

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

Please find below the final adopted rule that repeals and replaces the previous iteration of the Tangible Net Benefit Rule so that it no longer applies to supervised financial organizations. For this reason, this rule is no longer a joint rule administered by both the Bureau of Consumer Credit Protection and the Bureau of Financial Institutions, but only the Bureau of Consumer Credit Protection. The effective date of this rulemaking is December 5, 2011. However, as set forth in the Basis Statement, it is the Bureau's view that supervised financial organizations were no longer subject to the Tangible Net Benefit Rule upon the effective date (September 28, 2011) of Public Law 2011, Chapter 427, "An Act to Amend the Maine Consumer Credit Code To Conform with Federal Law." Copies of this rulemaking are also available from the Bureau of Financial Institutions, 36 State House Station, Augusta, ME 04333-0036.

/s/ John A. Barr
Deputy Superintendent
Gardiner, Maine
December 7, 2011

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
030 BUREAU OF CONSUMER CREDIT PROTECTION CHAPTER 550

MORTGAGE LENDING: GUIDELINES FOR DETERMINING REASONABLE,
TANGIBLE NET BENEFIT

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repealed the term “subprime mortgage loan” and replaced it with a new term contained in federal law, “higher-priced mortgage loan.”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.

In 2011, the Maine Legislature passed Public Law 2011, Chapter 427, “An Act to Amend the Maine Consumer Credit Code To Conform with Federal Law.” As a result of this new law, supervised financial organizations and the Maine State Housing Authority are exempt from section 8-506 of the Code, which sets forth enhanced restrictions for certain creditors. One of the enhanced restrictions set forth in section 8-506 is the prohibition against knowingly or intentionally engaging in the act or practice of flipping a residential mortgage loan when making a high-cost mortgage loan or higher-priced mortgage loan. Because supervised financial organizations are no longer subject to this enhanced restriction, the Bureaus are repealing and replacing the rule with this proposed rule that will not apply to supervised financial organizations or the Maine State Housing Authority. For this reason, the proposed rule, when it becomes effective, will no longer be a joint rule administered by both Bureaus; rather, it will be a rule administered by the Bureau of Consumer Credit Protection only. This proposed rule also changes statutory cross-references as a result of the passage of Public Law 2011, Chapter 427. The Bureaus are not proposing any other substantive changes to the rule.

SECTION 2: Authority

1. Title 9-A M.R.S. § 1-102(2), which sets forth the underlying purposes and policies of the Code and which includes simplifying and clarifying the law governing consumer credit.
2. Title 9-A, M.R.S. § 6-104(1)(E), which permits the Administrator to adopt, amend, and repeal rules to carry out the specific provisions of the Consumer Credit Code.
3. Title 9-A M.R.S. § 8-504, which gives the administrator authority to adopt rules substantially similar to or that afford more protection for consumers than those codified in 12 C.F.R., Part 226.
4. Title 9-A M.R.S. § 8-506(5), which permits the administrator to adopt rules defining with reasonable specificity the requirements for complying with the prohibition against knowingly or intentionally engaging in the act or practice of flipping a residential mortgage loan when making a high-cost mortgage loan or a higher-priced mortgage loan.
5. Title 9-A M.R.S. § 8-506(7), which exempts supervised financial organizations and the Maine State Housing Authority from the provisions of § 8-506.
6. Title 9-A M.R.S. § 8-508, which grants rulemaking authority to the administrator to prohibit acts or practices in connection with the refinancing of a

residential mortgage loan that the administrator finds is associated with abusive lending practices or that is otherwise not in the interest of the borrowing public. 7. Title 9-B M.R.S. § 215, which 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.

SECTION 3: Purpose

This promulgation repeals and replaces the joint rule, Bureau of Consumer Credit Protection Chapter 550 and Bureau of Financial Institutions Chapter 144, with one rule, administered solely by the Bureau of Consumer Credit Protection, Chapter 550. Accordingly, its scope is limited to creditors other than supervised financial organizations or the Maine State Housing Authority, pursuant to Public Law 2011, Chapter 427, "An Act To Amend the Maine Consumer Credit Code To Conform with Federal Law" as codified in section 8-506(7) of the Maine Consumer Credit Code. This promulgation also reflects that the prohibition against flipping applies when a high-cost mortgage loan or higher-priced mortgage loan is made, as set forth in section 8-506(5) of the Maine Consumer Credit Code.

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. §6-103;
2. "Borrower" means any natural person obligated to repay a loan including a co-borrower, cosigner or guarantor;
3. "Creditor" has the same meaning as set forth in 9-A M.R.S. § 1-301(17) and also includes an entity defined as a lender as set forth in 24 C.F.R., § 3500.2 (September 1, 2011 edition), including a mortgage broker. The term does not include a supervised financial organization as defined in 9-A M.R.S. § 1-301(38-A) or the Maine State Housing Authority;
4. "Flipping a residential mortgage loan" has the same meaning as set forth in 9-A M.R.S. § 8-506(5);
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. "High-cost mortgage loan" has the same meaning as set forth in 9-A M.R.S. § 8-506(1)(H);
7. "Higher-priced mortgage loan" has the same meaning as set forth in 9-A M.R.S. § 8-506(1)(I);

1. "Open-end credit" has the same meaning as set forth in 9-A M.R.S. § 1-301(26);
 2. "Mortgage broker" has the same meaning as set forth in 9-A M.R.S. 8-506(1)(J)
 3. "Points and fees" has the same meaning as set forth in 9-A M.R.S. § 8-506(1)(K);
 4. "Residential mortgage loan" has the same meaning as set forth in 9-A M.R.S. § 8-506(1)(L);
12. "Refinancing" has the same meaning as 12 C.F.R. 226.20(a) (September 1, 2011 edition) 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 when making a high-cost mortgage loan or higher-priced 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 high-cost mortgage loan or 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 high-cost mortgage loan or 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 high-cost mortgage loan or 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 high-cost mortgage loan or 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 high-cost mortgage loan or higher-priced mortgage loan.

5. 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.

6. 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 rule may result in imposition of damages, penalties, and other remedial actions, as set forth in 9-A M.R.S. §§ 8-505, 8-506, 8-508, and all other applicable provisions of law.

EFFECTIVE DATE: December 5, 2011. Note: the Bureaus are of the view that supervised financial organizations are not subject to this rule pursuant to Public Law 2011, Chapter 427, "An Act to Amend the Maine Consumer Credit Code To Conform with Federal Law" which became effective on September 28, 2011.

Attachment "A" to the Reasonable, Tangible Net Benefit Rule, reflecting changes necessitated by Public Law 2009, Chapter 362, "An Act to Conform State Mortgage Laws with Federal Laws"

STATE OF MAINE – REASONABLE, TANGIBLE NET BENEFIT DISCLOSURE FORM

This disclosure is being provided to you pursuant to Maine's residential mortgage lending laws. The law protects borrowers from certain loan brokering and lending practices. One of the prohibited practices is known as "flipping a residential mortgage loan when making a high-cost mortgage loan or higher-priced mortgage loan."

WHAT IS FLIPPING? "Flipping" is the making of a high-cost mortgage loan or higher-priced mortgage loan (the "new loan") to a borrower who refinances an existing residential loan when the new loan does not result in a "reasonable, tangible net benefit" to the borrower.

borrower name(s):

Property address:

BASED UPON THE REVIEW BY THE LENDER, AND THE MORTGAGE BROKER, IF ONE IS USED, OF ALL OF THE CIRCUMSTANCES RELATED TO THE NEW LOAN AND ANY DEBTS TO BE PAID FROM THE PROCEEDS OF THE NEW LOAN, THE NEW LOAN PROVIDES A REASONABLE, TANGIBLE NET BENEFIT TO YOU AS FOLLOWS:

Loan Information

	New Loan	Old Loan
Monthly payment amount		
Length of repayment period		
Amount of cash out (or paid to others)		
Interest rate or weighted average interest rate		
Type of loan (Adjustable Rate Loan or Fixed Rate Loan)	Adjustable Fixed (Circle one.)	Adjustable Fixed (Circle one.)
Bona fide personal need, as reasonably determined by the borrower?	Yes No (Circle one.)	

CREDITOR TO COMPLETE:

The borrower received the following reasonable, tangible net benefit from the new loan (include bona fide personal need, if applicable):

After reviewing all relevant information, the lender and mortgage broker, if one was used, confirm that they have performed the analysis of the applicable reasonable, tangible net benefit as identified

above and that they have explained the analysis to the borrower. The borrower(s) acknowledge(s) that the lender and mortgage broker, if one was used, have identified and explained the reasonable, tangible net benefit(s).

FOR LENDERS:

I have reviewed and explained this Form and the answers provided therein to the borrower.

_____, _____,
Agent/Loan Officer's printed name Title

Agent/Loan Officer's signature Date

On behalf of: _____
(Name of Lender)

FOR LOAN BROKERS:

I have reviewed and explained this Form and the answers provided therein to the borrower.

_____, _____
Agent/Loan Officer's printed name Title

Agent/Loan Officer's signature Date

On behalf of: _____
(Name of Mortgage Broker)

Borrower's printed name

Borrower's signature

Date: _____

Co-Borrower's printed name

Co-Borrower's signature

Date: _____

* If the terms of the refinancing change after the mortgage broker explains its answers to the borrower and signs this form, the lender shall explain its answers to the borrower and sign a new form.

CONSUMERS:

If you have questions regarding your loan or creditor, please contact the Bureau of Consumer Credit Protection. Its website address is <http://www.Credit.Maine.gov>, and its toll-free telephone number, if calling in Maine, is 1-800-332-8529.

BASIS STATEMENT

1. Pursuant to Public Law 2007, Chapter 273, Section A-40, the Administrators of Title 9-A were required to adopt rules defining the requirements for determining whether or not a borrower has a reasonable ability to pay a subprime mortgage loan, taking into account the various considerations set forth in State law and federal regulations and guidelines.
2. On January 1, 2008, this Tangible Net Benefit/Ability to Pay Rule first became effective.
3. In June 2009, the Maine Legislature passed "An Act to Conform State Mortgage Laws with Federal Laws" which, among other things, repealed and replaced a provision in Title 9-A M.R.S. with a new "ability to repay" provision, modeled after federal law, containing specific criteria for determining "ability to repay." The statute accordingly superseded previous rulemaking related to ability to pay.

4. "An Act to Conform State Mortgage Laws with Federal Laws" also repealed the term "subprime mortgage loan" and replaced it with a new term contained in federal law, "higher-priced mortgage loan."

5. This rule was amended to comport with this law. Specifically, the Bureaus amended the "tangible net benefit" subsection of the rule so that it would apply only when a residential mortgage loan that is "higher-priced mortgage loan" is made to refinance an existing residential mortgage loan. The Bureaus also removed the "ability to pay" subsection of the rule because of the "ability to repay" provision in Maine law that supersedes that former subsection.

6. In 2011, the Maine Legislature passed Public Law 2011, Chapter 427, "An Act to Amend the Maine Consumer Credit Code To Conform with Federal Law." As a result of this new law, supervised financial organizations and the Maine State Housing Authority are exempt from section 8-506 of the Code, which sets forth enhanced restrictions for certain creditors. One of the enhanced restrictions set forth in section 8-506 is the prohibition against knowingly or intentionally engaging in the act or practice of flipping a residential mortgage loan when making a high-cost mortgage loan or higher-priced mortgage loan. Because supervised financial organizations are no longer subject to this enhanced restriction, the Bureaus are repealing and replacing the rule with this proposed rule that will no longer apply to supervised financial organizations or the Maine State Housing Authority. In other words, this proposed rule updates the rule so that it accurately reflects current law. For this reason, the proposed rule, when it becomes effective, will no longer be a joint rule administered by both Bureaus; rather, it will be a rule administered by the Bureau of Consumer Credit Protection only. This proposed rule also reflects that the flipping prohibition extends to high-cost mortgage loans and higher-priced mortgage loans and further reflects changes in statutory cross-references as a result of the passage of Public Law 2011, Chapter 427. The Bureaus are not proposing any other substantive changes to the rule.

7. When this rule was first promulgated, a hearing was held at which many comments were received. Following the hearing, the Bureaus published their responses to these comments, interpreting and providing further clarification to various aspects of the rule. The Bureaus are of the view that, to the extent their responses to comments following the hearing are still relevant to this re-promulgation, they should be included as part of the basis statement. The Bureaus' responses to comments regarding "ability to pay" were not included at the time of the rule's second promulgation because the "ability to pay" section of the rule was repealed. The Bureaus' responses to comments regarding the "tangible net benefit" analysis and form relate to when a residential mortgage loan that is a high-cost mortgage loan or higher priced mortgage loan is made to refinance an existing residential mortgage loan. Furthermore, the Bureau's comments do not apply when the creditor is a supervised financial organization or the Maine State Housing Authority. Therefore, the tangible net tangible form has also been amended so that the contact information of the Bureau of Financial Institutions has been removed.

8. Pursuant to Title 5, s. 8057-A(4), the Bureaus are required to provide

citations for up to three primary sources of information relied up in adopting the rule. The Bureaus rely upon Public Law 2011, Chapter 427, "An Act to Amend the Maine Consumer Credit Code to Conform with Federal Law."

COMMENTS AND RESPONSES TO THIS PARTIAL REPEAL

By letter dated October 31, 2011, Kathy Keneborus on behalf of the Maine Bankers Association, wrote in support of the partial repeal of the tangible net benefit rule because it aligns the rule with PL 2011, Chapter 427, "An Act to Amend the Maine Consumer Credit Code to Conform with Federal Law," exempting Maine's supervised financial organizations from the flipping prohibition in Article 8-A of Title 9-A.

COMMENTS AND RESPONSES TO THE FIRST PROMULGATION

a) The rebuttable presumption created by the reasonable, tangible net benefit form

The original proposed rule provided that a duly completed and signed form would create a rebuttable presumption for the creditor that the borrower is receiving a reasonable, tangible net benefit from the new residential mortgage loan.

The Bureaus were persuaded by the arguments put forward against the rebuttable presumption in the original proposed rule. The Bureaus determined that a form that reflects reasonable, tangible net benefit, if duly completed and signed, would serve as "evidence of compliance" with the prohibition against "flipping." The Bureaus decided that it was appropriate to strengthen consumer protections by eliminating the "rebuttable presumption" that existed in the original proposed rule. Doing so, they determined, would diminish the possibility of unscrupulous creditors using the form as a shield to protect themselves from liability.

b) General responses to comments regarding the reasonable, tangible net benefit form

The original proposed rule provided for a form that creditors could use in determining whether or not a borrower is receiving a reasonable, tangible net benefit.

The Bureaus agreed with several of those commenting that the form should sensitize creditors to their legal obligation that, in determining whether or not a borrower is receiving a reasonable, tangible net benefit, the creditor must consider all the circumstances of the borrower (if only to exclude some factors). The form was shortened and reformatted in columns and rows to make it easier for the borrower to compare the terms of the new loan with the old one. This revision also clarified the requirement that creditors consider all of the borrower's circumstances rather than considering one factor in isolation. The

Bureaus also added a new paragraph to the rule which provides that certain factors may not show that the borrower is receiving a reasonable, tangible net benefit but which must, nevertheless, be considered by creditors.

The Bureaus also emphasized that the rule does not mandate that creditors use the form that is found as Attachment A to the rule. Rather, the rule requires that creditors use the attached form or one substantially similar to it. The Bureaus stated that, if a creditor wished to submit a form to the Bureaus for evaluation as to whether their form is "substantially similar," it could do so.

c) Detailed responses to comments regarding the reasonable, tangible net benefit form

The Bureaus agreed that the term "amortization period" may not be understood by all borrowers, and the Bureaus thus changed this term so that it reads, "length of the repayment period." The Bureaus also amended the term, "cash in excess of fees" to "amount of cash out (or paid to others)."

The Bureaus were of the opinion that, under ordinary circumstances, "Bona fide personal need" requires certain extenuating circumstances to justify the benefit to the borrower, including, but not limited to, satisfying a tax lien, responding to a court order, honoring a divorce settlement, satisfying medical expenses, or obtaining a loan for educational expenses. However, with respect to the question of who determines what qualifies as a "bona fide personal need," the Bureaus amended that part of the form so that it is clear that this determination is one made by the borrower, bearing in mind that the borrower's need cannot be patently unreasonable.

The Bureaus decided not to elaborate on the factor, "change in amortization period" (other than to simplify it to "length of repayment period," as noted above) because (a) the reconstituted form requires creditors to provide the repayment periods for both the new and old loans and (b) the form was amended to clarify that creditors are required to consider all the circumstances of the borrower in determining reasonable, tangible net benefit. The Bureaus recognized that lengthening the repayment period would be beneficial to some borrowers, while shortening the repayment period would be beneficial to others. The Bureaus determined that the determination as to whether the change is beneficial to the borrower is one that must be made on a case-by-case basis, taking into account all the circumstances.

The Bureaus amended the form and the rule to make clear that the borrower may either receive a reasonable amount of cash in excess of fees or may designate a third party recipient.

That portion of the reconstituted form dealing with refinancing of loans from adjustable to fixed rates, like the other factors, requires the creditor to input information regarding the old and new loans. The Bureaus determined that the question of whether or not refinancing from an adjustable to a fixed rate loan is, on balance, beneficial to the borrower would depend on a consideration of all the circumstances.

The Bureaus amended the rule and the reasonable, tangible net benefit form so

that the term “costs and fees” is clarified to mean only those costs and fees paid by the borrower.

d) Incorporation of the definition of “refinancing”

The Bureaus agreed with several of those commenting that clarity would be served by incorporating a definition of “refinancing” in the rule and did so by reference to the federal Regulation Z definition of “refinancing.” However, unlike the federal Regulation Z definition, the Rule’s definition of “refinancing” applies also to open-end credit transactions, in keeping with the underlying intent of the Act.

e) Inclusion of Home Equity Lines of Credit (HELOCs) from the reasonable, tangible net benefit analysis

The Bureaus determined that HELOCs were not to be given “safe harbor” treatment in the rule.

f) Reference on the form to the Bureaus and counseling

The Bureaus noted that there are several entities that provide objective, neutral counseling and, without mandating that they be referenced in the reasonable, tangible net benefit form, the Bureaus agreed that references to objective third-party counseling may be included in the form.

The Bureaus had also agreed that it was in the public interest to include both Bureaus’ contact information on the form in case a borrower had any questions about the loan or creditor. Because supervised financial organizations are no longer subject to this rule, the contact information of the Bureau of Financial Institutions has been deleted from the form.

g) Time frame for providing the reasonable, tangible net benefit form to borrowers

The Bureaus noted that the rule already makes clear that the form, or one substantially similar to it, must be provided prior to or upon making the new loan. If the terms of the refinancing change after a mortgage broker explains its determination to a borrower and signs the form, the creditor must explain the changes to the borrower and complete an additional form.

h) Use of the definition “fully indexed rate”

The Bureaus noted that rule requires an analysis of a loan at its fully indexed rate and took into consideration that this rate is simple to calculate and widely understood. The Bureaus further noted that using the fully indexed rate should strike a balance between the need to create clear guidelines for creditors with the need to protect borrowers. By using the term “fully indexed rate,” the rule

would prevent creditors from using so-called teaser rates when calculating tangible net benefit or ability to pay.

i) References to the HUD-1 Form

The Bureaus amended the rule and the form to reference HUD settlement statements generally, if one is used at all.

j) Use of the term "weighted average"

The Bureaus determined that it was important to calculate a weighted average interest rate to enable comparison with the interest rate of the new loan. By way of example, one method for calculating a weighted average would be to use the following formula:

$OPB \times \text{Current Interest} = YIA$

$\text{Total YIA} = \text{weighted average interest rate (in decimal form)}$

Total OPB

where OPB is the outstanding principal balance, Total OPB is the outstanding principal balance for all the loans, YIA is the yearly interest amount, and Total YIA is the yearly interest amount for all the loans.

k) Use of the composite rate calculation

The rule was amended to use the fully indexed rate in the tangible net benefit analysis. The Bureaus believed that this analysis would provide a reasonable comparison of the new monthly payment with the payment on the loan or loans being refinanced, including adjustable loans.

l) Pipeline loans

The Bureaus agreed with several of those commenting that the rule would only apply to loan applications received after January 1, 2008 and amended the effective date of the rule accordingly.

m) Application of the rule

The Bureaus stated that all mortgage brokers involved in mortgage lending in Maine would be subject to the rule. The rule applies to "creditors"; pursuant to section 8-506(1)(F) of the Act, mortgage brokers are included in the definition of "creditors." The definition of "mortgage broker" refers to the federal definition of "mortgage broker" found in 24 C.F.R. 3500.2. However, the rule no longer applies to supervised financial organizations or the Maine State Housing Authority, pursuant to Public Law 2011, Chapter 427.

n) References to federal laws and terms

The Bureaus determined that consistency between the Act and the rule was best achieved by including references to the federal terms.

RESPONSES TO COMMENTS TO THE SECOND RE-PROMULGATION

The Bureaus received comment letters from Attorney Piampiano on behalf of the Maine Credit Union League; Ms. Keneborus, Director of Government Relations and Compliance of the Maine Association of Community Banks; and a joint comment letter from Carla Dickstein, Senior Vice-President of Coastal Enterprises, Inc., Chet Randall, Staff Attorney at Pine Tree Legal Assistance and Sara Gagné-Holmes, Esq., Executive Director at Maine Equal Justice Partners.

1. Placement of sentence from footnote 1 from the original rule into section 5(5) of the proposed rule

All commenters sought clarification regarding the placement of the sentence from footnote 1 of the original rule into section 5(5) of the proposed rule. This sentence read as follows:

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.

Furthermore, commenters expressed concern that this sentence relates to a borrower's repayment ability despite the fact that one of the stated intentions behind the proposed rule is to repeal the repayment ability provisions now that repayment ability is delineated in Title 9-Asection 8-506(4). Ms. Dickstein and attorneys Randall and Gagné-Holmes sought assurance that the proposed placement of this sentence did not weaken Maine's strong underwriting standards by inadvertently creating a carve-out and looser standards for a narrow subset of higher priced, adjustable rate mortgage loans.

Bureaus' response:

After considering the various comments, the Bureaus were of the view that the proposed rule unnecessarily retained in section 5(5) a part of the language found in footnote 1 of the existing rule. The language pertains to the qualification of borrowers and the determination of repayment capacity.

The Bureaus determined that the provision was unnecessary because it related to a borrower's ability to pay while the proposed rule focused entirely on the tangible net benefit analysis. The language was originally found in a footnote to the definition of "fully indexed rate," a definition that appeared in the proposed rule, and so it had been carried forward into the proposed rule. The requirements for determining a borrower's ability to pay are now found only in statute, and the final rule is not intended to relate to, or modify, those requirements. Because section 5(5) of the proposed rule related to a borrower's

ability to pay and is not required for a tangible net benefit analysis, the Bureaus eliminated that section from the rule.

2. Rebuttable presumption

Ms. Keneborus and Attorney Piampiano asked that the rule be amended so that a duly completed and signed "reasonable, tangible net benefit" form would give rise to a presumption that the borrower is receiving a reasonable, tangible net benefit from the refinancing transaction. Both commenters noted that the rule as originally proposed in 2007 contained such a presumption but that this approach was not adopted following the comments and hearing. Both commenters also noted that the rule without the rebuttable presumption creates uncertainty and fear of liability from litigation on the part of credit unions and banks.

Bureaus' response:

The intention behind this second promulgation was to align the rule with current Maine law and not to introduce substantive changes to the tangible net benefit analysis. The concept of a rebuttable presumption was the subject of much debate during the comment period and hearing when the rule was originally proposed. At that time, the Bureaus, after hearing all views and after much deliberation, decided not to adopt the rebuttable presumption. The Bureaus accordingly found no compelling reason to do so in the second promulgation and did not introduce the concept of a "rebuttable presumption" in the rule at that time.

3. Incorporation of federal guidelines

Carla Dickstein, Senior Vice-President of Coastal Enterprises, Inc., Chet Randall, Staff Attorney at Pine Tree Legal Assistance and Sara Gagné-Holmes, Esq., Executive Director at Maine Equal Justice Partners urged that the explicit reference to the federal guidelines relating to ability to repay remain in the rule since they may be amended from time to time.

Bureaus' response:

Because the intent behind the second re-promulgation was to repeal the ability to repay provisions from the rule entirely, the Bureaus did not believe these references to federal guidelines properly belong in the rule.

Copies of 24 CFR § 3500.2 may be obtained at cost from the Bureau of Consumer Credit Protection or from the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02210 tel. (617) 973-3000. In addition, a copy may be obtained at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

Copies of 12 CFR 226.20(a) may be obtained at cost from the Bureau of Consumer Credit Protection or from the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02210 tel. (617) 973-3000. In addition, a copy may be obtained at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.