

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

General Provisions

Proposed Readoption with Amendment: N.J.A.C. 3:26

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15(e), 17:12B-48(21) and 17:12B-197.

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

Proposal Number: PRN 2006-246.

Submit comments by October 6, 2006 to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, the rules at N.J.A.C. 3:26 concerning savings and loan associations will expire on December 14, 2006. The Department of Banking and Insurance has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were promulgated, as required by the Executive Order No. 66 (1978). Therefore, in accordance with N.J.S.A. 52:14-5.1 the rules are proposed for readoption.

N.J.A.C. 3:26-1.1 establishes a minimum record retention schedule for State-chartered savings and loan associations. These limitations codify what is generally considered to be prudent banking practice.

N.J.A.C. 3:26-2.1 limits to \$500 the amount a lender or other servicing entity may charge for substitution by the mortgagor in mid-term of an insurance policy or policies.

N.J.A.C. 3:26-4 affords State savings and loan associations parity with Federal associations. In particular, a State association may exercise any power, right, benefit or privilege which is now or hereafter authorized for Federal savings and loan associations pursuant to Federal law.

N.J.A.C. 3:26-4.1(a) and (b) set forth the rules for State associations to exercise those powers, rights, benefits or privileges authorized for national banks, Federal savings banks or Federal savings associations, and out-of-State banks, savings banks or savings associations.

N.J.A.C. 3:26-4.1(c) clarifies those New Jersey statutes with which those institutions seeking parity must still comply.

N.J.A.C. 3:26-4.1(d) sets forth the procedures for the submission of a notice of intent and the conferral of the Commissioner's approval prior to the exercise by a State association of any power, right, benefit, or privilege that is exercised by an out-of-State bank, savings bank, or savings association. Specifically, the State association shall submit a notice of intent for the Commissioner's approval. Such notice of intent shall include: a description of the intended activity; a copy of the statutory or regulatory authority, including any pertinent regulatory interpretation of such authority, that governs the out-of-State institution that the applicant State association proposes as the basis for such exercise of parity; and a business plan and statement of the general or specific experience of the applicant that establishes how such exercise of parity

would be conducted in a manner consistent with safe and sound banking practices. The items submitted as part of the business plan and the statement of experience shall be treated as confidential by the Department and shall not be public records pursuant to N.J.S.A. 47:1A-1 et seq. The Commissioner may disapprove the exercise of any power, right, benefit or privilege on the grounds of: an incomplete notice of intent; safety and soundness; failure to comply with New Jersey licensing requirements; or other grounds as provided in this subchapter. The Commissioner may condition the exercise of any power, right, benefit or privilege on the grounds of safety and soundness, compliance with New Jersey licensing requirements, or on other grounds as provided in N.J.A.C. 3:26-4.

In addition to the proposed readoption, the Department is proposing to revise the heading of Chapter 26 to "General Provisions for State Savings and Loan Associations."

This 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 readoption affect all State-chartered associations and the public who patronize such associations. The rules for destruction and retention of records assure that State-chartered associations comply with prudent banking practices regarding the minimum retention of documents and thereby assure persons using such institutions access to those documents for the requisite number of years. The parity rules will continue to provide New Jersey State-chartered associations substantially competitive parity with their Federal and out-of-State counterparts. Consumers should continue to benefit from their access to a wider variety of

financial services and products. The proposed amendment changing the chapter heading will serve to more easily identify the chapter to those seeking the rules pertaining to State-chartered associations.

Economic Impact

The rules proposed for readoption apply to all State-chartered associations. They require that an association maintain records for specified minimum periods. To maintain these records, associations incur storage and other administrative costs, which have a negative impact on the institution. However, these requirements are consistent with prudent banking practices. Accordingly, this negative economic impact is minimal.

The rules proposed for readoption also limit to \$5.00 the amount a lender or a legal entity servicing mortgages may charge for substitution in mid-term of an insurance policy. This limit has a negative economic impact on lenders and servicers, and there is a corresponding positive economic impact on borrowers.

The ability of State-chartered associations to exercise powers, rights, benefits and privileges of out-of-State, State-chartered associations and Federally-chartered associations will continue to have a positive economic impact on State-chartered associations. New Jersey State-chartered associations will continue to be able to offer services and products not specifically authorized by New Jersey statutes and rules, thereby increasing opportunities to better serve their customers and opportunities for profitability.

New Jersey-chartered associations that seek parity will continue to incur costs related to the submission of notices of intent with the required supporting information. The Department continues to expect these administrative costs to be minimal. As a result of the State-chartered

associations' ability to exercise parity, consumers should continue to benefit economically from additional service and product options and marketplace competition.

The proposed amendment changing the heading of the chapter will have no economic effect.

Federal Standards Statement

Pursuant to Executive Order No. 27 (1994), a Federal standards analysis is required when an agency adopts, readopts, or amends rules that exceed any Federal standards or requirements, and must include in the rulemaking document a comparison with the Federal law or rule. There are no Federal standards applicable to the rules proposed for readoption at this time.

New Jersey associations may, in the future, become subject to Federal standards pursuant to a proper exercise of parity in accordance with N.J.A.C. 3:26-4.1. While the Federal standards applicable in such cases cannot be identified at this time, no applicable State standards may exceed them because parity with Federal institutions may only be exercised pursuant to the pertinent Federal standards.

The rules proposed for readoption on State association parity, however, also continues to provide that certain State statutory and regulatory consumer protection requirements may not be avoided through parity: for example, State criminal usury limitations; protections against predatory lending and requirement to offer New Jersey Consumer Checking Accounts. In some cases, these limitations on activities by State-chartered State associations may exceed Federal standards applicable to Federally-chartered banks, savings banks, and savings associations – that is, the State-chartered institutions will be subject to more limitations than their Federal counterparts. The limitations in the rules proposed for readoption may restrict New Jersey State

associations from certain types or levels of activity in which their Federal counterparts may conceivably be permitted to engage in at the present time or in the future. Notwithstanding these limitations, New Jersey-chartered State associations would, because of parity, continue to be able to offer many new services and products to New Jersey consumers that are not specifically authorized by applicable New Jersey statutes and rules, and reap the resulting economic benefits.

The Department views the limitations as reasonable and necessary to discharge the Commissioner's statutory responsibility to promulgate rules for the appropriate regulation of New Jersey-chartered State associations. Specifically, the Department is required to implement the legislative authorization in the Parity Act, N.J.S.A. 17:13B-1 et seq., to promulgate rules with the objective of achieving substantially competitive parity between State-chartered and Federally-chartered institutions, with the goal of maintaining a vigorous dual banking system. Solid benefits will be afforded to New Jersey consumers by the continued viability of laws addressing consumer checking accounts, criminal law including usury, and high cost residential mortgages. Finally, the Department sees no technological obstacle to the regulated community's continued compliance with these limitations.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption and amendment will result in the generation or loss of jobs. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact as a result of the rules proposed for readoption and amendment.

Regulatory Flexibility Analysis

The rules proposed for readoption place reporting, recordkeeping and compliance requirements on savings and loan associations, approximately 50 percent of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the Department does not believe that ongoing compliance with these rules requires professional assistance.

The schedule in N.J.A.C. 3:26-1 requires an association to maintain records for specified minimum periods. The Department deems the periods set forth in the proposed rules to be consistent with prudent banking practice. These records must be maintained so that they are available to the Department and other regulators who examine the soundness of the institution. In addition, the association must maintain the records in order to respond to consumer inquiries or complaints, and to protect itself from litigation. For the above reasons, no differing requirements are established for small businesses.

The maximum charge of \$5.00 established in N.J.A.C. 3:26-2 is a reasonable charge appropriate for covering the administrative costs of the transaction. Since the administrative cost should not vary from small to large institution, no differentiation is made based on business size.

The rules on parity will continue to impose compliance requirements on State-chartered associations. Entities seeking to exercise a power, right, benefit or privilege authorized for an out-of-State state association or a Federally-chartered association will continue to be required to

provide notice of their intent to exercise parity and to provide the necessary documentation. The Department believes that this information is necessary in all cases for it to perform its supervisory functions.

State-chartered associations initially seeking to exercise parity may require professional assistance in the form of attorneys and/or accountants. The costs will vary depending on the assistance needed.

The parity rules continue to offer State-chartered associations flexibility while requiring them to operate in a manner that is responsible to the Department, their customers and the general public. The Department does not believe that the compliance requirements are unduly burdensome and finds that they are consistent with prudent banking practices. The purpose of these requirements does not vary based on business size. Accordingly, no differentiation based on business size is provided.

The proposed amendment to the chapter heading should have no impact on reporting, recordkeeping or compliance requirements.

Smart Growth Impact

The rules proposed for readoption and amendment have no impact on the achievement of smart growth and implementation of the State Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:26.

Full text of the proposed amendment follows (additions indicated in boldface **thus**):

CHAPTER 26

GENERAL PROVISIONS FOR STATE SAVINGS AND LOAN ASSOCIATIONS

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