# 02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

030 BUREAU OF CONSUMER CREDIT PROTECTION

Chapter 190 Enforcement Policy Guidelines

SUMMARY: This rule establishes the procedures the Bureau intends to follow upon discovery of certain violations of the Maine Consumer Credit Code. It is a modification of an earlier version of the Guidelines which became effective September 7, 1981.

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§1. AUTHORITY

This Rule is being adopted in accordance with the following statutory authority: 9-A M.R.S.A., §§6 -104(1)(E), 8-104(1) and 8-108(3).

§2. PURPOSE

 The purpose of this Rule is to establish standards for addressing violations of Articles I through VI of the Maine Consumer Credit Code and Article VIII, its Truth-in-Lending provisions. Maine must have an enforcement policy at least as strict as that required by the Federal Truth-in-Lending Act in order to maintain a delegation of enforcement authority from the Federal Reserve Board pursuant to Section 123 of the Federal Truth-in-Lending Act.

§3. DEFINITIONS

 Except as specified below, all definitions are those found in the Maine Consumer Credit Code, Title 9-A, M.R.S.A., (the "Code") and its accompanying regulations:

A. "Overcharge" means an actual or potential charge to a consumer in excess of that allowed by law. The term includes an amount equal to the difference between: an understated APR and the true APR; and an understated Finance Charge and the true Finance Charge.

B. “Understated APR" means a disclosed annual percentage rate that is more than 1/8 of one percentage point below the annual percentage rate calculated in accordance with Article VIII of the Code. In the case of irregular transactions, a 1/4 of 1% tolerance is allowed. For purposes of this rule, an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment).

C. "Understated Finance Charge" means a disclosed finance charge that is less than the finance charge generated by applying the annual percentage rate, calculated in accordance with Article VIII of the Code and reduced by the appropriate tolerances specified in subsection B, to the Amount Financed.

D. "Lump Sum Method" means a method of reimbursement under which a cash payment equal to the total overcharge (rounded to the nearest $1.00) will be made to a consumer.

E. "Lump Sum/Payment Reduction Method" means a method of reimbursement under which a cash payment which will fully compensate the consumer for past overcharges will be returned to the consumer and the remaining payment amounts on the loan will be reduced to eliminate future overcharges.

§4. GENERAL POLICIES

A. Rules of Application.

(1) These policies and remedies represent the standards to be used by the Bureau in enforcing the Code. The Bureau retains the authority to take appropriate alternative action pursuant to Article VI of the Code.

(2) Credit transactions

(a) Except as specifically noted below, these guidelines apply to all consumer credit transactions within the jurisdiction of the Code.

(b) The guidelines do not apply to the following:

(i) advertising (Section 3-201) ; and

(ii) licensing of supervised lenders, Article II, Part 3.

B. Violations Subject to Corrective Action. Violations subject to corrective action include the following:

(1) Violations involving the failure to correctly disclose required information, which may or may not involve overcharges;

(2) Violations involving overcharges, except that violations involving overcharges of less than $1.00 per individual account will not be subject to reimbursement unless the Bureau determines they are part of a consistent pattern, or due to gross negligence or a willful violation of the Code;

(3) Violations involving practices of the creditor prohibited by the Code; and

(4) Violations involving the use of agreements prohibited by the Code.

C. Period for which Corrective Action Required. Except as otherwise provided in this Rule, corrective action shall be required on all consumer credit transactions within the scope of the Code and to which the record retention provisions of Regulation Z-2 and §1-111 apply. In other words, corrective action may be required for Truth-in-Lending violations for a period of two years following the date disclosure was required to be given, and for Articles I through VI violations, for a period of two years after final entry on the account for closed-end transactions and two years after the most recent entry on the account for open-end transactions.

D. Disclosure of Reason(s) for Corective Action. Whenever corrective action is taken, the creditor must clearly inform the consumer that the action is being taken because of the creditor's failure to comply with the Maine Consumer Credit Code. The notice will further inform the consumer of the specific violation and, in the case of corrective action involving reimbursement of any kind, clearly inform the consumer of his unqualified right to keep such reimbursement.

E. Procedures for Corrective Action.

(1) Within 60 days of receipt by the creditor from the Administrator of the written notice of one or more alleged violations, the creditor shall:

(a) submit further information or documents relevant to a report of examination or notice of alleged violation which demonstrate to the Administrator that a violation has not occurred;

(b) by written notice to the Administrator, contest the written notice of alleged violations pursuant to subsection F; or

(c) proceed under subsection (E)(2) of this Section.

(2) With respect to a notice of alleged violation not contested by the creditor, the creditor shall, within 60 days of receipt, take the appropriate corrective action required by Section 5 of this Rule. Extension of this time period may be granted by the Administrator for good cause, but such extension shall not affect §5-201(7) or §8-208(2). Failure to comply with this paragraph shall automatically result in notification by the Bureau of the alleged violations to all parties to the transactions pursuant to subsection G.

F. Contested Findings.

(1) The administrator shall attempt to resolve disputes first by informal means, including the negotiation of an Assurance of Discontinuance (§6-109).

(2) Failure to resolve the disputed findings of violation by informal means may result in the use by the Administrator or recommendation to the Attorney General of one or more formal enforcement options set forth in the Code: administrative enforcement orders (§6-108); injunction against violations (§6-110); injunction against unconscionable agreements or conduct (§6-111); civil actions to seek damages, refunds or penalties in appropriate cases (§6-113); temporary injunctions (§6-112); or criminal penalties (§§5-301, 8-109).

G. Notification of Consumer. Pursuant to §6 -106(1), the Administrator shall notify all parties to a consumer credit transaction that an alleged violation has occurred and their legal options regarding that violation if:

(1) The creditor contests the notice of alleged violation, in which case the notice will also inform consumers that the creditor disputes the alleged violation;

(2) The creditor does not contest the notice of alleged violation but fails to take the appropriate corrective action within the time period specified in subsection E(2); or

(3) The alleged violation is determined to be an obvious error under subsection H and is not subject to administrative corrective action involving overcharges under §5(C). The Administrator may permit notice from the creditor that may be required under §5(B) to suffice for any notice that would otherwise be sent by the Administrator, provided that the Administrator has the opportunity to review the creditor's notice, and modify it if necessary, before it is sent.

H. Obvious Error.

(1) An “obvious error" is one in which the APR was disclosed correctly, but the finance charge required to be disclosed was understated, or the finance charge was disclosed correctly but the APR required to be disclosed was understated, and the error involved a disclosure which was 10% or less of the amount that should have been disclosed.

(2) Except for the provisions of §5(A) and (B), an obvious error will not be subject to administrative remedy unless the Administrator finds that the error resulted from gross negligence or a willful intent to deceive the consumer.

I. Agency Discretion. Corrective action will not be required if the Administrator determines that the violation resulted from any unique circumstances involving a clearly technical and non-substantive violation and which, in the case of disclosure, did not adversely affect the information provided to the consumer and did not mislead or otherwise deceive the consumer.

§5. CORRECTIVE ACTION

A. Copies of Documents to Administrator. Copies of any correspondence or documentation, including refund checks, sent to the consumer in fulfillment of the obligations established in this Rule, shall also be provided contemporaneously to the Administrator.

B. Corrective Action Not Involving Overcharges. Violations not involving overcharges, including, but not limited to, the improper disclosure of required information, conduct or action by a creditor contrary to law, or the use of prohibited terms or conditions in consumer credit agreements, shall be corrected as follows:

(1) Corrected disclosure statements shall be provided to consumers whenever the disclosures required by law to be given contain an inaccuracy;

(2) Actions taken by a creditor against a consumer that are contrary to the Code shall be rescinded; and

(3) Agreements containing terms or provisions prohibited by the Code shall be reformed to conform to the Code.

C. Corrective Action Involving Overcharges; General Provisions. A consumer subject to an overcharge will be reimbursed by the creditor using either the lump sum method or the lump sum/ payment reduction method, at the discretion of the creditor, except that if any portion of the overcharge has already been collected it will be refunded by the lump sum method and may not be amortized.

D. Special Rules Involving Overcharges Resulting from Truth-in-Lending Disclosure Violations.

(1) In situations involving the improper disclosure of the Annual Percentage Rate (APR) or Finance Charge, the following provisions apply:

(a) Where there is an understated APR and the Finance Charge is correct, the creditor shall take corrective action to ensure that the consumer's true cost of credit does not exceed the disclosed APR.

(b) Where there is an understated Finance Charge and the APR is correct, the creditor shall take corrective action to ensure that the consumer's true cost of credit does not exceed the disclosed Finance Charge.

(c) Where both the Finance Charge and the APR are understated, the creditor shall take appropriate action to correct the larger overcharge.

(2) In situations involving the failure to disclose the Annual Percentage Rate or Finance Charge, the following provisions apply:

(a) Where the APR was omitted and the Finance Charge was correct, the APR shall be considered to be:

(i) the contract rate if that rate was disclosed on the note or truth-in-lending disclosure statement, except that a contract rate disclosed as a graduated rate (under §2-201(2)(A) or §2-401(2)(A)) shall not be considered to be a disclosure of the contract rate; or

(ii) if the contract rate was not disclosed, the contract rate (as determined) or the actual APR, reduced by 1/4 of 1% in real estate-secured transactions, and 1% in all other transactions, whichever is less.

For purposes of this subparagraph, the "contract rate" is the rate of interest on the note, or other form of indebtedness, exclusive of any form or prepaid finance charge.

(b) Where the Finance Charge was required to be disclosed but was omitted and the APR was correct, the Finance Charge shall be considered to be the lesser Finance Charge derived by comparing the Finance Charge generated by application of the contract rate (whether disclosed or to be determined), or that generated by application of the APR reduced by 1/4 of 1% in real estate-secured transactions, or 1% in all other transactions.

(3) In situations involving improper disclosure of the Annual Percentage Rate or Finance Charge and simultaneous omission of the Annual Percentage Rate or Finance Charge, the following provisions apply:

(a) Where the APR is understated and the Finance Charge is omitted, the creditor will first determine what the Finance Charge should be in accordance with §5(D)(2)(b). An adjustment will then be made in accordance with §5(D)(1)(c).

(b) Where the Finance Charge is understated and the APR is omitted, the creditor will first determine what the APR should be in accordance with §5(D)(2)(a). An adjustment will then be made in accordance with §5(D)(1)(c).

(4) In situations involving the failure to give a disclosure statement to the consumer, the APR and Finance Charge will be determined in accordance with §5(D)(2)(a).

(5) In situations involving the improper disclosure of Credit Life or Accident and Health Insurance the following provisions apply:

(a) If the creditor has not disclosed to the consumer in writing that Credit Life or Accident and Health Insurance is optional, the insurance shall be treated as having been required by the creditor and improperly excluded from the finance charge. The creditor shall take appropriate corrective action for the overcharge resulting from the understated finance charge or APR. The insurance will remain in effect subject to the terms of the policy.

(b) If the creditor has disclosed to the consumer in writing that Credit Life or Accident and Health Insurance is optional but there is either no signed insurance option or no disclosure of the cost of insurance, the creditor shall, unless a claim was made on the insurance policy and paid, be required to send a written notice to the affected consumer disclosing the cost of the insurance and notifying the consumer that the insurance is optional and that it may be canceled within 45 days to obtain a full refund of all premiums charged. If the creditor receives no response within 45 days, the insurance will remain in effect subject to the terms of the policy, and no further corrective action will be required.

(c) Omission of the date on the insurance option shall not be considered to result in an overcharge.

(6) If a creditor has not itemized and disclosed the charges allowed by §8-105(4) and has not included them in the finance charge as required by that Section, the resulting disclosure violation shall constitute an overcharge which shall be refunded to the consumer.

(7) In situations involving the proper disclosure of the optional nature and cost of Credit Life or Accident and Health Insurance, in which the consumer elects to purchase such coverage and is appropriately charged for it, but in which the creditor fails to obtain such coverage for the consumer, coverage will be presumed to exist and the creditor will be responsible for paying any claim that may be made to the same extent as the insurer had coverage been obtained. However, coverage will not be presumed to exist and the creditor will not be responsible for paying any claim if the consumer is ineligible for such insurance, or the insurance has been terminated, and the consumer was so notified and the creditor has returned any premium to the consumer within 60 days of the determination of ineligibility or termination.

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