

MAINE BUREAU OF FINANCIAL INSTITUTIONS  
SUPERINTENDENT'S  
NOTICE TO INTERESTED PARTIES

Please find attached the re-promulgated Regulation Z-2 which has now been adopted by the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection, together with the basis statement, a summary of the comments received and the Bureaus' responses. Please note that the effective date of this regulation is August 1, 2010.

/s/ Lloyd P. LaFountain III  
Superintendent of Financial Institutions  
Gardiner, Maine  
May 10, 2010

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
029 BUREAU OF FINANCIAL INSTITUTIONS CHAPTER 138 (REG. 38)  
030 BUREAU OF CONSUMER CREDIT PROTECTION CHAPTER 240

TRUTH-IN-LENDING, REGULATION Z2

**SUMMARY:**

This rule was originally promulgated in 1981 and re-promulgated in 1986, 1989, 1992, 1997, 1998 and 2002. This joint re-promulgation, which repeals and replaces both Bureau of Financial Institution Rules, Chapter 138, and Bureau of Consumer Credit Protection Rules, Chapter 240, adopts the latest federal Truth-in-Lending regulations by reference so as to implement Article VIII of the Maine Consumer Credit Code.

**SECTION 1. AUTHORITY**

This rule is being adopted pursuant to 9-A M.R.S. §§ 6-104 and 8-104 by the Bureau of Consumer Credit Protection and the Bureau of Financial Institutions, as the agencies responsible for the administration of the Maine Consumer Credit Code for supervised lenders and supervised financial organizations.

**SECTION 2. PURPOSE**

This rule mandates how the cost of credit and leases are to be disclosed to consumers and how billing errors are to be resolved in open-end credit.

### **SECTION 3. DEFINITIONS**

1. "Administrator" means a person as defined in 9-A M.R.S. § 1-301(2).
2. "Code" means the Maine Consumer Credit Code, Title 9-A M.R.S.

### **SECTION 4. GENERAL PROVISIONS**

Except as provided below, the Administrators hereby adopt all final provisions of federal Regulation Z (12 Code of Federal Regulations, Part 226) adopted through February 22, 2010, including all appendices, and all provisions of federal Regulation M (12 Code of Federal Regulations, Part 213) adopted through February 22, 2010 by the Board of Governors of the Federal Reserve System pursuant to Title I (Truth-in-Lending Act) and Title V (General Provisions) of the Consumer Credit Protection Act (15 U.S.C. § 1601 et seq.

The following provisions of Regulations Z and M are not adopted:

1. Reg. Z, § 226.1(e) concerning enforcement and liability, to the extent that additional effects of violations and liabilities are set forth in the Code, including §§ 5-201, 8-206-E, 8-208 and 8-209 of the Code;
2. Reg. Z, § 226.2(a)(6), the definition of the term "business day," to the extent that the definition of "business day" in § 1-301(6-A) of the Code also excepts Patriots' Day, which falls on the third Monday of April;
3. Reg. Z, § 226.2(a)(14), the definition of the term "credit," to the extent that it differs from the definition of "credit" in § 1-301(15) of the Code;
4. Reg. Z, § 226.2(a)(16), the definition of the term "credit sale," to the extent that it differs from the definition of "consumer credit sale" in § 1-301(11) of the Code;
5. Reg. Z, § 226.3(b), which exempts credit (other than credit secured by real property) over \$25,000, to the extent that there is conflict with § 1-301(11)(A)(vi) (which extends the provisions of the Code to debts secured by manufactured housing and to motor vehicle sales in which the amount financed does not exceed \$ 35,000) and § 1-301(14)(A)(iv)(b) (which extends the provisions of the Code to unsecured loans not exceeding \$35,000 if made by a supervised lender other than a supervised financial organization);
6. Reg. Z, § 226.4(d)(1)(ii), concerning the form of disclosure of the cost of credit insurance, to the extent that additional substantive and disclosure requirements are imposed by § 4-104 of the Code;

7. Reg. Z, § 226.5a(b)(1)(i), which sets forth the requirements for disclosure of the variable rate feature of a credit or charge card plan, to the extent that its provisions are more limited than those contained in § 3-310(D) of the Code;

8. Reg. Z, § 226.5a(b)(5), which sets forth the requirements for disclosure of a credit card plan's "grace period," to the extent that it contemplates grace periods shorter than the minimum 25-day requirements of §§ 2-202(5) and 2-402(4) of the Code;

9. Reg. Z, §§ 226.5a(b)(9) and 226.5a(b)(10), which set forth the requirements for disclosure of late payment fees and over-the-limit fees, to the extent that such fees are not expressly authorized by § 2-501 of the Code for transactions other than those involving unsecured lender credit cards, for which late payment fees and over-the-limit fees are authorized in § 2-501(4);

10. Reg. Z, § 226.5a(g), which defines various balance computation or calculation methods, to the extent that it contemplates methods other than the "average daily balance (excluding new purchases)," the "average daily balance (including new purchases)," and the "adjusted balance" methods, which are the only methods permitted by §§ 2-202(2) and 2-402(2) of the Code;

11. Reg. Z, § 226.9(c)(1), concerning the 15-day notice requirement for changes in terms for home equity plans and other forms of open-end credit that are not credit card accounts, to the extent that there is a conflict with the 30-day notice requirement in § 3-204 of the Code;

12. Reg. Z, § 226.12(f) concerning discounts, to the extent that sellers in sales transactions are also prohibited from imposing a surcharge on a card holder who elects to use a card in lieu of payment by cash, check or similar means as set forth in § 8-303(2) of the Code;

13. Reg. Z, § 226.17(c)(5) and Official Staff Commentary to Reg. Z, § 226.17(c)(1)-17 to the extent that there is a conflict with §§ 8-103 (1-A)(EE) and 8-106(6) of the Code;

14. Reg. Z, § 226.19(a)(2)(ii), concerning the receipt of corrected disclosures, to the extent that additional disclosure requirements regarding prepayment penalties are imposed by § 8-206(3)(B) of the Code;

15. Reg. Z, § 226.24(i)(4), to the extent that there is a conflict with § 241(15) of Title 9-B, the Maine Banking Code;

16. Reg. Z, § 226.32 concerning requirements for certain closed-end home mortgages referred to in the Code as high-rate, high-fee mortgages, as a result of this section being supplanted by the provisions of §§ 8-206-A and 8-206-H of the Code, including terms used in §§ 8-206-A and 8-206-H of the Code and defined in

§ 8-103(1-A) and elsewhere in the Code, to the extent that there is a conflict with terms defined in federal Regulation Z;

17. Reg. Z, § 226.34, concerning prohibited acts or practices in connection with certain closed-end home mortgages referred to in the Code as high-rate, high-fee mortgages, as a result of this section being supplanted by the provisions of §§ 8-206-A, 8-206-H and 8-206-I of the Code, including terms used in §§ 8-206-A, 8-206-H and 8-206-I of the Code and defined in § 8-103(1-A) and elsewhere in the Code, to the extent that there is a conflict with terms defined in federal Regulation Z;

18. Reg. Z, § 226.35, concerning prohibited acts or practices in connection with higher-priced mortgage loans, as a result of this section being supplanted by the provisions of § 8-206-I of the Code, including terms used in § 8-206-I of the Code and defined in § 8-103(1-A) and elsewhere in the Code, to the extent that there is a conflict with terms defined in federal Regulation Z;

19. Reg. Z, § 226.36, concerning prohibited acts or practices in connection with credit secured by a consumer's principal dwelling, as a result of this section being supplanted by § 8-206-J of the Code, including terms used in § 8-206-J of the Code and defined in § 8-103(1-A) and elsewhere in the Code, to the extent that there is a conflict with terms defined in federal Regulation Z;

20. Reg. Z, § 226.52(a)(2), concerning the limitations on fees, to the extent that § 2-501(4)(D) imposes a limit on attorney's fees of not more than 15% of the unpaid debt incurred in connection with a legal action brought by an attorney who is not a salaried employee of the creditor;

21. Reg. Z, Appendices G-1, sub-§§ (b),(e) and (f), and G-1(A), sub-§§ (b),(e) and (f), to the extent that there is a conflict with §§ 2-202(2) and 2-402(2) of the Code;

22. Reg. M, § 213.4(m)(2) concerning the value of the leased property upon expiration of the lease, to the extent that there is a conflict with §3-401 of the Code; and

23. Reg. M, § 213.4(o) and Official Staff Commentary to Reg. M, § 213.4(o)-3, to the extent that there is a conflict with Title 11 M.R.S. § 2-1221(2)(b).

The Administrators shall follow the interpretations set forth in the Official Commentaries to Regulations Z and M issued by the Board of Governors of the Federal Reserve System, except for the Official Staff Commentary to provisions for which an exception has been made under this rule or unless the Administrators issue either a rule or advisory ruling, which explains a conflict between Maine law and federal Regulation Z or M and establishes the interpretation of the Administrators. However, the Administrators shall follow the Official Staff Commentaries relating to §§ 226.32, 226.34, 226.35 and 226.36 of federal Regulation Z, even though these sections have been excepted

from this Regulation Z-2 in their entirety, to the extent that these Official Staff Commentaries relate to language that is identical or substantially similar to State law.

EFFECTIVE DATE: August 1, 2010. The effective and mandatory compliance dates in Federal Regulation Z as of February 22, 2010 will be followed to the extent that any may occur after August 1, 2010.

## **SECTION 5. BASIS STATEMENT:**

This Rule amends a joint rule issued by Bureau of Financial Institutions' Chapter 138, Regulation 38 and the Bureau of Consumer Credit Protection's Chapter 240, Regulation Z-2, effective July 28, 2002, which in turn supplanted versions effective July 7, 1998, May 28, 1997, May 4, 1992, December 18, 1989, May 22, 1986 and September 7, 1981. The purpose of this Rule is to update various sections of the rule and provide guidance to creditors who are subject to Maine's Truth-in-Lending Law (Article VIII of the Maine Consumer Credit Code), and to maintain the State's delegation of authority from the Federal Reserve Board, which was granted pursuant to §123 of Title I of the Federal Truth-in-Lending Act, 15 U.S.C. § 1633. In order to protect Maine's exemption, this State's regulations interpreting truth-in-lending laws must be substantially similar to those imposed under the Federal Truth-in-Lending Act and there is adequate provision for enforcement.

Regulation Z-2 was last amended by the Bureaus on July 28, 2002. The Bureaus have accordingly considered all of the amendments that have been made to federal Regulation Z since this time. These amendments fall broadly into six categories: (1) those amendments relating to changes in cross-referencing, or that are otherwise incidental, technical, or clarifying in nature; (2) those amendments relating to electronic communications, disclosures and advertisements; (3) those amendments relating to timing of disclosures and notices for mortgage transactions; (4) those amendments relating to advertising; (5) those amendments relating to high-rate, high-fee mortgage loans, higher priced mortgage loans, and residential mortgage loans; and (6) those amendments implementing the provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009, including the Federal Reserve Board's Interim final rule dated July 22, 2009, 74 FR 36077, and the Final Rule, dated February 22, 2010, 75 FR 7658.

The fifth category of these amendments, relating to high-rate, high-fee mortgage loans, higher priced mortgage loans and residential mortgage loans, as set forth in § 226.32 and §§ 226.34 to 226.36 of federal Regulation Z have been incorporated into the Code pursuant to Public Law 2009, Chapter 362, "An Act to Conform State Mortgage Laws with Federal Laws". The Bureaus are of the view that the legislative intent behind Public Law 2009, Chapter 362 was to

create a “stand alone” body of state law relating to the regulation of these types of loans. Readers are directed to seek guidance directly from the provisions of the Code (and, to the extent applicable, Bureau of Consumer Credit Protection’s Chapter 550/Bureau of Financial Institutions’ Chapter 144 and the Bureaus’ advisory rulings) on questions relating to these types of loans. Thus, § 226.32 of federal Regulation Z is supplanted by §§ 8-206-A and 8-206-H of the Code; § 226.34 of federal Regulation Z is supplanted by §§ 8-206-A, 8-206-H and 8-206-I of the Code; § 226.35 of federal Regulation Z is supplanted by § 8-206-I of the Code; and § 226.36 is supplanted by § 8-206-J of the Code. To the extent that these provisions of federal and state law are identical or substantially similar, the Bureaus shall follow the Official Staff Commentary relating to these provisions.

The Bureaus have also considered all of the amendments that have been made to federal Regulation M since July 28, 2002, and the corresponding state laws relating to consumer leases. They have determined that the only amendments made since this time have been to federal law, and relate to electronic communications, disclosures and advertisements. The Bureaus are accordingly of the view that no changes need to be made to this Regulation Z-2 to the extent that it relates to federal Regulation M.

### **Comments and the Bureaus’ Responses to Comments**

The Bureaus received two comment letters, one from Attorney Jeffrey T. Piampiano, representing the Maine Credit Union League, and the other from Kathy Keneborus, the Director of Government Relations & Compliance for the Maine Association of Community Banks. The Bureaus wish to thank Attorney Piampiano and Ms. Keneborus for their comments.

Both Attorney Piampiano and Ms. Keneborus expressed general support for the Bureaus’ proposed rule. Attorney Piampiano indicated support for the Bureaus’ efforts because it will ensure that Maine retains its exemption from federal Regulation Z. Ms. Keneborus wrote that the Bureaus’ proposed rule, by bringing further consistency between Maine and federal law, will benefit Maine consumers when comparing loan products from lenders subject to federal and state laws.

Specific comments

#### **1. “Business Day” definitional discrepancy in section 4(2) of the proposed rule**

Both Attorney Piampiano and Ms. Keneborus asked the Bureaus to consider amending the proposed rule so that the definition of “business day” in federal Regulation Z is not exempted, thereby incorporating the federal definition of “business day” into the proposed rule. Both commented that the discrepancies

between the state definition of "business day" and its federal counterpart cause confusion to lenders and consumers.

Bureaus' response

The Bureaus have reviewed the definitions of "business day" in Title 9-A, § 1-301(6-A) and "business days" Title 9-B § 145(1) (referenced in the Title 9-A definition) and agree that there is a need to provide clarification. In reviewing these provisions, the Bureaus have determined that the definition of "business day," for the purposes of this rule, is the same as the definition of "business day" in federal Regulation Z, except that the state definition also includes Patriots' Day. The Bureaus have therefore decided not to repeal the exception for the definition of "business day" in this rule, but have clarified in the rule that the exception is maintained in order that Patriots' Day is not included as a "business day." The Bureaus note that the definition of "business day" in the equivalent regulation in Massachusetts, 209 CMR 32.02, excludes "any legal holiday under the laws of the Commonwealth" which would include Patriots' Day.

## **2. Clarification of section 4(22) of the proposed rule**

Attorney Piampiano asked the Bureaus to clarify section 4(22) of the proposed rule, which exempts Appendix G-1 subsections (b) and (e) of federal Regulation Z to the extent that they are in conflict with Title 9-A, sections 2-202(2) and 2-402(2).

Bureaus' response

This exception, like the "business day" exception, is unchanged from the current rule, and the Bureaus were not seeking to amend it in this re-promulgation. Appendix G to Part 226 provides for open-end model forms and clauses. Both federal Appendix G-1, which sets forth the balance computation methods Model Clauses (Home-equity Plans), and federal Appendix G-1(A), which sets forth the balance computation methods Model Clauses (Plans Other Than Home-Equity Plans) are relevant insofar as they relate to Title 9-A, sections 2-202(2) and 2-402(2). Appendix G-1 provides the computation method model form clauses for home equity plans. Appendix G-1(A) provides the computation method model form clauses for plans other than home equity plans. Title 9-A, sections 2-202(2) and 2-402(2) relate generally to finance charges for consumer credit sales and loans on open-end credit pursuant to which lenders are limited to only two types of computation methods. The computation methods described in paragraphs (b), (e) and (f) of these two federal appendices are not contemplated in Title 9-A, sections 2-202(2) and 2-402(2) and are thus excepted. The Bureaus have amended the rule so that the exception also includes Appendix G-1(f) and the new Appendix G-1(A) (b), (e) and (f). Because section 4(11) of the proposed rule has been removed (see

paragraph 3 below), section 4(22) of the proposed rule has become section 4(21) of the final rule.

### **3. Clarification of section 4(11) of the proposed rule**

Ms. Keneborus requested clarification regarding the exception to footnote 12 of 12 CFR 226.6(a)(2), noting that footnote 12 of federal Regulation Z is now reserved.

Bureaus' response

When this rule was last promulgated in 2002, footnote 12 of 226.6(a)(2) read "[i]f a creditor is offering a variable rate plan, the creditor shall also disclose: (1) the circumstances under which the rate(s) may increase: (2) any limitations on the increase: and (3) the effect(s) of an increase." This language is now contained in the body of 226.6(a)(1)(ii), and footnote 12, now reserved, no longer has any content. Because of amendments made to Title 9-A, § 3-310(D), the Bureaus have determined that an exception is no longer required. This exception has therefore been removed from the rule.

### **4. Effective date**

Both Attorney Piampiano and Ms. Keneborus requested a delay in the effective date of the rule in order to provide lenders sufficient time to understand the new rule and update their existing compliance practices. Both noted the significant changes introduced by the rule and the correspondingly significant changes that lenders will need to make in their procedures in order to ensure timely compliance with the new rule. Attorney Piampiano requested a 90-day delay for the effective date, while Ms. Keneborus requested an effective date of September 1, 2010.

The Bureaus are aware of the significant changes in compliance that will have to be made by the lending community by virtue of this re-promulgation. The Bureaus, however, must weigh this factor against the need for Maine to adopt new federal requirements in a timely manner in order to protect Maine consumers, as well as to justify Maine's exemption from federal Regulation Z to the Federal Reserve Board.

Weighing these competing factors, the Bureaus have selected a date falling approximately midway between the dates suggested by Attorney Piampiano and Ms. Keneborus. The effective date of this rule will be August 1, 2010. As indicated in the effective date provision to the rule, the effective and mandatory compliance dates in federal Regulation Z will be followed to the extent that any may occur after August 1, 2010.

### **5. Enforcement and Liability**



The Bureaus have also amended section 4(1) of the rule which relates to enforcement and liability, to clarify that additional effects of violations and liabilities as set forth in the Code, including those found in §§ 5-201 and 8-208, may be imposed.

Drafting Note: These provisions include the final rule found in 75 FR 7658 published by the Federal Register on February 22, 2010, which implements provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009. Copies of 12 CFR Part 226 may be obtained at cost from either the Bureau of Financial Institutions or the Bureau of Consumer Credit Protection, or from the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, MA 02106 tel. (617) 973-3000. In addition, a copy may be obtained via the Internet at <http://www.federalreserve.gov/Regulations/RegRef.htm#z>.

Drafting Note: Copies of 12 CFR Part 213 may be obtained at cost from the Bureau of Financial Institutions or from the Bureau of Consumer Credit Protection, or from the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, MA 02106 tel. (617) 973-3000. In addition, a copy may be obtained via the Internet at <http://www.federalreserve.gov/Regulations/RegRef.htm#m>.

Drafting Note: The "ability to repay" provisions in federal and Maine law are substantially the same, but for the provision in 12 CFR § 226.34(a)(4)(ii)(B) not found in Maine law.