

02-029

Chapter 138

Regulation #38

TRUTH-IN-LENDING, REGULATION Z-3

(Also 030 - BUREAU OF CONSUMER CREDIT PROTECTION Chapter 240)

BACKGROUND AND SUMMARY:

This regulation is part of the State of Maine's ongoing efforts to harmonize State truth-in-lending laws with federal truth-in-lending laws. It requires creditors to comply with federal Regulation Z, now codified at 12 C.F.R. Part 1026, and federal Regulation M, now codified at 12 C.F.R. Part 1013, issued by the Consumer Financial Protection Bureau (CFPB). It will thus provide additional consumer credit protections to Maine consumers, ease compliance burdens on Maine creditors, and preserve the Bureau's ability to enforce truth-in-lending laws applicable to Maine-chartered and Maine licensed lenders.

In 2011, Maine enacted P.L. ch. 427, "An Act to Amend the Maine Consumer Credit Code to Conform with Federal Law" (Maine Conforming Act). Among other things, the Maine Conforming Act provides that, "[n]otwithstanding any other law, a creditor shall comply with the Federal Truth in Lending Act ... and its implementing regulations, Regulation Z ... and Regulation M ... including any final regulations issued on or before July 21, 2011." The purpose of enactment was, in part, to harmonize Maine's truth-in-lending laws with federal truth-in-lending laws in order to ensure the preservation of Maine's exemption under Regulation Z pursuant to law now codified at 12 C.F.R. §1026.29, thereby allowing for the continuation of state enforcement of truth-in-lending laws applicable to State-chartered and State-licensed lenders. The Maine Conforming Act also makes creditors that are not supervised financial organizations or the Maine Housing subject to certain enhanced restrictions set forth in 9-A, M.R.S. §8-506, in addition to the requirements now set forth in federal Regulation Z, 12 C.F.R. Part 1026, and federal Regulation M, 12 C.F.R. Part 1013. Shortly after the effective date of the Maine Conforming Act, the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection repealed their joint rule known as Truth-in-Lending, Regulation Z-2, because it had been superseded by the new State law.

In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (Dodd-Frank Act) created the CFPB and gave it responsibility over the federal Truth-in-Lending Act and the Consumer Leasing Act. Using its new authority, the CFPB re-codified Regulation Z (Truth-in-Lending) and Regulation M (Consumer Leasing) as 12 C.F.R. Parts 1026 and 1013, respectively, and began modifying those regulations consistent with the

requirements of the Dodd-Frank Act.

This promulgation, which will become known as Regulation Z-3, requires creditors to comply with the regulations issued by the CFPB in 12 C.F.R. Part 1026 and 12 C.F.R. Part 1013, including those Regulation Z and Regulation M rules issued since July 21, 2011, the majority of which become effective in January 2014.

The CFPB's new regulations include:

- 76 FR 79768, establishing a new and discrete codification of Regulation Z;
- 76 FR 78500, establishing a new and discrete codification of Regulation M;
- 78 FR 11280, implementing requirements and restrictions concerning loan originator compensation, qualifications of, and registration or licensing of loan originators, compliance procedures for depository institutions, mandatory arbitration, and financing of single-premium credit insurance;
- 78 FR 10902, regarding mortgage loan servicing;
- 78 FR 10368, requiring appraisals for "high-risk mortgages";
- 78 FR 6856, expanding the types of mortgage loans subject to the Home Ownership and Equity Protections Act of 1994 (HOEPA);
- 78 FR 6408, delineating requirements for creditors to determine a consumer's ability to repay consumer credit transactions secured by a dwelling, establishing protections from liability for "qualified mortgages," and limiting prepayment penalties;
- 78 FR 4726, lengthening the time for which mandatory escrow accounts established for higher-priced mortgage loans must be maintained;
- 78 FR 25818 which amends the ability to pay requirements for credit card accounts;
- 78 FR 30739 which clarifies and makes technical amendments to 78 FR 4726, the final rule which, among other things, lengthens the time for which a mandatory escrow account established for a higher-priced mortgage loan must be maintained;
- 78 FR 32547 regarding loan originator compensation requirements, prohibition on financing credit insurance premiums and the delay of effective date; and
- 78 FR 35430 providing an exemption from the ability to pay requirements for creditors with certain designations, loans pursuant to certain programs, certain non-profit creditors, and mortgage loans made in connection with certain federal emergency economic stabilization programs; providing an additional definition of a qualified mortgage for certain loans made and held in portfolio by small creditors; providing a temporary definition of a qualified mortgage for balloon loans, and;

modifying the requirements regarding the inclusion of loan originator compensation in the points and fees calculation.

- 78 FR 44686 which clarifies the implementation dates for the adjustable rate mortgage provisions of Regulation Z, and clarifies that construction, bridge and reverse mortgages are not subject to its requirements regarding repayment abilities and prepayment penalties for higher priced mortgage loans.
- Amendments to the 2013 mortgage rules issued by the CFPB on January 13, 2013 clarifying and revising the definition of points and fees for purposes of the qualified mortgage points and fees cap and the high-cost mortgage points and fees threshold; revising two exceptions for small creditors operating predominantly in "rural" or "underserved" areas pending the Bureau's re-examination of the underlying definitions of "rural" or "underserved" over the next two years, and extending the exception to the general prohibition on balloon features for high-cost mortgages to allow small creditors to continue originating balloon high-cost mortgages if the loans meet the requirements for qualified mortgages under certain Regulation Z provisions; amending an exemption from the requirement to establish escrow accounts for higher-priced mortgage loans under certain circumstances; and making technical and wording changes to various provisions of Regulation Z.

This regulation also directs creditors subject to the enhanced restrictions in 9-A M.R.S. § 8-506 to comply with the restrictions in 9-A M.R.S. § 8-506 using as authority 12 C.F.R. Part 1026 rather than 12 C.F.R. Part 226.

SECTION 1. AUTHORITY

The Bureau of Financial Institutions and the Bureau of Consumer Credit Protection are promulgating this regulation under their authority set forth in 9-A M.R.S. §§ 1-102, 6-104, 8-504 and 8-507, pursuant to which the Bureaus may adopt rules substantially similar to or that afford more protection for consumers than those codified in federal truth-in-lending laws, notwithstanding any other law. Alignment with CFPB Regulation Z and CFPB Regulation M is consistent with 9-A M.R.S. §8-504 wherein the Bureaus are authorized to issue rules that are consistent with the purposes of Title X and Title XIV of the Dodd-Frank Act and with the purposes set forth in 9-A M.R.S. §§1-102 and 8-502.

Pursuant to 9-A M.R.S. §8-504(2) specifically, the Bureaus' administrators may make rules containing differentiations and adjustments for a class of transactions that in the judgment of the administrators are necessary and proper to effectuate the purposes of 9-A M.R.S. and to facilitate compliance with 9-A M.R.S. In exercising that authority, the Bureaus have specifically considered whether there is a substantial impact on consumer protection before adopting provisions affecting compliance with 9-A M.R.S. §8-506 and have

determined that the provisions will provide greater protection to consumers.

SECTION 2. PURPOSES

The purposes of this regulation are to:

- A. Provide additional credit protections to Maine consumers by requiring creditors subject to Article 8-A of 9-A M.R.S. to comply with Regulation Z and Regulation M issued by the CFPB using its discrete codifications (12 C.F.R. Part 1026, Regulation Z and 12 C.F.R. Part 1013, Regulation M) and by requiring creditors subject to Article 8-A of 9-A M.R.S. to comply with truth-in-lending and consumer leasing regulations issued by the CFPB since July 21, 2011.
- B. Ease compliance by creditors subject to Article 8-A of 9-A M.R.S. with truth-in-lending laws; and
- C. Preserve Maine's exemption from federal Regulation Z and thereby allow for the continuation of State enforcement of truth-in-lending laws applicable to creditors subject to Article 8-A of 9-A M.R.S.

SECTION 3. DEFINITIONS

Unless the context otherwise indicates, any word or phrase used herein that is defined in 9-A M.R.S. shall have the meaning set forth in 9-A M.R.S., and any word or phrase that is not defined in 9-A M.R.S. but that is defined in 12 C.F.R. Part 1026 or 12 C.F.R. Part 2013 shall have the meaning set forth in those federal regulations.

SECTION 4. GENERAL PROVISIONS

- A. Creditors subject to Article 8-A of 9-A M.R.S. shall comply with federal truth-in-lending regulations issued by the CFPB, 12 C.F.R. Part 1026, up to and including the effective date of this regulation.
- B. Creditors subject to Article 8-A of 9-A M.R.S. shall comply with federal consumer leasing regulations issued by the CFPB, 12 C.F.R. Part 1013, up to and including the effective date of this regulation.
- C. Creditors subject to the enhanced restrictions in 9-A M.R.S. § 8-506 shall comply with subsections 4(A) and 4(B) of this regulation, and shall comply with the enhanced restrictions in 9-A M.R.S. § 8-506 with reference to 12 C.F.R. Part 1026 where any provision of 12 C.F.R. Part 226 is cited in § 8-506.

- D. Creditors subject to Article 8-A of 9-A M.R.S. shall comply with federal truth-in-lending and consumer leasing regulations by the mandatory compliance deadlines set forth in those federal regulations, as applicable.
- E. Creditors subject to Article 8-A of 9-A M.R.S. may comply with federal truth-in-lending and consumer leasing regulations prior to the mandatory compliance deadlines set forth in those federal regulations, as applicable.

EFFECTIVE DATE: October 15, 2013.

PRIMARY SOURCES OF INFORMATION RELIED UPON: Pursuant to 5 M.R.S. §8057-A(4), the Bureaus are required to provide citations for primary sources of information relied upon in adopting the regulation. The Bureaus rely upon Public Law 2011, Chapter 427, "An Act to Amend the Maine Consumer Credit Code to Conform with Federal Law", and 12 C.F.R. § 1026.29 of Regulation Z setting forth the requirements for the exemption from federal truth-in-lending laws.

BASIS STATEMENT

This regulation is part of the Bureaus' ongoing efforts to keep state truth-in-lending requirements substantially similar to federal truth-in-lending requirements by incorporating the requirements of federal truth-in-lending rules that have recently been issued by the CFPB. The rule also directs lenders to follow the requirements found in 12 Code of Federal Regulations Part 1026, which are the Regulation Z rules issued by the CFPB. Furthermore, this regulation directs lenders subject to the state enhancements found in Title 9-A, s. 8-506, to follow these enhancements using references found in 12 Code of Federal Regulations Part 1026.

SUMMARY OF COMMENTS AND BUREAUS' RESPONSES TO COMMENTS

The Bureaus received one comment letter from the Maine Bankers Association (MBA), dated September 23, 2013. Kathy Keneborus, the Director of Government Relations & Compliance for the MBA, expressed support for the Bureaus' continued efforts to make Maine's truth-in-lending law consistent with federal truth-in-lending law, including the Bureaus' proposal of Regulation Z-3.

- Ms. Keneborus requested that the proposed rule be amended to include final rule amendments issued by the CFPB on September 13th, 2013.

Bureaus' response. The proposed rule, as drafted, requires creditors to comply with federal truth-in-lending regulations issued by the CFPB "up to and including the effective date of this regulation." Because the effective date of the rule will post-date these new CFPB rule amendments, Regulation Z-3 will include the requirements set forth therein. For added clarity, the Bureaus have listed these recent CFPB rule amendments in the "background and summary" section.

- Ms. Keneborus requested that the Bureau adopt any CFPB authorized transition period for compliance to the new Regulation Z requirements that are being incorporated in Regulation Z-3.

Bureaus' response: The Bureaus are aware that some of the new CFPB rules that are being incorporated in Regulation Z-3 may be subject to revised mandatory compliance deadlines. Sub-section 4(D) of the proposed rule provides that creditors shall comply with the mandatory compliance deadlines set forth in those regulations. Thus, if the mandatory compliance deadlines in the CFPB final rules are revised, these revised federal mandatory compliance deadlines will form as part of Regulation Z-3.

Copies of 12 CFR Part 1026 may be obtained at cost from the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection, or from the CFPB at www.consumerfinance.gov.

Copies of 12 CFR Part 1013 may be obtained at cost from the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection, or from the CFPB at www.consumerfinance.gov.

The adjustments to the threshold dollar amounts for consumer loans and consumer leases are automatically adjusted pursuant to the Maine Conforming Act, now codified in 9-A, M.R.S. §1-301(11).