

02-029

Chapter 139

Regulation #39

(Also Chapters 400 and 880 - BANKING CREDIT REGULATION
INSURANCE)

Sale of Insurance Products by Financial Institutions and Supervised
Lenders

SUMMARY: In 1997, the Maine Legislature enacted P.L. 1997, c. 315, "An Act to Promote Parity in the Regulation of Insurance Sales by Federally and State-chartered Financial Institutions."

The law authorizes the Superintendent of Insurance, the Superintendent of Banking and the Director of Consumer Credit Regulation (hereinafter collectively referred to as the "Regulators") to undertake joint rulemaking to address issues regarding sales of insurance products by financial institutions and supervised lenders. Specifically, the regulators were directed to address 1) signage; 2) the physical location at which the sales of insurance take place; and 3) identification of insurance agencies, producers and consultants affiliated with financial institutions, credit unions, financial institution holding companies and supervised lenders. This rule establishes requirements in these areas in order to minimize the possibility of customer confusion and provide adequate consumer protections.

While this rule establishes requirements regarding signage, physical location, and the identification of affiliated insurance agencies, producers, and consultants, its provisions are in addition to any notice, disclosure, or consumer protection requirements established by P.L. 1997, c. 315; any requirements imposed by the Banking, Consumer Credit, or Insurance Codes; and any other requirements contained in applicable state or federal laws or regulations.

Finally, this rule does not apply to transactions in which an institution or its affiliate is exempt from licensure as an insurance agency, producer, or consultant pursuant to 24-A § 1443-A (2), or to transactions which are not subject to the provisions of Article 4, Part 4 of the Maine Consumer Credit Code (9-A M.R.S.A. § 4-401 et seq.) or 9-B M.R.S.A. § 448.

I. AUTHORITY

This rule is promulgated pursuant to the authority granted to the Director of the Office of Consumer Credit Regulation, the Superintendent of the Bureau of Banking and the Superintendent of the Bureau of Insurance pursuant to 9-A

M.R.S.A. § 4-407; 9-B M.R.S.A. § 416 and 448(5); and 24-A M.R.S.A. § 1443-A(3).

II. PURPOSE

This rule establishes requirements with respect to signage, physical location and identification of insurance agencies, producers and consultants in connection with the sale of insurance products by financial institutions, financial institution holding companies, credit unions, supervised lenders and their affiliates, in order to minimize customer confusion and provide adequate consumer protections.

III. DEFINITIONS.

For purposes of this rule, the following terms have the following meanings:

- A. "Affiliate" shall have the same meaning as set forth in 9-A M.R.S.A. § 4-403(1), with respect to supervised lenders, and as set forth in 24-A M.R.S.A. 1443-A(2) with respect to financial institutions.
- B. "Financial institution" shall mean a financial institution authorized to do business in this state, as defined in 9-B M.R.S.A. § 131(17-A) and includes a financial institution holding company as defined in 9-B M.R.S.A. § 131(18); a mutual holding company as defined in 9-B M.R.S.A. § 1052(2); and a credit union authorized to do business in this state as defined in 9-B M.R.S.A. § 131(12-A).
- C. "Insurance agency" shall have the same meaning as set forth in 24-A M.R.S.A. § 1402(3).
- D. "Insurance consultant" shall have the same meaning as set forth in 24-A M.R.S.A. § 1402(4).
- E. "Insurance producer" shall have the same meaning as set forth in 24-A M.R.S.A. § 1402(5).
- F. "Insurance product" shall have the same meaning as set forth in 9-A M.R.S.A. § 4-403(6) or 9-B M.R.S.A. § 131(22-E), as the context may require. For the purposes of this rule, "insurance product" does not include group health and group life insurance to the extent authorized by Title 24-A, Chapters 31 and 35 when the insured is enrolled in the insurance policy; credit life and credit health insurance to the extent authorized by Title 24-A, Chapter 37; credit property insurance; credit involuntary unemployment insurance; forced placed property insurance; a vendor's single interest policy; or any other type of insurance excluded by the Superintendent of Insurance pursuant to 9-A M.R.S.A. § 4-401(2), 9-B M.R.S.A. § 448(6), or 24-A M.R.S.A. § 1443-A(2). For the purposes of this rule, "insurance product" also does not include annuities sold pursuant to 9-B M.R.S.A. § 443(11), or any rules promulgated thereunder.

- G. "Regulators" shall mean the Bureau of Banking, the Office of Consumer Credit Regulation, and the Bureau of Insurance, collectively.
- H. "Retail area" shall mean, for financial institutions, all space occupied by a financial institution where the "business of banking" as defined by 9-B M.R.S.A. § 131(5) may occur or, for supervised lenders, all space occupied by a supervised lender where consumer credit transactions, as defined by 9-A M.R.S.A. § 1-301(12), are entered into.
- I. "Supervised lender" shall have the same meaning as set forth in 9-A M.R.S.A. § 1-301(39).

IV. REQUIREMENTS AND PROCEDURES FOR SALE OF INSURANCE PRODUCTS BY FINANCIAL INSTITUTIONS AND SUPERVISED LENDERS.

- A. **Signage.** A financial institution or supervised lender, or an affiliate of either, which sells, markets or promotes insurance products within the retail area of the financial institution or supervised lender must utilize signs which are clearly visible to its customers that distinguish insurance products from non-insurance products, and which identify insurance agencies, producers and consultants who are affiliated with the institution and who are providing insurance products within the retail area.

To aid customers in distinguishing between insurance products and non-insurance products, conspicuous signs must be posted in areas where insurance is sold. If applicable, the signs must clarify that insurance sold is not a deposit or obligation of the financial institution or supervised lender; is not guaranteed by the financial institution or supervised lender; and is not insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), or their successors.

- B. **Physical location.** The space utilized by the insurance agency, producer or consultant must be separated, to the extent practicable, from the retail area of the financial institution or supervised lender in such a manner as to prevent confusion in the public's mind.

When certain considerations, such as the staffing level, size or design of a particular facility of a financial institution or supervised lender, prevent sales from being conducted in a location distinct from the retail area, the financial institution, supervised lender, or an affiliate of either, shall make every reasonable effort to minimize customer confusion through an appropriate combination of signage, disclosure, and physical location within the retail area. In no event, however, may the sale of insurance products be conducted at the retail deposit-taking stations of a financial institution (the "teller line" or "teller window").

- C. **Identification and role of personnel.** To aid in distinguishing between insurance and non-insurance products, financial institutions, supervised lenders, and their affiliates shall develop written policies consistent with

the purposes of this rule specifying who may sell and recommend insurance products and how individuals selling and recommending insurance products identify themselves and their sales roles.

The involvement of personnel staffing the retail deposit-taking stations of financial institutions and other individuals not licensed to sell insurance products should be limited to providing informational materials or directing customers to licensed personnel who can provide information. Such employees may identify the availability and location of informational material or brochures, and may provide telephone numbers or other information to assist customers in contacting a licensed agency, producer, or consultant.

The financial institution, supervised lender, or an affiliate of either shall utilize signs clearly visible to customers that adequately identify those insurance agencies, producers and consultants affiliated with the financial institution or supervised lender, as discussed in Section IV(A) of this rule.

V. ENFORCEMENT.

Compliance with this rule shall be determined by reviewing the cumulative effect of the use of signs, the physical location of insurance sales, and the identification of insurance agencies, producers, and consultants. The regulators shall cooperate in the enforcement of this rule. Examinations for compliance with the statute and rule will be conducted by the Bureau of Banking with respect to financial institutions or their affiliates and by the Office of Consumer Credit Regulation with respect to supervised lenders or their affiliates. Suspected violations of the rule shall be reported to the Bureau of Insurance. Notwithstanding the foregoing, the Bureau of Insurance may conduct investigations, examinations and other enforcement actions with respect to the insurance activities of financial institutions and supervised lenders. Information which is deemed confidential under Title 9-A, Title 9-B, or Title 24-A of the Maine Revised Statutes Annotated shall remain confidential when shared with or communicated between or among the regulators.

EFFECTIVE DATE: November 26, 1997

BASIS STATEMENT:

This regulation implements the provisions of P.L. 1997, c. 315, "An Act to Promote Parity in the Regulation of Insurance Sales by Federally and State-chartered Financial Institutions." Specifically, the law requires that the sale of insurance products by financial institutions and supervised lenders takes place in a manner that minimizes customer confusion between any non-insurance product offered by the financial institution or supervised lender or its affiliates, and such insurance products, to the extent practicable.

RESPONSE TO COMMENTS:

Notice of the proposed rulemaking was published on or about August 27, 1997. A public hearing was held on September 16, 1997, and written comments were solicited through September 29, 1997. In addition, one comment was received after the close of the comment period. The written comments will be discussed first, followed by the comments provided at the public hearing. Although the comments are categorized by the manner in which they were received, they are numbered sequentially for ease of reference.

WRITTEN COMMENTS

1. Robert W. Goodwin of Goodwin's Inc. Insurance recommended that "somewhere in the act, or [in the] interpretation of the act, it should clearly state that any and all personnel, either of the bank or the insurance agency, must be duly licensed ... and subject to the same educational and licensing laws which apply to the insurance industry."

The regulators believe that the law itself makes it clear that financial institutions and supervised lenders are subject to the same licensure and educational requirements imposed by the Insurance Code and regulations as any other insurance agencies, producers, or consultants.

The third paragraph of the summary states that the requirements established by the rule are in addition to any requirements imposed by the Banking, Insurance, and Consumer Credit Codes. It is recognized that statutory and regulatory requirements such as licensure and continuing education do apply. Therefore, the regulators feel that it is not necessary to make any revisions in response to Mr. Goodwin's comment.

Mervyn L. Taylor, an insurance agent from Camden, Maine expressed concerns about "suitability and disclosure," and recommended that purchasers of insurance from the institutions subject to P.L. 1997, c. 315, be required to initial and sign a disclosure form at the time the application is taken.

This suggestion is beyond the scope of this rule as it does not involve the areas of signage, physical location and identification, which the regulators were required to address by the enabling legislation. Suitability requirements are generally established by statute. Maine's Insurance Code does not include such requirements and, as previously noted, producers who are affiliated with financial institutions and supervised lenders are held to the same standards and requirements as other agents. Since suitability standards do not apply to insurance producers who are not affiliated with financial institutions or supervised lenders, it would be inappropriate to apply such standards to affiliated producers. Finally, a number of disclosure requirements were included in the

legislation; the regulators are not prepared, at this time, to go beyond the requirements established by the Legislature.

2. Doris Vigo, Compliance Counsel with the American Bankers Insurance Group of Miami, Florida urged that the rule exempt optional mortgage insurance from the requirements of this regulation, arguing that such insurance is the functional equivalent of credit insurance, which is exempt from the law and rule.

P.L. 1997, c. 315, authorizes the Superintendent of Insurance to exempt additional types of insurance from many of the requirements of that law; see 9-A M.R.S.A. § 4-401(2); 9-B M.R.S.A. § 448 (6) and 24-A M.R.S.A. § 1443-A (2). This rule parallels the law's structure, by recognizing that any type of insurance excluded by the Superintendent of Insurance pursuant to that authority would not be considered an "insurance product"; see Section III(F) of this rule. Because the current list of exceptions was developed by the drafters of the bill and ratified by the Legislature, and because the authority to exempt additional products rests solely with the Superintendent of Insurance, this request is more appropriately the subject of a separate determination by the Superintendent of Insurance.

3. James M. Demers, President of the New England Financial Services Association of Concord, N.H. commented on two sections of the proposed rule.
 - a. Mr. Demers pointed out that the proposed rule would require non-depository institutions to post signs indicating that insurance sold is not a deposit or obligation, nor is it guaranteed by the non-bank lender; see Section IV(A), paragraph 2. Mr. Demers stated that these items relate to deposit-taking institutions only, and asks that the words "if applicable" be made to modify the entire paragraph.

This suggestion has been adopted; however, supervised lenders should recognize that while they do not accept deposits, the signage requirements may apply to other products offered, such as investment services.

- b. Next, Mr. Demers requested clarification of the verbiage in Section IV(B), paragraph 2 of the proposed rule. Mr. Demers observed that the phrase "physical separation" of the insurance activities from lending activities is listed as one of the factors to be considered if a lender cannot utilize a "[distinct] location" from which to conduct such insurance sales. Mr. Demers recommended that "physical separation" be omitted, so that institutions would be required to minimize confusion "through an appropriate combination of signage and disclosure."

The point made by Mr. Demers is well taken; the regulators recognize the difficulty presented by stating that physical

separation will be assessed in evaluating an institution's attempts to minimize confusion arising out of the inability to physically separate insurance sales from the retail area. Therefore, the phrase "physical separation" has been changed to read "physical location within the retail area." The term "retail area" is defined in the rule, and as modified this paragraph now makes it clear that, if the insurance sales area cannot be maintained in a location which is clearly distinct from the retail area, the insurance sales must be located within the retail area in such a manner as to minimize consumer confusion, in addition to the use of signs and disclosure.

4. Mark Walker, Esq. of the Maine Bankers Association, Augusta, Maine submitted comments on behalf of that organization, as well as on behalf of the Maine Association of Community Banks, the Maine Association of Life Underwriters, and the Maine Insurance Agents Association. The written comments were submitted as a follow up to comments made at the public hearing, which are discussed in the response to Comment 9(c), and requested that Section IV(C) of the rule be amended by adding the following sentence: "A non-licensed employee may identify the availability and location of informational material or brochures, and/or provide phone numbers or other information assisting the customer in contacting a licensed agent."

With only slight changes made in order to accommodate comments made at the public hearing by Christopher Pinkham of the Maine Association of Community Banks (see Comment 10(b), discussed below), this comment has been incorporated into Section IV(C), paragraph 2 of the rule.

5. Elizabeth J. Byrne, Counsel for the American Council of Life Insurance in Washington, D.C., submitted a written comment requesting an opportunity to discuss and clarify two issues with the Bureau of Insurance. The first was whether percentage-based leases are acceptable to the Bureau of Insurance. The second was a request for clarification on the issue of signage distinguishing between insurance products and non-insurance products.

The question of the acceptability of percentage-based leasing arrangements is more appropriately addressed solely to the Bureau of Insurance, as it is likely to affect all insurance producers, not just those affiliated with financial institutions and supervised lenders. With respect to the general issue of signage distinguishing insurance from non-insurance products, the rule has been slightly modified in response to a comment made by James Demers (see Comment 4(a) above), in order to clarify that certain of the deposit-related disclosures may not be applicable to non-depository institutions. The rule attempts to address areas of potential confusion on the part of consumers between insurance and non-insurance products, by requiring that signs indicate, when

applicable, that the insurance product 1) is not a deposit or obligation of the lender; 2) is not guaranteed by the lender; and 3) is not guaranteed by a federal insurance or guarantee entity.

6. Alton "Chip" Jones, Jr., of American Express Financial Advisors, Minneapolis, Minnesota sought clarification of the signage and identification requirements and posed a specific signage/identification scenario (desk top signs stating that the company's advisors are registered insurance agents and securities representatives who sell products that are not obligations of the financial institution and are not insured by the FDIC, NCUA or the their successors, and further indicating that the agents are associated with a registered insurance agency), and asked whether the proposed scenario would constitute compliance with the rule.

The regulators are unable to issue blanket statements regarding proposed measures designed to comply with the rule. Rather, compliance will be determined through reviews of the cumulative effect of all measures taken, including the clarity, visibility and content of the signs; the physical layout of the retail areas of the institution; and the adequacy of the identification of the insurance agents, producers and consultants affiliated with the lender.

As a final note, the commenter is reminded of the requirement that signs must also indicate that the product is not guaranteed by the financial institution or supervised lender. Such a statement was not included in the description of the sign submitted by the commenter.

final written comment, from Richard W. Smith, Esq., State Counsel for Commonwealth Land Title Insurance Co. of Portland, Maine, was received after the close of the comment period. Although the regulators are not required to address this comment, they have elected to do so in the interests of completeness. Mr. Smith posed three questions:

- a. Will the sales by lenders of homeowner's warranty insurance, homeowner's fire casualty and theft insurance, and title insurance be excluded from the effect of the rule, based on the fact that they are "similar to credit life insurance in that they are designed to protect the credit and protect the collateral"?

As indicated in the response to Comment 3, the ability to exclude additional products from the definition of "insurance products" rests exclusively with the Superintendent of Insurance and is beyond the scope of this rule.

- b. How are lenders who conduct business primarily by mail, or who utilize independent closing agents, affected by "the rules that require a clear identification of their two hats: lender and insurance

producer"?

To the extent that the underlying legislation (P.L. 1997, c. 315) applies to a financial institution's or supervised lender's method of conducting business, the rule will also apply. While some provisions of the rule do apply specifically to the conduct of business within the retail area of an institution, others are of a more generic applicability. For example, the requirements found in the first paragraph of Section IV(C) of the rule, entitled "Identification and role of personnel," may apply even to lenders conducting business exclusively by mail.

- c. Is it appropriate for title insurance agents to utilize the word "company" in their business names?

Interpretive questions of this nature are outside the purview of this rule, and should be directed to the Superintendent of Insurance.

COMMENTS SUBMITTED AT THE PUBLIC HEARING

At the public hearing on September 16, 1997, several issues were raised which were not covered by subsequent written comments.

7. Mark Walker, Esq. of the Maine Bankers Association, provided comments with respect to three aspects of the rule.

- a. Mr. Walker indicated that several of the group's members were concerned over the law's definition of the word "affiliates."

As Mr. Walker indicated later in his testimony on this point, his members' concerns "stem from the law itself." The definition of "affiliate" used in this rule is the same as that found in PL 1997, c. 315. Since affiliates, as defined therein, are subject to the law, they are also subject to the rule. The regulators do not have the authority to exempt any affiliates from the provisions of the legislation. With respect to the issue of whether the rule would apply to an out-of-state affiliate of a financial institution that sells insurance in that state, the regulators believe that neither the legislation nor the rule would apply to any out-of-state insurance affiliate whose activities do not require licensure in the State of Maine.

- b. Mr. Walker referenced the two standards of compliance effort found in Section IV (B), "Physical location." Specifically, he asked whether the general standard ("to the extent practicable") should also apply to situations in which sales of insurance cannot be conducted in a location distinct from the retail area of an institution. As drafted, the rule requires that institutions make "every reasonable effort" to minimize customer confusion in such situations through a

combination of signage, disclosure and placement.

The regulators have declined to adopt this suggestion. The rule, as drafted, accurately reflects the intent of the drafters to hold institutions to a high standard when physical separation is not possible. It is also appropriate to note that this rule requires that "every reasonable effort" (emphasis added) be made, while the OCC Advisory Letter (AL 96-8) imposes an arguably higher standard of "every effort" upon national banks.

- c. Mr. Walker's final request was that a sentence be added to Section IV(C), to state that "If a non-licensed bank employee identifies the availability and location of informational material or brochures, and/or provides phone numbers or other information assisting the customer in contacting a licensed agent, providing such information does not constitute solicitation."

This suggestion was addressed in responding to the written comment subsequently submitted by Mr. Walker on behalf of the Maine Bankers Association, the Maine Association of Community Banks, the Maine Association of Life Underwriters and the Maine Insurance Agents Association (Comment 5, above).

8. Christopher W. Pinkham, President of the Maine Association of Community Banks requested two modifications, the first in Section IV(A), "Signage," and the second in Section IV(C), "Identification and role of personnel."

- a. With respect to paragraph 1 of Subsection A, Mr. Pinkham requested clarification that only those insurance agencies, producers, and consultants who are affiliated with the lender and providing insurance products within the retail area need to be identified through the use of signs.

This suggestion has been incorporated into the final rule.

- b. With respect to paragraph 2 of Subsection IV(C), Mr. Pinkham requested that the specific titles of certain employees (namely, "tellers") be deleted from the sentence, on the basis that identification of bank personnel by title "defeats the purpose of parallel rules" in place for affiliated and non-affiliated insurance agencies.

This suggestion has been incorporated. The word "tellers" has been replaced by the functional description, "personnel staffing the retail deposit-taking stations."

9. Daniel Bernier, speaking on behalf of the Maine Insurance Agents Association and the Maine Association of Life Underwriters, expressed

concern regarding Mark Walker's proposal to exempt conduct such as providing information on how to reach licensed personnel as not constituting solicitation. To do so without care, said Mr. Bernier, would be to risk losing the law's prohibition against solicitation prior to the lending decision, which he termed "the most substantive provision of the whole statute."

Subsequent to the public hearing, Mr. Bernier joined in the letter submitted by Mark Walker (Comment 5). The regulators believe that this comment has been addressed by the responses to the concerns expressed in Comments 5 and 10, above.