

December 26, 2007

Maine Bureau of Financial Institutions
Maine Bureau of Consumer Credit Protection
Joint Advisory Ruling # 113
"Ability to Pay" under Bureaus' Joint Rule: Guidelines for Determining
Reasonable, Tangible Net Benefit and Ability to Pay (Chapters 550 and
144)

Dear :

This is in response to your recent correspondence in which you seek guidance regarding the "ability to pay" portion of the Bureaus' Final Rule Chapter 144 (Bureau of Financial Institutions) and 550 (Bureau of Consumer Credit Protection) ("the Final Rule"). Specifically, you have asked whether a borrowers' monthly payments to third parties must be fully-indexed when determining the borrower's debt-to-income ratio.

Subsection 5(2)(A) of the Final Rule provides that the determination of a borrower's reasonable ability to repay a subprime mortgage loan must include, in relevant part, consideration of "(5) the debt-to-income ratio of the borrower's monthly gross income, including the borrower's total monthly housing-related payments, all principal, interest, taxes and insurance."

Subsection 5(2)(B) of the Final Rule provides that creditors are to use certain calculation assumptions in this evaluation, including in relevant part, "(1) the monthly payment amounts based on, at a minimum, the fully indexed rate, assuming a fully amortizing payment schedule."

You have pointed out that the Final Rule and the Bureaus' responses to comments on the Final Rule do not clarify, first, whether the debt-to-income ratio analysis should include all debt-related payments of the borrower (*e.g.*, secured, unsecured, credit card, etc.), plus monthly housing-related payments and principal, interest, taxes and insurance (PITI). You have indicated that you believe that the standard industry analysis would include those other payments.

You have also pointed out that the Final Rule and the Bureaus' responses to comments do not clarify, assuming that the debt-to-income ratio analysis should include all debt-related payments of the borrower, which of those debt-

related payments must be fully-indexed, and, if so, whether they should be indexed in the same fashion as the subprime loan's monthly payment would be fully-indexed per the Final Rule's instructions.

You have urged us to take the position that a creditor should only be required to "fully index" payments made to that particular creditor. You note that a creditor does not have the information to "fully index" payments made to a third party, as the creditor does not have the third-party loan documents. By way of example, you note that, if a credit report shows a payment to a third-party creditor of \$400, and that payment is based on a "teaser rate," there is no way for the creditor to know that fact. Therefore, you argue that the creditor should be permitted to use the monthly payment that the third party is reporting to the credit bureau.

The Bureaus are of the opinion that the Final Rule's "ability to pay" section requires a creditor to consider both secured and unsecured debt payments in calculating ability to pay, but permits that creditor to rely on reported monthly payments to other creditors. We will not require creditors to attempt to "fully index" payments that may be due to other creditors in the future.

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