

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

The Bureau of Financial Institutions issued Regulation 36, Deposit Production Offices, effective February 23, 1997. Recent law changes have amended the statutes prohibiting the operation of a deposit production office to more closely align them with federal law. The Bureau of Financial Institutions proposes to amend Chapter 136 (Regulation 36) to implement those changes in statute. The proposed amended rule provides a *de minimis* percentage threshold of deposits under which all financial institutions authorized to do business in Maine would be considered to be in compliance with the rule. The proposed rule reduces the reporting requirements on Maine financial institutions and credit unions by eliminating the annual Branch Loan and Deposit/Share Survey. It is a routine technical rule as defined in Title 5, chapter 375, subchapter II-A.

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 September 16, 2005. 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>.

Gardiner, Maine
August 17, 2005

CHAPTER 136: DEPOSIT PRODUCTION OFFICES (REG. 36)

SUMMARY:

Public Law Chapter 83 of 2005, effective May 10, 2005, changed the definition of a deposit production office and amended 9-B MRSA § 241(8)'s prohibition against the operation a deposit production office to more closely align it with federal law. As amended, the definition of a deposit production office, 9-B MRSA § 131(12-B), is broadened to focus on the credit needs of all Maine communities, rather than the community where a branch is located. The Bureau

of Financial Institutions proposes to amend Regulation 36 to incorporate the statutory changes, which will result in a State rule that more closely parallels the federal law.

The proposed Regulation 36 establishes guidelines that are generally comparable to the federal rules. It also provides a safe harbor provision, so that a financial institution authorized to do business in this State that holds less than two percent of total Maine deposits would be considered to be in compliance with 9-B MRSA § 241(8). This de minimis threshold percentage recognizes that institutions that hold less than 2% of total Maine deposits are predominantly community financial institutions that operate offices only in Maine and, therefore, almost exclusively serve residents of the State. Numerous alternative non-financial institution lenders have steadily reduced the reliance on financial institutions for credit, thereby lessening the impact an individual community financial institution may have on the availability of funds for lending in Maine. Therefore, an institution that falls within the safe harbor will not be deemed to be a deposit production office.

The proposed Regulation 36 reduces reporting requirements for Maine financial institutions and credit unions, by eliminating the annual Branch Loan and Deposit/Share Survey. As an alternative, the Bureau will rely on aggregate loan and deposit data contained in Call Reports prepared by financial institutions for their primary federal regulator and, for institutions that operate interstate branches, on aggregate loan and deposit data, identical to that already being reported on a quarterly basis to the Bureau.

I. AUTHORITY

Title 9-B MRSA § 241(8) states the Superintendent may adopt rules to implement the prohibition on the operation of a deposit production office in Maine. Rules adopted pursuant to this § 241(8) are routine technical rules as defined in 5 MRSA, Chapter 375, subchapter II-A.

II. PURPOSE

This regulation sets forth the factors that the Superintendent will consider in determining whether a financial institution authorized to do business in this State is operating in compliance with 9-B MRSA § 241(8).

III. DEFINITIONS

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

- A. "Call Report" means the Consolidated Report of Condition and Income, the Thrift Financial Report, or the Credit Union Statement of Financial Condition filed with a financial institution's primary federal regulator.

- B. "Credit union authorized to do business in this State" has the meaning set forth in 9-B MRSA § 131(12-A).
- C. "Deposits" include all amounts a financial institution authorized to do business in this State must report as deposits (including credit union share accounts) in its Call Report.
- D. "Deposit production office" has the meaning set forth in 9-B MRSA § 131(12-B).
- E. "Financial institution authorized to do business in this State" has the meaning set forth in 9-B MRSA § 131(17-A) and also includes a credit union authorized to do business in this State. However, for purposes of this rule, "financial institution authorized to do business in this State" does not include limited purpose banks organized pursuant to 9-B MRSA, Part 12.
- F. "Home state" has the meaning set forth in 9-B MRSA § 131(20-A).
- G. "Interstate financial institution" means a financial institution authorized to do business in this State and operating at least one branch in Maine and at least one branch in another state.
- H. "Loan" has the meaning set forth in 9-B MRSA § 439-A (1)(A).
- I. "Maine deposits" is, for a Maine-only financial institution, the total of all deposits reported on the institution's Call Report. "Maine deposits" is, for an interstate financial institution, the total of all deposits attributable to branches in Maine.
- J. "Maine home state loan-to-deposit ratio" means the ratio of total Maine loans to total Maine deposits, for all financial institutions authorized to do business in this State whose home state is Maine.
- K. "Maine Interstate Report" means the quarterly report of total Maine deposits and Maine loans filed with the Bureau by an interstate financial institution.
- L. "Maine loans" is, for a Maine-only financial institution, the total of all loans reported on the institution's Call Report. "Maine loans" is, for an interstate financial institution, the total of all loans attributable to branches in Maine.
- M. "Maine-only financial institution" means a financial institution authorized to do business in this State whose home state is Maine and which has branches only in Maine.
- N. "Statewide loan-to-deposit ratio" means the ratio of Maine loans to Maine deposits, for each financial institution authorized to do business in this State.

IV. **GENERAL PROVISIONS**

- A. Standards

A financial institution authorized to do business in this State is in compliance with 9-B MRSA § 241(8), if it meets at least one of the following standards:

1. Its Maine deposits are less than two percent (2%) of total Maine deposits reported by all financial institutions authorized to do business in this State;
2. Its statewide loan-to-deposit ratio is equal to or greater than 50% of the Maine home state loan-to-deposit ratio;
3. Its statewide loan-to-deposit ratio is equal to or greater than 50%;
4. For a financial institution authorized to do business in this State whose home state is Maine, its most recent Community Reinvestment Act assessment by the institution's appropriate federal regulator is "satisfactory" or "outstanding;" or
5. For a financial institution authorized to do business in this State whose home state is not Maine, its most recent Community Reinvestment Act assessment for the State of Maine branch(es) by the institution's appropriate federal regulator is "satisfactory" or "outstanding."
6. The Maine home state loan-to-deposit ratio and the statewide loan-to-deposit ratio for each Maine-only financial institution and each interstate financial institution shall be calculated annually, using data obtained from the June 30 Call Report and the June 30 Maine Interstate Report.

B. Additional Performance Factors

If a financial institution authorized to do business in this State does not meet any of the standards set forth in Section IV(A) of this Regulation, then the Superintendent shall consider the following performance factors. Favorable consideration of these factors may result in a determination that the institution is in compliance with 9-B MRSA §241(8).

1. Other lending and investing activities in Maine of the financial institution, including loans originated for sale to secondary markets;
2. Lending activities in Maine of affiliates of the financial institution;
3. The length of time that the financial institution has been in operation in Maine;
4. The financial condition and statewide loan-to-deposit ratio trend of the financial institution;

5. The assessment area, as delineated in its Community Reinvestment Act Statement, of the financial institution;
 6. The economic conditions, lending opportunities and credit needs in the assessment area, as delineated in its Community Reinvestment Act Statement, of the financial institution; and
 7. Any other relevant factors that may be presented.
- C. Reporting Requirements

Quarterly, each interstate financial institution shall file with the Bureau a Maine Interstate Report. For each Maine-only financial institution, the information contained in its Call Report shall satisfy the reporting requirements.

- D. Penalty for Non-Compliance

If, after a review of the Standards and Performance Factors set forth in Sections IV(A) and IV(B) of this Regulation, the Superintendent determines that a financial institution authorized to do business in this State is not in compliance with 9-B MRSA § 241(8), the Superintendent shall notify the institution in writing of that finding. The institution shall have 60 days from receipt of that notification to submit to the Superintendent a plan describing the means and timetable by which it shall come into compliance with 9-B MRSA § 241(8). Within thirty days of receipt of a financial institution's remedial plan, the Superintendent shall notify the institution in writing of the plan's acceptance, acceptance with conditions, or rejection. The Superintendent may take any enforcement action, including issuing a cease and desist order pursuant to 9-B MRSA, Chapter 23, if the institution does not submit a reasonable plan or fails to adhere to its submitted plan.

V. **FEDERAL/STATE REGULATIONS**

It is recognized that the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the National Credit Union Administration may promulgate in the future regulations governing the operation of deposit production offices. It is further recognized that there may exist differences in scope and coverage between this Regulation 36 and those regulations promulgated by federal financial supervisory agencies. It is not the intent of this Regulation to permit any practice not permitted by the appropriate federal financial supervisory agency. To the contrary, besides complying with any restriction or limitation stated herein, each financial institution must comply fully with the laws and regulations of its respective federal financial supervisory agency.

