

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

General Provisions

Proposed Readoption with Amendments: N.J.A.C 3:1

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:2A-1 et seq., 17:9-41, 17:9A-1 et seq., 17:9A-9, 17:9A-24a, 17:9A-25.2, 17:9A-316, 17:11C-49, 17:12B-1 et seq., 17:16F-11, 17:16I-1 et seq., 17:16L-1 et seq., 17:16N-1 et seq. and 31:1-1.

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

Proposal Number: PRN 2006-95

Submit comments by June 2, 2006 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:1, which is scheduled to expire on September 2, 2006 pursuant to N.J.S.A. 52:14B-5.1c.

Subchapter 1, Interest and Usury, establishes maximum interest rates on certain types of loans and is promulgated pursuant to N.J.S.A. 31:1-1.

Subchapter 2 specifies procedures for applying to the Department for bank, savings bank or savings and loan charters, branches, and other types of facilities. It also specifies procedures for publishing notices of applications as well as procedures for hearings. N.J.A.C. 3:1-2.4 is

proposed to be amended. The proposed amendments will delete the requirement of payment of a fee to the Department when an out-of-State bank or association seeks to relocate a branch in this state. The proposed amendments will make it clear that it is the home state regulator who would consider the request and the Department would continue to receive a copy of the relevant documentation submitted to that home state regulator. As there is no substantive review or approval on the part of the Department, the Department believes there is no need to impose a fee in this situation. In addition, several technical amendments are proposed in N.J.A.C. 3:1-2.16.

Subchapter 3 regulates the making of mortgage loans in disaster areas.

Subchapter 4 implements the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq., and regulates the securing of governmental deposits. These rules specify the collateral that is required by a depository to secure a deposit of public funds.

Subchapter 5 is reserved.

Subchapters 6 and 7 set the fees the Department charges for specified services.

Subchapter 8 is reserved.

Subchapter 9 implements the Home Mortgage Disclosure Act, N.J.S.A. 17:16F-1 et seq.

Subchapter 10 requires a bank, savings bank, or savings and loan association that applies to the Department for a charter, branch or other facility, and that intends to purchase or lease the real estate for the facility from an affiliated person, to file with its application a detailed real estate application for the purpose of demonstrating to the Commissioner that the transaction is in the best interest of the institution and that the terms of the transaction are equal to or better than the institution could have received in an arm's length transaction.

Subchapter 11 prohibits banks, savings banks and savings and loan associations, and their affiliates from purchasing or making a loan involving a director, executive officer, or affiliated

person unless the terms of the loan are comparable to those prevailing for non-affiliated persons or other employees.

Subchapter 12 regulates multiple party deposit accounts.

Subchapter 13 prohibits a banking institution, holding company or other lender from requiring a borrower to obtain insurance from an agent controlled by the lender.

Subchapter 14 regulates revolving credit equity loans, including the terms of the agreement, the notification of changes and the methods of computing interest.

Subchapter 15 requires that banking institutions provide notification to their customers concerning availability of funds or comply with Federal Regulation CC, 12 CFR 229, implementing the Expedited Funds Availability Act, 12 U.S.C. §§ 4001-4010.

Subchapter 16 regulates the fees, charges, and obligations connected with applications for closed-end residential mortgage loans secured by first liens. In particular, the rules set the requirements for loan applications, lock-in agreements, and commitments, and define the permissible fees.

Subchapter 17 sets forth the rules for a banking institution to establish an automated teller machine (ATM).

Subchapter 18 prescribes the registration requirements for foreign banks to establish service facilities in this State. In addition, the rules define the permissible activities that foreign banks may conduct at these locations.

Subchapter 19 regulates Consumer Checking Accounts that must be established by depositories in this State. In addition, these rules provide an application procedure for institutions desiring to establish alternative accounts.

Subchapter 20 establishes under what circumstance the Department may request the social security number of an individual.

Appendix A contains sample forms for joint accounts, P.O.D. accounts and trust accounts.

As was noted above, the Department is proposing several amendments to N.J.A.C. 3:1-2.16 to update the names of agencies and their street and website addresses. These rules contain the listing of official data sources recognized by the Department.

The Department has reviewed the rules proposed for re adoption and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

Lastly, on January 3, 2006, notices of proposal were published in the New Jersey Register at 38 N.J.R. 5(a) and 10(a) which implement an assessment funding mechanism for the support of the Division of Banking. Those notices of proposal implement N.J.S.A. 17:1C-33 et seq. and, to that end, propose amendments to Chapter 1 involving fees, examination charges, license changes and annual reports, among other things.

This rule proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for re adoption with amendments apply to all financial institutions subject to supervision, regulation or licensing by the Department. They will continue to implement the policies of the Department on a wide variety of subjects as outlined in the Summary. Moreover, the rules proposed for re adoption with amendments will continue to

enable the Department to carry out its mission of requiring financial institutions to engage in their business in a manner that treats consumers fairly. In addition, while the rules impose necessary regulatory obligations, they also relieve financial institutions from unduly burdensome regulation. Thus, the rules proposed for readoption with amendments will continue to have a beneficial social impact on consumers and financial institutions.

Economic Impact

The Department expects that the rules proposed for readoption with amendments will have a positive economic impact on New Jersey financial institutions. The requirement that financial institutions charge legal interest rates for loans, that chartering and branching by depositories be conducted in an orderly fashion, that mortgage loans be made available in disaster areas, that depositories pay the appropriate fees for examinations and annual assessment, that licensees pay appropriate annual fees and fees for changes in the status of their licenses, that depositories report to the Department when they enter into a real estate transaction with an officer or director, that loans by depositories to officers and directors be no more favorable than those to other employees, that the holders of multiple party deposit accounts at depositories be advised of their rights, that insurance tie- ins are not required by lenders, that customers know the timeframe for when funds deposited will be available, that mortgage applicants and borrowers are treated properly by brokers and proposed lenders, that automated teller machines are appropriately located, that foreign banks register with the Commissioner, and that New Jersey Consumer Checking Accounts are offered to New Jersey consumers, are reasonable and necessary for the proper regulation of financial institutions operating in New Jersey. The rules proposed for readoption with amendments will continue to provide a substantial measure of

protection to consumers, thereby averting potential negative economic consequences from a consumer's involvement in a transaction. The fees, as currently existing, charged by the Department for chartering, licensing, examinations, administration and inquiries are not unreasonable or overly burdensome. However, as noted in the Summary, it is anticipated that when assessments are made pursuant to N.J.S.A. 17:1C-33 et seq. to implement the dedicated funding mechanism for the Banking Division, many of the current fees and assessments required by these rules will be changed.

Federal Standards Statement

The rules proposed for readoption with amendments do not contain any standards or requirements which exceed the standards or requirements imposed by Federal law. The rules proposed for readoption with amendments continue to apply certain Federal statutes and regulations to New Jersey financial institutions. The Federal statutes and regulations involved are 12 U.S.C. § 2901, 12 U.S.C. § 1831o, 12 U.S.C. §§ 4001-4010, 12 CFR 325.2(k) and 12 CFR 229.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the rules proposed for readoption with amendments. Financial institutions will use existing staff for continued compliance with the existing rules. The proposed amendments will have no jobs impact.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption with amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

Due to the nature of the financial services industry, a large percentage of the businesses covered by the rules proposed for readoption with amendments fall into the category of small business, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption do impose recordkeeping, reporting and compliance requirements on these regulated institutions. The Department is concerned with the impact these rules will have on institutions. However, it has been concluded that separate or differing standards for small businesses would not effectively safeguard the soundness of the institution and the security of the banking public. For the above stated reasons and the instances explained below, no differentiation in compliance or application of these rules is proposed. The proposed amendments do not impose any recordkeeping, reporting and compliance requirements.

Subchapter 2 requires that applications submitted to the Department for expansions of banking facilities include certain information. Since all of the information requested is needed to provide the Department with an adequate basis for reaching a decision on the application, the

Department favors retaining the current requirements for all applicants and establishes no differing standards.

Subchapter 4 requires public depositories to file a report with the Commissioner twice a year giving the balance of public funds on deposit in the institution. The submission of this information is necessary in order for the Department to monitor deposits of public funds in depository institutions. Therefore, the Department favors retaining this requirement for all public depositories. Subchapter 4 also requires depositories holding public funds to file a certified statement if they have on deposit public deposits exceeding 75 percent of the capital funds of the depository. The Department believes that this requirement should be retained for all depositories so that it can be notified of high levels of public deposits.

Subchapter 9, pursuant to the mandate of the Home Mortgage Disclosure Act, N.J.S.A. 17:16F-1 et seq., requires certain depository institutions (that is, those having assets of \$10,000,000 or more) to file quarterly reports with the Department. Consistent with this provision, this subchapter differentiates the compliance requirements for small businesses.

Subchapter 10 requires institutions which file applications for additional facilities, and which wish to purchase or lease the real estate for the facility from an affiliated person, to file with its application a detailed real estate application for the purpose of proving to the Department that the transaction is in the best interests of the institution and that the terms of the transaction are equal to, or better than, the institution could have obtained in an arm's length transaction with a non-affiliated party. The Department favors retaining the current requirement that a detailed real estate application be submitted with all applications because of the importance of monitoring real estate transactions between institutions and affiliated persons

Subchapter 16 requires that certain lenders of first lien residential mortgage loans make disclosures to borrowers, limit their fees to those designated, and collect those fees only at permissible points in the application process. The basic purpose of this subchapter is to establish a comprehensive system of regulation for first lien residential mortgage transactions. To exempt lenders which are small businesses would frustrate the purpose of the rules.

Subchapter 17 sets the filing requirements for institutions desiring to establish off-site Automated Teller Machines. In order to achieve comprehensive supervision, the Department needs registration of such machines established by all entities, including those that are small businesses. Therefore, no differing standards are appropriate for small businesses. In addition, the regulatory requirement is not burdensome.

Subchapter 18 requires foreign banks which establish back offices in New Jersey to file with the Department and pay a \$500.00 fee. The Department is of the view that these minimal compliance requirements are necessary for all institutions to ensure compliance with N.J.S.A. 17:9A-419 through 467, and therefore has made no differentiation for small businesses.

Subchapter 19, consistent with N.J.S.A. 17:16N-1 et seq., requires depositories to offer consumer checking accounts to consumers, defines the terms of such an account and sets forth a procedure for institutions to obtain approval for accounts which are not conforming. The Department views these rules, and the compliance requirements, as necessary to ensure that institutions comply with N.J.S.A. 17:16N-1 et seq. By providing for alternative accounts, the rules ensure that institutions of various sizes have the flexibility to offer accounts of different types, so long as they are consistent with the intent of the law.

The fees, charges and assessments as set forth in the Economic Impact, are imposed on small businesses. The assessment is based on the assets of the bank, and therefore is based on

the business size of the institution. No differentiation in the other fees has been made based on business size because these fees typically reimburse the Department for its administrative expenses, and this cost is not necessarily contingent on the size of the institution making the application or obtaining the license.

These rules may require professional services in the form of attorney representation. In particular, Subchapter 16 which requires disclosures on mortgage loans and limits the fees which may be charged often requires interpretation by counsel.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:1.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:1-2.4 Branch application of out-of-State banks and out-of-State associations

 (a) - (b) (No change.)

 (c) An application by an out-of-State bank or out-of-State association to relocate a branch office from a location in this State to another location in this State shall contain the following items:

1. A copy of the application filed with the home state regulator and with the appropriate Federal regulator; **and**

[2. The required filing fee; and]

[3.] **2.** (No change in text.).

3:1-2.16 Officially recognized data sources

(a) The Department shall take official notice of one or more of the following data sources to test the accuracy of data submitted in connection with applications and objections, to resolve factual discrepancies and to weigh the accuracy, reasonableness and applicability of documentary and oral evidence before it:

1. - 4. (No change.)

5. Population Estimates for New Jersey – Official State Estimates, New Jersey Department of Labor **and Workforce Development**, PO Box 056, Trenton, NJ 08625-0056, www.state.nj.us/labor/lra (published annually);

6. - 7. (No change.)

8. New Jersey Department of Labor **and Workforce Development**, Division of Labor Planning and Analysis, PO Box 056, Trenton, NJ 08625-0056, www.state.nj.us/labor/lra, State of New Jersey-Residential Construction Authorized by Building Permits (published annually and available also on a monthly basis);

9. - 10. (No change.)

11. New Jersey Department of Community Affairs, Division of Local Government Services, PO Box 800, Trenton, NJ, 08625, [www.nj.us/dca/dcahome.htm] www.state.nj.us/dca, United States Census Data for New Jersey Townships (provides tables of

statistical information from the most recent United States Census paralleling those available for non-townships in printed census reports);

12. -17. (No change.)

18. Federal Home Loan Bank Board, [7 World Trade Center, 22nd Floor] **101 Park Avenue**, New York, NY [10048-1185] **10178**, www.fhlbny.com; Summary Savings Accounts by Geographic Area (published annually);

19. Thomson Financial Publishing, 4709 W. Gulf Road, Skokie, IL 60076, [www.tpf.com] www.tfp.com, Polk's World Bank Directory (published semiannually);

20. - 23. (No change.)

(b) - (c) (No change.)

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