**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**030 BUREAU OF CONSUMER CREDIT PROTECTION**

**Chapter 110: BUREAU ORGANIZATION, ADMINSTRATION, AND PROCEDURE**

SUMMARY: This rule repeals and replaces the existing Chapter 110 pertaining to the organization of the Bureau of Consumer Credit Protection and the Bureau’s maintenance of records, response to consumer complaints, issuance of advisory rulings, and conduct of adjudicatory proceedings with respect to matters governed by the Maine Consumer Credit Code. It extends application of the rule to matters regulated by the Bureau pursuant to regulatory authority outside the Code. It adds new provisions regarding the use of criminal history record information in adjudicatory proceedings.

I. AUTHORITY

 Title 5 M.R.S. § 8051 requires State agencies to adopt rules of practice regarding, among other things, advisory rulings, and adjudicatory proceedings.

Title 9-A M.R.S. § 6-104(1)(E) and (4) require the Superintendent to adopt rules setting

out, among other things, the organization of the Bureau of Consumer Credit Protection, how the public may obtain information from or make submissions to the Bureau, and rules of practice setting forth both the nature of and requirements for formal and informal Bureau procedures.

 The Superintendent has statutory authority to make rules regarding regulation and enforcement of matters outside the Consumer Credit Code, including without limitation authority to make rules governing:

1. Check Cashers and Foreign Currency Exchangers, 32 M.R.S.§§ 6133(4)(D) and 6144;
2. Credit Reporting Agencies, 10 M.R.S. § 1310-A(1)(G)(4);
3. Debt Collectors, 32 M.R.S. § 11031;
4. Debt Management Service Providers, 32 M.R.S. § 6178;
5. Employee Leasing Companies, 32 M.R.S. § 14053(1-A);
6. Exchange Facilitators, 10 M.R.S. §§ 1396(2) and1400(1);
7. Foreclosure Purchasers, 32 M.R.S. §§ 6193(4) and 6200;
8. Guaranteed Asset Protection Waiver Administrators, 10 M.R.S. § 1500-H(6-A);
9. Money Transmitters, 32 M.R.S. §§ 6103(4) and 6125;
10. Nonbank ATMs, 32 M.R.S. § 6159;
11. Nonbank Payroll Processors, 10 M.R.S. §§ 1495-D(1-A), 1495-E, and 1495-F(7);
12. Payroll Processors, 10 M.R.S. §§ 1495-D(1-A),1495-E, and 1495-F(7); and
13. Real Estate Settlement Agencies, 10 M.R.S. § 1400-B (1).

II. Purposes.

 The purposes of this Chapter are to update Bureau protocols for responses to requests for

advisory rulings, to clarify the handling of complaints, to establish rules of practice for

adjudicatory proceedings, and to establish new protocols for the use of criminal history record information.

III. Definitions.

For purposes of this Chapter, the following terms have the indicated meaning:

1. “Adjudicatory proceeding” has the meaning set forth in 5 M.R.S. § 8002(1).
2. “Bureau” means the Maine Bureau of Consumer Credit Protection.
3. “Code” means the Maine Consumer Credit Code, Title 9-A M.R.S.
4. “Criminal history record information” has the meaning set forth in 28 C.F.R.

 § 20.3(d).

1. “Party” means a specific person whose legal rights, duties, or privileges are being determined in an adjudicatory proceeding or any person participating as an intervenor in an adjudicatory proceeding.
2. “Presiding officer” has the meaning set forth in 5 M.R.S. § 9062.
3. “Superintendent” means the Superintendent of the Maine Bureau of Consumer Credit Protection. The Superintendent is the gubernatorially-appointed administrator of the Bureau.

IV. ORGANIZATION

 The Bureau is responsible for enforcement of the Maine Consumer Credit Code and the laws and rules governing the entities regulated by the Superintendent pursuant to statutory authority outside the Code.

V. MAINTENANCE OF RECORDS AND REQUESTS FOR INFORMATION

1. All official records relating to the Bureau’s administration and enforcement of matters shall be filed and maintained in the Office of the Superintendent. To the maximum extent possible, records shall be maintained electronically.
2. Information regarding, Bureau rules, filing of consumer complaints, enforcement actions, and applications for licensure may be obtained online at http://www.maine.gov/pr;by mail addressed to the Bureau at 35 State House Station, Augusta, Maine 04333; or at the Bureau’s office, 76 Northern Avenue, Gardiner, Maine.

VI. INVESTIGATIONS

A. Informal communications may be made to the Superintendent either orally or in writing and need not be in any particular form. Such matters may be disposed of by correspondence or in another informal manner. A record shall be kept of each informal communication, listing its nature and all action taken thereon.

B. Investigation. If it appears from information brought to the attention of the Superintendent that a person may be committing or has committed an act or omission in violation of the Consumer Credit Code or any other statute for which the Bureau has investigatory responsibility, the Superintendent may order an investigation to determine if an illegal act is being or has been committed.

C. Summary action. After investigation, the Superintendent may take one or more of the following actions, as the situation warrants:

1. Accept an assurance in writing that the person in violation of the applicable statute or rule administered by the Superintendent

will not engage in that conduct in the future and, when appropriate, include a requirement that refunds be made to consumers. Assurances are public records available for inspection at the Bureau and on the Bureau’s website;

2. Set the matter for an administrative hearing to determine whether a violation occurred and what, if any, discipline or remedy may be imposed;

3. Bring a civil action through the Attorney General for injunctive relief, to redress consumer harm or to impose a civil penalty as provided by law;

4. Refer a matter to the Attorney General, the District Attorney, or the United States Attorney for criminal prosecution; and/or

5. Take any other action allowed by law.

VII. RULES OF PRACTICE

 A. Advisory Rulings.

1. Authority and Scope. The Superintendent may, at her/his discretion and pursuant to 5 M.R.S.A. § 9001, issue advisory rulings concerning the applicability of any Bureau statute or rule to an existing factual situation. Advisory rulings are nonbinding on the Bureau.

2. Submission. Requests for advisory rulings shall be in writing and shall set forth in detail all pertinent facts. The Superintendent may require submission of additional information necessary for consideration of a request.

1. Form. An advisory ruling shall be in writing and shall include a statement of the facts and/or assumptions on which it is based. An advisory ruling shall be signed by the Superintendent, be serially numbered, and be posted on the Bureau’s website. The posted ruling may be redacted to protect personally identifiable information, bona fide trade secrets, and other information that the Superintendent believes is commercially sensitive.

 B. Adjudicatory Proceedings.

1. Commencement.

 The Superintendent’s issuance of a notice of hearing commences an adjudicatory proceeding pursuant 5 M.R.S. §§ 9051- 9064.

1. The Notice of Hearing.

Besides meeting the requirements of 5 M.R.S. § 9052, the notice of hearing will identify the presiding officer and address the parties’ responsibilities going forward.

1. Presiding Officer.

The Superintendent may serve as the presiding officer in an adjudicatory proceeding or designate another individual to serve in that capacity.

1. Service of Filings.
2. All filings relating to an adjudicatory proceeding shall be addressed to a Bureau staff member designated in the notice of hearing for accepting service on behalf of the Superintendent, all parties, and the assistant attorney general representing staff members participating in an advocacy capacity.
3. Acceptance of a document for filing does not constitute a determination that it is sufficient for the purpose for which it is filed.
4. Represented parties. When a party is represented by an attorney, service shall be made on the attorney.
5. Service of any filing is complete:

1. To the Bureau when it receives the submission or the paper by mail, in-hand delivery, email, or by any other means specified by the Presiding Officer.

 2. To a Party when the paper is mailed to the party or the party's attorney, by in-hand delivery to the recipient, email , or by any other means specified by the Presiding Officer.

 5. Computation of Time.

1. General rule. In computing any period of time that is either prescribed or allowed by this rule, or is ordered by the presiding officer, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, State holiday, or any other day on which the Bureau is closed, in which event the period runs until the end of the next business day.
2. Modification. When by this rule or by order of the presiding officer an act is required or allowed to be done at or within a specified time, the presiding officer may for good cause order the period modified, if modification is not precluded by statute.

 6. Form of Filings.

 a. Captions. All filings shall contain a caption setting forth the name of the first listed respondent, the file number assigned to the case by the Bureau, and a brief descriptive title of the filing.

 b. Format. All filings other than exhibits shall be printed on one side of each page of 8.5 x 11-inch paper. The typed matter must be double spaced in at least 12-point type with margins of at least one inch, except that footnotes may be in 11-point type. Indented quotations must be single-spaced.

 c. Signatures. Every filing by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, with the attorney’s address and telephone number stated. A party not represented by an attorney shall sign the filing and state the party's address and telephone number. The signature of an attorney or party constitutes a representation by the signer that the signer has read the filing, that there are good grounds to support it, and that it is not interposed for delay.

 d. Non-compliance. If a party fails to comply with this section, the presiding officer may refuse to consider the filing.

 7. Motions.

 a. Form. All motions should be written and be served on all parties, except that motions may be made orally during a hearing,

 b. Content. Motions must state concisely the question to be determined, state the factual and legal grounds for the desired order or action, and be accompanied by any necessary supporting documentation.

1. Timing. No motion pertaining to an upcoming scheduled hearing

 may be filed less than 14 days before the hearing without the approval of the presiding officer. The filing or pendency of a motion does not alter or extend any deadline.

 d. Opposition. Any opposition to a motion must be filed within 7 days after receipt of the motion. A party failing to file such timely opposition shall be deemed to have waived all objections to the motion.

 e. Length. No brief or motion or opposition thereto shall exceed 10 pages without the prior approval of the presiding officer.

 f. Briefs and oral argument. The Superintendent or presiding officer may order that briefs be filed on any issue and may allow oral argument on any motion.

 g. Non-compliance. If a party fails to comply with this section, the presiding officer may refuse to consider the filing.

8.Timing and Manner of Intervention.

1. Timing. Persons who seek to intervene in a proceeding must do so by motion no later than the deadline for intervention set in the notice of hearing, unless the presiding officer orders otherwise for good cause shown.
2. Manner. Motions for leave to intervene shall conform to the requirements of 5 M.R.S.A. § 9054 and list the name, address, email address, and telephone number of the proposed intervenor and that person's attorney, if any.

9. Addition, Deletion, and Substitution of Parties.

The presiding officer may, in his/her discretion or on motion of a party, order the addition, deletion, or substitution of parties.

 10. Consolidation and Severance.

 a. Consolidation. The presiding officer may consolidate two or more proceedings where the proceedings involve a common question of law or fact or where such consolidation otherwise may expedite the orderly conduct and disposition of both proceedings.

1. Severance. The presiding officer may for good cause order any

 proceeding or portion thereof severed.

 11. Discovery.

The presiding officer may issue subpoenas pursuant to 5 M.R.S.A.

§ 9060(1).

 12. Pre-Hearing Conferences.

1. Agenda. The presiding officer may conduct one or more

pre-hearing conferences to facilitate the orderly conduct and disposition of a proceeding. Purposes of conferences should include without limitation scheduling the exchange of pre-marked exhibits, witness lists, and exhibit lists.

1. Telephonic or video conference. The presiding officer may conduct a pre-hearing conference by telephone, video, or other means. Upon notice to the participants, all or part of the pre-hearing conference may be recorded.
2. Record. Actions taken and agreements made at pre-hearing conferences shall be made part of the record.

 13. Mediation.

At the request of any party and with the consent of all parties, the Administrator or presiding officer may, in his/her discretion, appoint a mediator to facilitate settlement of a proceeding. The appointment of a mediator shall be on such terms and conditions as the Administrator or presiding officer directs. The mediator shall not be the Administrator, the presiding officer, or any Bureau staff who have participated or will participate in the proceeding in an advocate capacity. Settlement of a proceeding through mediation is in all cases subject to the Presiding Officer's approval.

 14. Witnesses.

1. Examination.

 i. After a witness is sworn, the parties may conduct direct examination, cross-examination, re-direct examination, and re-cross examination. Further examination by the parties is permissible only if the presiding officer allows it.

 ii. The presiding officer may conduct his/her own examination of a witness at any time during the testimony of that witness.

 b. Limitations. The presiding officer may for good cause limit the number of witnesses or the extent of a witness’s testimony.

1. Fifth Amendment. A witness's invocation of the Fifth Amendment privilege against self-incrimination must be stated by the witness on the record and not by the attorney for the witness. The Superintendent or presiding officer may take any adverse inference from a witness's invocation of that privilege as warranted by law.

 d. Immunity. The Superintendent or presiding officer shall not grant any kind of immunity to any witness in connection with a witness's testimony.

 e. Sequestration.

 i. When requested by any party, or on his/her own initiative, the presiding officer may sequester witnesses other than parties.

 ii. A party that is not a natural person may designate an individual as its representative to remain in the hearing room, even though that individual may also be a witness.

 iii. The presiding officer may order the witnesses, parties, their counsel, and any person under their direction not to disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the sequestered witness's absence.

 15. Conduct of Hearing.

 a. Presentation. The presiding officer shall determine the order in which the parties shall present their case and evidence.

 b. Openings and closings. Opening and closing statements may be made, either orally or in writing, at the discretion of the presiding officer.

 c. Stipulations. With the approval of the presiding officer, the parties may stipulate to facts at issue, either orally or in writing, and shall be bound thereby, though presiding officer may still require proof of stipulated facts.

1. Evidence. The presiding officer shall take evidence in accordance with the Maine Administrative Procedure Act, 5 M.R.S.A.

§ 9057.

 e. Objections. Objections shall be timely made, and the basis of each objection shall be stated briefly on the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until later, as appropriate.

 f. Close of evidence. Once a party has rested its case, it may introduce no further evidence without the presiding officer's consent.

 g. Conduct of Persons Appearing at Hearings. Contemptuous, disorderly, or improper conduct by any person appearing at a hearing shall be grounds for the presiding officer to exclude or expel that person from the hearing or to take other appropriate action.

 h. Telephonic or video hearing. The presiding officer may conduct all or part of a hearing by telephone, video, or other electronic means.

 i. Submissions. The presiding officer may order parties to file pre- hearing and post-hearing briefs and proposed findings of fact and conclusions of law.

 j. Adjudication on stipulated record. The presiding officer may elect not to hold a hearing, if all parties waive their right to the hearing and agree to submit to adjudication based on a stipulated record.

 16. Representation.

1. An individual may appear on the individual's own behalf or may be

represented by an attorney authorized to practice law in Maine.

1. An attorney who appears in a representative capacity shall enter an appearance by filing a written notice of appearance setting forth:
2. The attorney's name, business address, telephone number, fax number, and e-mail address; and
3. The name and address of the party represented.
4. Change of address. Each party and any representative of a party shall promptly notify the Bureau of any change of address, telephone number, fax number, or email address.
5. Withdrawal. An attorney who is the sole representative of a party may withdraw from representation only by serving a notice of withdrawal on the client and all other parties and filing the notice

with the Bureau, provided that:

 i. Such notice is accompanied by notice of the appearance of another attorney; and

 ii. No hearing date has been set.

 Unless these conditions are met, the attorney may withdraw only after the presiding officer’s approval of a motion to withdraw served on the client and stating contact information of the client. Such a motion may be granted subject to terms and conditions as the presiding officer deems appropriate.

 17. Use of Criminal History Record Information.

 In making decisions regarding licensing and registration of current and prospective licensees and registrants, the Bureau may use criminal history record information (CHRI) provided by the Federal Bureau of Investigation. The Bureau will not disseminate that CHRI to the public, will not maintain CHRI in formats that are accessible by the public, and will not keep CHRI within records that are subject to release through public record requests. The Bureau will only use a person’s CHRI in a public hearing held pursuant to the established requirement that the Bureau determine every licensee’s, registrant’s, and applicant’s qualifications and only if:

1. The CHRI is relevant and necessary to the Bureau’s determination;
2. The person has previously been advised of the possibility that CHRI will be disclosed;
3. The person is allowed to be present at the hearing; and
4. If the person withdraws a request for a hearing or indicates that he or she will not appear or contest the proposed action by the Bureau, the CHRI will not be made part of the record of the hearing.

 18. Failure to Appear.

1. When a party fails to appear at a scheduled hearing, the presiding officer shall, at the option of the moving party:
2. Enter a default, which may be set aside for good cause; or
3. Proceed to hold the hearing *in absentia* and render a decision on the record thus established, which may be used in subsequent legal proceedings.
4. Party's appearance. When a party is represented by an attorney, the party must nonetheless appear personally at a scheduled hearing unless excused by the presiding officer.
5. Telephonic or video appearance. When a party has been allowed to appear at a hearing by telephone, video, or other electronic means, the party fails to appear within the meaning of this subsection if, for more than 15 minutes after the scheduled time of the hearing or conference, the party fails to answer or free the telephone line, sign in at a video link, or otherwise fails to communicate as scheduled.

 19. *Ex Parte* Communications.

 Parties to an adjudicatory hearing may not communicate, directly or indirectly, in connection with any issue of fact, law or procedure, with the Superintendent or a presiding officer, except upon notice and opportunity for all parties to participate.

 20. Effective Date.

 This rule governs adjudicatory proceedings commenced on or after its effective date.

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AUTHORITY: 5 M.R.S. § 8051; 9-A M.R.S. § 6-104(1)( E ) and (4); 10 M.R.S. §§ 1310-A(1)(G)(4), 1396(2), 1400(1), §1400-B(1), 1495-D(1-A), 1495-E, 1495-F(7), and 1500-H(6-A); 32 M.R.S.§§ 6103(4), 6125, 6133(4)(D), 6144, 6159, 6178, 6193(4), 6200, 11031, and 14053(1-A)

EFFECTIVE DATE: