

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

Qualified Educational Institutions

Proposed Readoption with Amendment: N.J.A.C. 3:35

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Calendar Reference: See Summary below of explanation of exceptions to calendar requirement.

Authority: N.J.S.A. 17:1-15(e) and N.J.S.A. 17:9A-213

Proposal Number: PRN 2006 – 335

Submit comments by December 15, 2006 to:

Robert J. Melillo, Chief  
Legislative and Regulatory Affairs  
Department of Banking and Insurance  
20 West State Street  
P.O. Box 325  
Trenton, NJ 08625-0325  
Fax: (609) 292-0896  
Email: [legsregs@dobi.state.nj.us](mailto:legsregs@dobi.state.nj.us)

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt with amendment N.J.A.C. 3:35, which is scheduled to expire on March 3, 2007 pursuant to N.J.S.A. 52:14B-5.1c. The Department has reviewed Chapter 35 and, subject to the amendment noted below, has determined that the rules set forth therein are necessary, reasonable and proper for the purpose for which they were originally promulgated.

Chapter 35, Qualified Educational Institutions, implements N.J.S.A. 17:9A-213, which defines a Qualified Educational Institution and which permits such institutions to exercise certain

trust powers as set forth in N.J.S.A. 17:9A-28(6) and (9). This chapter applies to all educational institutions that seek to exercise powers pursuant to N.J.S.A. 17:9A-213(b), except those exempt from the requirements pursuant to N.J.S.A. 17:9A-213(f). This chapter was originally promulgated and became effective on September 4, 2001. N.J.A.C. 3:35-1.1 provides the purpose and scope of the subchapter; N.J.A.C. 3:35-1.2 defines the terms relating to qualified educational institutions; N.J.A.C. 3:35-1.3 specifies the required disclosures and minimum standards necessary to qualify an educational institution for the exercise of trust powers; and N.J.A.C. 3:35-1.4 lists the requirements necessary for an educational institution to register as a qualified entity. Annual report filing requirements are set forth in N.J.A.C. 3:35-1.5. The Department seeks to amend N.J.A.C. 3:35-1.5(a), regarding the filing of annual reports by qualified financial institutions, to require them to file their annual reports within 60 days of receipt of the audited financial statements referred to in N.J.A.C. 3:35-1.5(a)2, rather than “on or before April 1 of each year.” Following the amendment, the filing requirement will be more closely aligned with normal business cycles and business practices while preserving the Department’s receipt of the information contained in the annual report.

The financial examination of qualified educational institutions by the Commissioner or his or her designee is outlined in N.J.A.C. 3:35-1.6 and the procedures for the Commissioner providing for the public’s access to the qualified institutions’ names and addresses are prescribed in N.J.A.C. 3:35-1.7. The Commissioner’s powers of revocation and suspension of a qualified educational institution’s registration is the subject of N.J.A.C. 3:35-1.8.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is accepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### Social Impact

The rules proposed for readoption with amendment continue to provide a mechanism for not-for-profit qualified educational institutions within New Jersey to exercise powers as a trustee of funds in which the qualified educational institution has a qualifying interest. These rules permit not-for-profit qualified educational institutions to act as fiscal agents, thus enabling them to hold moneys, securities and other properties in trust and to act as an income beneficiary or a principal beneficiary of a trust or both, which is a charitable remainder trust, charitable lead trust or pooled income fund as defined by the Internal Revenue Service Code of 1986. 26 U.S.C. §§501(c)(3) and 26 §115 and in accordance with the registration and regulatory requirements of the Department set forth in N.J.S.A. 17:9A-213 et seq. As a result, these qualified institutions benefit financially from these trust holdings under the above cited tax statutes.

### Economic Impact

The rules proposed for readoption with amendment make no change in the previously established definition of approved qualified educational institutions within New Jersey. The readoption of the rules will continue to enhance the safety and soundness of financial trust holdings by these qualified educational institutions, allowing them to continue to contribute to the economic vitality of the communities in which they are located and to provide educational opportunities for their students. These rules will continue to impose an application fee and annual renewal fee. In addition, qualified educational institutions will continue to be subject to examination fees for examinations performed by the Department. The Department believes these fees are not unduly burdensome and that they reimburse the Department for its costs in overseeing these institutions. Future annual costs of compliance with these rules are not

expected to differ from current annual costs. By more closely aligning the annual report filing date with normal business cycles, the proposed amendment to N.J.A.C. 3:35-1.2(a)2 will enhance the efficiency of the operations of qualified institutions, thereby having a favorable economic impact upon them. Because such institutions are not subject to the Department's Dedicated Funding mechanism, revising the date by which their annual reports must be filed will have no economic impact upon the Department.

#### Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendment relate to the business of State banking and involve qualified educational institutions that have a qualified interest as an income or principal beneficiary in this State and, although the qualified educational institution must meet the requirements of the Internal Revenue Service Code of 1986, 26 U.S.C. §§ 501(c)(3) and 115 for tax purposes and the registration and regulatory requirements of the Department set forth in N.J.S.A. 17:9A-213 et seq., there is no conflict in the rules proposed for readoption with amendment with any Federal requirements or standards on this subject.

#### Jobs Impact

The Department does not believe that these rules proposed for readoption with amendment will cause any jobs to be generated or lost.

The Department invites interested parties to submit any data or studies concerning the jobs impact of the rules proposed for readoption with amendment together with their written comments on other aspects of the proposal.

### Agriculture Industry Impact

The Department does not expect any impact upon the State agricultural industry by these rules proposed for re adoption with amendment.

### Regulatory Flexibility Analysis

Some qualified educational institutions regulated by the rules in this chapter are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Some compliance, recordkeeping and reporting requirements will continue to be imposed by this chapter costs are discussed in the Economic Impact above.

The Department has determined that all such compliance, recordkeeping and reporting requirements as discussed in the Summary above, continue to be reasonable and necessary for the purpose for which they were originally proposed. The required recordkeeping is fully consistent with current standards for prudent business practice. Compliance costs are discussed in the Economic Impact above. These rules continue to apply to all State qualified educational institutions without regard to size, since they implement statutory provisions and/or regulatory policies. The rationale for those policies and the need for the reporting or compliance actions they require apply irrespective of the business size of the institution. The Department does not think that any provisions of these rules are onerous to "small businesses" or unnecessary. The Department notes, however, that the re adoption of these rules with amendments will impose no new recordkeeping, reporting or other compliance requirements, but merely continue those requirements that have been in existence. The additional use of professional services by the qualified educational institutions as a result of the rules proposed for re adoption with amendment is not anticipated. These rules will permit qualified educational institutions to manage their trust

assets themselves, but realize that it be done in a manner that is responsible to the grantors of the property, the institution and the general public.

### Smart Growth Impact

The rules proposed for re adoption with amendment will not have an impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

**Full text** of the rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:35.

**Full text** of the proposed amendment follow (addition indicated boldface **thus**; deletion indicated in brackets [thus]:

#### 3:35-1.5 **Filing of annual report**

(a) [On or before April 1 of each year] **Within 60 days of receipt of the audited financial statement referred to in (a)2 below,** each qualified institution shall file an annual report on a form approved by the Commissioner containing the following:

1. – 5. (No change.)

(b) (No change.)