

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## BANKING

### (a)

#### DEPARTMENT OF BANKING AND INSURANCE DIVISION OF BANKING

#### Dedicated Funding Assessment

#### Proposed Readoption with Amendments: N.J.A.C. 3:5

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1-15.e, and 17:1C-33 through 48.

Authorized By: Justin Zimmerman, Acting Commissioner,  
Department of Banking and Insurance.

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

Proposal Number: PRN 2018-124.

Submit comments by February 15, 2019, to:

Denise Illes, Chief  
Office of Regulatory Affairs  
New Jersey Department of Banking and Insurance  
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Trenton, NJ 08625-0325  
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The agency proposal follows:

#### Summary

The Department of Banking and Insurance (Department) is proposing to readopt with amendments the rules at N.J.A.C. 3:5. The rules at N.J.A.C. 3:5 were scheduled to expire on November 15, 2018. In accordance with N.J.S.A. 52:14B-5.1.c(2), the filing of this notice of proposal with the Office of Administrative Law extended the expiration date by 180 days to May 14, 2019. The rules in this chapter were promulgated to implement N.J.S.A. 17:1C-33 through 48. The Department has reviewed the rules and has determined that they continue to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The purpose of this chapter is to set forth the funding mechanism for the support of the Division of Banking in the Department of Banking and Insurance (Division) as required by N.J.S.A. 17:1C-33 through 48 and to distribute the financial burden proportionately among depository institutions and other financial entities. The rules in this chapter set forth the following:

N.J.A.C. 3:5-1 sets forth the purpose and scope of the chapter.

N.J.A.C. 3:5-2 sets forth the definitions of terms used throughout the chapter. In N.J.A.C. 3:5-2.1, the Department proposes to amend the

definition of “call report” to delete reference to the Office of Thrift Supervision because the Office of Thrift Supervision no longer exists.

N.J.A.C. 3:5-3 sets forth the procedure and time frames for the Department of the Treasury to certify, to the Commissioner, the total amount of expenses incurred in connection with the administration of special functions of the Division of Banking in the Department of Banking and Insurance. It also sets forth the time frame for the Commissioner to issue an assessment to a regulated entity.

N.J.A.C. 3:5-4 sets forth the assessment computation formula. N.J.A.C. 3:5-4.1 sets forth the rule for the allocation of expenses for the Offices of Depositories and Consumer Finance. N.J.A.C. 3:5-4.2 sets forth the components of the total assessment for the regulated entities. N.J.A.C. 3:5-4.2(a) states that all regulated entities shall be assessed a total assessment and the total assessment shall consist of the total of a base assessment and a volume assessment, if applicable.

The Department proposes to delete N.J.A.C. 3:5-4.2(b). This subsection was designed to provide for assessments against multiple “authorities” held by one licensee. Legislative amendments since the November 15, 2011 effective date of the last readoption of the rules, have eliminated the use of the “authorities” upon which this provision is predicated. All authorization to conduct regulated business is now subject directly to a license, and authorities are no longer issued. Further, no authorities exist from prior practice.

N.J.A.C. 3:5-4.3 sets forth the regulations for determining base assessments for all regulated entities. N.J.A.C. 3:5-4.4 sets forth the rules for the calculation of volume assessments.

N.J.A.C. 3:5-5.1 sets forth the rules for determining the maximum assessments.

N.J.A.C. 3:5-6.1 sets forth the rules for timely submission of objections and decisions regarding assessments.

N.J.A.C. 3:5-7 contains rules regarding collection of unpaid assessments and issuance of notices of delinquency. N.J.A.C. 3:5-7.1 sets forth the procedures to be followed in the event of a non-payment of an assessment. N.J.A.C. 3:5-7.2 sets forth the procedures for the collection of unpaid assessments, with legal interest, by the State Treasurer, by seizure and sale of any goods or chattels. N.J.A.C. 3:5-7.3 sets forth an additional remedy the State Treasurer may take, which is to docket a certificate of indebtedness as a judgment with the Clerk of the Superior Court.

N.J.A.C. 3:5-8 sets forth the general rule that regulated entities paying assessments are exempt from other fees or charges imposed by the Division of Banking, with some delineated exceptions.

N.J.A.C. 3:5-9 sets forth the penalties, including the imposition of an administrative penalty up to \$10,000 for each erroneous submission, and initiation of an action to revoke, suspend, or refuse to renew a license, if a regulated entity submits figures used to compute an assessment that are substantially or materially in error.

As the Department has provided a 60-day comment period on this

notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

As discussed in the Summary above, the proposed amendments delete outdated provisions to conform with existing statutory provisions. This should eliminate any confusion regarding the application of the rules, which should have a positive social impact.

The readoption of dedicated funding of the Division of Banking will continue to have a positive effect on the Division of Banking, the industries and individuals that the Division regulates, and the general public. The use of dedicated funding ensures that the Division has adequate funding to effectively protect and educate consumers and to regulate the industries in an efficient and timely manner.

#### Economic Impact

The Department does not expect that the rules proposed for readoption with amendments will have a significant economic impact on most regulated entities. The Department believes that its assessments and assessment system are reasonable. Entities that generally transact a larger volume of business and require the expenditure of a larger percentage of the Division's resources to effectively regulate and service their operations are subject to higher assessments, but only commensurate to the regulatory burden they place upon the Department. Ultimately, regardless of an entity's size or business volume, regulatory fees are a necessary cost of transacting business in New Jersey.

Regulated entities will continue to be required to compile the necessary information for the assessment funding system and forward it to the Department in their annual reports.

Regulated entities may employ outside professional assistance from accountants and attorneys for compliance, but such assistance should not be necessary. The costs of this will vary depending on the professional utilized and the services requested. No new costs will be imposed.

The rules proposed for readoption with amendments will economically affect all the industries and individuals who are regulated by the Division of Banking. The rules proposed for readoption with amendments allow for the fair and equitable allocation of the cost of regulation among those who are regulated by the Division. The rules proposed for readoption with amendments seek to assure that all the regulated entities, regardless of size, pay the costs associated with the basic services provided by the Department that those entities that generate more work and expense for the Division, due to its greater regulatory responsibilities with respect to such industries, bear the cost of their regulation in a manner which takes that greater burden into account.

Because the proposed amendments delete outdated provisions, they should impose no adverse economic impact. No new costs will be imposed.

#### Federal Standards Statement

The proposed readoption with amendments do not contain any standards or requirements that exceed standards or requirements imposed by Federal law.

#### Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the rules proposed for readoption with amendments, which delete outdated provisions.

The Department invites commenters to submit any data or studies concerning the jobs impact of the rules proposed for readoption with amendments together with written comments on other aspects of this proposal.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry in New Jersey.

#### Regulatory Flexibility Analysis

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 employees full-time, is independently owned and operated, and is not dominant in its field. Many of the licensees affected by the rules proposed for readoption with amendments are small businesses.

The rules proposed for readoption with amendments will impose no

new recordkeeping, reporting, or other compliance requirements on these entities, as discussed in the Summary above. As stated in the Economic Impact above, no new costs will be generated by the amendments. The costs of compliance with the rules proposed for readoption are set forth in the Economic Impact above. Further, as set forth above, the proposed amendments eliminate provisions to conform to existing law and impose no new reporting, recordkeeping or compliance requirements on small business. Licensees who chose to use the services of outside professionals, such as accountants or attorneys, for assistance with compliance may continue to do so. The costs for this will continue to vary based on the professional chosen and the amount of work requested and will not be affected by these amendments. Accordingly, no differentiation based on business size is needed or provided.

#### Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will not have an impact on the affordability of housing in this State and are unlikely to evoke a change in the average costs associated with housing in that the rules proposed for readoption with amendments relate to the funding of licensed entities by the Division of Banking.

#### Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will not have an impact on smart growth in this State, and there is an extreme unlikelihood that the rules proposed for readoption 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, in that the rules proposed for readoption with amendments relate to the funding of licensed entities by the Division of Banking.

#### Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative code at N.J.A.C. 3:5.

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

### SUBCHAPTER 2. DEFINITIONS

#### 3:5-2.1 Definitions

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

...

"Call report" means the report of general financial condition submitted by all insured depository institutions to the Federal Deposit Insurance Corporation[, the Office of Thrift Supervision,] or the National Credit Union Administration, as the case may be, on a quarterly basis and shall include reports filed with the Department by limited purpose companies on a semiannual basis pursuant to N.J.S.A. 17:9A-256.

...

### SUBCHAPTER 4. ASSESSMENT COMPUTATION FORMULA

#### 3:5-4.2 Total assessments

[(a)] All regulated entities shall be assessed a total assessment. The total assessment shall consist of the total of a base assessment and a volume assessment, if applicable.

[(b) For the purposes of determining the total assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. or the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43, licensees with more than one authority shall pay an aggregate base assessment consisting of a separate base assessment for each separate authority, which shall be added to a single volume assessment, if any, based on the aggregate dollars loaned or the equivalent for all their authorities.]