

December 17, 2007

Maine Bureau of Financial Institutions
Maine Bureau of Consumer Credit Protection
Joint Advisory Ruling # 111
Exclusion of HELOCs from definition of "sub-prime loan"

Dear:

Thank you for your letter seeking guidance regarding the inclusion of home equity lines of credit (HELOCs) under the definition of "subprime mortgage loan" in 9-A M.R.S.A. §8-103(1-A)(BB). 9-A M.R.S.A. § 8-103(1-A)(BB) defines "subprime mortgage loan" as either a nontraditional mortgage or a rate spread home loan.

"Nontraditional mortgage" is defined in 9-A M.R.S.A. § 8-103(1-A)(T) as having the "same meaning as those mortgages described in the 'Interagency Guidance on Nontraditional Mortgage Product Risks' issued September 29, 2006" In Section III of the Final Joint Guidance from the FFIEC, the "scope of the guidance" states that HELOCs are excluded from the types of products covered by the guidance, other than as discussed in the Simultaneous Second-Lien Loans section of the guidance. Federal Register, Vol. 71, No. 192, October 4, 2006.

"Rate spread home loan" is defined in 9-A MRSA § 8-103(1-A)(V) as meaning "any loan for which the rate spread *must be reported* under" HMDA, section 203.4(a)(12); emphasis supplied. The term also means any loan that meets the criteria of a high-rate, high-fee mortgage.

HMDA section 203.4(a)(12) addresses the data reporting requirements for dwelling-secured loans based on the difference between the loan's APR and the yield on Treasury securities with comparable maturities, depending on whether the loan involves a first-lien or a subordinate lien. The FFIEC's rate spread calculator, which was developed to assist HMDA reporting institutions with the rate spread data reporting requirements, however, expressly states that "[t]he reporting requirement applies to originations of home purchase loans, dwelling-secured home improvement loans, and refinancings." Further, the FFIEC's instructions for its rate spread calculator state under "Rate Spread Equal to 'N/A'", that the rate spread is not calculated for Home Equity Lines of Credit (HELOCs). If the institution chooses to report HELOCs, the rate spread should be equal to 'N/A'." Note that Section 203.4(c) of Reg. C, titled "Optional data", states that a financial institution "may report: (3) Home-equity lines of credit

made in whole or in part for the purpose of home improvement or home purchase" 12 CFR 203.4(c).

The fact that both the "Interagency Guidance on Nontraditional Mortgage Product Risks" and HMDA expressly exclude HELOCs from the scope of their coverage and mandatory reporting requirements, respectively, supports the interpretation that HELOCs should not be included in the definition of "subprime mortgage loan" under 9-A M.R.S.A. § 8-103(1-A)(BB), except to the extent a HELOC is a Simultaneous Second-Lien Loan as defined in the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued September 29, 2006, or meets the criteria of a high-rate, high-fee mortgage under §8-103(1-A)(V) .

The Bureaus conclude that HELOCs are not subject to the "ability to pay" underwriting requirements of 9-A M.R.S.A. § 8-103(1-A)(BB) and §8-206-D(1)(G), except to the extent a HELOC is a Simultaneous Second-Lien Loan as defined in the "Interagency Guidance on Nontraditional Mortgage Product Risks," or meets the criteria of a high-rate, high-fee mortgage under §8-103(1-A)(V).

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