

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Proposed Interstate Acquisition

Proposed Readoption with Amendments: N.J.A.C. 3:33

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-15e and 17:12B-278, 279 and 289.

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

Proposal Number: PRN 2004-412

Submit comments by December 31, 2004 to:

Douglas A. Wheeler, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Banking and Insurance
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
Email: Legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt and amend N.J.A.C. 3:33, which is scheduled to expire on May 3, 2005 pursuant to N.J.S.A. 52:14B-5.1c. The Department has reviewed Chapter 33 and, subject to the amendments noted below, has determined that the rules set forth therein are necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Department proposes to amend certain definitions contained in N.J.A.C. 3:33-1.1. The current terms and definitions of “insured institution” and “insured institution deposits” are

obsolete. The “National Housing Act” referred to in the current definition of “insured institution” has been repealed. With that repeal, the Federal Home Loan Bank System, including its board, and the Federal Savings and Loan Insurance Corporation ceased to exist. The functions of the Federal Home Loan Bank System and Board were taken over by the Office of Thrift Supervision as set forth at 12 U.S.C. § 1461 et seq. The functions of the Federal Savings and Loan Insurance Corporation were assumed by the Federal Deposit Insurance Corporation as set forth at 12 U.S.C. § 1801 et seq. A new definition of “insured savings association” has been proposed to replace “insured institution” and a new definition of “insured savings association deposits” has been proposed to replace “insured institution deposits.” The definitions of “control” and “savings and loan holding company” are also proposed to be amended to reflect the above referenced changes in Federal law and Federal regulatory functions.

In addition, based upon the proposed change creating the new terms and definitions of “insured savings association” and “insured savings association deposits,” the existing definitions of “applicant,” “eligible insured institution,” “eligible state,” “located,” “New Jersey insured institution,” “out-of-State insured institution,” and “reciprocal legislation” are proposed to be amended to reflect the appropriate law and terminology. In conjunction with the amended term “insured savings associations,” N.J.A.C. 3:33-1.2 and 1.3 are also proposed to be amended to replace the obsolete term throughout the rule by substituting the new term “insured saving association” in place of the term “insured institution.”

Lastly, the Department proposes to amend the definitions of “savings and loan subsidiary” and “subsidiary.” In the existing rule, these definitions referenced N.J.S.A. 17:12B-278 or 281. The Department has determined to do away with the reference to the statute, and has proposed to incorporate the statutory language in these two definitions for the ease of the public

working with the rule. The definition of “State” is also proposed to be amended to make it read more clearly.

N.J.A.C. 3:33 requires an out-of-State insured savings association or out-of-State savings and loan holding company that intends to acquire and retain control of a New Jersey insured savings association or New Jersey savings and loan holding company to file an application with the Department. The application must contain information as set forth in N.J.A.C. 3:33-1.2. In accordance with N.J.A.C. 3:33-1.3, the Commissioner of Banking and Insurance (Commissioner) shall determine whether the applicant is an “eligible insured savings association” or “eligible savings and loan holding company” as defined in N.J.A.C. 3:33-1.1 and whether more than 75 percent of the deposits of the applicant’s subsidiaries are in insured subsidiaries located in an “eligible state,” as defined in N.J.A.C. 3:33-1.1. The Commissioner shall also determine whether to place any limitations or restrictions on the acquisition of the New Jersey insured savings association or New Jersey savings and loan holding company. By continuing to require the Commissioner to make the specified determination before issuing a certificate of eligibility, the rules will continue to fulfill the legislative intent that the acquisition of New Jersey entities be done in a considered and orderly manner.

The Department’s 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 information which is required to be submitted to the Commissioner by the rules proposed for readoption and the proposed amendments will continue to enable the Department to

make informed decisions regarding transactions to acquire New Jersey insured savings associations and New Jersey savings and loan holding companies and to maintain regulatory control over the acquisition of New Jersey insured savings associations and New Jersey savings and loan holding companies. Depositors and shareholders of acquired savings associations benefit from the regulatory oversight provided by the Department in these transactions.

Economic Impact

The costs to applicants of meeting the requirements of these rules proposed for readoption and the proposed amendments will continue to consist of the fees required under N.J.A.C. 3:33-1.4, pursuant to N.J.S.A. 17:12B-285, and the administrative costs incurred in producing the application materials. Departmental cost for application review is at least partially offset by these fees. There is no proposed change in fees included in the rules proposed for readoption and the proposed amendments. The Department does not believe that these costs impose an undue burden on applicants. Moreover, the public benefits achieved offset the costs incurred by applicants.

Federal Standards Statement

The rules proposed for readoption and the proposed amendments are subject to but do not exceed standards or requirements imposed by Federal law. The rules proposed for readoption and the proposed amendments contain requirements or standards that are the same as those imposed by Federal law at 12 U.S.C. §§1467a and 1803.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the rules proposed for readoption and amendments. The rules proposed for readoption and the proposed amendments continue to provide the standards and filing requirements for out-of-State insured savings associations or out-of-State savings and loan holding companies to acquire control of a New Jersey insured savings association or New Jersey savings and loan holding company. The Department invites commenters to submit any data or studies concerning the job impact of the rules proposed for readoption with amendments, together with any written comments on other aspects of the proposal.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The obligation to comply with the rules proposed for readoption with amendments falls only on out-of-State insured savings associations and savings and loan holding companies, entities that are not resident in New Jersey. They are therefore outside of the scope of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and N.J.A.C. 1:30-5.1c(7)ii. Acquisitions by in-State entities are already governed by separate provisions and are subject to the Commissioner's approval. A regulatory flexibility analysis is, therefore, not required.

Smart Growth Impact

The rules proposed for re-adoption with amendments would have no impact on smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:33.

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

3:33-1.1 Definitions

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

“Applicant” means any out-of-State insured [institution] **savings association** or out-of-State savings and loan holding company filing an application hereunder to acquire a New Jersey insured [institution] **savings association** or New Jersey savings and loan holding company.

...

“Control” shall have the meanings set forth in [section 408(a) of the “National Housing Act”, as amended (12 U.S.C. §1730a)] **12 U.S.C. § 1467a a)(2)**.

“Eligible insured [institution] **savings association**” means an insured [institution] **savings association**:

1. (No change.)
2. Which is not directly or indirectly controlled by an insured [institution] **savings association** located outside of an eligible state or by a savings and loan holding company located outside of an eligible state; and

3. Which has at least 75 percent of the total aggregate deposits of the insured [institution] **savings association** and of the savings and loan subsidiaries of a savings and loan holding company directly or indirectly controlling the insured [institution], **savings association** if any, in an eligible state or states.

...

“Eligible state” means:

1. Any state in the Central-Atlantic Region, when at least two of those states, in addition to New Jersey, each of which has at least \$20,000,000,000 in insured [institution] **savings association** deposits, have reciprocal legislation in effect; [and] **or**

2. Any state or territory of the United States, when at least 13 states in addition to New Jersey, of which at least four, other than New Jersey, are among the 10 states, other than New Jersey, with the largest amount of insured [institution] **savings association** deposits, have reciprocal legislation in effect.

“Insured [institution] **savings association**” [shall have the meanings set forth in Section 408(a) of the “National Housing Act”, as amended (12U.S.C. § 1730(a)), and shall also include Federal savings banks whose accounts are insured by the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR § 561.1] **means a “savings association” as defined in 12 U.S.C. § 1813 whose deposits are insured by the Federal Deposit Insurance Corporation.**

“Insured [institution] **savings association** deposits” means the total domestic deposits in insured [institutions] **savings associations** in each state according to the most recent available statistics of the Federal [Savings and Loan] **Deposit** Insurance Corporation [or the Federal Home Loan Bank System] or, if those statistics are not available, from sources designated by the [commissioner] **Commissioner**.

“Located” means:

1. When referring to an insured [institution] **savings association**, the state in which the amount of aggregate deposits of all of its offices in that state is greater than the amount of aggregate deposits of all of its offices in any one other state or foreign jurisdiction; or

2. (No change.)

“New Jersey insured [institution] **savings association**” means an insured [institution] **savings association** located in New Jersey.

...

“Out-of-State insured [institution] **savings association**” means an insured [institution] **savings association** located outside of New Jersey.

...

“Reciprocal legislation” means statutory law of a state [, including the District of Columbia, which] **that** authorizes or permits a New Jersey insured [institution] **savings association** or a New Jersey savings and loan holding company, or both, to acquire insured [institutions] **savings associations** or savings and loan holding companies, or both, located in that state on terms and conditions substantially the same as the terms and conditions pursuant to which an insured [institution] **savings association** or savings and loan holding company located in that state may acquire insured [institutions] **savings associations** or savings and loan holding companies, or both, located in that state. The fact that the law of that other state imposes limitations or restrictions on the acquisition of insured [institutions] **savings associations** or savings and loan holding companies, or both, located in that state by a New Jersey insured [institution] **savings association** or New Jersey savings and loan holding company, or both, shall not necessarily mean that the law of that state is not reciprocal legislation; provided, however,

that if the law of the other state limits acquisitions by a New Jersey insured [institution] **savings association** or New Jersey savings and loan holding company, or both, to insured [institutions] **savings associations** or savings and loan holding companies, or both, which are not in competition with insured [institutions] **savings associations** or savings and loan holding companies, or both, located in or chartered by the state or to insured [institutions] **savings associations** or savings and loan holding companies which do not have customary deposit and commercial loan powers, the law of that other state shall not be reciprocal legislation. If the reciprocal legislation of that other state imposes limitations or restrictions on the acquisition or ownership of an insured [institution] **savings association** or savings and loan holding company located in that state by a New Jersey insured [institution] **savings association** or New Jersey savings and loan holding company, or both, substantially the same limitations and restrictions shall be applicable to the eligible insured [institution] **savings association** or eligible savings and loan holding company, or both, located in that other state with respect to its acquisitions of New Jersey insured [institutions] **savings associations** or New Jersey savings and loan holding companies, or both.

“Savings and loan holding company” shall have the meaning[s] set forth in [section 408(a) of the “National Housing Act”, as amended (12 U.S.C. § 1730(a))] **12 U.S.C. § 1467a(a)(1)(D)**

“Savings and loan subsidiary” [shall have the meanings set forth in N.J.S.A. 17:12B-278b] **means an insured savings association or savings and loan holding company, more than 50 percent of the voting shares or members’ rights of which are owned or controlled, directly or indirectly, by a savings and loan holding company.**

“State” [includes, but shall not be limited to, the District of Columbia] **means any state of the United States, and also the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa and the U.S. Virgin Islands.**

“Subsidiary” [shall have the meanings set forth in N.J.S.A. 17:12B-281f] **means any person or company which is controlled by another person or company.**

3:33-1.2 Content of application

(a) Any out-of-State insured [institution] **savings association** or out-of-State savings and loan holding company proposing to acquire and retain control of a New Jersey insured [institution] **savings association** or a New Jersey savings and loan holding company pursuant to N.J.S.A. 17:12B-278 et seq. shall submit an application to the Commissioner. The application shall comply with N.J.S.A. 17:12B-279 and shall contain the following information:

1. (No change.)
2. The name and location of each New Jersey insured [institution] **savings association** or New Jersey savings and loan holding company to be acquired;
3. Certified copies of:
 - i. The board resolution of the applicant authorizing the proposed acquisition of each New Jersey insured [institution] **savings association** or New Jersey savings and loan holding company; and
 - ii. The board resolution of each New Jersey insured [institution] **savings association** or New Jersey savings and loan holding company approving the proposed acquisition if such approval has been adopted;
4. – 5. (No change.)

6. A listing of any limitations or restrictions on the acquisition or ownership of an insured [institution] **savings association** or savings and loan holding company in the state in which the applicant is located that would be imposed on the acquisition of an insured [institution] **savings association** or savings and loan holding company in that state by a New Jersey insured [institution] **savings association** or New Jersey savings and loan holding company;

7. The name and location of any out-of-State savings and loan holding company that has direct or indirect control of the applicant. A controlling out-of-State insured [institution] **savings association** or out-of-State savings and loan holding company shall submit the information which is prescribed in the application to assist the Commissioner in determining whether the controlling out-of-State insured [institution] **savings association** or savings and loan holding company is an eligible insured [institution] **savings association** or eligible savings and loan holding company;

8. If the applicant has formally filed for the acquisition of any additional insured [institution] **savings association** subsidiaries with the State of New Jersey or with any agency of another state or of the Federal government, the applicant shall submit to the Commissioner the information required by those applications; and

9. The applicant shall submit a statement that it will notify the Commissioner in the event it subsequently obtains or divests control of any insured [institution] **savings association** or savings and loan holding company, or if another insured [institution] **savings association** or savings and loan holding company obtains direct or indirect control of the applicant.

(a) Within 30 days after receipt of a completed application for determination of compliance with the requirements of N.J.S.A. 17:12B-279 and this subchapter, the Commissioner shall issue a determination:

1. Whether the out-of-State insured [institution] **savings association** or out-of-State savings and loan holding company is an eligible insured [institution] **savings association** or eligible savings and loan holding company;

2. Whether the out-of-State insured [institution] **savings association** or out-of-State savings and loan holding company has more than 50 percent of the total aggregate deposits of its insured [institution] **savings association** subsidiaries in insured [institution] **savings association** subsidiaries located in an eligible state or states, each of which has reciprocal legislation in effect; and

3. (No change.)

(b) (No change.)