STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
OFFICE OF CONSUMER CREDIT REGULATION
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MEMORANDUM

TO: Members, Committee on Insurance & Financial Services
Members, Committee on Business, Research & Economic Development

FROM: William N. Lund, Director
Office of Consumer Credit Regulation

RE: Report on license and registration fees assessed by the Office of Consumer Credit Regulation, and recommendations on how to assess those fees in an equitable manner

DATE: January 4, 2005

I. Introduction.

Section 3 of PL 2003, Chapter 654 requires the Office of Consumer Credit Regulation to review the various license and registration fees assessed by the office and make recommendations on how to assess those fees in an equitable manner. The recommendations must be submitted on or before January 5, 2005 to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters.

II. Background.

With respect to non-bank lenders making real estate secured loans, PL 654 reduced volume fees from $20 per $100,000 of credit extended to $15 per $100,000. The law also authorized further reductions by rule.

On September 5, 2004 the Office of Consumer Credit Regulation promulgated Regulation 270 (copy attached), reducing the volume fees paid by non-bank lenders making real estate secured loans from $15 to $10 per $100,000 of credit extended.

Thus, as compared with the rate of volume fees paid by mortgage companies in January of 2004, the rate paid in January of 2005 will be reduced by 50%, from $20 per $100,000 to $10 per $100,000. This would reduce the aggregate volume fees paid by mortgage companies from approximately $965,000 in 2004 to $482,500 in 2005, assuming the volume of mortgage financing remained constant. In fact, as made clear from the chart on page 3, 2005 revenues from mortgage companies are expected to be far less, because higher interest rates will significantly reduce the rate of refinancings.

III. License and registration fees currently assessed by the Office of Consumer Credit Regulation

The following chart lists initial and renewal license and registration fees assessed by the Office of Consumer Credit Regulation. All figures are annualized; *i.e.*, for those business types that receive a two-year license, the amount listed below reports the amount for each year.

Business Type	Annualized Initial License/Reg.	Annualized Renewal	Also Pay Volume Fees?
General Creditors (including auto dealers)	$20	$20	Yes
Supervised Lenders – Main Office	$250	$100	Yes
Supervised Lenders – Branch Office	$100	$100	Yes
Debt Management Service Providers (Credit Counselors)	$500	$250	No
Money Transmitters	$500	$250	No
Money Transmitter Delegate/Agent License	$50	$50	No
Check Cashers – Main Office	$250	$250	No
Check Cashers – Branch Office	$100	$100	No
Debt Collectors –Main Office	$200	$200	No
Debt Collectors – Branch Office	$100	$100	No
Loan Brokers	$200	$100	No
Loan Brokers – Branch	$100	$100	No
Credit Reporting Agencies	$100	$100	No
Non-Bank ATMs	$50	$50	No
Non-Bank ATMs – Each additional after 1	$25	$25	No

In addition to license and registration fees, general creditors and supervised lenders pay "volume fees" based on the volume of credit extended. Other regulated companies, such as debt collectors, money transmitters and loan brokers, do not pay volume fees. Therefore, when evaluating the equity of total fees paid, volume fees paid by creditors and lenders must be factored into the equation.

The chart below lists budgeted revenue for the Office of Consumer Credit Regulation for calendar year 2005, and includes volume fee receipts:

Business Type	**Lic., Reg. and Volume Fees (2005 Est.)**	**% of Total Revenue**
General Creditors		
Mobile Home Dealers	$650	
New Car Dealers	$22,500	
Other Creditors	$11,000	
Pawnbrokers	$750	
Rent-to-Own Companies	$1,100	
Sales Finance Companies	$80,000	
Used Car Dealers	$3,000	
	Total $119,000	18.9%
Supervised Lenders	$306,000	48.7%
Debt Collectors/ Repossession Companies	$112,000	17.8%
Loan Brokers	$42,000	6.7%
Money Transmitters/ Check Cashers/ Foreign Currency Exchangers	$23,500	3.8%
Debt Management Service Providers (Credit Counselors)	$9,000	1.4%
Credit Reporting Agencies	$2,600	4%
Non-Bank ATMs	$14,700	2.3%
	Total $628,800	100%

Note: The above figures do not include approximately $60,000 in projected revenue paid by all categories of regulated entities resulting from reimbursement for the actual costs of compliance examinations; *see* Part IV of this report. In addition, these figures do not reflect revenue from the revised payroll processor licensing program, since the roster size and other details are unknown at the time of drafting this report.

IV. Methodology for determining equity of assessments.

Several aspects of the agency's activities are designed to be self-funded; *e.g.*, when the agency conducts a compliance examination it bills for the examiner's actual costs, and when an administrative hearing is held, the hearing officer can assess actual costs incurred in conducting the proceeding to the disciplined company.

However, at the present time the agency does not seek reimbursement for its time and resources expended resolving consumer complaints. Therefore, responding to such complaints represents the largest category of unreimbursed activity. Furthermore, such complaints constitute a bellwether of consumer demand for the agency's services, and therefore form a fair gauge of levels of regulatory activity performed by the office with respect to the different categories of regulated entities.

Numbers of consumer complaints by business type for 2003 are as follows:

Business Type	# of Formal, Written Complaints	% of Total
Supervised Lenders	191	25.1%
General Creditors (including new & used auto dealers)	103	13.5%
Debt Collectors/Repossession Companies	299	39.3%
Loan Brokers	37	4.9%
Credit Reporting Agencies	105	13.8%
Debt Management Companies (Credit Counselors)	26	3.4%
Money Transmitters/Check Cashers/ Foreign Currency Exchanges	0	-
Non-bank ATMs	0	-
Totals	761	100%

Note: The above table excludes 165 written complaints received by the agency that were either referred to another regulatory agency or that related to companies over which the agency has no legal jurisdiction, and does not include 5,022 telephoned complaints and inquiries.

V. Demands on agency staff differ by complaint type.

Consumer complaints vary in complexity depending on the subject matter, urgency and size of file. Debt collector complaints, for example, tend to be straightforward, and most can be handled with one or more letters to the collection agency. Complaints against mortgage companies and loan brokers, on the other hand, often involve a great deal of time and paperwork to resolve, since they require analysis of various laws (including laws applicable to 1) the application process; 2) the closing of the loan; and 3) the servicing of the loan) and since they often require the complaint examiner to review an entire real estate closing file. For that reason, the chart below adds a "complexity factor" designed to account for the additional time needed for complex consumer complaints. The weighted percentage represents an estimate of the proportional demands on office staff time required to process different types of consumer complaints.

Entity	**Formula for Degree of Complexity (# of complaints x complexity factor)**	**Weighted percentage**
Supervised Lender	191 x 2.5 = 478	40.6%
Loan Broker	37 x 2.5 = 93	7.9%
Debt Management	26 x 1.75 = 46	3.9%
Credit Reporting Agencies	105 x 1.5 = 156	13.4%
Money Transmitter/Check Casher/Foreign Currency	0 x 1.25 = 0	—
General Creditor	103 x 1 = 103	8.8%
Debt Collector	299 x 1 = 299	25.4%
Non-Bank ATM	0 x 1 = 0	—
	Total	100%

VI. Results of comparison between weighted complaint percentage and total revenue contribution

Overall, therefore, this analysis produces a comparison between the revenue generated from certain business types, compared to the burden imposed by those business segments in the form of the need to respond to consumer complaints:

Business Type	Weighted Complaint Percent	Revenue Percent	Variance
Supervised Lender	40.6%	48.7%	8.1%
General Creditors	8.8%	18.9%	10.1%
Debt Collector/Repo Companies	25.4%	17.8%	(-7.6%)
Loan Broker	7.9%	6.7%	(-1.2%)
Money Transmitter/Check Casher/Foreign Currency	—	3.8%	3.8%
Debt Management	3.9%	1.4%	(-2.5%)
Credit Reporting Agencies	13.4%	.4%	(-13%)
Non-Bank ATM	—	2.3%	2.3

VII. Analysis by business type

1) Supervised Lenders: Even after a two-step reduction in volume fee assessments, the "variance" figure (+ 8.1%) for supervised lenders remains positive. This suggests that at least a portion of any increased revenue generated by fees assessed to other business types, should be applied toward additional reductions (or maintenance of current reductions) for supervised lenders.

2) General Creditors: This variance (+ 10.1%) is also a positive number, reflecting relatively strong compliance practices by Maine retail creditors, especially new automobile dealers. The number also reflects the healthy revenue derived from sales finance companies, not only those that purchase automobile credit sales contracts, but also those that facilitate the financing of snowmobiles, ATVs, consumer farm-and-garden tractors, and pleasure watercraft.

3) Debt Collector/Repo Companies. This variance is a negative figure, indicating that under this analysis debt collectors may not be "paying their own way." However, it is important to note that revenue from debt collector licenses has tripled in the past 6 years, and that a great deal of the enforcement costs associated with regulating this industry are related to complaints against unlicensed, out-of-state collection agencies and collection law firms.

4) Loan Brokers. Loan brokers are also not paying their own way, as is seen by the variance figure of [- 1.2%]. In addition, loan brokers have proven in recent years to be an expensive and difficult industry to regulate, a fact demonstrated by the series of administrative hearings (*e.g.*, Frank Fox, Lighthouse Mortgage, Rockland Financial) held during calendar year 2004. With low ($200/1st year; $100 renewals) license fees and no equivalent of the "volume fees" paid by creditors and lenders, this may be an area for the legislature to review with an eye toward re-balancing and adjustment, with a portion of any resulting relief being directed toward supervised lenders.

5) Money Transmitter/Check Casher/Foreign Currency. These industries do not represent any measurable consumer complaint expense at this time. Some resources have been expended, however, dealing with federal agencies responsible for Homeland Security/Treasury/money laundering issues.

6) Debt Management Companies (Credit Counselors). Regulation of these companies has become more complex in the past 24 months, because 1) the last of the Maine-based companies departed when Money Management International (MMI) purchased Consumer Credit Counseling Services, Inc. (CCCS) of South Portland, so that regulators are now dealing entirely with companies featuring out-of-state ownership; and 2) this remains an area ripe for Internet fraud, as fake credit counselors scam consumers, including Maine consumers, whose desperate search of Internet Web sites for debt relief leads them to send money to non-legitimate, unlicensed out-of-state entities.

7) Credit Reporting Agencies. The large negative variance (- 13%) might at first blush lead to the conclusion that this is an area where increased fees should be collected to offset the large numbers of consumer complaints against credit reporting agencies. However, it is also important to understand that the state of Maine operates one of the only successful credit reporting agency registration programs in the country, and that the current low registration fee may be responsible for the large number (26) of companies that are registered. This office is concerned that any significant fee increase in this area may lead credit reporting agencies – all of which are located out-of-state – to discontinue registering with the office. From our point of view, an overriding factor in being able to resolve consumer complaints is maintaining a full roster of registered companies with up-to-date contact information so that we can readily contact the appropriate company officials when we receive consumer complaints.

8) Non-Bank ATMs. This program is not the source of any measurable consumer complaint volume.

VIII. Recommendations

1) **Increase revenue from loan brokers**. Of the areas studied, regulation of loan brokers is proving to be increasingly expensive compared to the modest revenues derived. If the initial and renewal fees were doubled $400 (initial) and $200 (renewal), they would still be among the lowest of any state. States currently impose initial license fees ranging as high as $2,600 (Ohio) and $2,900 (New Jersey), with a mean average among all states of $598.

2) **Increase revenue from debt management companies**. This step would prove more challenging than adjusting fees in other areas, because a large number of complaints are lodged against illegitimate or semi-legitimate out-of-state companies that Maine consumers have located on the Internet.

3) **Review revenue from supervised lenders (mortgage companies) to see whether reductions can continue or stay in force**. The goal of this report is not to explore ways to increase overall revenue. Rather, it is to determine whether the revenues should be "re-balanced" or adjusted. To that "zero sum" goal, a portion of any additional revenues generated should be applied toward maintaining current reductions in volume fees or even promulgating further reductions by rule.

4) **Assess companies for failure to respond responsibly to consumer complaints**. A common complaint from companies is that the current system "penalizes all for the misbehavior of a few." One way to address this situation would be to assess a charge to each company whenever a consumer complaint is determined to be "justified" or "verified." This could be an accounting and public relations challenge, as companies lose the ability to resolve a consumer complaint while at the same time denying culpability. However, there are certain times (such as when a company exhibits undue and unreasonable delay in responding to state regulators) when our agency could strengthen its policy by more frequently utilizing the authority it already has to assess costs incurred in resolving a verified consumer complaint.

5) **Assess costs in all enforcement/administrator/disciplinary actions**. If a matter reaches the administrative hearing state, our office will continue a trend begun this year; namely, to assess the actual costs expended to bring the enforcement action.

IX. Conclusion

This study establishes a simple model to determine whether each of the industries regulated by the Office of Consumer Credit Regulation is paying its fair share of total costs. Some recommendations (*e.g.*, assessing costs for administrative hearings) can be done without legislative guidance or law changes. Others (such as raising loan broker fees) would require statutory amendment. Still others (such as assessing creditors for each verified consumer complaint) are permitted under current law but would represent a new approach for this office and would benefit from legislative deliberation.

Attachment “A”

Maine Office of Consumer Credit Regulation Official Rule, Chapter 270, “Adjustment of Volume Fees,” promulgated September 5, 2004; effective for fees paid January, 2005

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

030 OFFICE OF CONSUMER CREDIT REGULATION

Chapter 270: ADJUSTMENT OF VOLUME FEES

SUMMARY

Chapter 654 of the Public Laws of 2004 repealed former sub-§§ 3-B of 9-A M.R.S.A. § 6-203 and added new sub-§§ 3-B and 3-C to § 6-203. Section 6-203 as amended establishes preliminary volume fees to be paid by lenders making loans secured by an interest in land. It provides for two alternative fees, with the choice dependent upon whether, as of October 1 of the previous calendar year, the fund balance of the Office of Consumer Credit Regulation exceeds 125% of the Office's current annual budget. It authorizes the Director of the Office of Consumer Credit Regulation to promulgate rules adjusting, within certain parameters, those volume fees. This rule is the first such adjustment, and it adjusts downward the fee to be charged when the fund balance of the Office of Consumer Credit Regulation as of October 1 of a previous year exceeds 125% of the Office's current annual budget.

I. AUTHORITY

This rule is promulgated pursuant to the authority granted the Director of the Office of Consumer Credit Regulation by 9-A M.R.S.A. §§ 6-104(1)(E) and 6-203(3-C). It is a routine technical rule as defined by 5 M.R.S.A. § 8071(2)(A).

II. PURPOSE

This rule reduces the volume fee referenced in 9-A M.R.S.A. § 6-203(3-B)(A) from Fifteen Dollars ($15.00) to Ten Dollars ($10.00).

III. DEFINITIONS

For purposes of this Rule, the following terms have the following meanings, consistent with 9-A M.R.S.A. § 6-203(3-B):

1. "Supervised lenders" means lenders regulated by the Office of Consumer Credit Regulation making loans secured by an interest in land.

2. "Volume fee" means an amount paid annually to the Office of Consumer Credit Regulation by supervised lenders, which amount is based on the original unpaid balances arising from loans secured by an interest in land made in this State during the previous calendar year.

IV. ADJUSTMENT TO VOLUME FEE ASSESSMENT

Supervised lenders shall pay a volume fee of Ten Dollars ($10.00) for each One Hundred Thousand Dollars ($100,000.00), or part thereof, if the fund balance of the Office of Consumer Credit Regulation as of October 1st of the previous calendar year exceeds One Hundred Twenty-Five Percent (125%) of the Office's current annual budget.

EFFECTIVE DATE:

September 5, 2004 - filing 2004-377