

CHAPTER 2 ADVERTISING

Authority

N.J.S.A. 17:1-15(e) and 17:16H-1 et seq.

Source and Effective Date

R.2006 d.73, effective January 20, 2006.
See: 37 N.J.R. 3101(a), 38 N.J.R. 1181(a).

Chapter Expiration Date

Chapter 2, Advertising, expires on January 20, 2011.

Chapter Historical Note

Chapter 2, Advertising, was adopted as R.1980 d.125, effective March 20, 1980. See: 12 N.J.R. 2(b), 12 N.J.R. 170(b).

Subchapter 2, Plain Language, was adopted as R.1981 d.259, effective July 9, 1981. See: 13 N.J.R. 184(a), 13 N.J.R. 383(a). Subchapter 2, Plain Language, was repealed by R.1982 d.213, effective July 19, 1982. See: 14 N.J.R. 454(a), 14 N.J.R. 755(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Advertising, expired on March 20, 1985.

Chapter 2, Advertising, was adopted as new rules by R.1985 d.183, effective April 15, 1985. See: 17 N.J.R. 238(a), 17 N.J.R. 904(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Advertising, was readopted as R.1990 d.236, effective April 12, 1990. See: 22 N.J.R. 690(b), 22 N.J.R. 1353(c). Pursuant to Executive Order No. 66(1978), Chapter 2 expired on April 12, 1995.

Chapter 2, Advertising, was adopted as new rules by R.1995 d.407, effective August 7, 1995. See: 27 N.J.R. 1715(a), 27 N.J.R. 2883(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Advertising, was readopted as R.2000 d.343, effective July 26, 2000. See: 32 N.J.R. 2177(a), 32 N.J.R. 3059(a).

Chapter 2, Advertising, was readopted by R.2006 d.73, effective January 20, 2006. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. ADVERTISING BY FINANCIAL INSTITUTIONS

3:2-1.1 Authority, scope and enforcement

(a) This subchapter is promulgated pursuant to the provisions of N.J.S.A. 17:16H-1 et seq. This subchapter applies to

financial institutions subject to supervision, regulation or licensing by the Department.

(b) Compliance with this subchapter and N.J.S.A. 17:16H-1 et seq. shall be enforced by the Commissioner.

Amended by R.1988 d.524, effective November 7, 1988.

See: 20 N.J.R. 1025(a), 20 N.J.R. 2750(b).

Substituted "subchapter" for "regulation".

Amended by R.2000 d.343, effective August 21, 2000.

See: 32 N.J.R. 2177(a), 32 N.J.R. 3059(a).

Changed N.J.S.A. references throughout; and in (a), substituted a reference to this subchapter for a reference to this regulation.

3:2-1.2 Definitions

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

"Act" means N.J.S.A. 17:16H-1 et seq.

"Advertisement" means any announcement, statement, assertion or representation which is placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station or in any other way.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"Deposit account" means an account that is held by or offered to a consumer, and includes time, demand, savings, and negotiable order of withdrawal accounts.

"Disclaimer" means any statement in any advertisement which affects, limits or in any way modifies the offer that is the subject of the advertisement.

"Financial institution" means any bank, savings bank, state association, credit union, licensed lender, including a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender, or sales finance company, or any other institution, corporation, partnership, or individual subject to supervision, regulation or licensing by the Department.

"Lender" means the financial institution which makes the loan or issues the loan commitment.

"Mortgage loan" means a loan made by a financial institution to a natural person for a personal, family or household purpose, secured by a mortgage constituting a lien upon real property on which there is erected or to be erected a structure containing one to six dwelling units, a portion of which may be used for nonresidential purposes, or upon a lease of the fee of such real property, in the making of which

the financial institution relies primarily upon the value of the mortgaged property.

"Point" means an amount of money equal to one percent of the principal amount of the loan.

Amended by R.1988 d.524, effective November 7, 1988.
See: 20 N.J.R. 1025(a), 20 N.J.R. 2750(b).

Added "mortgage banker, mortgage broker" to "financial institution"; added definitions "lender", "mortgage loan" and "point".

Amended by R.1995 d.244, effective August 7, 1995.

See: 27 N.J.R. 793(a), 27 N.J.R. 2883(b).

Added the definition of "Deposit account".

Amended by R.2000 d.343, effective August 21, 2000.

See: 32 N.J.R. 2177(a), 32 N.J.R. 3059(a).

In "Act", changed N.J.S.A. reference; inserted "Commissioner" and "Department"; and rewrote "Financial institution".

3:2-1.3 Required disclosure

(a) The advertising of maximum interest rates and yield on time and savings deposits shall comply with the requirements of the Federal Truth in Savings Law, 12 U.S.C. §§4301 et seq., and Federal Reserve Regulation DD, 12 CFR 230.

(b) All advertisements of loan products shall comply with the requirements of the Federal Truth-in-Lending Law and Regulation Z, 15 U.S.C. 1601 et seq. and 12 CFR 226 et seq., respectively, where applicable.

Amended by R.1988 d.524, effective November 7, 1988.

See: 20 N.J.R. 1025(a), 20 N.J.R. 2750(b).

Added (c).

Amended by R.1990 d.236, effective May 7, 1990.

See: 22 N.J.R. 1353(c).

"Federal Home Loan Bank Board" changed to "Office of Thrift Supervision".

Amended by R.1995 d.244, effective August 7, 1995.

See: 27 N.J.R. 793(a), 27 N.J.R. 2883(b).

In (a) substituted the Federal Truth in Savings Law and Federal Reserve Regulation DD for other rules as the advertising standards to be met, deleted former (b), and recodified (c) as (b).

Amended by R.2006 d.73, effective February 21, 2006.

See: 37 N.J.R. 3101(a), 38 N.J.R. 1181(a).

Section heading was "Disclosure of interest rates"; in (a), substituted "shall" for "must."

3:2-1.4 Violations of the Act

(a) No financial institution shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of banking, lending or being a financial institution or with respect to any person in the conduct of such business, which is inaccurate, untrue, deceptive or misleading, or which negatively affects the public's confidence in such financial institution or financial institutions in general.

(b) Without limiting (a) above, the following conduct shall be deemed deceptive or misleading:

1. The advertisement of "immediate approval" of a loan application or "immediate closing" of a loan, or words to that effect;

2. The advertisement of a "no-point" mortgage loan when points, as defined herein, are charged or the advertisement of an incorrect specific number of points;

3. The advertisement of unqualified access to credit without clearly and conspicuously disclosing that material limitations on the availability of such credit may exist, including, but not limited to, limitations such as the percentage of down payment required, that a higher interest rate or points may be required, or that restrictions as to the maximum principal amount of the loan offered may apply;

4. The advertisement of a specific rate for a mortgage loan unless:

i. The lender offers lock-in agreements to a reasonable number of qualified applicants at that rate; or

ii. The advertiser specifically states in the advertisement that the expressed rate is the rate at which such loans offered by the lender are currently being closed or committed (in cases where the lender customarily commits to close at a specific rate) and that the rate is subject to change;

5. The advertisement of a mortgage loan by a mortgage broker (or mortgage banker that acts merely as a mortgage broker with regard to the advertised loan) that does not specifically and conspicuously state that the advertiser will not make any mortgage loan commitments or fund any mortgage loans under the advertised program and does not contain a statement that conspicuously states that the mortgage broker (or mortgage banker acting as set forth above) arranges loans with third-party providers;

6. The advertisement of a mortgage loan or mortgage loan services by a licensed lender with mortgage banker, correspondent mortgage banker or mortgage broker authority without including in the advertisement or broadcast announcement, the name, address and telephone number of the licensee and the words "licensed by the N.J. Department of Banking and Insurance";

7. The advertisement of a deposit account which does not comply with the requirements of the Federal Truth in Savings Law, 12 U.S.C. 4301 et seq., and Federal Reserve Regulation DD, 12 CFR 230; and

8. The failure of any advertisement to comply with the provisions of N.J.A.C. 3:2-1.3.

(c) No loan or savings product may be advertised by an entity subject to this subchapter unless the entity has the advertised product available to a reasonable number of qualified applicants responding to the advertisement on the date the advertisement appears, or on the next business day if the advertisement appears on a day the advertiser is not open for business.

(d) Nothing in this section shall require a lender to offer any loan product to an unqualified applicant.

Amended by R.1988 d.524, effective November 7, 1988.
See: 20 N.J.R. 1025(a), 20 N.J.R. 2750(b).

Added (b)-(d).

Amended by R.1990 d.236, effective May 7, 1990.
See: 22 N.J.R. 690(b), 22 N.J.R. 1353(c).

Added as deceptive practice, advertisement of a yield on a deposit account for a term of less than one year without reference to the basis of compounding.

Amended by R.1993 d.295, effective June 21, 1993 (operative September 1, 1993).

See: 25 N.J.R. 1035(a), 25 N.J.R. 2687(a).

Amended by R.1993 d.423, effective September 7, 1993.

See: 25 N.J.R. 2625(b), 25 N.J.R. 4063(b).

Amended by R.1994 d.559, effective November 7, 1994.

See: 26 N.J.R. 3234(a), 26 N.J.R. 4347(b).

Amended by R.1995 d.244, effective August 7, 1995.

See: 27 N.J.R. 793(a), 27 N.J.R. 2883(b).

Substituted the Federal Truth in Savings Law and Federal Reserve Regulation DD as the advertising standard for deceptive or misleading conduct.

Amended by R.1995 d.407, effective August 7, 1995.

See: 27 N.J.R. 1715(a), 27 N.J.R. 2883(a).

Amended by R.2000 d.343, effective August 21, 2000.

See: 32 N.J.R. 2177(a), 32 N.J.R. 3059(a).

In (b), rewrote 6.

Amended by R.2006 d.73, effective February 21, 2006.

See: 37 N.J.R. 3101(a), 38 N.J.R. 1181(a).

Rewrote (b)3 and 5; added (b)8.

3:2-1.5 Notification of possible violation; cease and desist order; grounds; content; hearing; service

(a) If it appears to the Commissioner, based on his or her examination of the advertisement of a financial institution, that the financial institution is in violation of the Act or this chapter, the Commissioner may order such financial institution to show cause why an order directing the financial institution to cease and desist from using the advertisement in question should not be issued.

(b) The order to show cause shall be returnable in not less than 20 days from the date of service thereof. The order to show cause shall contain the following:

1. A statement that the financial institution may request a hearing pursuant to the Administrative Procedure Act;
2. A reference to the particular section of the statute or rule charged to have been violated;

3. A short and plain statement of the facts giving rise to the alleged statutory or rule violation.

(c) Service of the order to show cause shall be made by certified mail, return receipt requested.

Amended by R.2000 d.343, effective August 21, 2000.
See: 32 N.J.R. 2177(a), 32 N.J.R. 3059(a).

In (a), neutralized gender references.

Amended by R.2006 d.73, effective February 21, 2006.

See: 37 N.J.R. 3101(a), 38 N.J.R. 1181(a).

Rewrote the section.

3:2-1.6 Hearings

Upon notification of a request for a hearing by a financial institution in response to an order to show cause issued pursuant to N.J.A.C. 3:2-1.5, the Commissioner shall certify the matter as a contested case. An administrative hearing will then be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

Amended by R.1985 d.183, effective April 15, 1985.

See: 17 N.J.R. 238(a), 17 N.J.R. 904(a).

Deleted "the procedure established for contested cases." and added "the Administrative ... N.J.A.C. 1:1-1.1 et seq."

3:2-1.7 Continued violation of Act; penalty

A financial institution which continues to violate the provisions of N.J.A.C. 3:2-1.4 hereof after being ordered by the Commissioner to cease such practices shall be subject to a penalty not to exceed \$500.00 for each violation.

3:2-1.8 (Reserved)

Repealed by R.1995 d.407, effective August 7, 1995.

See: 27 N.J.R. 1715(a), 27 N.J.R. 2883(a).

Section was "Disclaimer; size of type".

3:2-1.9 Administrative Procedure Act

Except as otherwise provided in the Act and this subchapter, the procedures followed by the Commissioner shall conform to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Amended by R.2000 d.343, effective August 21, 2000.

See: 32 N.J.R. 2177(a), 32 N.J.R. 3059(a).

Substituted a reference to this subchapter for a reference to these regulations, and changed N.J.S.A. reference.