

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

Please find below the Bureau of Financial Institution's proposed replace and repeal of Chapter 118 (Regulation 18) - Funds Availability and Truth-in-Savings, the Notice of Agency Rule-making Proposal setting forth the reasons for the re-promulgation, and the Small Business Impact Statement. The comment deadline is April 23, 2012.

/s/ John A. Barr
Deputy Superintendent of Financial Institutions
Gardiner, Maine
March 20, 2012

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
029 BUREAU OF FINANCIAL INSTITUTIONS
CHAPTER 118: FUNDS AVAILABILITY AND TRUTH-IN-SAVINGS (REG. 18)

SUMMARY:

History

On July 1, 1981, the Bureau of Financial Institutions promulgated a regulation governing deposit account charges. The focus of the 1981 regulation, which became Regulation 18, was to advance disclosure of deposit and share account charges. In 1987, Regulation 18 was revised to incorporate state requirements for disclosing policies governing funds availability. Since then, Regulation 18 has been amended again to recognize the changes that have occurred on the federal level with respect to funds availability and truth in savings, including the adoption of truth-in-savings regulations for credit unions (12 CFR Part 707).

This promulgation

This promulgation repeals and replaces Regulation 18. It conforms Regulation 18 to federal regulations, specifically, by incorporating by reference Federal Regulation CC (12 CFR Part 229, January 1, 2012), Federal Regulation DD (12 CFR Part 230, January 1, 2012), and National Credit Union Administration Board

provisions (12 CFR Part 707, January 1, 2012), which include the amendments that have been made to those federal regulations since this rule was last promulgated. Those amendments include: disclosure practices related to overdraft services, including balances disclosed to consumers through automated systems in Federal Regulation DD, by 74 FR 5584; the addition of Subpart D of Federal Regulation CC relating to substitute checks, by 69 FR 47290; and the restructuring of check-processing operations within the Federal Reserve System into a single check-processing region so that generally there are no longer any checks that are defined as “non-local” in Federal Regulation CC, by 75 FR 219.

This promulgation repeals the funds availability requirements for non-transaction accounts contained in the previous iteration of Regulation 18, as well as the account disclosure requirements for non-consumer accounts, also contained in the previous iteration of Regulation 18. These requirements do not exist in federal law for those types of accounts. Instead, this promulgation adopts the federal definitions of “account” in Federal Regulation CC (12 CFR Part 229, January 1, 2012), Federal Regulation DD (12 CFR Part 230, January 1, 2012), and National Credit Union Administration Board, Truth in Savings provisions (12 CFR Part 707, January 1, 2012), as applicable, thereby more closely conforming this regulation to federal regulations.

Nothing in this Regulation 18 shall be construed as curtailing the authority of federal regulators to administer Federal Regulation CC (12 CFR Part 229), Federal Regulation DD (12 CFR Part 230) and National Credit Union Administration Board, Truth in Savings provisions (12 CFR Part 707).

This promulgation also repeals specific references to electronic notices and disclosures because the federal regulations that are being incorporated by reference already provide that such notices and disclosures may be provided in electronic form.

Finally, this promulgation excepts the definition of “business day” in federal regulations to the extent that this definition differs from the definition of “business days” in Section 145 of Title 9-B MRSA and excepts the enforcement and liability provisions in federal regulations because the enforcement and liability provisions in Chapters 22, 23 and 24 of Title 9-B MRSA will be used when administering this Regulation 18.

I. AUTHORITY

Title 9-B MRSA Section 241(1) gives the Superintendent the authority to promulgate rules defining, limiting, or proscribing acts and practice which are determined to be anti-competitive, unfair, deceptive or otherwise injurious to the public interest.

Title 9-B MRSA Section 241(5) gives the Superintendent the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability. That statute also requires that Maine's financial institutions make funds, represented by items deposited into an account, available for withdrawal within a reasonable time.

Title 9-B MRSA Section 242(1) gives the Superintendent authority to adopt rules defining, limiting or proscribing advertising that is false, misleading or deceptive.

II. PURPOSE

The purpose of this Regulation 18 is to conform it to up-to-date federal regulations. Its purpose is also to repeal the funds availability requirements for non-transaction accounts and the disclosure requirements for non-consumer accounts. Furthermore, this promulgation repeals references to electronic notices and disclosures because the federal regulations that are being incorporated already provide for such notices and disclosures.

III. PROVISIONS OF THE REGULATION

A. Definitions

1. "Business day" means a business day as defined by Title 9-B MRSA § 145(1).
2. "Credit union" means a credit union authorized to do business as defined by Title 9-B MRSA § 131(12-A).

"Financial institution" means a financial institution authorized to do business as defined in Title 9-B MRSA Section 131(17-A).

B. Funds Availability

Financial institutions and credit unions shall comply with the applicable provisions of Federal Regulation CC (12CFR, Part 229, January 1, 2012) and related appendices, which are incorporated herein by reference.

The following provisions of Federal Regulation CC are not adopted:

1. The definition of "business day" in 12 CFR 229.2(g) to the extent that it differs from the definition of "business days" in Section 145 of Title 9-B MRSA.

2. The enforcement and liability provisions found in 12 CFR 229.3 to the extent that Chapters 22, 23 and 24 of Title 9-B MRSA provide for enforcement authority to administer, and liability under, this Regulation 18.

C. Truth in Savings

Financial institutions and credit unions shall comply with the provisions of Federal Regulation DD (12 CFR, Part 230 (January 1, 2012) and National Credit Union Administration Board, Truth in Savings provisions (12 CFR Part 707 (January 1, 2012)) including all their appendices which are incorporated herein by reference.

The following provisions of Federal Regulation DD and 12 CFR Part 707 are not adopted:

1. The definition of "business day" in 12 CFR 230.2(g) to the extent that it differs from the definition of "business days" in Section 145 of Title 9-B MRSA.
2. The enforcement and liability provisions found in 12 CFR 230.9(a), 12 CFR 230.9(b), and 12 CFR 707.9 to the extent that Chapters 22, 23 and 24 of Title 9-B MRSA provide for enforcement authority to administer, and liability under, this Regulation 18.

D. Complaint Resolution Procedure

The schedule of account charges or other literature that is used to convey information on fees assessed in conjunction with the operation of an account shall contain a notice to account holders regarding the procedure to be followed in resolving disputes. The following notice contains model language that may be used:

"If you have a dispute with your financial institution or credit union regarding your account, you may contact the financial institution or credit union and attempt to resolve the problem directly. If the financial institution or credit union fails to resolve the problem, communicate the problem and the resolution you are seeking to:

Maine Bureau of Financial Institutions

36 State House Station

Augusta, Maine 04333-0036

To file a complaint electronically, you may contact the Maine Bureau of Financial Institutions at the following Internet address:

http://www.maine.gov/pfr/financial_institutions/complaint.htm

When your complaint involves a federally-chartered financial institution or credit union, the Maine Bureau of Financial Institutions will refer it to the appropriate federal supervisory agency."

Financial institutions that post the model complaint resolution language on their web sites are encouraged to establish a link to the referenced URL on the Bureau's web site.

EFFECTIVE DATE: []

Copies of 12 CFR Part 229, 12 CFR Part 230, and 12 CFR Part 707 may be obtained at cost from the Bureau of Financial Institutions, the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, MA 02106 tel. (617)973-3000, or the National Credit Union Administration, Region 1, 9 Washington Square, Washington Avenue Extension, Albany, NY 12208 tel. (518)862-7400. In addition, copies may be obtained via the Internet

at <http://www.federalreserve.gov/Regulations/RegRef.htm#cc>
<http://www.federalreserve.gov/Regulations/RegRef.htm#dd>, and
http://www.ncua.gov/ref/rules_and_regs/rules_and_regs.html

For the purposes of Subpart IV(C) of this regulation, "schedule of account charges" means a listing of fees and charges relating to the maintenance and operation of an account which may be imposed by the financial institution or credit union on its account holder for using an account of a financial institution or credit union. It does not include a listing of fees for ancillary services such as safe deposit boxes, traveler's checks, night deposit bags, check printing, fax fees, photocopies or similar charges not directly related to the maintenance or operation of an account.

NOTICE OF AGENCY RULE-MAKING PROPOSAL

AGENCY: Department of Professional and Financial Regulation
Bureau of Financial Institutions

CHAPTER NUMBER AND TITLE:

Chapter 118

Funds Availability and Truth in Savings

PROPOSED RULE NUMBER (*leave blank; assigned by Secretary of State*):

CONTACT PERSON FOR SUBMITTING DATA, VIEWS OR ARGUMENTS, AND OBTAINING ADDITIONAL INFORMATION OR PRINTED VERSION OF PROPOSED RULE:

Christian D. Van Dyck, Attorney, Bureau of Financial Institutions, 36 State House Station, Augusta ME 04333-0036

Christian.d.vandyck@Maine.gov

624-8574

CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different): N/A.

PUBLIC HEARING (if any): None proposed. If 5 or more interested persons request a hearing, they may do so by contacting the contact person.

COMMENT DEADLINE: April 23, 2012

SUBSTANCE OF PROPOSED RULE:

This promulgation repeals and replaces Regulation 18. It conforms Regulation 18 to federal regulations, specifically, by incorporating by reference Federal Regulation CC (12 CFR Part 229, January 1, 2012), Federal Regulation DD (12 CFR Part 230, January 1, 2012), and National Credit Union Administration Board provisions (12 CFR Part 707,

January 1, 2012), which include the amendments that have been made to those federal regulations since this rule was last promulgated. Those amendments include: disclosure practices related to overdraft services, including balances disclosed to consumers through automated systems in Federal Regulation DD, by 74 FR 5584; the addition of Subpart D of Federal Regulation CC relating to substitute checks, by 69 FR 47290; and the restructuring of check-processing operations within the Federal Reserve System into a single check-processing region so that generally there are no longer any checks that are defined as “non-local” in Federal Regulation CC, by 75 FR 219.

This promulgation repeals the funds availability requirements found in the previous iteration of Regulation 18 for non-transaction accounts, as well as the disclosure requirements for non-consumer accounts, also contained in the previous iteration of this regulation, which requirements do not exist in federal law for those types of accounts. Instead, this promulgation adopts the federal definitions of “account” in Federal Regulation CC (12 CFR Part 229, January 1, 2012), Federal Regulation DD (12 CFR Part 230, January 1, 2012), and National Credit Union Administration Board, Truth in Savings provisions (12 CFR Part 707, January 1, 2012), as applicable, thereby more closely conforming this regulation to federal regulations.

This promulgation also repeals specific references to electronic notices and disclosures because the federal regulations that will be incorporated by reference already provide that such notices and disclosures may be provided in electronic form.

Finally, this promulgation excepts the definition of “business day” in federal regulations to the extent that this definition differs from the definition of “business days” in Section 145 of Title 9-B MRSA, and excepts the enforcement and liability provisions in federal regulations because the enforcement and liability provisions in Chapters 22, 23 and 24 of Title 9-B MRSA will be used when administering this Regulation 18.

SMALL BUSINESS IMPACT STATEMENT: May be found at the Bureau’s website: www.Maine.gov/pfr/financialinstitutions.

IMPACT ON MUNICIPALITIES OR COUNTIES (if any): None.

STATUTORY AUTHORITY FOR THIS RULE:

Title 9-B MRSA Section 241(1) gives the Superintendent the authority to promulgate rules defining, limiting, or proscribing acts and practice which are determined to be anti-competitive, unfair, deceptive or otherwise injurious to the public interest.

Title 9-B MRSA Section 241(5) gives the Superintendent the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability. That statute also requires that Maine's financial institutions make funds, represented by items deposited into an account, available for withdrawal within a reasonable time.

Title 9-B MRSA Section 242(1) gives the Superintendent authority to adopt rules defining, limiting or proscribing advertising that is false, misleading or deceptive.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different): Federal Regulation CC, 12 CFR Part 229, (January 1, 2012), Federal Regulation DD, 12 CFR Part 230, January 1, 2012), and National Credit Union Administration Board provisions (12 CFR Part 707, January 1, 2012)

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON:

Christian.d.vandyck@Maine.gov

** Check one of the following two boxes.*

X The above summary is for use in both the newspaper and website notices.

The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____

(authorized signature)

FUND

AGENCY
AMOUNT

ORG

APP

JOB

OBJT

MAPA-3 revised 9-09: additional summary information for web

Notice of Agency Rule-making Proposal

DETAILED BASIS STATEMENT / SUMMARY:

029 BUREAU OF FINANCIAL INSTITUTIONS
CHAPTER 118 (REGULATION 18)
PROPOSED REPEAL AND REPLACEMENT OF REGULATION 18
FUNDS AVAILABILITY AND TRUTH IN SAVINGS

STATEMENT OF IMPACT ON SMALL BUSINESS

Prepared pursuant to 5 MRSA §8052, sub-§5-A

- A. Identification of the types and an estimate of the number of the small businesses subject to the proposed repeal and replacement of Chapter 118 (Regulation 18):

This proposed repeal and replacement does not alter the number or types of entities that will be subject to its application. The same banks and credit unions that were subject to the current iteration of Regulation 18 will subject to the proposed repeal and replacement of Regulation 18. The number of banks and credit unions in Maine that qualify as a "small business" under 5 MRSA §8052 is about 30.

- B. Projected reporting, record-keeping and other administrative costs required for compliance with the proposed repeal and replacement of Chapter 118 (Regulation 18), including the type of professional skill necessary for preparation of the report or record:

This proposed repeal and replacement of Regulation 18 will not require any additional record-keeping or administrative costs. This proposal will conform state law to federal law thereby reducing record-keeping and administrative costs.

- C. Brief statement of the probable impact on affected small businesses:

This proposed repeal and replacement of Regulation 18 will have a positive impact on small businesses to the extent that those banks and credit unions that qualify as small businesses will be able to play on a level playing field with their federal counterparts with respect to funds availability and truth in savings requirements. Compliance burdens will be reduced by this "flattening" of state law with federal law. Furthermore, to the extent that funds availability requirements will no longer apply to non-transaction accounts, banks and credit unions will have discretion to deposit potentially bad checks into those accounts thereby reducing losses arising from these checks.

D. Description of any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the proposed repeal and replacement of Chapter 118 (Regulation 18):

None.