

September 2, 1981

Dear

You have requested the Bureau to advise you on the status of Maine law regulating maximum finance charges for mobile home loans and credit sales in light of recent interest rates in excess of 18% announced by the VA and FHA for their federally guaranteed or insured mortgage programs.

The term "mobile home" for the purposes of The Maine Consumer Credit Code is defined as "a structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation..." Section 1-202(8). [Thus, a modular or factory-built home constructed without a permanent chassis is exempted from the Code if it involves a loan secured by a first lien mortgage on real estate granted by a "supervised financial institution," i.e., one not needing a supervised lender's license.]

Both mobile home loans and credit sales, no matter the lien status, are regulated by The Maine Consumer Credit Code, See 9-A M.R.S.A. § § 1-202(8) and 1-301(14) for loans and §1-301(11) for sales. If real estate is involved, however, the Code does not apply unless the annual percentage rate exceeds 12¼%. § § 1-301(11); 1-301(14). In addition, Section 2-307(1) provides that a security interest in real estate may not be taken for a consumer loan in excess of 18%.

There are several federal statutes which must be analyzed prior to determining whether these rate limitations are preempted.

(A) National Housing Act.

1. In 1976, Congress enacted P.L. 94-324, §8 (12 U.S.C.A. §1709-1a) which Preempted state constitutional usury restrictions for F.H.A. and V.A. loans. This preemption is narrow in scope and was frankly directed at the State of California which exempted some lenders from its constitutional usury ceiling and not others:

“Section 8 of S. 2529, as reported, would preempt a state constitutional usury provision which limits the interest rates chargeable on FHA/VA mortgages by certain types of lenders, while not imposing rate limits on mortgages made by other lenders. At present, this section would apply only to California.” (1976 U.S. Code Cong. and Admin. News, p. 1344, 1358; S. Rpt. No. 94-806.)

2. This preemption was supplemented by P.L. 96-153, § 308 (12 U.S.C.A. § 1735 f-7, December 21,1979) which provides:

“(a) The provisions of the constitution of any State expressly limiting the rate or Amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders and the provisions of any state law expressly limiting the rate or amount of interest, discount points, or other

charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, or advance which is insured under subchapter I or II of this chapter.

“(b) The provisions of subsection (a) of this section shall apply to loans, mortgages, or advances made or executed in any State until the effective date (after December 21, 1979) of a provision of law of that State limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage, or advance.”

This preemption with respect to F.H.A. loans was complimented by P.L. 96-126, § 401 (38 U.S.C.A. § 1828) for V.A. loans.

P.L. 96-153 is clearly broader than the 1976 preemption. In addition, its Legislative history indicates that the preemptive provisions were intended to cover credit sales as well as direct loans. See 1979 U.S. Code Cong. and Admin. News, pp. 2419-2420.

(B) Depository Institutions Deregulation and Monetary Control Act of 1980.

This Act preempted state interest rate limitations established by constitution or statute for a loan or credit sale secured by a first lien on a residential manufactured home made after March 31, 1980. P.L. 96-221, § 501. You may also want to consult the Federal Home Loan Bank Board Regulations defining this preemption, 12 CFR § 590.1 (April 3, 1980).

This ability to exceed state maximum rate limitations is conditioned on compliance with certain contract terms required by the FHLBB. See 12 CFR Part 590.4 (June 19, 1980; July 3, 1980; July 24, 1980.)

Section 501(b)(2) allows states to expressly over ride the federal preemption if done prior to April 1, 1983. Maine has done so. P.L. 1981, c. 218, effective September 18, 1981, a copy of which I enclose.

Conclusion

While Congress has not repealed P.L. 96-153, the broader preemption of DIDA certainly was intended to include V.A./F.H.A. loans and credit sales. Both statutes allow states to override the preemption. Maine has done so by explicit reference to P.L. 96-221. Since the over provision of P.L. 96-153 does not (unlike P.L. 96-221) specify the form the state override must take, I conclude that Maine's override is effective with respect to mobile home loans and credit sales guaranteed or

insured by V.A. and F.H.A. beginning on September 18, 1981, the effective date of Maine's P.L. 1981, c. 218. Prior to that date, any mobile home loan or credit sale in excess of 18% must conform to applicable V.A./F.H.A. and FHLBB regulations with respect to other contract terms.

The only doubt as to the effect of DIDA prior to September 18, 1981 lies in interpreting its impact on Section 2-307(1) of the Code. This provision, which prohibits a security interest in real estate for a loan over 18%, does not on its face regulate the maximum finance charge on a first lien mobile home loan; it does, however, regulate the type of security interest which may be taken by the lender for any consumer loan governed by the Code. I interpret this consumer protection legislation as not preempted because it is not "...expressly limiting the rate or amount of interest discount points, finance charges, or other charges..." Section 501(a)(1), Pub. L. 96-221. Since two of the three federal mobile home programs in which you wish to engage do not involve land purchases, and because even if Section 2-307 is preempted, the state override is effective shortly, it would seem prudent to avoid conflict with Section 2-307.

Sincerely,

Barbara R. Alexander  
Superintendent

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