02-029
CHAPTER 131
Regulation #31
ASSESSMENTS - FINANCIAL INSTITUTIONS

SUMMARY:

Title 9-B MRSA §214(2) requires each State-chartered financial institution to pay an assessment to the Bureau of Financial Institutions to cover the general regulatory costs, overhead, transportation and general administrative expenses of the Bureau. In 1993, the Bureau of Financial Institutions (then the Bureau of Banking) promulgated Regulation 31, effective December 27, 1993. At that time, the assessment revenue was insufficient to support the operating needs of the Bureau of Financial Institutions at levels adequate to cover the cost of the Bureau's mandated functions. The then nominal growth in the industry and the unprecedented regulatory activities necessary to address the economic recession and its adverse impact on the industry contributed to the need to promulgate rules to address the insufficient revenue stream. Regulation 31 increased the rate of assessment from 6¢ per $1,000 of total average assets to 7¢ per $1,000 of total average assets and established a special assessment for two successive 6-months periods.

Over the past several years, State-chartered financial institutions have experienced healthy and consistent growth in assets. During the same period of time, the Bureau's operating costs have remained relatively stable. Assessments paid by the State-chartered financial institutions have risen steadily and the Bureau feels that it can reduce assessments, maintain the level of revenue necessary to fund the general regulatory costs of the Bureau as required in 9-B MRSA §214(2), and still provide an adequate reserve against unanticipated expenditures. Therefore, the Bureau is repealing and replacing Regulation 31. The new Regulation 31 will lower the rate of assessment from 7¢ per $1,000 of total average assets to 6¢ per $1,000 of total average assets. The new rate of 6¢ per $1,000 of total average assets will remain in effect for each subsequent quarterly assessment, until such time as economic conditions warrant an increase in the assessment.

The new Regulation 31 is a routine technical rule as defined by 5 M.R.S.A. § 8071(2)(A).

I. AUTHORITY

Title 9-B MRSA §214(2)(A) authorizes the Superintendent of the Bureau of Financial Institutions to alter, through rulemaking, the annual rate of assessment for each financial institution under the Superintendent's supervision.

Title 9-B MRSA §215 authorizes the Superintendent to implement by rule any provision of law relating to the supervision of financial institutions.

II. PURPOSE

This regulation reduces the annual assessment paid by financial institutions to the Bureau of Financial Institutions from 7¢ per $1,000 of total average assets to 6¢ per $1,000 of total average assets. Assessments paid by a limited purpose bank -- a nondepository trust company, merchant bank, or uninsured bank predominantly engaged in the business of a nondepository trust company -- are established pursuant to Bureau of Financial Institutions Regulation 41 (Chapter 141).

III. DEFINITIONS

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

A. "Federal regulator" means the Federal Deposit Insurance Corporation for banks, the Office of Thrift Supervision for savings and loans associations, and the National Credit Union Administration for credit unions.
B. "Financial institution" means a universal bank, limited purpose bank, trust company, savings bank, industrial bank, savings and loans association or credit union organized under the laws of this State. Excluded from the definition of "financial institution" is any limited purpose bank that is predominantly engaged in the business of a nondepository trust company and is subject to Bureau of Financial Institutions Regulation 41 (Chapter 141).
C. "Total assets" means the total of assets plus the total of the Allowance for Loans and Lease Losses reported on the financial institution's Report of Condition as required by the institution's federal regulator.
D. "Total of average assets" means the sum of total assets reported for all months in the assessment period divided by the number of months in the assessment period.

IV. GENERAL PROVISIONS

Beginning with the assessment due and payable November 11, 2004 for the period ending September 30, 2004, each financial institution shall pay an assessment to the Bureau of Financial Institutions at an annual rate of 6¢ for each $1,000 of the total of average assets.

BASIS STATEMENT

This regulation is being promulgated to lower the annual rate of assessment for banks and credit unions from 7¢ for each $1,000 of the total of average assets to 6¢ for each $1,000 of the total of average assets. Notice of proposed rulemaking was published on or about September 8, 2004. No public hearing was requested and none was held. The Bureau received two comments during the public comment period which closed on October 15, 2004: one comment from Christopher Pinkham on behalf of the Maine Association of Community Banks (MECB) and their 17 Maine-chartered member banks and the second comment from Mark Walker of Maine Bankers Association (MBA) representing twenty-three diversified financial services organizations.

Both MECB and MBA strongly supported the proposed modifications to the original Regulation 31. The organizations recognized the Bureau's efforts over the past several years to hold operating costs relatively stable, anticipating future staffing needs, technology improvements, and examination responsibilities. Both MECB and MBA strongly supported the reduction of the assessment rate to $.06 per $1,000 of total average assets.

MBA further observed that the change in the assessment rate, combined with the reduction in the daily rate for examiners, which was announced to the industry in the Bureau's memorandum dated August 26, 2004, will result in a reduction in the total costs of supervision and examination by the Bureau. In its letter of comment, MBA inquired about any additional cost reductions that may be forthcoming and the adequacy of reserves against unanticipated expenditures. MBA members suggested that some of the Bureau's reserve could be used to further reduce the quarterly assessments and examiner costs charged to state-chartered institutions. MBA offered their assistance to the Bureau to further review that reserve account to determine its adequacy.

Response to Comments

The Bureau appreciates the comments received from MECB and MBA in support of its promulgation of Regulation #31.

In its comment letter, MBA made observations regarding the Bureau's current reserve for unanticipated expenditures with commentary suggesting a need for additional reductions in quarterly assessments and examiner costs. MBA did not, through those comments, request any changes to the proposed rule. Indeed, the assessment rate established in Regulation #31 sets that rate at the statutory floor; therefore, the Bureau cannot reduce the rate any further. The mechanism for determining the daily rate for examiners is not addressed in Regulation #31; therefore those comments are incompatible with the current rule-making proceedings. The Bureau is promulgating Regulation #31 essentially as proposed.

EFFECTIVE DATE: October 26, 2004