

ADOPTIONS SECTION

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Notice of Readoption

Consumer Lenders and Sales Finance Companies

Readoption: N.J.A.C. 3:17

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1-15.e, 17:1C-33 et seq., and 17:11C-49.

Authorized By: Richard J. Badolato, Commissioner, Department of Banking and Insurance.

Effective Date: May 17, 2017.

New Expiration Date: May 17, 2024.

Take notice that pursuant to N.J.S.A. 52:14B-5.1.c, the rules at N.J.A.C. 3:17 were scheduled to expire on June 21, 2017. The rules implement the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 et seq., and the Retail Installment Services Act of 1960, N.J.S.A. 17:16C-1 et seq., (Acts) regarding the licensing and regulation of consumer lenders and sales finance companies.

Subchapter 1 sets forth the general provisions. N.J.A.C. 3:17-1.1 sets forth the purpose and scope of the chapter. N.J.A.C. 3:17-1.2 contains definitions and terms used in the chapter including: accrual basis of accounting, act, advertisement, alternate name, billing cycle, borrower, branch office, closed end loan, commissioner, consumer lender, consumer loan, consumer loan business, controlling interest, department, direct contact, individual, insolvent,

license name, license or licensing period, licensee, liquid assets, open end loan, person, sales finance company, substantial stockholder, time price differential, trade name, and true name.

N.J.A.C. 3:17-1.3 states that a licensee shall maintain a principal office, and that a principal office where the licensee has direct contact with New Jersey consumers shall be in a suitable location. The rule sets forth the factors that shall be considered in determining whether such location constitutes a suitable office location, which factors depend on whether the licensee has direct contact with New Jersey consumers in an in-State or in an out-of-State location.

N.J.A.C. 3:17-1.4 establishes the requirements for licensee names. N.J.A.C. 3:17-1.5 addresses the maximum number of alternate or trade names that may be used. N.J.A.C. 3:17-1.6 governs the grounds for denying the use of alternate or trade names and N.J.A.C. 3:17-1.7 addresses the required display of a license.

Subchapter 2 contains the rules regarding licensing. N.J.A.C. 3:17-2.1 sets forth that a person engaging in business as a consumer lender or sales finance company must obtain a license to act as such. N.J.A.C. 3:17-2.2 sets forth the documents required as part of the initial license application. N.J.A.C. 3:17-2.3 sets forth the documents required as part of the branch office license application. N.J.A.C. 3:17-2.4 sets forth the license renewal application process and N.J.A.C. 3:17-2.5 sets forth the license renewal application process for branch offices. N.J.A.C. 3:17-2.6 sets forth the process for the late renewal of licenses. N.J.A.C. 3:17-2.7 governs the application for approval of a change of control of direct ownership of 25 percent or more of a licensee. N.J.A.C. 3:17-2.8 establishes the steps to be taken when a consumer lender or sales finance company discontinues its licensed business operations in New Jersey. Finally, N.J.A.C. 3:17-2.9 outlines the requirement that a licensee notify the Department of Banking and Insurance (Department) within 15 days if the licensee or any of its affiliates are fined, penalized, or

disciplined, or if the licensee or any officer, director, partner, member, owner, or substantial stockholder of the licensee are: arrested, indicted, or convicted; have any business or professional license, registration, certificate, or any other right to engage in business revoked, denied, suspended, or restrained; file a petition for bankruptcy or reorganization; or engage in activity that may have a substantial impact on the ability of a licensee to engage in the licensed activity in a prudent or worthy manner.

Subchapter 3 establishes the application fees for new licenses, renewals, and branch offices.

Subchapter 4 provides the rules for net worth, liquid assets, and insolvency that apply to each corporation, partnership, limited liability company, or sole proprietorship that is licensed as a consumer lender. This subchapter also addresses the factors that the Commissioner of Banking and Insurance (Commissioner) shall consider in determining whether to suspend, revoke, or refuse to renew the license of a consumer lender who has failed to maintain net worth or liquid assets requirements.

Subchapter 5 addresses licensee books and records, examinations, and annual reports. N.J.A.C. 3:17-5.1 provides the required methods and accounting, as well as preservation and storage requirements of documents. N.J.A.C. 3:17-5.2 permits a licensee to reproduce documents and records for the purpose of complying with the subchapter. N.J.A.C. 3:17-5.3 identifies the rules concerning the location of licensee books and records. N.J.A.C. 3:17-5.4 governs loan numbering and index requirements for consumer lenders, as well as the requirement that each consumer lender establish a complete file for each loan. N.J.A.C. 3:17-5.5 governs documentation of loans. N.J.A.C. 3:17-5.6 sets forth the required information to be contained in the file of a consumer lender or sales finance company when it has reduced a note to judgment,

as well as the requirement to maintain records of nonjudicial foreclosures of security. N.J.A.C. 3:17-5.7 sets forth the motor vehicle lien requirements for consumer lenders or sales finance companies. N.J.A.C. 3:17-5.8 sets forth the requirement that licensees retain a copy of each advertisement for at least two years after the last date on which any such advertisement was used. N.J.A.C. 3:17-5.9 provides that an official report of examination be submitted to the licensee. N.J.A.C. 3:17-5.10 provides for charges for investigation for persons not licensed by the Department. Finally, N.J.A.C. 3:17-5.11 provides that consumer lenders and sales finance companies shall file an annual report by May 1 of each year.

Subchapter 6 governs insurance matters for consumer lenders, including disclosures, recordkeeping, premium collection, refunds to borrowers of unearned premiums, and credit life insurance notifications and construction.

Subchapter 7 addresses advertising and insurance costs, verbal advertisements, and prohibited types of advertising.

Subchapter 8 identifies characteristics of loans. This subchapter includes provisions at N.J.A.C. 3:17-8.1 applicable to all loans (for example, repayment of consumer loan at any time without penalty; borrower given a copy of every document required to sign), and characteristics applicable only to consumer loans found at N.J.A.C. 3:17-8.2 (for example, repayment in substantially equal monthly installments of principal and interest).

Subchapter 9 concerns other lines of business for consumer lenders that may be performed in the same office as the consumer lending business without securing specific approval from the Commissioner, as well as those activities that require the approval of the Commissioner. N.J.A.C. 3:17-9.1 provides that consumer lenders shall conduct only those business activities authorized under the consumer lending license, activities specified in N.J.A.C.

3:17-9.2, and those for which the consumer lender has obtained specific approval from the Commissioner as provided in N.J.A.C. 3:17-9.2. N.J.A.C. 3:17-9.2 sets forth those permitted activities not requiring specific approval by the Commissioner, so long as such business is conducted in accordance with other applicable laws. Those permitted activities include the following: any licensed activity permitted under the Acts provided the consumer lender has secured a proper license, mortgage loan business, home repair financing agency business, insurance premium finance company business, business or commercial loans, financing of installment contracts for business or commercial purposes, the leasing of personal property for business or commercial purposes, income tax preparation service, first lien loans on non-residential real property, and purchase of owner originated second mortgages. Those activities that a lender seeks to perform on the premises of the consumer lender office that are not itemized in N.J.A.C. 3:17-9.2(a) require approval from the Commissioner, which shall be sought in the manner outlined in N.J.A.C. 3:17-9.2(b) through (d). Finally, N.J.A.C. 3:17-9.3 provides that violations of these rules or the Acts may result in suspension or revocation of a licensee's approval to engage in any of the business activities specified in N.J.A.C. 3:17-9.2.

Subchapter 10 sets forth the standards and process for the imposition of administrative penalties, including the initiation of administrative action, the consequences of an alleged violator's failure to respond to a notice, the penalties and provisions that may be included in a consent to an administrative penalty, and the requirements for an alleged violator's request for a hearing.

The Department of Banking and Insurance has reviewed these rules and has determined that the rules should be readopted without amendment. The rules are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, pursuant to

N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.