

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

Public Law 2003, Chapter 263, § 1, effective September 13, 2003, amended 9-A M.R.S.A. § 2-509. The amendment authorizes supervised financial organizations to assess a consumer a reasonable charge related to the prepayment of a consumer loan secured by an interest in land. That charge must be reasonably calculated to offset only the cost of origination of the loan. Title 9-A M.R.S.A. § 2-509 as amended requires the Superintendent to adopt rules to implement its provisions. This rule establishes guidelines to be followed by a supervised financial organization that assesses a charge for full repayment, through refinancing or otherwise, of a consumer loan secured by an interest in land, when repayment occurs prior to the end of the loan's contractual term. This rule does not permit a supervised financial organization to assess a prepayment charge or prepayment penalty designed to recover anticipated revenue.

Notice of this proposed Rule is being published by the Secretary of State. Interested parties may submit written comments or requests for a hearing to the Bureau of Financial Institutions, 36 State House Station, Augusta, Maine 04333-0036 by January 23, 2003. Electronic comments or requests for a hearing may be submitted by accessing the Internet Home Page of the Bureau of Financial Institutions at <http://www.maine.gov/financialinstitutions>.

A copy of the proposed rule is attached.

/s/ Howard R. Gray, Jr.
Superintendent of Financial Institutions
Gardiner, Maine
December 24, 2003

CHAPTER 142 CHARGES PERMITTED FOR PREPAYMENT OF (REG. 42)
CERTAIN CONSUMER LOANS

HISTORICAL SUMMARY:

Public Law 2003, Chapter 263, § 1, effective September 13, 2003, amended 9-A M.R.S.A. § 2-509. The amendment authorizes supervised financial organizations to assess a consumer a reasonable charge related to the prepayment of a consumer loan secured by an interest in land. That charge must be reasonably calculated to offset only the cost of origination of the loan. Title 9-A M.R.S.A. § 2-509 as amended requires the Superintendent to adopt rules to implement its provisions. Rules adopted pursuant to § 2-509 are routine technical rules as defined in Title 5, chapter 375, sub-chapter 2-A.

SECTION I. Purpose

This rule establishes guidelines to be followed by a supervised financial organization that assesses a charge for full repayment, through refinancing or otherwise, of a consumer loan secured by an interest in land, when repayment occurs prior to the end of the loan's contractual term. This rule does not permit a supervised financial organization to assess a prepayment charge or prepayment penalty designed to recover anticipated revenue.

SECTION II. Definitions

For purposes of this rule, the following definitions shall apply:

- A. "Advertising" means a commercial message in any medium that promotes, directly or indirectly, any consumer loan subject to this rule.
- B. "Closing cost" has the same meaning as in 9-A MRSA § 1-301(8), except that it does not include prepaid interest. The term "closing cost" also has the same meaning as the term "cost of origination of the loan" in 9-A MRSA § 2-509.
- C. "Consumer" has the same meaning as in 9-A MRSA § 1-301(10).
- D. "Consumer loan" has the same meaning as in 9-A MRSA § 1-301(14), excluding a high-rate, high-fee mortgage as defined in 9-A MRSA § 8-103(1)(F-1).
- E. "Prepayment charge" means a fee that is assessed to a consumer if the consumer repays a consumer loan in full, through refinancing or otherwise, prior to the end of the contractual term of the loan.
- F. "Supervised financial organization" has the same meaning as in 9-A MRSA § 1-301(38-A).

SECTION III. General Provisions

Except as provided in Section IV, a supervised financial organization may assess a reasonable prepayment charge to recover certain closing costs, when a

consumer repays a consumer loan secured by an interest in land in full prior to the maturity date stated in the loan note. The dollar amount of the prepayment charge must be disclosed in the note. Closing costs, including closing costs that are waived by the financial institution, must be fully disclosed and itemized in documentation accompanying the note. Only those closing costs incurred, but waived by the financial institution, are recoverable through the assessment of a prepayment charges permitted under this rule. The prepayment charge must not exceed the total of the incurred, but waived, closing costs prorated as follows:

- A. If the loan is prepaid within 12 months of its closing date, the supervised financial organization may assess a fee no greater than the prepayment charge disclosed in the note.
- B. If the loan is prepaid between 13 to 24 months of its closing date, the supervised financial organization may assess a fee no greater than one half of the prepayment charge disclosed in the note.
- C. No prepayment charge may be assessed more than 24 months after the closing date of the loan.

SECTION IV. Exceptions

- A. No prepayment charge may be assessed, if the loan is refinanced with the original lender.
- B. No prepayment charge may be assessed, if the consumer prepays the loan in response to a change in terms notification issued pursuant to Title 9-A MRSA § 3-204.
- C. No prepayment charge may be assessed, if the consumer makes payments on the loan in amount(s) larger than required by the terms of the note and the lender accepts such payments.
- D. No prepayment charge may be assessed, if the consumer prepays the loan when the financial institution exercises its right to accelerate the loan in the event of default.
- E. No prepayment charge may be assessed for early repayment of a high-rate, high-fee mortgage as defined in Title 9-A § 8-103(1)(F-1).

SECTION V. Disclosures, advertising.

Advertisements for consumer loans that provide a prepayment charge for early repayment must disclose, in a conspicuous and easy to comprehend manner, that fact and the methodology by which a prepayment charge may be assessed.

SECTION VI. Federal rules and regulations.

The Federal Deposit Insurance Corporation, the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration have promulgated or may in the future promulgate, regulations or guidelines governing the manner in which a financial institution can assess charges for early repayment of a consumer loan. There may exist some difference between this rule and a regulation promulgated by a federal regulatory agency. It is not the intent of this rule to permit any practice that is not permitted by a federal regulatory agency.

AUTHORITY:

9-B MRSA § 111, 215, 241, 242 and 251

9-A MRSA § 2-509