

December 10, 2007

Maine Bureau of Financial Institutions
Maine Bureau of Consumer Credit Protection
Joint Advisory Ruling # 110
PL 2007, Chapter 273, Request for Guidance regarding "odd days" or
"per diem" interest

Dear :

This is in response to your recent correspondence in which you asked the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection for guidance regarding the treatment of "odd days' interest" under the definition "points and fees" in PL 2007 Chapter 273. "Odd days' interest" refers to the practice of collecting at closing the "per diem" interest that will accrue between the closing date and the day of the month when regular monthly payments are due. For example, if a loan closes on December 15, the lender will collect 16 days' per diem interest (through December 31), and the first regular monthly payment of principal plus one month's interest will be due on February 1. This practice allows all mortgage payments in a lender's portfolio to come due on the same day of each calendar month.

Under PL 2007 Chapter 273, 9-A MRSA, section 8-103(1-A)(U) "points and fees" include all items included in the definition of "finance charge" in 12 CFR, section 226.4(a) and 226.4(b) "except interest or the time price differential." It is your position that odd days' interest does not constitute "points and fees," as this term is used in 9-A MRSA, section 8-103(1-A)(U) because it is excluded as "interest." You note that, if the consumer were to prepay the contract in full on the day after closing, odd days' interest would not be earned and would be refundable, because it represents a collection of amounts to be earned in the future and, thus, contractually, it is not yet due.

You have also noted that federal and Maine interpretation of these same words in a similar context supports your interpretation. This same language, "except interest and time price differential," is used in 12 CFR, section 226.32 in reference to loans under federal Regulation Z, and in the parallel Maine statute that has now been replaced by Chapter 273. You have also noted that the federal Official Staff Commentary regarding section 226.32(b)(1)(i) states that interest "including per diem interest" paid at closing is not a "point or fee" for section 226.32 purposes.

As a general matter, the Bureaus have stated in adopting Regulation Z-2 that Maine Truth-in-Lending, which includes portions of PL 2007, Chapter 273, will be construed consistently with federal Truth-in-Lending wherever possible. Such consistency supports the idea that "per diem" or "odd days" interest collected in advance at closing should be excluded from the definition of "points and fees." Therefore, we are of the opinion that "per diem" or "odd days" interest is not to be included when calculating "points and fees" as that term is defined in 9-A MRSA, section 8-103(1-A)(U).

We hope this is responsive to your request for our opinion on this matter.

Sincerely,

/s/ Lloyd P. LaFountain III
Superintendent

Bureau of Financial Institutions

Sincerely,

/s/ William N. Lund
Superintendent

Bureau of Consumer Credit
Protection