

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

Please find attached the Bureau's newly adopted Regulation 18: Funds Availability and Truth in Savings, together with the Basis Statement, the Summary of Comments and the Bureau's responses to those comments. No substantive changes were made from the proposed rule. The effective date of this rule is July 2, 2012.

/s/ Lloyd P. LaFountain III
Superintendent
Gardiner, Maine
May 17, 2012

02-029
CHAPTER 118
REGULATION # 18 - DEPOSIT ACCOUNT DISCLOSURES

SUMMARY:

History

On July 1, 1981, the Bureau of Financial Institutions promulgated a regulation governing deposit account charges. The focus of the 1981 regulation, which became Regulation 18, was to advance disclosure of deposit and share account charges. In 1987, Regulation 18 was revised to incorporate state requirements for disclosing policies governing funds availability. Since then, Regulation 18 has been amended again to recognize the changes that have occurred on the federal level with respect to funds availability and truth-in-savings, including the adoption of truth-in-savings regulations for credit unions (12 CFR Part 707).

This promulgation

This promulgation repeals and replaces Regulation 18. It conforms Regulation 18 to federal regulations, specifically, by incorporating by reference Federal Regulation CC (12 CFR Part 229, January 1, 2012), Federal Regulation DD (12 CFR Part 230, January 1, 2012), and National Credit Union Administration Board provisions (12 CFR Part 707, January 1, 2012), which include the amendments that have been made to those federal regulations since this rule was last promulgated. Those amendments include: disclosure practices related to

overdraft services, including balances disclosed to consumers through automated systems in Federal Regulation DD, by 74 FR 5584; the addition of Subpart D of Federal Regulation CC relating to substitute checks, by 69 FR 47290; and the restructuring of check-processing operations within the Federal Reserve System into a single check-processing region so that generally there are no longer any checks that are defined as “non-local” in Federal Regulation CC, by 75 FR 219.

This promulgation repeals the funds availability requirements for non-transaction accounts contained in the previous iteration of Regulation 18, as well as the account disclosure requirements for non-consumer accounts, also contained in the previous iteration of Regulation 18. These requirements do not exist in federal law for those types of accounts. Instead, this promulgation adopts the federal definitions of “account” in Federal Regulation CC (12 CFR Part 229, January 1, 2012), Federal Regulation DD (12 CFR Part 230, January 1, 2012), and National Credit Union Administration Board, Truth in Savings provisions (12 CFR Part 707, January 1, 2012), as applicable, thereby more closely conforming this regulation to federal regulations.

Nothing in this Regulation 18 shall be construed as curtailing the authority of federal regulators to administer Federal Regulation CC (12 CFR Part 229), Federal Regulation DD (12 CFR Part 230) and National Credit Union Administration Board, Truth in Savings provisions (12 CFR Part 707).

This promulgation also repeals specific references to electronic notices and disclosures because the federal regulations that are being incorporated by reference already provide that such notices and disclosures may be provided in electronic form.

Finally, this promulgation excepts the definition of “business day” in federal regulations to the extent that this definition differs from the definition of “business days” in Section 145 of Title 9-B MRSA and excepts the enforcement and liability provisions in federal regulations because the enforcement and liability provisions in Chapters 22, 23 and 24 of Title 9-B MRSA will be used when administering this Regulation 18.

I. AUTHORITY

Title 9-B MRSA Section 241(1) gives the Superintendent the authority to promulgate rules defining, limiting, or proscribing acts and practice which are determined to be anti-competitive, unfair, deceptive or otherwise injurious to the public interest.

Title 9-B MRSA Section 241(5) gives the Superintendent the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability. That statute also requires that Maine's financial

institutions make funds, represented by items deposited into an account, available for withdrawal within a reasonable time.

Title 9-B MRSA Section 242(1) gives the Superintendent authority to adopt rules defining, limiting or proscribing advertising that is false, misleading or deceptive.

II. PURPOSE

The purpose of this Regulation 18 is to conform it to up-to-date federal regulations. Its purpose is also to repeal the funds availability requirements for non-transaction accounts and the disclosure requirements for non-consumer accounts. Furthermore, this promulgation repeals references to electronic notices and disclosures because the federal regulations that are being incorporated already provide for such notices and disclosures.

III. PROVISIONS OF THE REGULATION

A. Definitions

1. "Business day" means a business day as defined by Title 9-B MRSA § 145(1).
2. "Credit union" means a credit union authorized to do business as defined by Title 9-B MRSA § 131(12-A).
3. "Financial institution" means a financial institution authorized to do business as defined in Title 9-B MRSA Section 131(17-A).

B. Funds Availability

Financial institutions and credit unions shall comply with the applicable provisions of Federal Regulation CC (12CFR, Part 229, January 1, 2012) and related appendices, which are incorporated herein by reference.

The following provisions of Federal Regulation CC are not adopted:

1. The definition of "business day" in 12 CFR 229.2(g) to the extent that it differs from the definition of "business days" in Section 145 of Title 9-B MRSA.
2. The enforcement and liability provisions found in 12 CFR 229.3 to the extent that Chapters 22, 23 and 24 of Title 9-B MRSA provide for enforcement authority to administer, and liability under, this Regulation 18.

C. Truth in Savings

Financial institutions and credit unions shall comply with the provisions of Federal Regulation DD (12 CFR, Part 230 (January 1, 2012) and National Credit Union Administration Board, Truth in Savings provisions (12 CFR Part 707 (January 1, 2012)) including all their appendices which are incorporated herein by reference.

The following provisions of Federal Regulation DD and 12 CFR Part 707 are not adopted:

1. The definition of "business day" in 12 CFR 230.2(g) to the extent that it differs from the definition of "business days" in Section 145 of Title 9-B MRSA.
2. The enforcement and liability provisions found in 12 CFR 230.9(a), 12 CFR 230.9(b), and 12 CFR 707.9 to the extent that Chapters 22, 23 and 24 of Title 9-B MRSA provide for enforcement authority to administer, and liability under, this Regulation 18.

D. Complaint Resolution Procedure

The schedule of account charges or other literature that is used to convey information on fees assessed in conjunction with the operation of an account shall contain a notice to account holders regarding the procedure to be followed in resolving disputes. The following notice contains model language that may be used:

"If you have a dispute with your financial institution or credit union regarding your account, you may contact the financial institution or credit union and attempt to resolve the problem directly. If the financial institution or credit union fails to resolve the problem, communicate the problem and the resolution you are seeking to:

Maine Bureau of Financial Institutions
36 State House Station
Augusta, Maine 04333-0036

To file a complaint electronically, you may contact the Maine Bureau of Financial Institutions at the following Internet address:

<http://www.maine.gov/pfr/financialinstitutions/complaint.htm>

When your complaint involves a federally-chartered financial institution or credit

union, the Maine Bureau of Financial Institutions will refer it to the appropriate federal supervisory agency.”

Financial institutions that post the model complaint resolution language on their web sites are encouraged to establish a link to the referenced URL on the Bureau's web site.

EFFECTIVE DATE: July 2, 2012

Basis Statement

This promulgation repeals and replaces Regulation 18 by conforming it with federal regulations, specifically, by incorporating federal Regulation CC (12 CFR Part 229, January 1, 2012), federal Regulation DD (12 CFR Part 230, January 1, 2012), and NCUA (12 CFR Part 707, January 1, 2012), which include the amendments that have been made to these federal regulations since this rule was last promulgated. These amendments include disclosure practices related to overdraft services, including balances disclosed to consumers through automated systems in Regulation DD, by 74 FR 5584, the addition of Subpart D of Regulation CC relating to substitute checks, by 69 FR 47290, and the restructuring of check-processing operations within the Federal Reserve System into a single check-processing region so that there are generally no longer any checks that are non-local in Regulation CC, by 75 FR 219.

It also repeals the funds availability requirements for non-transaction accounts, as well as the disclosure requirements for non-consumer accounts, both contained in the previous iteration of this regulation, which requirements do not exist in federal law for these types of accounts. Instead, this promulgation adopts the federal definitions of “account” in federal Regulation CC (12 CFR Part 229, January 1, 2012), federal Regulation DD (12 CFR Part 230, January 1, 2012), and NCUA (12 CFR Part 707, January 1, 2012), as applicable, thereby more closely conforming this regulation to federal regulations, while retaining local authority.

This promulgation also repeals specific references to electronic notices and disclosures as the federal regulations that are being incorporated by reference in this promulgation already provide that such notices and disclosures may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.)

Furthermore, this promulgation excepts the definitions of “business day” in federal regulations to the extent that these definitions differ from the definition of “business days” in s. 145 of Title 9-B, as well as the enforcement and liability provisions in federal regulations because of the enforcement and liability provisions in Chapters 22, 23 and 24 of Title 9-B which will be used when administering this regulation.

While this promulgation conforms funds availability requirements for transaction accounts to federal regulations, section 241(5) of Title 9-B MRSA still requires financial institutions to make funds from non-transaction accounts available for withdrawal within a reasonable time. For non-transaction accounts, what is a reasonable time may vary, depending upon the totality of the circumstances relating to the deposit.

Pursuant to Public Law 2011, Chapter 304, "An Act to Ensure Regulatory Fairness and Reform," agencies are required to file with the Secretary of State citations for up to 3 primary sources of information relied upon in developing a proposed rule. The Bureau is relying upon three primary sources of information. They are federal Regulation CC (12 CFR Part 229, January 1, 2012), federal Regulation DD (12 CFR Part 230, January 1, 2012), and NCUA (12 CFR Part 707, January 1, 2012).

Comments and responses to comments

The Bureau received two letters, both in support of this proposed promulgation.

By letter dated April 23, 2012, Quincy Hentzel, Director of Governmental Affairs for the Maine Credit Union League, wrote in support of the Bureau's proposed promulgation, noting that such changes will aid in compliance efforts among Maine's credit unions and create another level of parity between state- and federally-chartered institutions.

By email dated April 23, 2012, Kathy Keneborus, Director of Government Relations & Compliance for the Maine Bankers Association, also wrote in support of this proposed promulgation, noting that the proposal will align Regulation 18 with corresponding federal regulations. Ms. Keneborus also recommended adopting the federal definition of "business day" in Regulation 18 which definition would include Patriot's Day. The Bureau has decided to retain the state definition of "business day" found in the Banking Code, recognizing that certain lenders choose to close on the Patriot's Day holiday.

Copies of 12 CFR Part 229, 12 CFR Part 230, and 12 CFR Part 707 may be obtained at cost from the Bureau of Financial Institutions, the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, MA 02106 tel. (617)973-3000, or the National Credit Union Administration, Region 1, 9 Washington Square, Washington Avenue Extension, Albany, NY 12208 tel. (518)862-7400. In addition, copies may be obtained via the Internet

at <http://www.federalreserve.gov/Regulations/RegRef.htm#cc>
<http://www.federalreserve.gov/Regulations/RegRef.htm#dd>, and
http://www.ncua.gov/ref/rules_and_regs/rules_and_regs.html

For the purposes of Subpart IV(C) of this regulation, "schedule of account charges" means a listing of fees and charges relating to the maintenance and operation of an account which may be imposed by the financial institution or

credit union on its account holder for using an account of a financial institution or credit union. It does not include a listing of fees for ancillary services such as safe deposit boxes, traveler's checks, night deposit bags, check printing, fax fees, photocopies or similar charges not directly related to the maintenance or operation of an account.