

COLLECTION AGENCY  
ADVISORY RULING #2  
FEBRUARY 8, 1983

February 8, 1983

Re: Maine Collection Agency Law; Applicability to Bank Servicing of Loans Originated by Others

Dear

You have requested an Advisory Ruling from this Bureau as to whether or not a Maine bank which services its own mortgage or VISA loans in the ordinary course of business may also service similar loans originated by other lenders is subject to the licensing requirements of the law relating to Collection Agencies (32 M.R.S.A. Section 571, et seq.). Specifically, your client, a trust company located in this State proposes to "service" loans made by a municipality with respect to mortgage-secured home improvement loans made pursuant to the municipality's Community Development Block Grant Housing Rehabilitation Loan Program. The municipality will make the loan, with the assistance of the bank. "Servicing" will consist of performing duties including, but not limited to, billing and bookkeeping services, receive payments, provide account status on a monthly basis, and will provide such collection practices as the bank would normally employ to service its own loans. The person(s) closing the loans will orally identify the name of the servicing bank to the consumers.

Similarly, your client is also contemplating a proposal whereby it would also provide servicing for a number of savings and loan associations in essentially the same manner as it would for the municipality.

You have concluded that your client would not be subject to the Federal Fair Debt Collection Practices Act because it does not meet the definition of a "debt collector," based in part upon the Report of the U. S. Senate Banking Committee relating to that Act. An excerpt from that Report states in part that the Committee intended the term "debt collector" to exclude "mortgage service companies and others who service outstanding debts for others, so long as the debts were not in default when taken for servicing." While we tend to agree with your well-reasoned conclusion that your client is outside of the Federal Fair Debt Collection Practices Act, you should realize that the Bureau cannot formally rule on the Federal Act, inasmuch as the State of Maine does not have an exemption to enforce that Act. You may wish to confer with the Federal Trade Commission if further information is needed.

Turning to the applicability of the Maine Collection Agency law, which we do enforce, the key section of that law which would govern is Section 572, Exclusions. The "servicing" of loans by financial institutions is nothing new or innovative and is considered to be a normal banking function, particularly when the servicing arrangement is not entered into for the purpose of collecting debts from consumers in default. Consequently, it is the position of this Bureau that the "servicing" of loans by a bank, in the context outlined in this letter, is a collection activity that is directly related to the operation of a business other than that of a Collection Agency and is thus exempt from the Act.

Sincerely,

/s/ Harry W. Giddinge

Harry W. Giddinge  
Deputy Superintendent

HWG:as