

**BANKING**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF BANKING**

**Safe and Sound Methods of Banking**

**Proposed Readoption: N.J.A.C. 3:7**

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-15(e), 17:9A-256, 17:9A-260, 17:12B-73, 17:12B-171, 17:12B-172, 17:12B-176 and 17:12B-319.

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

Proposal Number: PRN 2011-078.

Submit comments by May 20, 2011 to:

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The agency proposal follows:

## Summary

The Department of Banking and Insurance (Department) proposes to readopt without amendment N.J.A.C. 3:7, which is scheduled to expire on October 2, 2011, pursuant to N.J.S.A. 52:14B-5.1c. The Department has reviewed N.J.A.C. 3:7 and determined it to be necessary, reasonable and proper for the purposes for which it was originally promulgated. Additionally, the Department believes that N.J.A.C. 3:7 has promoted public confidence in banks, savings banks, and State associations. N.J.A.C. 3:7 consists of five subchapters.

Subchapter 1 requires any bank, savings bank or State association that permits counsel to handle funds to procure an endorsement rider to its fidelity bond procured pursuant to N.J.S.A. 17:9A-115 or 17:12B-73. Subchapter 2 requires a bank, savings bank or State association to periodically review fire insurance policies supporting loans secured by mortgages and real estate owned by them, or use other prudent means instead of periodic review, to protect itself from exposure to loss from insufficient insurance coverage. Additionally, a bank, savings bank or State association must retain and file closing statements and must annually verify the payment of real estate taxes by its mortgage borrowers. Subchapter 3 sets forth, among other things, the definitions of terms used in the subchapter, the time period in which an examination must commence, the requirements for the confirmation of deposits and debts, the exclusions from the confirmation program, the terms governing the confirmation by internal auditors, the provisions for sampling to achieve a satisfactory confirmation level, the performance and frequency of examination scope, and the minimum audit scope to be performed in a bank and savings bank. Subchapter 4 remains reserved. Finally, Subchapter 5 sets forth the definitions of terms used therein and establishes the procedures for every director and executive officer of a bank, savings bank or State association to submit a "statement of interest" to the Department that discloses

information on the business interest of the director or officer in other business enterprises, and additional information on the business interest of the director or officer or his or her family in business enterprises that have business relationships with the institution.

As noted above, the Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they were promulgated. Therefore, the Department proposes to readopt Chapter 7 without amendments at this time.

A 60-day comment period is provided for this notice of proposed readoption, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice 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 apply to all banks, savings banks and State associations subject to supervision and regulation by the Department. These rules implement N.J.S.A.17:9A-260 and 17:12B-172 by continuing to require banks, savings banks and State associations to be fully and completely examined and requiring that a “statement of interest” be filed by every director or executive officer of a bank, savings bank or State association. Additionally, banks, saving banks and State associations are required to protect the collateral underlying their mortgage loans. Therefore, these rules will continue to foster public confidence in New Jersey banks, savings banks and State associations and will have a beneficial social impact on those institutions, their depositors, and the general public.

### **Economic Impact**

The readoption of N.J.A.C. 3:7 will have no substantial adverse economic impact on the general public, the banking industry or the Department. N.J.A.C. 3:7 will continue to implement the requirements that banks, savings banks and State associations be examined, will continue to require them to take steps to protect the collateral for their loans, and will continue to require that their officers and directors report their business dealings with their respective bank, savings bank and/or State association. The financial strength of banks, savings banks and State associations will continue to be well supervised and maintained under the rules proposed for readoption, resulting in a positive economic impact upon the institutions, their depositors and the general public.

### **Federal Standards Statement**

A Federal standards analysis is not required because the rules proposed for readoption are not subject to any Federal requirements or standards.

### **Jobs Impact**

The Department does not anticipate that any jobs will be lost or generated as a result of the rules proposed for readoption. Banks, savings banks and State associations may use existing internal audit staff or outside public accountants, as they have in the past, for examination. Therefore, the Department expects no jobs to be generated or lost as a result of the new application of the proposed readoption of N.J.A.C. 3:7.

### **Agriculture Industry Impact**

The Department does not expect that any agriculture industry impact will result from the rules proposed for re adoption at N.J.A.C. 3:7.

### **Regulatory Flexibility Analysis**

Some banks, savings banks and State associations are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for re adoption will continue to impose compliance requirements on these entities, including utilizing an accountant or other approved person to: perform confirmations in the examination process; obtain an endorsement rider to a fidelity bond; verify the real estate tax payments of mortgage borrowers; specify types of confirmations of deposits and debts; and meet certain minimum standards for the scope of audits. The recordkeeping requirements include closing statements and the retention of mortgage loan insurance files. The reporting requirements include the need for disclosure by bank executives of their interest in other business enterprises in which they directly, or through family members, have a business interest.

The Department believes that these requirements are mandated pursuant to N.J.S.A. 17:9A-256 and 260 and N.J.S.A. 17:12B-73, 171, 172 and 176, and constitute good banking practice. Thus, the purpose of these requirements does not permit variation based upon business size and no differentiation based on business size is made. Additionally, the Department does not believe that these requirements are unduly burdensome, as they represent procedures that are already in place to protect the interests of banks, savings banks, State associations and their customers.

### **Smart Growth Impact**

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

### **Housing Affordability Impact**

The rule proposed for re adoption will have an insignificant impact on affordable housing in New Jersey because the rules require: banks, savings banks and State associations to be fully and completely examined and to protect the collateral underlying their mortgage loans; that a “statement of interest” be filed by every director or executive officer of a bank, savings bank or State association; and any bank, savings bank or State association that permits counsel to handle funds to procure an endorsement rider to its fidelity bond procured pursuant to N.J.S.A. 17:9A-115 or 17:12B-73.

### **Smart Growth Development Impact**

The rules proposed for re adoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the readopted rules 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 require: banks, savings banks and State associations to be fully and completely examined and to protect the collateral underlying their mortgage loans; that a “statement of interest” be filed by every director or executive officer of a bank, savings bank or State association; and any bank, savings bank or State association that permits counsel to handle funds to procure an endorsement rider to its fidelity bond procured pursuant to N.J.S.A. 17:9A-115 or 17:12B-73.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:7.