

**BANKING**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF BANKING**

**Governmental Unit Deposit Protection**

**Proposed Amendments: N.J.A.C. 3:34-1.2, 1.5, 1.9, and 1.15**

**Proposed New Rule: N.J.A.C. 3:34-1.16**

Authorized By: Kenneth E. Kobylowski, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 8.1, and 15; and 17:9-41 et seq.; and P.L. 2011, c. 108.

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

Proposal Number: PRN 2012-057.

Submit comments by June 1, 2012 to:

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The agency proposal follows:

**Summary**

The Department of Banking and Insurance (Department) is proposing amendments to the rules at N.J.A.C. 3:34 which implement the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq. (“the Act” or “GUDPA”). The Act establishes the reporting, operational, and collateral requirements for public depositories which hold public funds on deposit. On August 18, 2011, P.L. 2011, c. 108 was enacted to authorize credit unions to become depositories of public funds, along with banks, savings banks, and savings and loan associations which are currently authorized to do so. The Department has reviewed the existing GUDPA rules in light of the statutory amendments and proposes amendments and a new rule to conform the rules to the amended statute and to make other needed clarifications.

N.J.A.C. 3:34-1.2 sets forth necessary definitions. The Department proposes to amend some of the terms, such as “capital funds,” “call report,” “public depository,” and “uninsured,” to reference credit unions and the Federal agency that insures credit union deposits. The Department also proposes to add the term “credit union” and expand the defined term “custodial depository” to also include the term “custodian.”

The Department proposes to amend N.J.A.C. 3:34-1.9 to expand the section heading to include the terms “reserves” and “capital deposits” and to add a new paragraph 4 to N.J.A.C. 3:34-1.9(a) clarifying the terms “reserves” and “capital deposits” as they are used regarding credit unions. This proposed addition results in the calculation of capital funds not being overstated. The calculation limitation is identical to the limits currently set forth in the rules for banks, savings banks and associations.

The Department proposes to amend N.J.A.C. 3:34-1.15(a) and (b) to modify the procedure used and the information required for applications filed with the Department seeking approval as a public depository. Under the current rule, a prospective public depository merely

notifies the Department. The proposed amendments require a completed application and the posting of that event on the Department's website thereby giving notice to all, and provide for a 30-day period of review of the application.

The Department also proposes to amend N.J.A.C. 3:34-1.15(c) to set forth what factors the Commissioner will consider when deciding whether to require a first time public depository to hold eligible collateral in an amount in excess of the amounts set forth in N.J.A.C. 3:34-1.6 after its initial three-month holding period and its filing of a valuation report. The intent of the amendment is to inform public depositories of the factors that will affect such determinations by the Commissioner, the object of which is to ensure that risk is minimized to all public depositories.

Proposed new N.J.A.C. 3:34-1.16 provides for reporting to the Department of payments by credit unions for the financial education program referenced in the Act. The proposed rule requires the filing of a certification on a form to be provided by the Department and to require proof of the payment.

Lastly, the Department proposes to delete the transitional fee schedule references in N.J.A.C. 3:34-1.5, as the transitional time frame for fiscal year 2011 has expired.

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 proposed amendments and new rule implement changes to GUDPA which authorize credit unions as additional depositories where the public funds of New Jersey county and local

governments, school districts, and public bodies (local governmental units) may be deposited. Allowing credit unions to accept public funds provides more choices to local government units by increasing competition in terms of service and interest rate. The proposed amendments also require proof that required funds for financial education programs are provided and provide prospective applicants for approval as public depositories with additional information on the application process. By facilitating financial education and enhancing the efficiency of the application process, the proposed amendments will have a beneficial social impact.

### **Economic Impact**

Proposed new rule N.J.A.C. 3:34-1.16 will require some credit unions to contribute to a financial education non-profit organization. The contributions are capped at \$100,000 per year, are set by statute, and are only required of credit unions that exceed the threshold level of public funds held on deposit specified in the rule.

The proposed amendments to N.J.A.C. 3:34-1.15 articulate the factors the Commissioner shall consider when determining whether to order a first time public depository to hold eligible collateral in an amount in excess of that required by N.J.A.C. 3:34-1.6 as is set forth in the current rule. Consequently, they should have a favorable economic impact on first time public depositories by enabling them to address the factors identified in the amendments and better prepare to comply with an order by the Commissioner directing that they hold such excess collateral.

Credit unions that choose to accept public funds will have to comply with the reporting requirements, post the required collateral, pay the annual fee specified in N.J.A.C. 3:34-1.5 unless exempt as provided therein, and monitor the public funds on deposit to ensure that the

proper type and amount of collateral is maintained. Credit union staff time required to maintain GUDPA records should not be significant. Consequently, the cost of the additional recordkeeping and reporting requirements imposed by these proposed rules should be minimal.

The proposed amendments and new rule will facilitate the participation of credit unions in the GUDPA program, which will increase competition amongst depositories for public funds. This should result in governmental entities receiving enhanced levels of service and higher rates of return on the public funds they deposit, which will have a favorable economic impact on such governmental entities and, ultimately, on New Jersey residents who pay taxes to such entities. For these reasons, the benefits to be realized by the proposed amendments and new rule outweigh any costs credit unions that choose to participate in the GUDPA program will incur.

#### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and new rule are consistent with, but do not exceed, Federal standards. The Federal standards applicable to, but not exceeded, by the proposed amendments and new rule are established in the Federal Credit Union Act, Pub. L. 73 - 467 in particular 12 U.S.C. §§ 1757(5) and 1790d(c).

#### **Jobs Impact**

The Department does not anticipate that any jobs will be lost or generated as a result of the proposed amendments and new rule. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments and new rule 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 proposed amendments and new rule.

### **Regulatory Flexibility Analysis**

The proposed amendments and new rule impose compliance requirements on small businesses, as discussed in the Summary above. The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines a “small business” as any business resident in this State that employs fewer than 100 full-time employees, is independently owned and operated, and is not dominant in its field. Some of the participating banks and now credit unions are small businesses. It is not expected that professional services will be needed to comply with the proposed amendments and new rule. Compliance costs are discussed in the Economic Impact above. Monitoring by the Department of the collateral and the overall financial condition of all public depositories is necessary for the protection of local governmental unit deposits regardless of the size of the public depository. Therefore, no different compliance requirements based on business size have been proposed in these rules.

Proposed N.J.A.C. 3:34-1.16 imposes recordkeeping and reporting requirements only on credit unions approved as public depositories whose average daily balance of public funds on deposit for the preceding year exceeded \$2,000,000, some of which are small businesses. The recordkeeping requirements are not extensive and the reporting is required only once annually. Both requirements are mandated by the recently amended GUDPA statute. Therefore, no different compliance requirements based on business size have been proposed in the rule.

### **Housing Affordability Impact Analysis**

The proposed amendments and new rule will have no impact on affordable housing in New Jersey because the proposed amendments and new rule concern governmental unit deposit protection.

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

The proposed amendments and new rule will have no impact on smart growth and there is an extreme unlikelihood that the proposed amendments and new rule 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 proposed amendments and new rule concern governmental unit deposit protection.

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

#### 3:34-1.2 Definitions

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

...

“Call report” means the quarterly report on a depository’s overall condition made to the appropriate Federal banking agency as defined by subsections (q) and (r) of section 3 of the Federal Deposit Insurance Act, Pub. L. 81-797 (12 U.S.C. § 1813(q) and (r)) **or to the National Credit Union Administration.**

“Capital funds” means:

1. (No change.)
2. In the case of a mutual savings bank, the aggregate of the capital deposits, if any, and the surplus of the savings bank; [and]
3. In the case of an association, the aggregate of all reserves required by any law or regulation, and the undivided profits, if any, of the association; **and**
4. **In the case of a credit union, the aggregate of all reserves required by any law or regulation, and the capital deposits of the credit union.**

...

“Credit union” means a credit union as defined in N.J.S.A. 17:13-80.

...

“Custodial depository **or custodian**” means the depositories specified in N.J.S.A. 17:9-44c.

...

“Public depository” means a State or Federally chartered bank, savings bank or an association located in this State or a State or Federally chartered bank, savings bank or an association located in another state with a branch office in this State, the deposits of which are insured by the Federal Deposit Insurance Corporation, **or a State or Federally chartered credit union located in this State, or a State or Federally chartered credit union located in another state with a branch office in this State, the deposits of which are insured by the National Credit Union Share Insurance Fund**, and which receives or holds public funds on deposit.

...

“Uninsured” means not insured by the Federal Deposit Insurance Corporation (FDIC), **the National Credit Union Share Insurance Fund**, or by any other agency of the United States which insures deposits made in public depositories.

...

3:34-1.5 Fees

(a) Each public depository, unless exempt, shall pay [a fee for the period July 1, 2010 through June 30, 2011, hereinafter “fiscal 2011,” and] an annual fee for [each such] **every** fiscal year [thereafter]. [With the exception of fiscal 2011, the] **The** fee will be based on the average daily public funds on deposit for the three-month reporting period ending on the June 30 valuation date of the prior fiscal year. [For fiscal 2011, the fee will be based on the average daily public funds on deposit for the three-month reporting period ending on the September 30, 2010 valuation date.]

(b) – (g) (No change.)

3:34-1.9 Scope of terms surplus [and], undivided profits, **reserves, and capital deposits**

(a) As included within the definition of capital funds in N.J.S.A. 17:9-41 and N.J.A.C. 3:34-1.2:

1. - 3. (No change.)

**4. The terms “reserves” and “capital deposits” shall, in the case of a credit union, include any reserve for contingency required by any law or regulation and any reserve for bad debts as computed for Federal income tax purposes, but shall:**

i. **Exclude any specifically allocated reserves or reserves for known specific charges; and**

ii. **Be reduced by the booked value of any intangible assets referenced on the balance sheet which represent nonmaterial values over and above physical assets, such as goodwill, deferred losses, and intangible assets.**

3:34-1.15 Requirements for first time public depositories

(a) Before initially accepting public funds, a depository shall [notify] **submit a complete application to the Department for approval as a public depository** on a form found on the Department's website at [www.state.nj.us/dobi/index.html](http://www.state.nj.us/dobi/index.html) [of its intent to do so at least 15 days prior to accepting the funds]. The information to be provided on the form shall [be] **include the depository's identifying information, chartering agency, a certified copy of board resolution(s) authorizing participation in GUDPA and designating the depository's GUDPA custodian, total capital funds, and the name of the approved custodian. Upon receipt of a complete application, the Commissioner shall publish notice of the submission of the application on the Department's website at [www.njdobi.org](http://www.njdobi.org).** After [being so notified] **review of the application, the Commissioner shall approve the application within 30 days of the Department's acceptance of all required materials and confirmation of compliance with all requirements set forth in this chapter and shall** prescribe the amount of eligible collateral required to be maintained.

(b) Upon the Commissioner **approving the application and** prescribing the required collateral amount and the collateral being properly pledged with the [custodial depository] **custodian** and proof of that being provided by the [custodial depository] **custodian** to the

Department, **the approved status of the public depository will be published on the Department's website at [www.njdobi.org](http://www.njdobi.org). After approval by the Department of the first valuation report filed by the public depository in accordance with N.J.A.C. 3:34-1.4, the public depository will be added to the electronic list of approved public depositories referenced in N.J.A.C. 3:34-1.8.**

(c) After a public depository has held public funds for an entire three-month period and filed a valuation report for the full three-month period, it shall hold eligible collateral in the amount required by N.J.A.C. 3:34-1.6 unless otherwise ordered by the Commissioner. **When deciding whether to order a public depository to hold eligible collateral in an amount higher than required by N.J.A.C. 3:34-1.6, the Commissioner shall consider factors related to the level of risk to which the public funds held by the public depository are exposed, including, but not limited to, the factors listed below:**

- 1. The tangible equity capital of a non-credit union public depository or net worth of a credit union public depository;**
- 2. The level of concentrations reflected in the public depository's financial statements;**
- 3. The single borrower lending limit to which the public depository is subject pursuant to applicable State or Federal law or regulations; and**
- 4. Such other factors as the Commissioner may deem relevant to an evaluation of the level of risk to which the public funds held by the public depository may be exposed.**

**3:34-1.16 Financial education program supported by credit union public depositories**

(a) If the average daily balance of the public funds on deposit at the credit union for the preceding year is in excess of \$2,000,000, the chief financial officer of a credit union that qualifies as a public depository shall transmit to the Department with each fourth calendar quarter GUDPA report a written certification, in a form specified by the Commissioner and posted on the Department's website, that the credit union has forwarded to the nonprofit corporation designated by the Department of Education in accordance with N.J.S.A. 17:9-43.2 a sum equal to the average daily balance, multiplied by the appropriate factor, as determined in accordance with the following schedule:

1. An average daily balance in excess of \$2 million but less than \$25 million: multiply by a factor of .0005;
2. An average daily balance of \$25 million or over but less than \$50 million: multiply by a factor of .00075;
3. An average daily balance of \$50 million or over: multiply by a factor of .0010. However, in no event, shall a credit union be required to forward a sum in excess of \$100,000 in any one year.

(b) The certification shall contain proof of payment to the designated nonprofit corporation in the form of a copy of a cancelled check or other payment instrument or evidence of a successful wire transfer.