

November 5, 1982

The Bureau has had several requests to clarify the relationship between a "residential mortgage transaction". ("RMT") as that term is defined in Regulation Z, §226.2(a)(24), and a refinancing of a mortgage transaction. The Bureau has been asked whether the following types of transactions remain "residential mortgage transactions":

The first type of transaction involves the refinancing of a mobile home credit sale or loan without land. In this case, the creditor proposes to alter the payment schedule at the consumer's request, but prior to any actual default or delinquency. No new funds or charges, other than actual closing costs, will be imposed.

The second type of transaction involves a new loan to pay off the amount of the principal owing on a first lien mortgage involving real estate, and in which all closing costs and any prepaid finance charges ("points") are paid in cash. The purpose of this type of loan would be to provide the consumer with a reduced interest rate.

The third category of loans involve the addition of new principal to the outstanding balance on the existing mortgage loan, such additional funds to be used either for closing costs or prepaid finance charges, as well as potentially the addition of new monies to reflect a growth in equity of the consumer's home.

The Bureau has consulted with staff of the Federal Reserve Board on the issue of whether or not any of these subsequent transactions remain a "residential mortgage transaction" for the purposes of the Truth in Lending Act and Regulation Z. In all cases, the Bureau and the Federal Reserve Board staff agree that these transactions do not meet the definition of "residential mortgage transactions." The hallmark of the definition of RMT is that the proceeds of the loan be used for the acquisition or initial construction of the consumer's principal residence. In all of these cases, the purpose of the loan is not to acquire the consumer's principal residence, but to alter payment schedules, reduce the interest rate, change creditor identity, or advance new funds. For the purposes of Article VIII of The Maine Consumer Credit Code, and Regulation Z (which the Bureau has adopted by reference), the subsequent "refinancings" should not be characterized as an RMT for the purposes of structuring disclosures. This means that the mobile home transaction, for instance, will not be able to take advantage of the rule (§226.4(c)(7)) with respect to the exclusion of closing costs from the finance charge.¹ In all cases, the disclosure should not include the assumption information §226.18(q), although such information can (and probably should) be disclosed outside of the segregated federal Truth in Lending disclosures.

The Bureau notes that Regulation Z, §226.20, requires a new obligation and an

¹. Note that this disclosure rule differs from the Code rule concerning the calculation of the maximum finance charge. See 9-A M.R.S.A. §2-501(D), §1-301(8).

extinguishment of the old one as a trigger for new Truth in Lending disclosures.² It is certainly possible that a reduction in interest rate by the same creditor who granted the RMT could be accomplished without triggering new Truth in Lending disclosures, §226.20(a)(2). Changes in the contract are accomplished by virtue of amendments to the payment schedule could also conceivably be structured in such a way as to avoid an entirely new note and disclosure statement. Obviously, a change in the creditor and the granting of a new mortgage loan, no matter the purpose, is a new transaction and must disclose as such.

In addition to the Truth in Lending implications, a provision of The Maine Consumer Credit Code is of more than passing importance in determining whether or not these transactions qualify as an RMT. By virtue of P.L. 1981, c. 618, Section 1-202(8) of The Maine Consumer Credit Code was amended to exclude certain mortgage loans by supervised lenders other than supervised financial organizations from certain provisions of the Code. The exemption is applicable only to "residential mortgage transactions."* This term is defined in Section 8-103(1)(H) of the Maine Code in terms identical to that of the federal Truth in Lending Act and Regulation Z.

There is nothing in the Code which would prohibit a licensed lender from making the types of loans described above. However, those loans will have to comply with the interest rate and contract term limitations of The Maine Consumer Credit Code. While the Bureau, as a policy matter, has little concern about a transaction in which the consumer merely remains liable for the outstanding unpaid balance of the original loan, the addition of any prepaid finance charges or new funds certainly triggers all of the concerns raised in Advisory Ruling #60. Clearly, the Legislature intended to exempt a narrow class of transactions to allow supervised lenders to compete with other traditional creditors for the typical purchase money mortgage transaction. The specific addition of the acquisition test clearly distinguishes transactions in which new funds are advanced, for what-ever purpose.

I hope this responds to your request. Please let me know if further assistance is requested.

/s/ Barbara R. Alexander
Barbara R. Alexander
Superintendent

*AR #88 Amendment

This Ruling is modified to reflect further legislative change regarding residential mortgage transactions (RMT), and their refinancing, by supervised lenders who are not supervised financial organizations. P.L. 1983, c. 212, §2 amended §1-202(8) to provide that refinancings of RMTs by "non-bank" lenders would also enjoy exemption from most sections of the Code. Most recently, P.L. 1985, c. 336, §2, further amended that same subsection to make any loan secured by a first lien mortgage on real estate made by a non-bank lender exempt from most Code provisions.

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². Again, the distinction between the definition of what constitutes a refinancing for Truth in Lending purposes and for purposes of §2-504 of the Code is vital. Any increase in rate in a fixed-rate transaction may trigger a §2-504 refinancing whether or not a new note or agreement is signed. See also Bureau Rule #200.