

**BANKING**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF BANKING**

**General Provisions**

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

Authorized By: Thomas B. Considine, 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 2011-130.

Submit comments by August 5, 2011 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 December 5, 2013, 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.

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

Subchapters 4 and 5 are 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 circumstances 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.

The Department is proposing to amend N.J.A.C. 3:1-2.4, 2.5 and 2.6 to recognize the consolidation of the New Jersey Bankers Association and the New Jersey League of Community Bankers.

The Department is also proposing an amendment to N.J.A.C. 3:1-2.16 to update the name of a State agency. Lastly, the Department is proposing to amend the legal citation in N.J.A.C. 3:1-2.18(a)4.

In addition, the Department is studying the recently enacted “Dodd-Frank Wall Street Reform and Consumer Protection Act,” Public Law No. 111-203, 124 Stat. 1376 (2010) and may propose amendments to this chapter based on its analysis most likely to the sections on bank branching, conditions on new charters and fees. Any such amendments would be the subject of the rulemaking process permitting public and industry input and comment.

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

This notice of 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 readoption 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 readoption 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 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 charged by the Department for chartering, licensing or registering are not unreasonable or overly burdensome.

### **Federal Standards Statement**

The rules proposed for re adoption with amendments do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law. The rules proposed for re adoption 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 re adoption 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 rules proposed for re adoption with amendments together with their written comments on other aspects of this notice of proposal.

### **Agriculture Industry Impact**

The Department does not expect any agriculture industry impact from the rules proposed for re adoption 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 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 that 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, what 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 that 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 that establish bank 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 that 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 that 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.

### **Housing Affordability Impact Analysis**

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 specify the

permissible fees. This subchapter provides consumer protection for and requires disclosures to borrowers of residential real estate mortgage funds. These rules will have no impact on affordable housing. The balance of the rules in the chapter which are proposed for re-adoption with amendments will have no impact on affordable housing in New Jersey because the rules, and amendments, concern general provisions of banking.

### **Smart Growth Development Impact Analysis**

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 specify the permissible fees. This subchapter provides consumer protection for, and requires disclosures to borrowers of residential real estate mortgage funds. These rules will have no impact on smart growth nor will they evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The balance of the rules in the chapter, which are proposed for re-adoption with amendments will have no impact on smart growth and there is an extreme unlikelihood that the rules proposed for re-adoption with amendments would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules and amendments concern general provisions of banking.

**Full text** of the rules proposed for re-adoption 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]):

## SUBCHAPTER 2. PROCEDURAL RULES

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

(a) (No change.)

(b) An out-of-State bank or out-of-State association, that has at least one branch office in this State, may establish additional branch offices in this State by filing a notice with the Department, so long as the out-of-State bank or out-of-State association is adequately capitalized, will be adequately capitalized and managed after the branch is established and has achieved sufficient compliance with the Community Reinvestment Act. The out-of-State bank or out-of-State association shall send notice to the New Jersey Bankers Association, [and the New Jersey League of Community Bankers,] or [their] **its** successor organization[s], if any, for publication in their weekly bulletins.

### 3:1-2.5 Charter applications; notice and publication

(a) When a charter application is filed with the Department, the Department shall so advise, in writing, the New Jersey Bankers Association, [and the New Jersey League of Community Bankers,] or [their] **its** successor organization[s], if any. Notice of receipt of the application shall also be posted on the Department's website at [www.njdobi.org](http://www.njdobi.org).

(b) When the Department finds that a charter application is complete, the Department shall send notice to the applicant setting forth a hearing date. The Department shall also post notice of the hearing on the Department's website at [www.njdobi.org](http://www.njdobi.org) within one week of

sending the notice. In addition, the Department shall advise through a notice, electronically or in writing, the New Jersey Bankers Association, [and the New Jersey League of Community Bankers,] or [their] **its** successor organization[s], if any, of the hearing date. The notice shall also contain a statement that an objection, if any, shall be filed with the Department no later than 10 business days prior to the scheduled hearing date and list the requirements for an objection to be considered by the Department as set forth at N.J.A.C. 3:1-2.7(b).

(c) – (e) (No change.)

### 3:1-2.6 Branch applications; notice and publication

(a) When a branch application is accepted, the Department shall send notice to the applicant and shall also post notice of the acceptance on the Department's website at [www.njdobi.org](http://www.njdobi.org). The Department shall also advise, in writing, the New Jersey Bankers Association, [and the New Jersey League of Community Bankers,] or [their] **its** successor organization[s], if any, of the acceptance of the application. Each notice shall contain the following:

1. – 5. (No change.)

(b) (No change.)

### 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. - 20. (No change.)

21. New Jersey Department of Labor **and Workforce Development**, Division of Employment Security, PO Box 056, Trenton, NJ 08625-0056, [[www.state.nj.us/labor/lra](http://www.state.nj.us/labor/lra)] [\*\*www.state.nj.us/labor/lpa/lam\\_index.html\*\*](http://www.state.nj.us/labor/lpa/lam_index.html), Covered Employment Trends (published annually and available on a monthly basis);

22. – 23. (No change.)

(b) – (c) (No change.)

3:1-2.18 Charter applications; conditions for approval

(a) The Commissioner shall condition approval of a charter application by a depository on the following factors:

1. – 3. (No change.)

4. For the first three years after issuance of the certificate of authority, the Depository shall obtain prior approval from the Commissioner before installing any person on the board of directors or employing any person with the depository in an executive officer position as defined in N.J.A.C. 3:6-[3.1]**1.1**;

5. – 7. (No change.)