

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Governmental Unit Deposit Protection

Adopted Amendments: N.J.A.C. 3:34-1.2, 1.5, 1.9, and 1.15

Adopted New Rule: N.J.A.C. 3:34-1.16

Proposed: April 2, 2012 at 44 N.J.R 955(a).

Adopted: August 1, 2012 by Kenneth E. Kobylowski, Acting Commissioner, Department of
Banking and Insurance.

Filed: August 2, 2012 as R.2012 d.152, **with substantial changes** not requiring additional public
notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8, 8.1, and 15; and 17:9-41 et seq.; and P.L. 2011, c. 108.

Effective Date: September 4, 2012.

Expiration Date: November 1, 2017.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance received comments from: Mary Catherine Roberts, Esq. of the firm Riker, Danzig, Scherer, Hyland & Perretti, LLP on behalf of the New Jersey Bankers Association.

COMMENT: The commenter stated they were pleased to see that the proposal contains various provisions that will require certain credit unions to contribute towards financial education programs and “to comply with the reporting requirements, post the required collateral, pay the annual fee... and monitor the public funds on deposit to ensure that the proper type and amount of collateral is maintained.”

RESPONSE: The Department thanks the commenter for their support of the proposal.

COMMENT: The commenter believes it would be appropriate to reference the National Credit Union Administration in the definitions of “public depository” and “uninsured” in N.J.A.C. 3:34-1.2.

RESPONSE: The Department agrees and will make these changes upon adoption. The amendments adding of the words referencing the National Credit Union Administration, which administers the National Credit Union Share Insurance Fund, do not enlarge what will be affected, change what is being prescribed, or enlarge the scope of the rule, but merely clarifies the proposal. Consequently, they may be made upon adoption in accordance with N.J.A.C. 1:30-6.3.

COMMENT: The “level of concentrations” listed in N.J.A.C. 3:34-1.15(c)2 is unclear as to what types of concentrations will be considered by the Commissioner in determining the amount of eligible collateral that must be delivered to a custodial depository for safekeeping. The commenter questions whether the Department is concerned with the geographical location of mortgage loans, commercial loans, or a combination of both, or is the Department concerned with a concentration of specific types of investment securities. The commenter suggested that to be more specific, it would be helpful if the subject sentence is either stricken or refined to clearly set forth the types or examples of particular concentrations that the Commissioner will evaluate.

RESPONSE: The Department contemplates its review of level of concentrations of risk will include the consideration of various types of risk, and both the geographical locations of risks and types of investment securities. Examples would include, but not be limited to an over concentration in derivative investments or in commercial mortgages in a depressed commercial market. Consequently, the Department has concluded that no change to the rule is necessary.

COMMENT: The commenter recommended that N.J.A.C. 3:34-1.15(a) be changed to “30 calendar days” instead of the reference to “30 days.”

RESPONSE: The Department believes it is not necessary to specify calendar days. Unless “business days” are specified, references to time periods in the rules may be understood to refer to calendar days. Therefore the Department declines to make the suggested change.

COMMENT: The commenter stated that the language of N.J.A.C. 3:34-1.15(a) assumes that the Commissioner will act on every application within 30 days. The commenter believes there may be occasions where the Commissioner will find it necessary to extend his or her review. As a result, the commenter suggests that the Department add the following: “If the Commissioner takes no action within 30 calendar days, the application will be automatically approved, unless the Commissioner notifies the public depository, in writing, that the review period is being extended.”

RESPONSE: The Department believes the commenter is misreading the text of the proposal. As is set forth in the rule text, the 30-day period does not begin to run until the Department has accepted all required materials and confirmed compliance with the requirements of the subchapter. Because the additional text is not necessary, the Department declines to make the suggested change.

COMMENT: The commenter stated that N.J.A.C. 3:34-1.16(a) makes reference to a “chief financial officer” and states that unless the Department is certain that every credit union has a chief financial officer it should delete the term “chief financial officer” from the rule and instead have it reference “the chief executive officer or such officer designated by the chief executive officer.”

RESPONSE: Although the term “chief financial officer” is used in the underlying statute, the Department recognizes that not all credit unions have such a position. Therefore, the Department will amend the rule upon adoption to refer to the chief financial officer “or the senior official in the credit union with responsibility for performing the functions of a chief financial officer.” Consistent with N.J.A.C. 1:30-3.6, this change may be made upon adoption because it does not enlarge what will be affected, change what is being prescribed, or enlarge the scope of the rule, but merely clarifies the proposal.

COMMENT: The commenter suggested that the Department consider segregating credit union deposits into a separate pool to allow the Department to provide proper separation and, if necessary, assessment of deficiency in the event of default among like institutions should an institution fail. The commenter believes that the Commissioner has the statutory authority to do so pursuant to N.J.S.A. 17:9-43.b.

RESPONSE: The Department disagrees with the assertion regarding its statutory authority to adopt a rule as suggested. The authority conferred by N.J.S.A. 17:9-43.b applies in the event of a default and not at an earlier time. In addition, N.J.S.A. 17:9-45.e prescribes the manner in which the Commissioner shall make an assessment to cover a deficiency in the event of a default by a State bank, a national bank, a savings bank, or a credit union where the collateral posted by the defaulting depository is insufficient to pay in full the net deposit liability of such depository to the affected governmental units. This statute does not provide for the separate assessment among like institutions to cover a deficiency in the event of default suggested by the commenter. Therefore the Department declines to make the suggested change.

COMMENT: The commenter suggested that language be included in the regulation at N.J.A.C. 3:34-1.15(c) to provide that all public depositories have the option to post additional collateral to remove any potential contingent liability, so that a depository pledging collateral equal to or greater than 100 percent of the public deposits it holds should not have any contingent liability for post-deposit losses at any other institution.

RESPONSE: The Department lacks the statutory authority to make the proposed change. Pursuant to N.J.S.A. 17:9-45, all public depositories having public funds, regardless of the level of collateral they post, are subject to assessment to cover a deficiency in the event that the collateral posted by a defaulting depository is insufficient to pay in full the net deposit liability of the defaulting depository. Therefore, the Department declines to make the suggested change.

COMMENT: The commenter recommended that there be an increased timeframe for the posting of full collateral during the initial participation in Government Unit Deposit Protection

Act beyond three months as set forth at N.J.A.C. 3:34-1.15(c), and that the Department consider including language to extend the three-month timeframe to 12 months.

RESPONSE: The Department notes that pursuant to N.J.A.C. 3:34-1.15(c), the Commissioner has the discretion to extend the time period to post full collateral, for each new applicant and thus already has the authority to extend the time period to 12 months or any other duration deemed appropriate. Accordingly, the Department declines to make the suggested change.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rule are consistent with, but do not exceed, Federal standards. The Federal standards applicable to, but not exceeded by, the adopted amendments and new rule are established in the Federal Credit Union Act, Pub. L. 73 - 467 in particular 12 U.S.C. §§ 1757(5) and 1790d(c).

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

3:34-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Public depository” means a State or Federally chartered bank, savings bank or an association located in this State or a State or Federally chartered bank, savings bank or an association located in another state with a branch office in this State, the deposits of which are insured by the Federal Deposit Insurance Corporation, or a State or Federally chartered credit union located in this State, or a State or Federally chartered credit union located in another state with a branch office in this State, the deposits of which are insured by the National Credit Union Share Insurance Fund ***administered by the National Credit Union Administration***, and which receives or holds public funds on deposit.

...

“Uninsured” means not insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Share Insurance Fund ***administered by the National Credit Union Administration***, or by any other agency of the United States which insures deposits made in public depositories.

...

3:34-1.16 Financial education program supported by credit union public depositories

(a) If the average daily balance of the public funds on deposit at the credit union for the preceding year is in excess of \$2,000,000, the chief financial officer*, **or the senior official in the credit union with responsibility for performing the functions of a chief financial officer,*** of a credit union that qualifies as a public depository shall transmit to the Department with each fourth calendar quarter GUDPA report a written certification, in a form specified by the Commissioner and posted on the Department’s website, that the credit union has forwarded to the nonprofit corporation designated by the Department of Education in accordance with N.J.S.A. 17:9-43.2 a sum equal to the average daily balance, multiplied by the appropriate factor, as determined in accordance with the following schedule:

1. – 3. (No change from proposal.)

(b) (No change from proposal.)