

02-029

Chapter 145

Regulation #45

(Also BUREAU OF CONSUMER CREDIT PROTECTION Chapter 600)

STUDENT LOANS

SECTION 1: Summary

1. This Chapter allows subject lenders to provide to student borrowers loans that provide for a schedule of payments of principal and/or interest pursuant to which payments are not substantially equal to all other payments or pursuant to which the intervals between consecutive payments differ substantially. This Chapter also allows subject lenders to provide to student borrowers loans that provide for the deferral of periodic payments and the accrual of interest and costs during the deferral period.

2. This Chapter is promulgated jointly by the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection because it pertains to financial institutions authorized to do business in this State as defined by Title 9-B § 131(17-A), credit unions authorized to do business in this State as defined by Title 9-B § 131(12-A), and supervised lenders, as defined in Title 9-A § 1-301(39). This Chapter only pertains to loans provided to student borrowers by subject lenders.

SECTION 2: Authority

1. Pursuant to Title 9-A M.R.S.A. § 8-104(4), the Administrator may by rule exempt from all or part of Title 9-A any class of transactions (other than transactions involving a mortgage described in § 8-103, sub-§ 1-A, paragraph P) for which, in the determination of the Administrator, coverage under all or part of Title 9-A M.R.S.A. does not provide a meaningful benefit to consumers in the form of useful information or protection. In determining which classes of transactions to exempt in whole or in part under Title 9-A M.R.S.A. § 8-104(4), the Administrator shall consider the following factors:

A. The amount of the loans and whether the disclosures, right of rescission and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the Administrator;

B. The extent to which the requirements of Title 9-A M.R.S.A.

complicate, hinder or make more expensive the credit process for the class of transactions;

C. The status of the borrowers, including:

1) Any related financial arrangements of the borrowers, as determined by the Administrator;

2) The financial sophistication of the borrowers relative to the type of transaction; and

3) The importance to the borrowers of the credit, related supporting property and coverage under Title 9-A M.R.S.A., as determined by the Administrator;

D. Whether a loan is secured by the principal residence of the consumer; and

E. Whether the goal of consumer protection would be undermined by such an exemption.*

*Pursuant to Public Law 2011, Chapter 427, the provisions of Article 8 of Title 9-A, including § 8-104(4), were repealed. This Public Law replaced Article 8 with a new Article 8-A wherein § 8-504(2) provides that rules may contain classifications, differentiations or other provisions and may provide for adjustments and exceptions for any class of transactions subject to Title 9-A that in the judgment of the administrator are necessary or proper to effectuate the purposes of Title 9-A, or to prevent circumvention or evasion of or to facilitate compliance with, the provisions of Title 9-A. The Bureaus now rely upon § 8-504(2) as authority for this Chapter.

2. Title 9-A M.R.S.A. § 6-104(1) paragraph E permits the Administrator to adopt, amend, and repeal rules to carry out the specific provisions of Title 9-A M.R.S.A.

3. Title 9-A M.R.S.A. §§ 6-103 and 1-301(2) state that, except in cases in which a supervised financial organization is the creditor, the Administrator is the Superintendent of the Bureau of Consumer Credit Protection. In cases in which a supervised financial organization is the creditor, the Administrator is the Superintendent of the Bureau of Financial Institutions.

4. Title 9-B M.R.S.A. § 215 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

1. The purpose of this Chapter is to provide a limited exemption from Title 9-A M.R.S.A. §§ 3-308(1) and 3-308(3) to enable lenders to provide student loans to student borrowers that are not insured, guaranteed, subsidized or made directly by the federal government, a state, a nonprofit private loan guaranty or organization, by an institution of higher education itself or through an endowment or trust fund affiliated with such institution of higher education.

2. This exemption supersedes the following provisions of the Consumer Credit Code.

A. Title 9-A M.R.S.A. § 3-308(1) provides that "... no creditor may contract for or receive payments of principal and/or interest pursuant to a schedule of payments under which any one payment is not substantially equal to all other payments, excluding any down payment receivable by the creditor or under which the intervals between any consecutive payments differ substantially."

B. Title 9-A M.R.S.A. § 3-308(3) provides that, "A schedule of payments may provide for the deferral of the first periodic payment subsequent to any down payment for a period of not more than 12 months, except that interest or costs may not accrue in connection with the deferral of the first periodic payment if the deferral is for a period of time in excess of 90 days."

3. Title 9-A M.R.S.A. §§ 3-308(1) and 3-308(3) do not allow for payment schedules common to student lending. This Chapter allows lenders to receive payments pursuant to which payments are not substantially equal and to delay repayment of principal and/or interest on loans to student borrowers while they are still in school on at least a half-time schedule. The student loans remain subject to all other protections related to consumer lending found in the Consumer Credit Code.

SECTION 4: Definitions

1. For the purpose of this Chapter, the following terms have the following meanings:

A. "Cost of attendance" has the same meaning as set forth in 20-A M.R.S.A. § 11413(6) and means the tuition and fees applicable to a student, together with an estimate of other expenses reasonably related to cost of attendance at an institution of higher education, including, without limitation, the cost of room and board, transportation, books and supplies.

B. "Institution of higher education" has the same meaning as set forth in 20-A M.R.S.A. § 11459(3) and means an accredited post-secondary institution of higher education located within the United States.

C. "Lender" means a financial institution authorized to do business in this State as defined in 9-B M.R.S.A. § 131(17-A), a credit union authorized to do business in this State as defined by 9-B M.R.S.A. § 131(12-A), and a supervised lender, as defined in 9-A M.R.S.A. §1-301(39).

D. "Student loan" means a loan to a student borrower who has attained the age of 18 and who is enrolled at least half time in an institution of higher education, the proceeds of which are used to pay for the cost of attendance at an institution of higher education.

SECTION 5: General Provisions

1. When providing student loans to student borrowers, a lender is exempt from the provisions of 9-A M.R.S.A. § 3-308 to the extent that a lender may do any of the following:

A. Contract for or receive payments of principal and/or interest pursuant to a schedule of payments under which any one payment is not substantially equal to all other payments or under which the intervals between any consecutive payments differ substantially; and

B. Contract for the deferral of periodic payments and for the accrual of interest and costs during the deferral period.

A lender is exempt from the provisions of 9-A M.R.S.A. § 3-308 to the extent set forth in paragraphs (A) and (B) above, whether or not the student loan is co-signed or guaranteed by any third party. However, the lender is not exempt from the provisions of 9-A M.R.S.A. § 3-308 to the extent set forth in paragraphs (A) and (B) above, if a co-borrower is named on the student loan.

2. When a student borrower is no longer enrolled at least half-time in an institution of higher education, the terms of the student loan must provide for payments to begin within nine months after enrollment ends.

3. If a student borrower completes or terminates enrollment at least half-time in an institution of higher education, but then resumes enrollment at least half time in an institution of higher education, the lender may contract for or receive payments in accordance with paragraphs 5(1)(A) and 5(1)(B) of this Chapter.

4. When making student loans, the lender shall require written verification that the student borrower is 18 years or older at the time of making the loan and is enrolled at least half time in an institution of higher education.

5. When making student loans, the lender shall require student borrowers to notify the lender when they are no longer enrolled at least half time at an institution of higher education.

6. Student loans, and lenders that offer such loans, are otherwise subject to the applicable provisions and prohibitions set forth in Titles 9-A and 9-B M.R.S.A., and regulations promulgated by the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection.

EFFECTIVE DATE: July 7, 2008

BASIS STATEMENT

1. Pursuant to Title 9-A M.R.S.A. § 8-104(4), the Administrator may exempt, by rule, from all or part of Title 9-A any class of transactions, other than transactions involving a mortgage described in § 8-103, sub-§ 1-A, paragraph P, for which, in the determination of the Administrator, coverage under Title 9-A M.R.S.A. §§ 3-308(1) and 3-308(3) does not provide a meaningful benefit to consumers in the form of useful information or protection. Coverage under 9-A M.R.S.A. §§ 3-308(1) and 3-308(3) does not provide a meaningful benefit to

student borrowers because the payment schedule restrictions and deferral restrictions therein do not accommodate student borrowers' need to access credit on terms that are amenable to them. Furthermore, the goals of consumer protection are preserved by this Chapter because non-guaranteed student loans will remain subject to the other applicable provisions of Title 9-A M.R.S.A. The exemption for student lending only applies to the restrictions found in 9-A M.R.S.A. sub-§§ 3-308(1) and 3-308(3).

2. In determining which classes of transactions to exempt in whole or in part under 9-A M.R.S.A. sub-§ 8-104(4), the Administrator shall consider, among other things, the importance to the borrowers of the credit and the extent to which the requirements of Title 9-A may hinder the credit process. Given the importance of access to educational opportunities to students, the Bureaus find that it is appropriate to expand the types of student loans a lender can offer in an effort to supplement existing guaranteed loan programs. Furthermore, given the academic commitments and financial burdens faced by students attending an institution of higher education, the payment schedule restrictions and the deferral restrictions in the Consumer Credit Code create an obstacle to credit access for student borrowers.

3. A Notice of agency rulemaking was published and mailed on or about Wednesday, April 30th, 2008. The deadline for public comment was Monday, June 2nd, 2008.

RESPONSES TO COMMENTS

1. By email dated May 20th, 2008, Attorney Gretchen Jones questioned the Bureaus' reference to Title 9-A M.R.S.A. § 3-204 in section 3(3) of the rule.

Bureaus' response. The Bureaus have omitted the reference to Title 9-A M.R.S.A. § 3-204. The Bureaus note that omission of this reference does not alter the meaning of section 3(3) of the rule.

2. By email dated May 20th, 2008 and letter dated May 27th, 2008, Attorney Jones questioned whether or not loans to fund "study abroad" programs would fall outside the parameters of the proposed rule.

Bureaus' response. The answer to this question depends upon whether or not a student, while participating in a "study abroad" program, is still enrolled at an "institution of higher education" as defined in section 4(1)(B) of the rule. If so, a student loan to fund a "study abroad" program would fall within the parameters of the proposed rule. It is the Bureaus' understanding that students are generally enrolled at their primary institution of higher education while participating in "study abroad" programs.

3. By email dated May 20th, 2008 and letter dated May 27th, 2008, Attorney Jones questioned whether or not the rule applies to loans made to students as well as parents, or students only.

Bureaus' response. The rationale for the rule is to provide for a payment schedule and/or deferral period that may accommodate students' academic commitments. While parents (and other third parties) may not be immune from the financial stresses caused by a student attending an institution of higher education, the Bureaus are of the view that the rule should not extend to parents (and other third parties) of students. In order to clarify the rule, the Bureaus have added a paragraph in sub-section 5(1) of the rule which states that a lender is exempt from the provisions of 9-A M.R.S.A. § 3-308 to the extent set forth in paragraphs 5(1)(A) and 5(1)(B) of the rule, whether or not the student loan is co-signed or guaranteed by any third party. However, a lender is not exempt from the provisions of 9-A M.R.S.A. § 3-308 to the extent set forth in paragraphs 5(1) (A) and 5(1)(B) of the rule if a co-borrower is named on the student loan.

4. By email dated May 20th, 2008, Attorney Jones states that section 4(1)(C) of the rule implies that the prohibitions imposed under 9-A M.R.S.A. § 3-308 apply to federally-chartered credit unions whereas they do not, by virtue of NCUA rule 701.21(b)(1)(ii).

Bureaus' response. The Bureaus believe that clarity is best served if the definition of "lender" in section 4(1)(C) of the Rule is not amended. Attempting to exclude certain entities on the basis that they are not subject to the provisions of 9-A M.R.S.A. § 3-308 may only invite confusion.