

02-029

Chapter 136

Regulation #36

DEPOSIT PRODUCTION OFFICES

SUMMARY:

Public Law 2005, chapter 83, effective May 10, 2005, changed the definition of a deposit production office and amended 9-B MRSA § 241(8)'s prohibition against the operation of a deposit production office to more closely align it with federal law. As amended, the definition of a deposit production office, 9-B MRSA § 131(12-B), is broadened to focus on the credit needs of all Maine communities, rather than the community where a branch is located. The Bureau of Financial Institutions amends Regulation 36 to incorporate the statutory changes, which will result in a State rule that more closely parallels the federal law. Regulation 36 establishes guidelines that are generally comparable to the federal rules. It also provides a safe harbor provision, so that a financial institution authorized to do business in this State that holds less than two percent (2%) of total Maine deposits would be considered to be in compliance with 9-B MRSA § 241(8). This *de minimis* threshold percentage recognizes that institutions that hold less than 2% of total Maine deposits are predominantly community financial institutions that operate offices only in Maine and, therefore, almost exclusively serve residents of the State. Numerous alternative non-financial institution lenders have steadily reduced the reliance on financial institutions for credit, thereby lessening the impact an individual community financial institution may have on the availability of funds for lending in Maine. Therefore, an institution that falls within the safe harbor will not be deemed to be a deposit production office. Regulation 36 reduces reporting requirements for Maine financial institutions and credit unions, by eliminating the annual Branch Loan and Deposit/Share Survey. As an alternative, the Bureau will rely on aggregate loan and deposit data contained in Call Reports prepared by financial institutions for their primary federal regulator and, for institutions that operate interstate branches, on aggregate Maine loan and deposit data, identical to that already being reported on a quarterly basis to the Bureau.

I. AUTHORITY

Title 9-B MRSA § 241(8) states the Superintendent may adopt rules to implement the prohibition on the operation of a deposit production office in Maine. Rules adopted pursuant to this § 241(8) are routine technical rules as defined in 5 MRSA, Chapter 375, subchapter II-A.

II. PURPOSE

This regulation sets forth the factors that the Superintendent will consider in determining whether a financial institution authorized to do business in this State is operating in compliance with 9-B MRSA § 241(8).

III. DEFINITIONS

For purposes of this rule, the following terms have the following meanings:

- A. "Call Report" means the Consolidated Report of Condition and Income, the Thrift Financial Report, or the Credit Union Statement of Financial Condition filed with a financial institution's primary federal regulator.
- B. "Credit union authorized to do business in this State" has the meaning set forth in 9-B MRSA § 131(12-A).
- C. "Deposits" include all amounts a financial institution authorized to do business in this State must report as deposits (including credit union share accounts) in its Call Report.
- D. "Deposit production office" has the meaning set forth in 9-B MRSA § 131(12-B).
- E. "Financial institution authorized to do business in this State" has the meaning set forth in 9-B MRSA § 131(17-A) and also includes a credit union authorized to do business in this State. However, for purposes of this rule, "financial institution authorized to do business in this State" does not include limited purpose banks organized pursuant to 9-B MRSA, Part 12.
- F. "Home state" has the meaning set forth in 9-B MRSA § 131(20-A).
- G. "Interstate financial institution" means a financial institution authorized to do business in this State and operating at least one branch in Maine and at least one branch in another state.
- H. "Loan" has the meaning set forth in 9-B MRSA § 439-A (1)(A).
- I. "Maine deposits" is, for a Maine-only financial institution, the total of all deposits reported on the institution's Call Report. "Maine deposits" is, for an interstate financial institution, the total of all deposits attributable to branches in Maine.
- J. "Maine home state loan-to-deposit ratio" means the ratio of total Maine loans to total Maine deposits, for all financial institutions authorized to do business in this State whose home state is Maine.
- K. "Maine Interstate Report" means the quarterly report of total Maine deposits and Maine loans filed with the Bureau by an interstate financial institution.
- L. "Maine loans" is, for a Maine-only financial institution, the total of all loans reported on the institution's Call Report. "Maine loans" is, for an interstate financial institution, the total of all loans attributable to branches in Maine.

- M. "Maine-only financial institution" means a financial institution authorized to do business in this State whose home state is Maine and which has branches only in Maine.
- N. "Statewide loan-to-deposit ratio" means the ratio of Maine loans to Maine deposits, for each financial institution authorized to do business in this State.

IV. GENERAL PROVISIONS

A. Standards

A financial institution authorized to do business in this State is in compliance with 9-B MRSA § 241(8), if it meets at least one of the following standards:

1. Its Maine deposits are less than two percent (2%) of total Maine deposits reported by all financial institutions authorized to do business in this State;
2. Its statewide loan-to-deposit ratio is equal to or greater than 50% of the Maine home state loan-to-deposit ratio;
3. Its statewide loan-to-deposit ratio is equal to or greater than 50%;
4. For a financial institution authorized to do business in this State whose home state is Maine, its most recent Community Reinvestment Act assessment by the institution's appropriate federal regulator is "satisfactory" or "outstanding;" or
5. For a financial institution authorized to do business in this State whose home state is not Maine, its most recent Community Reinvestment Act assessment for the State of Maine branch(es) by the institution's appropriate federal regulator is "satisfactory" or "outstanding."

The Maine home state loan-to-deposit ratio and the statewide loan-to-deposit ratio for each Maine-only financial institution and each interstate financial institution shall be calculated annually, using data obtained from the June 30 Call Report and the June 30 Maine Interstate Report.

B. Additional Performance Factors

If a financial institution authorized to do business in this State does not meet any of the standards set forth in Section IV(A) of this Regulation, then the Superintendent shall consider the following performance factors. Favorable consideration of these factors may result in a determination that the institution is in compliance with 9-B MRSA §241(8).

1. Other lending and investing activities in Maine of the financial institution, including loans originated for sale to secondary markets;
2. Lending activities in Maine of affiliates of the financial institution;
3. The length of time that the financial institution has been in operation in Maine;
4. The financial condition and statewide loan-to-deposit ratio trend of the financial institution;
5. The assessment area, as delineated in its Community Reinvestment Act Statement, of the financial institution;
6. The economic conditions, lending opportunities and credit needs in the assessment area, as delineated in its Community Reinvestment Act Statement, of the financial institution; and
7. Any other relevant factors that may be presented.

C. Reporting Requirements

Quarterly, each interstate financial institution shall file with the Bureau a Maine Interstate Report. For each Maine-only financial institution, the information contained in its Call Report shall satisfy the reporting requirements.

D. Penalty for Non-Compliance

If, after a review of the Standards and Performance Factors set forth in Sections IV(A) and IV(B) of this Regulation, the Superintendent determines that a financial institution authorized to do business in this State is not in compliance with 9-B MRSA § 241(8), the Superintendent shall notify the institution in writing of that finding. The institution shall have 60 days from receipt of that notification to submit to the Superintendent a plan describing the means and timetable by which it shall come into compliance with 9-B MRSA § 241(8). Within thirty days of receipt of a financial institution's remedial plan, the Superintendent shall notify the institution in writing of the plan's acceptance, acceptance with conditions, or rejection. The Superintendent may take any enforcement action, including issuing a cease and desist order pursuant to 9-B MRSA, Chapter 23, if the institution does not submit a reasonable plan or fails to adhere to its submitted plan.

V. FEDERAL/STATE REGULATIONS

It is recognized that the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the National Credit Union Administration may promulgate in the future regulations governing the operation of deposit production offices. It is further recognized that there may exist differences in scope and coverage between this

Regulation 36 and those regulations promulgated by federal financial supervisory agencies. It is not the intent of this Regulation to permit any practice not permitted by the appropriate federal financial supervisory agency. To the contrary, besides complying with any restriction or limitation stated herein, each financial institution must comply fully with the laws and regulations of its respective federal financial supervisory agency.

EFFECTIVE DATE: October 17, 2005

BASIS STATEMENT:

The Bureau of Financial Institutions issued Regulation 36, Deposit Production Offices, effective February 23, 1997. On September 10, 1997, the federal bank regulators issued rules which prohibited the use of interstate branches primarily for deposit production. This rule is being promulgated to more closely parallel federal rules on the prohibition of deposit production offices and establishes guidelines that are generally comparable to the federal rules. It also provides a *de minimis* percentage threshold of deposits under which all financial institutions authorized to do business in Maine would be considered to be in compliance with this rule and reduces the reporting requirement on Maine financial institutions and credit unions by eliminating the annual Branch Loan and Deposit/Share Survey.

RESPONSE TO COMMENTS

Notice of the proposed rulemaking was published on or about June 16, 2004 and written comments were solicited through July 16, 2004. In response to the proposed rule, the Bureau received comments submitted by two interested parties. Barbara A. Haynes of the Greater Waterville Area Federal Credit Union commented that she found the present reporting forms time-consuming and confusing and was in favor of the elimination of Regulation 36.

Christopher W. Pinkham, President of the Maine Association of Community Bankers ("MACB"), commented that the 23 Maine-based member banks strongly supported the proposal to substantially eliminate the existing reporting requirements. MACB suggested that the Bureau clarify that the standards listed in Section IV (A) and (B) related to the Community Reinvestment Act would not apply to credit unions, inasmuch as credit unions are not subject to the Community Reinvestment Act. The Bureau is well aware that, at this time, the Community Reinvestment Act does not apply to credit unions and therefore a credit union could not satisfy those standards that are related to the Act. Because the rule applies to all financial institutions authorized to do business in this State, including credit unions authorized to do business in this State, the Bureau believes the rule's standards should be uniform for all covered institutions, even if all of the standards may not apply to all of the covered institutions. Each of the Community Reinvestment Act-related standards was in the prior rule and applied equally to all financial institutions authorized to do

business in this State, including credit unions. As such, the Bureau is not convinced that the suggested changes are appropriate and, therefore, has not incorporated the suggested changes.