

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

Depository Institutions

Proposed Readoption with Amendments: N.J.A.C. 3:4

Authorized By: Marlene Caride, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, 17:9A-8.10, 17:9A-27.50, 17:9A-106, 17:9A-266 et seq., 17:12B-72, and 17:12B-177 et seq.

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

Proposal Number: PRN 2022-026.

Submit comments by May 6, 2022, to:

Denise M. Illes, Chief
Office of Regulatory Affairs
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
Email: legsgregs@dobi.nj.gov

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt and amend N.J.A.C. 3:4, governing depository institutions. Pursuant to N.J.S.A. 52:14B-5.1.c, the rules in this chapter were scheduled to expire on January 26, 2022. As the Department filed this notice of readoption on or prior to this date, the expiration date is extended 180 days to July 25, 2022, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The rules proposed for readoption will continue to provide the regulatory framework to enable the Commissioner of Banking and Insurance (Commissioner) to monitor depository institutions. The rules at Subchapter 1 help ensure that institutions do not operate in an unsafe and unsound manner, and that they maintain appropriate levels of capital. The rules at Subchapter 2 continue to set standards for stock option plans offered to directors, officers, and employees. Subchapter 3 requires institutions to file necessary reports with the Department. Lastly, Subchapter 4 specifies the activities permitted and not permitted by agents of foreign banks.

The Department proposed to amend N.J.A.C. 3:4 to update outdated cross-references. The Department proposes to amend N.J.A.C. 3:4-1.2, by

changing the cross-references of 12 CFR 325.2t, 12 CFR 325.2v, Appendix A to 12 CFR Part 325, and 12 CFR 567.6, in the definitions of “tier 1 capital,” “total assets,” “qualifying capital,” and “risk weighted assets,” to 12 CFR 324, respectively. This section of the Code of Federal Regulations (CFR) was amended effective January 1, 2019. In addition, CFR citations are updated to match Office of Administrative Law standards, as needed.

The Department proposes to amend N.J.A.C. 3:4-3.3(a) and (b) to change the cross-reference to 12 C.F.R. Part 304.4 to 12 CFR Part 324 for the same reason as stated above. The Department also proposes to amend N.J.A.C. 3:4-3.3(a) to eliminate the acronym FDIC and insert the full name of the entity, which is the Federal Deposit Insurance Corporation.

The Department proposes to amend N.J.A.C. 3:4-3.3(c) to update the reference from the “Right to Know” law to the “Open Public Records Act.”

Lastly, the Department proposes to amend N.J.A.C. 3:4-3.3(d) to delete the outdated reference to the August 6, 2008 deadline date by which each bank was required to provide the Department, in writing, on letterhead signed by an officer, with its official email address.

The Department has reviewed the remaining rules and has determined they should be readopted. They are necessary, reasonable, and proper for the purpose for which they were originally promulgated.

A 60-day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice is excepted from the provisions at 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 New Jersey State-chartered depository institutions. N.J.A.C. 3:4-3 also applies to out-of-State State-chartered depository institutions that have a branch in New Jersey. N.J.A.C. 3:4-4 applies to agents of foreign banks.

The rules in this chapter provide standards with respect to capital requirements for depository institutions for determining whether such institutions are operating in an unsafe or unsound condition and reflect permissible activities with respect to the provision of stock option plans consistent with the law.

With regard to capital requirements, the Department notes that reviewing capital ratios is an important way to measure the safety and soundness of a depository institution. A depository institution with a higher capital ratio has a larger cushion for protection in the event of an economic or business decline. By periodically reviewing capital ratios and other aspects of bank finances and operations, the Department is able to identify potential problems and assist institutions in addressing those problems before their condition deteriorates. Capital helps avoid failures, which in turn, protects against disruptions to depositors and the public, generally. Ultimately, the Commissioner has the authority to take possession of institutions pursuant to N.J.S.A. 17:9A-269 or 17:12B-179.

With respect to compensation requirements, the rules proposed for readoption with amendments will continue to reflect existing statutory requirements by providing flexibility to State depositories in

compensating their directors, officers, and employees. This, in turn, may better enable such depositories to attract and retain qualified persons to such positions. To the extent that depositories are able to operate efficiently and profitably through this employment, the public should similarly benefit.

The banking industry has come to rely on the presence and viability of these rules and their operation. State depository institutions are provided with standards concerning capital requirements and threshold levels at which the Department will determine whether such depositories are in an unsafe or unsound financial condition for purposes of taking action in accordance with N.J.S.A. 17:9A-266 et seq., and 17:12B-177 et seq. The rules further reflect and implement provisions with respect to compensation and the offering of stock options by State depositories to their directors, officers, and employees. This chapter, thus, implements various statutory requirements and enables the Department to fulfill its statutory duties under the law. Failure to readopt this chapter would impair the Department's ability to properly oversee banking operations and would unsettle established relations between banking institutions and the public, their directors, officers, employees, and the Department. The protections that this chapter affords depositors and the operational guidance they provide to the banking industry protections compel their continued existence, both to implement statutory provisions and to foster or promote a sound regulatory policy. Therefore, the readopted rules will have a beneficial social impact upon depository institutions, their customers, and the general public.

The proposed amendments will have a beneficial social impact upon depositories, their customers, and the general public, as readers of the rules will be provided with correct citations, references, and deadlines, and the potential for confusion will be eliminated.

Economic Impact

The rules proposed for readoption with amendments will not impose any additional economic impact on State depository institutions or depositors in that the readoption will continue existing requirements.

State depositories will continue to incur costs associated with compliance with the requirements set forth in the chapter. These requirements include maintaining applicable capital to asset ratios as set forth at N.J.A.C. 3:4-1. These ratios are comparable to those applicable to Federally chartered banks and Federally chartered savings institutions, as prescribed by Federal banking regulators. Moreover, by continuing to define unsafe operation and unsafe conditions, the rules specify when the Department may take enforcement action against a depository institution in accordance with N.J.S.A. 17:9A-266 et seq., and 17:12B-177 et seq. State depository institutions will continue to be required to incur costs associated with any order issued due to the failure of such institution to maintain appropriate capital ratios as set forth in the rules. However, the Department believes that any costs that may be imposed are outweighed by the benefits to be achieved through the potential elimination of unsafe or unsound financial conditions and attendant costs and disruptions.

With respect to stock option plans, the rules will continue to have a positive economic impact on these institutions to the extent that depositories are able to transact business more efficiently and attract and retain qualified people. The Department does not believe that any negative economic impact will result from the readoption of N.J.A.C. 3:4-2. All stock option plans are approved by the Department.

Further, as noted in the Social Impact, the rules in this chapter address various statutory requirements governing banks and other regulated depositories. The rules will continue to provide standards by which the Department may monitor the financial condition of State depositories to help ensure that such entities will not be in, or become in, an unsafe or unsound financial condition, and if a State depository is in such condition, to take appropriate action pursuant to law to help avoid further deterioration. This, in turn, should benefit depositors, banks, savings banks, savings and loan associations, taxpayers, and the public generally.

The failure to readopt this chapter would require State depository institutions to engage in business without guidance from the Department. This could impose significant costs on the industry since current compliance requirements would not be readily available to the industry, requiring depositories to implement guidelines, which may or may not be acceptable to the Department. This, in turn, could result in disruption to

the market with attendant additional costs. Further, the readoption of the current rules will enable the Department to continue to monitor State depository institutions in an appropriate manner.

The Department has carefully monitored, and continues to monitor, the impact of the rules in this chapter through communication with the banking industry and the public. The Department is unaware of any provisions of this chapter that imposes undue or unnecessary financial burdens on State depositories.

Finally, the Department will continue to be required to incur any costs associated with monitoring the financial condition of depository institutions to ensure compliance with this chapter. The Department anticipates that future annual costs to ensure compliance with these rules should be consistent with current annual costs. Some depository institutions may choose to seek, or continue to use, professional assistance for compliance with this chapter. This assistance would be in the form of accountants, financial industry consultants, or attorneys. The cost of the professional will vary based on the individual professional and the amount of work requested.

The proposed amendments will not impose any additional economic impact on State depository institutions or depositors in that the proposed amendments update citations and references and continue existing requirements.

Federal Standards Statement

The rules proposed for readoption with amendments do not contain standards or requirements that exceed standards or requirements imposed by Federal law. The rules proposed for readoption with amendments continue to apply to State-chartered depositories and utilize certain Federal standards as set forth at 12 CFR Part 324 and 12 U.S.C. § 324. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that any jobs will be lost as a result of the proposed readoption with amendments. Depository institutions and foreign banks will use existing staff for compliance with the rules, and the amendments do not impose any new or different requirements. The proposed amendments are technical in nature and impose no new requirements.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments, 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 readoption with amendments.

Regulatory Flexibility Analysis

Some depository institutions operating in this State are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments will continue to impose recordkeeping and reporting requirements on these entities in the form of reports of their financial condition to the Department. The rules proposed for readoption with amendments will also continue to require New Jersey banks, savings banks, and savings and loan associations to maintain capital in the amount set forth in the rules and, if such an institution seeks to do so, to provide for stock option plans in accordance with the rules.

The Department believes that these requirements are generally mandated pursuant to good banking practices. The costs are discussed in the Economic Impact. Moreover, the Department does not believe that these requirements are unduly burdensome and, in many cases, should not require professional services for compliance. By using a percentage-based formula, N.J.A.C. 3:4-1.3, which prescribes the minimum risk-based capital requirement applicable to these institutions, does provide for variation based upon business size. Generally, however, the purpose of this chapter is to provide guidance to depository institutions in their operations and to protect consumers, regardless of the size of the institution. This purpose does not vary based upon business size. Accordingly, other than as set forth at N.J.A.C. 3:4-1.3, no differentiation based on business size is provided.

The proposed amendments do not impose any reporting, recordkeeping, or compliance requirements upon depositories.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will not have an impact on housing affordability in this State or on the average costs of housing, in that the rules relate to operations of depository institutions and foreign banks.

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 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 proposed amendments relate to depository institutions and foreign banks.

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. 3:4.

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

SUBCHAPTER 1. CAPITAL REQUIREMENTS**3:4-1.2 Definitions**

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

...
 “Qualifying capital” means qualifying capital as defined [in Appendix A to] **at 12 [C.F.R.] CFR Part [325] 324.**

“Risk weighted assets” for a bank and savings bank means risk weighted assets as defined [in Appendix A to] **at 12 [C.F.R.] CFR Part [325] 324,** and for a savings and loan association, means risk weighted assets as defined [in] **at 12 [C.F.R. 567.6] CFR 324.**

...
 “Tier 1 capital” means Tier 1 capital as defined [in] **at 12 [C.F.R. § 325.2t] CFR Part 324.**

“Total assets” means total assets as defined [in] **at 12 [C.F.R. § 325.2v] CFR Part 324.**

SUBCHAPTER 3. REPORTING REQUIREMENTS**3:4-3.3 Call reports and official [e-mail] email address**

(a) Pursuant to N.J.S.A. 17:9A-256, every bank and out-of-State bank with a branch office in this State shall file a semi-annual report with the Department that sets forth the bank’s assets and liabilities as of June 30 and December 31 of each year, on a form to be provided by the Commissioner. The reports shall be in the general form of report adopted by the Federal Financial Institutions Examination Council for purposes of filing by banks with the [FDIC] **Federal Deposit Insurance Corporation** pursuant to 12 [C.F.R.] **CFR Part [304.4] 324** or with the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. § 324. Such reports shall be filed with the Department within 30 days after the end of the relevant six-month period. Upon request, the Commissioner may extend the due date for not more than 10 days.

(b) The requirements [in] **at (a)** above shall not apply to a bank or out-of-State bank that files reports of financial condition with the Federal Deposit Insurance Corporation pursuant to 12 [C.F.R.] **CFR Part [304.4] 324** or with the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. § 324.

(c) In addition to **the** reports required to be filed pursuant to (a) above, the Commissioner may require such additional reports from a particular bank, as the Commissioner deems necessary, to obtain a full and complete knowledge of such bank’s condition. Reports filed pursuant to this subsection shall be considered confidential and shall not be subject to public inspection or copying pursuant to the [“Right to Know” law] **Open Public Records Act**, N.J.S.A. 47:1A-1 et seq.

(d) Notwithstanding the provisions [in] **at (b)** above, each bank shall provide the Department, in writing, on letterhead signed by an officer, with its official [e-mail] **email** address [by August 6, 2008]. Within 10 days following any change in the official [e-mail] **email** address previously provided to the Department, the bank shall notify the Department of the change in the same manner and include the full name of the entity, its old [e-mail] **email** address, its new [e-mail] **email** address, and the effective date of the change. The notice shall be sent to: New Jersey Department of Banking and Insurance, Division of Banking, Attention: Depositories, 20 West State Street, [P.O.] **PO** Box 040, Trenton, New Jersey 08625-0040.

EDUCATION**(a)****STATE BOARD OF EDUCATION****State Board of Examiners and Certification****Proposed Amendment: N.J.A.C. 6A:9B-5.6****Proposed New Rules: N.J.A.C. 6A:9B-8A**

Authorized By: New Jersey State Board of Education, Angelica Allen-McMillan, Ed.D., Acting Commissioner, Department of Education, Acting Secretary, State Board of Education.

Authority: P.L. 2021, c. 224.

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

Proposal Number: PRN 2022-029.

Submit written comments by May 6, 2022, to:

Jorden Schiff, Ed.D., Assistant Commissioner
 Division of Field Support and Services
 New Jersey Department of Education
 100 River View Plaza
 PO Box 500
 Trenton, New Jersey 08625-0500
 Email: chapter9b@doe.nj.gov

The agency proposal follows:

Summary

The Department of Education (Department) proposes new rules at N.J.A.C. 6A:9B, State Board of Examiners and Certification, to effectuate a new State law authorizing the development of a five-year pilot program for issuance of a limited certificate of eligibility (limited CE) and a limited certificate of eligibility with advanced standing (limited CEAS) in an instructional area for candidates who meet certain requirements. Limited CE and limited CEAS holders will only be eligible to teach in school districts, charter schools, and renaissance school projects that apply to participate in the pilot program and are approved by the Commissioner of the Department of Education (Commissioner).

Under the existing rules, a candidate for a certificate of eligibility (CE) must possess, at a minimum, a bachelor’s degree, complete a minimum number of content credits through subject-specific coursework, have a minimum grade point average, meet the basic skills requirement, and pass a content knowledge assessment. The CE is the “alternate route” pathway. A candidate for a certificate of eligibility with advanced standing (CEAS) must complete an educator preparation program, possess, at a minimum, a bachelor’s degree, complete a minimum number of content credits through subject-specific coursework, have a minimum grade point average, pass a content knowledge assessment, and pass a performance assessment. The CEAS is the traditional route to certification. The CE and CEAS, which are issued by the State Board of Examiners, are lifetime certificates that authorize holders to seek and accept employment as a teacher in any New Jersey public school district.

P.L. 2021, c. 224 (N.J.S.A. 18A:26-2b through h) creates a limited CE and a limited CEAS in an instructional area for individuals who have met all but one of the existing certification eligibility requirements. Certificate holders who have a limited CE or a limited CEAS in an instructional area