping". No lender or mortgage broker making or arranging a high-cost home loan may engage in the unfair act or practice of "loan flipping". "Loan flipping" is making a home loan to a borrower that refinances an existing home loan when the new loan does not have a tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's situation.</p> <p>"Flipping" high cost home loans; that is, brokering or making a high cost home loan to a borrower that refinances an existing mortgage loan when, considering all the circumstances of the refinancing, such refinancing does not have a tangible net benefit to the borrower. A lender shall be considered by the superintendent to have provided a tangible net benefit to the borrower if a high cost home loan meets the following criteria: the borrower receives a monetary benefit, such as receipt of additional proceeds, a reduction of the outstanding mortgage debt, a lowering of the annual percentage rate, and/or a lowering of the monthly payments of principal and interest, taking into consideration the totality of the circumstances, including, but not limited to, the amount of the monetary benefit, the loan product and the borrower's repayment ability, current and expected income and current obligations; provided, however, that if the monthly payment of principal and interest and/or the mortgage debt increases, a</p>

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	3 NY ADC 41.5
North Carolina	<p>§24-10.2</p> <p>No lender may knowingly or intentionally engage in the unfair act or practice of "flipping" a consumer home loan. "Flipping" a consumer loan is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in G.S. 24-1.1E(a)(6).</p> <p>N.C.G.S.A. § 24-10.2</p>
North Dakota	Not applicable.
Ohio	Not applicable.
Oklahoma	<p>(3) Refinancings within one-year period. Within one year of having extended credit subject to 160:45-9-2, refinance any loan subject to 160:45-9-2 to the same borrower into another loan subject to 160:45-9-2, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to 160:45-9-2, shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to 160:45-9-2 to the same borrower into another loan subject to 160:45-9-2, unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.</p> <p>OK ADC 160:45-9-4</p>
Oregon	Not applicable.
Pennsylvania	Not applicable.
Rhode Island	Not applicable.
South Carolina	<p>A lender may not engage knowingly or intentionally in the unfair act or practice of "flipping" a consumer home loan. This provision applies regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in Section 37-23-20(15).</p> <p>Code 1976 § 37-23-70</p>

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	<p>"Flipping" a consumer home loan means the making of a consumer home loan that refinances within forty-two months an existing consumer home loan of the borrower when the new loan does not have a reasonable, tangible net benefit to the borrower, considering all the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.</p>
	<p>(a) A rebuttable presumption of reasonable, tangible, net benefit to the borrower occurs when including, but not limited to, the following:</p>
	<p>(i) at the time the home loan is consummated, the borrower's total monthly debts, including amounts due under the home loan, do not exceed fifty percent of the borrower's monthly income as verified by tax returns, payroll receipts, or other third-party income verification;</p>
	<p>(ii) the borrower's monthly payment to pay the new consolidated debt is a minimum of twenty percent lower than the total of all monthly obligations being financed, taking into account costs and fees;</p>
	<p>(iii) there is a beneficial change for the borrower in the duration of the loan;</p>
	<p>(iv) the borrower receives a reasonable amount of cash in excess of and in relation to the cost and fees as part of the refinancing;</p>
	<p>(v) the borrower's note rate of interest is reduced by at least two percent;</p>
	<p>(vi) there is a change from an adjustable rate loan to a fixed rate loan, taking into account costs and fees and the costs can be recouped within two years; or</p>
	<p>(vii) the borrower is able to recoup the costs of refinancing the loan within two years and reduces the interest rate by two points or the length of term by a minimum of five years.</p>
	<p>(b) the home loan refinancing transaction is presumed to be a flipping if a home loan refinances an existing home loan that was consummated as a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government or a nonprofit organization, which either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or are not required at all under specified conditions, and if, as a result of the refinancing, the borrower loses one or more of the benefits of the special mortgage.</p>
	<p>Code 1976 § 37-23-20</p>
South Dakota	Not applicable.
Tennessee	Not applicable.
Texas	Not applicable.
Utah	Not applicable.
Vermont	Not applicable.

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Virginia	<p>As used in this section, "flipping" a mortgage loan means refinancing a mortgage loan within 12 months following the date the refinanced mortgage loan was originated, unless the refinancing is in the borrower's best interest. Factors to be considered in determining the same would include but not be limited to whether:</p> <p>1. The borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;</p> <p>2. There is a change in the amortization period of the new loan;</p> <p>3. The borrower receives cash in excess of the costs and fees of refinancing;</p> <p>4. The borrower's note rate of interest is reduced;</p> <p>5. There is a change from an adjustable to a fixed rate loan, taking into account costs and fees; or</p> <p>6. The refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction.</p> <p>B. No mortgage lender or broker shall knowingly or intentionally engage in the act or practice of "flipping" a mortgage loan. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed any limitation established pursuant to Article 9 (§ 6.1-330.69 et seq.) of Chapter 7.3 of this title.</p> <p>Va. Code Ann. § 6.1-422.1</p>
Washington	Not applicable.
West Virginia	<p>§ 31-17-8 NOTE: A West Virginia worksheet is provided as a separate Express Search.</p> <p>(d) Where loan origination fees, investigation fees or points have been charged by the licensee, the charges may not be imposed again in any refinancing of that loan or any additional loan on that property made within twenty-four months thereof, unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan and the borrower's circumstances. The licensee shall document this benefit in writing on a form prescribed by the commissioner and maintain such documentation in the loan file. To the extent this subdivision overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. § 1735f-7a, the state law limitations contained in this section shall apply.</p>

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	W. Va. Code, § 31-17-8
Wisconsin	Not applicable.
Wyoming	Not applicable.