



DEPARTMENT OF BUSINESS, OCCUPATIONAL AND PROFESSIONAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
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ADVISORY RULING #87
DECEMBER 31, 1985

December 31, 1985

RE: Cosigner Notices for Joint Open-end Account Holders

A creditor has requested an Advisory Ruling interpreting the definition of the term "cosigner" in §3-206(6)(B) of the Code, as that term relates to joint account holders with open-end credit.

Section 3-206(6)(B) is a new provision of law, added by P.L. 1985, c. 134, which adopted the definition of the term "cosigner" as used in the Federal Trade Commission's Credit Practices Rule, 16 CFR 444.1(k). The purpose of the amendment was to conform Maine's cosigner law to the recently promulgated Federal Trade Commission's Credit Practices Rule, which became effective on March 1, 1985.

In the FTC definition, it was unclear whether a joint account holder in an open-end credit situation, who was liable on the contract but who chose not to use the account, "received compensation" and thus would not be a cosigner. In a March 22, 1985 Staff Advisory Letter, the FTC Staff concluded that a person who is jointly obligated on an account, but voluntarily chooses not to exercise his or her right to use the account, does not become a cosigner through failure to use the account (CCH Consumer Credit Guide, para. 96,345).

In the later adopted Federal Reserve Board and Federal Home Loan Bank Board versions of the Credit Practices Rule (12 CFR 227 and 12 CFR 535, respectively), the FTC interpretation was followed. In both rules the definition of cosigner was amended to make it clear that one who jointly applies for open-end credit has the right to use the account, but voluntarily chooses not to, "receives compensation" and thereby is not a cosigner.

In light of uniform federal interpretation of this question, and the fact that one of the principal motives behind L.D. 188 (P.L., c. 134) was to harmonize state and federal cosigner requirements for the sake of simplicity, cost and avoidance of confusion, it is the Bureau's position that the term "cosigner" in §3-206(6)(B) excludes joint account holders in open-end accounts, who are entitled to use the account, but who, for whatever reason, voluntarily choose not to.

/s/ Robert A. Burgess
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Superintendent

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