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WILLIAM N. LUND
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January 17, 2008

Joint Advisory Ruling #114

Re: Changes to the Bureau of Financial Institutions Regulation 44 and Bureau of Consumer Credit Protection Chapter 550, "Mortgage Lending: Guidelines for Determining Reasonable, Tangible Net Benefit and Ability to Pay" and the "tangible net benefit" form as the result of recent amendments to the Act to Protect Maine Homeowners from Predatory Lending

On January 8th, 2008, the Maine Legislature enacted Public Law 2007, Chapter 471, "An Act Relating to Mortgage Lending and Credit Availability." The law was effective, retroactively, back to January 1, 2008.

This new statute makes various amendments to the previously enacted mortgage lending law, titled "An Act to Protect Maine Homeowners from Predatory Lending." Whereas the original law prohibited "flipping" (refinancing without providing a tangible net benefit) on all loans, the amendments limit the prohibition on "flipping" to *subprime mortgage loans only*. In other words, following the changes, creditors may make prime mortgage loans without undertaking a "tangible net benefit" analysis.

Subprime loans include 1) "non-traditional" loans as described in the federal Interagency Guidance on Nontraditional Mortgage Product Risks; 2) "rate-spread" loans that are reportable under the federal Home Mortgage Disclosure Act; and 3) high-rate, high-fee loans. With respect to non-traditional loans referenced in the Interagency Guidance, the recent amendments to the law make clear that, for purposes of the regulation, the only loans that will be considered non-traditional are those that permit the borrower to defer repayment of principal or interest.

The Bureau of Financial Institutions Regulation 44 and Bureau of Consumer Credit Protection Chapter 550 promulgated in December of 2007 contained a form, appended as Attachment "A", to guide creditors through the "tangible net benefit" test. That form is still appropriate for use, with the exception that its use is not required with prime loans, but only with subprime loans as indicated above.

Accordingly, references to "residential mortgage loans" subject to the tangible net benefit analysis found in Section 5(1) of the Tangible Net Benefit/Ability to Pay Rule pertain, instead, to a "subprime mortgage loan." Likewise, the reference to "residential mortgage loan" in the introductory paragraph of the form itself (Appendix A) should be modified to refer to "subprime mortgage loan."



Please also note that the definitions of the terms “fully indexed rate” and “fully amortizing payment schedule,” initially defined in the regulation, were included in the recent amendments and are therefore now part of Maine law. These definitions are more fully defined in the regulation. In addition, the regulation’s discussion of alternatives to tax and payroll forms for documentation of the borrower’s ability to pay, and the considerations established by the rule for determining the borrower’s ability to pay, have likewise been incorporated in the Consumer Credit Code through the recent amendments.

A new “tangible net benefit form” incorporating the changes is attached.

Sincerely,

/s/Lloyd P. LaFountain, III

Lloyd P. LaFountain III, Superintendent
Bureau of Financial Institutions

Sincerely,

/s/William N. Lund

William N. Lund, Superintendent
Bureau of Consumer Credit Protection