

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out all of Part A and inserting the following:

## PART A

**Sec. A-1. 9-A MRSA §8-103, sub-§1-A, ¶Q-1** is enacted to read:

Q-1. "Higher-priced mortgage loan" means either:

(1) A residential mortgage loan that is a "nontraditional mortgage" as defined in paragraph T; or

(2) A "rate spread home loan" as defined in paragraph V.

**Sec. A-2. 9-A MRSA §8-103, sub-§1-A, ¶V**, as enacted by PL 2007, c. 273, Pt. A, §4 and affected by §§37 and 41, is amended to read:

V. "Rate spread home loan" means any loan for which the rate spread must be reported under the Home Mortgage Disclosure Act of 1975, Regulation C except that, beginning October 1, 2009, "rate spread home loan" has the same meaning as set forth for "higher-priced mortgage loans" in 12 Code of Federal Regulations, Section 203.4(a)(12); and 226.35(a). In addition, "rate spread home loan" means any loan that meets the criteria of a high-rate, high-fee mortgage.

**Sec. A-3. 9-A MRSA §8-103, sub-§1-A, ¶BB**, as amended by PL 2007, c. 471, §7 and affected by §18, is repealed.

**Sec. A-4. 9-A MRSA §8-206-D, sub-§1, ¶B**, as amended by PL 2007, c. 471, §11 and affected by §18, is further amended to read:

B. A creditor may not knowingly or intentionally engage in the act or practice of flipping a residential mortgage loan when making a ~~subprime~~ higher-priced mortgage loan. The administrator shall adopt rules defining with reasonable specificity the requirements for compliance with this paragraph. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. A-5. 9-A MRSA §8-206-D, sub-§1, ¶G**, as repealed and replaced by PL 2007, c. 471, §12 and affected by §18, is amended to read:

G. A creditor may not extend a ~~subprime~~ higher-priced mortgage loan to a borrower unless a reasonable creditor would believe at the time the loan is made that the borrower will be able to make the scheduled payments associated with the loan.

(1) The determination of a borrower's reasonable ability to repay a ~~subprime~~ higher-priced mortgage loan must be documented or otherwise evidenced in writing and must include, without limitation, a consideration of the following:

(a) The borrower's income;

(b) The borrower's credit history;

(c) The borrower's current obligations, including other secured and unsecured debts;

(d) The borrower's employment status;

(e) The debt-to-income ratio of the borrower's monthly gross income, including the borrower's total monthly housing-related payments including all principal, interest, taxes and insurance; and

(f) The borrower's other available financial resources, excluding the borrower's equity in the principal dwelling that secures or would secure the ~~subprime~~ higher-priced mortgage loan.

(2) The evaluation of the borrower's reasonable ability to repay the ~~subprime~~ higher-priced mortgage loan must include:

(a) The monthly payment amounts based on, at a minimum, the fully indexed rate, assuming a fully amortizing payment schedule;

(b) The verification of income by:

(i) Review of a borrower's tax returns, payroll receipts or records of accounts from a borrower's financial institution, or reasonable 3rd-party verification of those returns, receipts or records;

(ii) Review of reasonable alternatives to the borrower's tax returns, payroll receipts or records of accounts from a borrower's financial institution, including, but not limited to, statements from investment advisors, broker-dealers and others in a fiduciary relationship with the borrower as long as the reasonable alternatives reflect the borrower's actual income and not estimated, projected, anticipated or a range of earnings for a borrower's type or class of employment; and

(c) For products that permit negative amortization, a repayment analysis based upon the initial loan amount plus any balance increase that may accrue from the negative amortization provision.

(3) The administrator may adopt, amend and repeal routine technical rules in accordance with Title 5, chapter 375, subchapter 2-A defining with reasonable specificity the requirements set forth in subparagraphs (1) and (2). In adopting rules under this subparagraph, the administrator shall give due consideration and weight to the following federal regulations and guidelines, as amended from time to time:

(a) Final Interagency Guidance on Nontraditional Mortgage Product Risks;

(b) Credit Risk Management Guidance for Home Equity Lending;

(c) Expanded Guidance for Subprime Lending Programs; and

(d) Interagency Guidance on Subprime Lending.

Amend the bill in Part B in section 1 in Article 13 in §13-102 in subsection 1 by striking out all of paragraph A (page 15, lines 1 and 2 in L.D.) and inserting the following:

‘A. The receipt, collection, distribution and analysis of information common for the processing, underwriting or modification of a residential mortgage loan; and’

Amend the bill in Part B in section 1 in Article 13 in §13-103 in subsection 2 by inserting after paragraph D the following:

‘E. An employee of a nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) and engaged in the financing of housing for low-income people under a program designed specifically for that purpose, to the extent exempted by the administrator by rule, advisory ruling or interpretation, after taking into consideration any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development.

F. A retail seller of a manufactured home to the extent determined by any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development.’

Amend the bill in Part B in section 1 in Article 13 in §13-104 in subsection 4 in paragraph B by striking out all of subparagraph (1) (page 18, lines 27 and 28 in L.D.) and inserting the following:

(1) An independent credit report from a consumer reporting agency described in the federal Fair Credit Reporting Act, Section 603(p) except that information on a credit report may not be used as the sole basis for the denial of a mortgage loan originator license pursuant to section 13-105; and

Amend the bill in Part B in section 1 in Article 13 in §13-105 in subsection 2 by striking out all of the first indented paragraph (page 19, lines 3 and 4 in L.D.) and inserting the following:

**‘2. No felony conviction.** Except if the administrator determines that a conviction as described in paragraph A does not affect the applicant’s demonstration of good character and fitness under subsection 3, the applicant has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic, foreign or military court:’

Amend the bill in Part B in section 1 in Article 13 in §13-116 by striking out all of subsections 13 and 14 (page 28, lines 29 to 33 in L.D.) and inserting the following:

**‘13. Excessive insurance.** Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

**14. Account.** Fail to truthfully account for money belonging to a party to a residential mortgage loan transaction; or

**15. Good faith and fair dealing.** Fail to comply with the duties of good faith and fair dealing as required in section 10-303-A.’

## SUMMARY

This amendment strikes Part A of the bill and retains only those provisions relating to conforming defined terms in Maine law with federal law.

This amendment makes changes to Part B of the bill to provide for an exemption from licensing as a mortgage loan originator for nonprofit organizations engaged in financing housing for low-income persons and for retail sellers of manufactured homes to the extent determined by the federal Department of Housing and Urban Development. The amendment clarifies the requirements for licensing related to an applicant’s criminal history and credit history. The amendment also includes a provision making the duties of good faith and fair dealing apply to mortgage loan originators.