

TITLE 3

BANKING

CHAPTER 1

GENERAL PROVISIONS

Authority

N.J.S.A. 17:1-8, 17:1-8.1, 17:2A-1 et seq., 17:9-41, 17:9A-1 et seq., 17:9A-9, 17:9A-24a, 17:9A-25.2, 17:9A-316, 17:11C-49, 17:12B-1 et seq., 17:16F-11, 17:16L-1 et seq., 17:16L-1 et seq. and 17:16N-1 et seq.

Source and Effective Date

R.2006 d.246, effective June 8, 2006.
See: 38 N.J.R. 1493(a), 38 N.J.R. 2795(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 1, General Provisions, was extended by gubernatorial directive from December 5, 2013 to June 5, 2015. See: 46 N.J.R. 74(a).

Chapter Historical Note

Subchapter 3, Mortgage Loans in Disaster Areas, was adopted and became effective prior to September 1, 1969.

Subchapter 2, Procedural Rules, was adopted as R.1970 d.97, effective August 13, 1970. See: 2 N.J.R. 70(a).

Subchapter 4, Governmental Unit Deposit Protection, was adopted as R.1971 d.9, effective January 15, 1971. See: 2 N.J.R. 97(d), 3 N.J.R. 19(c).

Subchapter 5, Mortgage Applicant's Birth Control Practices, was adopted as R.1973 d.166, effective June 21, 1973. See: 5 N.J.R. 136(a), 5 N.J.R. 216(b).

Subchapter 6, Fees, was adopted as new rules by R.1974 d.221, effective August 9, 1974. See: 6 N.J.R. 254(c), 6 N.J.R. 342(a).

Subchapter 7, Miscellaneous Fees, was adopted as new rules by R.1975 d.120, effective May 14, 1975. See: 7 N.J.R. 126(c), 7 N.J.R. 247(c).

Subchapter 9, Home Mortgage Disclosure, was adopted as new rules by R.1977 d.308, effective August 22, 1977. See: 9 N.J.R. 303(c), 9 N.J.R. 405(c).

Subchapter 11, Restrictions on Loans Involving Affiliated Persons, was adopted as new rules by R.1977 d.471, effective December 15, 1977. See: 9 N.J.R. 404(b), 10 N.J.R. 3(c).

Subchapter 10, Restrictions on Real Property Transactions, was adopted as new rules by R.1978 d.55, effective February 21, 1978. See: 9 N.J.R. 404(c), 10 N.J.R. 92(c).

Subchapter 12, Multiple Party Deposit Accounts, was adopted as new rules by R.1980 d.480, effective November 1, 1980. See: 12 N.J.R. 378(c), 12 N.J.R. 686(d).

Subchapter 14, Revolving Credit Equity Loans, was adopted as R.1983 d.378, effective September 19, 1983. See: 15 N.J.R. 1147(a), 15 N.J.R. 1575(b).

Pursuant to Executive Order No. 66(1978), Subchapter 9, Home Mortgage Disclosure, was readopted effective August 26, 1983 as R.1983 d.379. See: 15 N.J.R. 1146(a), 15 N.J.R. 1575(a).

Subchapter 13, Insurance Activities, was adopted as R.1983 d.566, effective December 5, 1983. See: 15 N.J.R. 820(a), 15 N.J.R. 2033(a).

Pursuant to Executive Order No. 66(1978), Subchapter 10, Restrictions on Real Property Transactions, was readopted as R.1984 d.63, effective March 19, 1984. See: 16 N.J.R. 2(a), 16 N.J.R. 520(a).

Pursuant to Executive Order No. 66(1978), Subchapter 12, Multiple Party Deposit Accounts, was readopted as R.1985 d.660, effective January 6, 1986. See: 17 N.J.R. 2488(a), 18 N.J.R. 77(b).

Subchapter 15, Availability of Funds, was adopted as R.1986 d.73, effective March 17, 1986. See: 18 N.J.R. 13(a), 18 N.J.R. 553(a).

Subchapter 16 was adopted as R.1989 d.191, effective April 17, 1989, operative July 16, 1989. See: 20 N.J.R. 1021(b), 21 N.J.R. 981(c).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Provisions, was readopted as R.1991 d.48, effective January 4, 1991. See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Subchapter 17, Automated Teller Machines (ATM), was adopted as R.1991 d.244, effective May 6, 1991. See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).

Subchapter 18, Foreign Banks and Associations; Registration of Service Facilities, was adopted as R.1991 d.347, effective July 1, 1991. See: 23 N.J.R. 1233(a), 23 N.J.R. 2029(a).

Subchapter 19, New Jersey Consumer Checking Accounts, was adopted as R.1992 d.303, effective August 3, 1992. See: 24 N.J.R. 1667(a), 24 N.J.R. 2710(a).

The Executive Order No. 66(1978) expiration date for Chapter 1, General Provisions, was extended by gubernatorial directive from January 4, 1996 to April 4, 1996. See: 28 N.J.R. 815(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Provisions, was readopted as R.1996 d.168, effective March 6, 1996. See: 28 N.J.R. 3(a), 28 N.J.R. 1830(a).

Pursuant to Executive Order No. 66(1978), Subchapter 5, Mortgage Applicant's Birth Control Practices, expired on April 4, 1996.

Subchapter 20, Requests for Disclosure of Social Security Numbers, was adopted as new rules by R.1997 d.185, effective May 5, 1997. See: 29 N.J.R. 284(a), 29 N.J.R. 1691(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Provisions, was readopted as R.2001 d.112, effective March 6, 2001, and Subchapter 8, Credit or Loan Applications, was repealed by R.2001 d.112, effective April 2, 2001. See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Subchapter 7, Miscellaneous Fees, was renamed Miscellaneous by R.2006 d.233, effective June 19, 2006. See: 38 N.J.R. 5(a), 38 N.J.R. 2671(a).

Chapter 1, General Provisions, was readopted as R.2006 d.246, effective June 8, 2006. See: Source and Effective Date. See, also, section annotations.

Subchapter 4, Governmental Unit Deposit Protection, was repealed by R.2010 d.253, effective November 1, 2010. See: 42 N.J.R. 1447(a), 42 N.J.R. 2605(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, General Provisions, was scheduled to expire on June 8, 2013. See: 43 N.J.R. 1203(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 1, General Provisions, was scheduled to expire on December 5, 2013. See: 43 N.J.R. 1294(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. INTEREST AND USURY

- 3:1-1.1 Interest rates
- 3:1-1.2 Interest rates; other loans

SUBCHAPTER 2. PROCEDURAL RULES

- 3:1-2.1 Definitions
- 3:1-2.2 Charter applications
- 3:1-2.3 Branch applications of depositories
- 3:1-2.4 Branch application of out-of-State banks and out-of-State associations
- 3:1-2.5 Charter applications; notice and publication
- 3:1-2.6 Branch applications; notice and publication
- 3:1-2.7 Charter applications; objections and hearings
- 3:1-2.8 Branch applications; objections and oral presentations
- 3:1-2.9 Insufficiency of data in support of application; hearing
- 3:1-2.10 Oral presentations
- 3:1-2.11 Failure of party requesting oral presentation to appear
- 3:1-2.12 Minibranches; space limitation
- 3:1-2.13 Prehearing conference
- 3:1-2.14 Procedure for oral presentation
- 3:1-2.15 Closing of branch offices
- 3:1-2.16 Officially recognized data sources
- 3:1-2.17 Applications; copies
- 3:1-2.18 Charter applications; conditions for approval
- 3:1-2.19 Minimum and maximum stock subscriptions
- 3:1-2.20 Criteria for branch approval: Public interest
- 3:1-2.21 Criteria for branch approval: Compliance with Community Reinvestment Act
- 3:1-2.22 Charter conversions
- 3:1-2.23 Fees; banks and savings banks
- 3:1-2.24 Fees, State associations
- 3:1-2.25 Relaxation or dispensation of requirements of subchapter
- 3:1-2.26 (Reserved)

SUBCHAPTER 3. MORTGAGE LOANS IN DISASTER AREAS

- 3:1-3.1 Definitions
- 3:1-3.2 Duties of Commissioner
- 3:1-3.3 Emergency mortgage powers exercisable by financial institutions
- 3:1-3.4 Preliminary requirements
- 3:1-3.5 Limitations

SUBCHAPTERS 4 THROUGH 5. (RESERVED)

SUBCHAPTER 6. FEES

- 3:1-6.1 through 3:1-6.4 (Reserved)
- 3:1-6.5 Annual review
- 3:1-6.6 Examination charge and per diem rate
- 3:1-6.7 Failure to pay fees or examination charges

SUBCHAPTER 7. MISCELLANEOUS

- 3:1-7.1 Name change
- 3:1-7.2 Duplicate licenses and certificates
- 3:1-7.3 Requests for certificate of standing, licensee verification, licensing statutes and licensee listings
- 3:1-7.4 Address and official e-mail address change
- 3:1-7.5 Fees subject to review
- 3:1-7.6 Penalty for late filing of annual reports and/or late payment of assessments

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. HOME MORTGAGE DISCLOSURE

- 3:1-9.1 Authority; scope; enforcement
- 3:1-9.2 Definitions

- 3:1-9.3 through 3:1-9.6 (Reserved)
- 3:1-9.7 Violations of the Act
- 3:1-9.8 Powers of the Commissioner; investigations and hearings
- 3:1-9.9 Orders; grounds; content; hearing; service
- 3:1-9.10 Investigatory hearings; presiding officer
- 3:1-9.11 Presiding officer's powers
- 3:1-9.12 Investigatory hearing procedure
- 3:1-9.13 Report of presiding officer
- 3:1-9.14 Exceptions to report of presiding officer
- 3:1-9.15 Decision by the Commissioner
- 3:1-9.16 Continued violation of Act; penalty
- 3:1-9.17 Notice of charges; continued violation of Act
- 3:1-9.18 through 3:1-9.19 (Reserved)

SUBCHAPTER 10. RESTRICTIONS ON REAL PROPERTY TRANSACTIONS

- 3:1-10.1 Definitions
- 3:1-10.2 Application required on real property transactions
- 3:1-10.3 Approval of denial of real estate applications
- 3:1-10.4 Objectors and hearings

SUBCHAPTER 11. RESTRICTIONS ON LOANS INVOLVING AFFILIATED PERSONS

- 3:1-11.1 Definitions
- 3:1-11.2 Prohibition

SUBCHAPTER 12. MULTIPLE PARTY DEPOSIT ACCOUNTS

- 3:1-12.1 Definitions
- 3:1-12.2 Types of contracts
- 3:1-12.3 Type of accounts
- 3:1-12.4 Specific content of deposit contract
- 3:1-12.5 Additional provisions
- 3:1-12.6 Change in contract
- 3:1-12.7 Copy of contract
- 3:1-12.8 Limitation of subchapter
- 3:1-12.9 Effective dates

SUBCHAPTER 13. INSURANCE ACTIVITIES

- 3:1-13.1 Insurance tie-in prohibition
- 3:1-13.2 (Reserved)

SUBCHAPTER 14. REVOLVING CREDIT EQUITY LOANS

- 3:1-14.1 Authorization
- 3:1-14.2 Revolving credit equity loan agreement
- 3:1-14.3 Terms of agreement
- 3:1-14.4 Notification of changes
- 3:1-14.5 Interest
- 3:1-14.6 Methods of computing interest

SUBCHAPTER 15. AVAILABILITY OF FUNDS

- 3:1-15.1 Definitions
- 3:1-15.2 Compliance with Federal law
- 3:1-15.3 through 3:1-15.8 (Reserved)

SUBCHAPTER 16. MORTGAGE LOANS, FEES, OBLIGATIONS

- 3:1-16.1 Definitions
- 3:1-16.2 Fees
- 3:1-16.3 Application process
- 3:1-16.4 Lock-in agreements
- 3:1-16.5 Commitment process
- 3:1-16.6 Expiration of lock-in or commitment
- 3:1-16.7 Closing
- 3:1-16.8 Trust funds
- 3:1-16.9 No private right of action
- 3:1-16.10 Special rules for brokers
- 3:1-16.11 through 3:1-16.12 (Reserved)

3. If the branch site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2; and

4. All other documentation required of a specific applicant by the Commissioner, or which the applicant wishes the Department to consider.

(d) An application by a depository to interchange a branch office and a principal office shall contain the following items before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and the location of each office involved in the applied for interchange;

2. An original certification of a copy of the resolution authorizing the application; and

3. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(e) The Commissioner may return to the applicant any branch application which does not comply with (a), (b), (c), or (d) above.

(f) The Commissioner shall accept or reject a branch application within one year after the applicant submits the application. The failure of the applicant to provide all necessary information within one year shall constitute sufficient grounds to reject the application. The Commissioner may extend the one-year limitation when the applicant is not substantially at fault for the delay.

(g) A depository that directly or through a predecessor bank, savings bank or State association by merger or other reorganization has been in business for at least three years, and which is well capitalized, adequately managed, and if applicable, has received in its most recent examination under the "Community Reinvestment Act of 1977," 12 U.S.C. §§ 2901 et seq., a rating of not less than "satisfactory record of meeting community credit needs," or its equivalent, may apply for expedited branch office approval for full branch, mini-branch, relocation, auxiliary and interchange applications by filing for such expedited approval with the Commissioner. The application shall contain:

1. A certification by the depository, in a form specified by the Commissioner, that recites the following:

i. The depository meets the criteria set forth in (g) above;

ii. The depository is entitled to request expedited processing and does request such processing;

iii. Information identifying each principal office of a State-chartered bank, savings bank or savings and loan association which has been open for less than three years and is located in the trade area of the applicant's proposed branch office;

iv. The cost of the proposed branch office and whether the investment in the office complies with the limitations set forth in N.J.S.A. 17:9A-24(13) or 17:12B-166; and

v. A statement that the transaction complies with N.J.A.C. 3:1-10.1 et seq. regarding the interests of any executive officers, directors, managers and others in the premises, if any.

(h) The Department may remove an accepted application from expedited review if it presents a significant supervisory or compliance concern, or it raises a significant legal or policy issue requiring additional review.

(i) An accepted application for expedited processing shall be deemed approved on the 30th day after receipt by the Commissioner, unless approved or denied earlier by the Commissioner in writing, who as part of the application shall consider whether the interests of the public will be served to advantage by the establishment of such branch.

Amended by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Substantial changes in section.

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Objection and request for oral presentation; time for filing; content".

Amended by R.1993 d.258, effective June 7, 1993.

See: 25 N.J.R. 1033(a), 25 N.J.R. 2248(a).

Deleted (a)10 and redesignated existing (a)11 to (a)10.

Amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (a), (b), (c) and (d), inserted "items" following "following"; in (b) and (c), deleted former 5 and recodified former 6 as 5; added (g).

Amended by R.2004 d.50, effective February 2, 2004.

See: 35 N.J.R. 4350(a), 36 N.J.R. 647(a).

Rewrote (g)1; added (h); recodified former (g)2 as (i), deleted the first sentence and substituted "An accepted application for expedited processing shall" for "An application shall".

Amended by R.2006 d.233, effective June 19, 2006.

See: 38 N.J.R. 5(a), 38 N.J.R. 2671(a).

Deleted former (a)2 and recodified (a)3 through (a)6 as (a)2 through (a)5; deleted former (b)2 and recodified (b)3 through (b)5 as (b)2 through (b)4; deleted former (c)2 and recodified (c)3 through (c)5 as (c)2 through (c)4; and deleted former (d)2 and recodified (d)3 through (d)4 as (d)2 through (d)3.

Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. *In re Orange Savings Bank*, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

A hearing on a branch banking application is neither required by constitutional right nor by statute. *Atty.Gen.F.O.1979*, No. 6.

3:1-2.4 Branch application of out-of-State banks and out-of-State associations

(a) An application by an out-of-State bank that has no branch offices in New Jersey to acquire a branch office in this State shall contain the following items:

1. A completed current application form, containing the name of the depository, the name of the depository selling the branch and the location of the applied for branch;
2. The required application filing fee;
3. An opinion of counsel that the out-of-State bank is authorized to acquire a branch in New Jersey;
4. If the out-of-State bank intends to immediately relocate the branch to a new location in this State, the exact location of the proposed relocation; and
5. A copy of the application filed with the home state regulator.

(b) An out-of-State bank or out-of-State association, that has at least one branch office in this State, may establish additional branch offices in this State by filing a notice with the Department, so long as the out-of-State bank or out-of-State association is adequately capitalized, will be adequately capitalized and managed after the branch is established and has achieved sufficient compliance with the Community Reinvestment Act. The out-of-State bank or out-of-State association shall send notice to the New Jersey Bankers Association, and the New Jersey League of Community Bankers, or their successor organizations, if any, for publication in their weekly bulletins.

New Rule, R.1996 d.483, effective October 7, 1996.
See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.4, "Charter applications; notice and publication", recodified to 3:1-2.5.

Amended by R.2001 d.112, effective April 2, 2001.
See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Substituted "that" for "which" throughout; in (a) and (c), inserted "items" following "following"; in (b), inserted "League" preceding "Community and Savings Bankers" and substituted ", and/or their successor organizations, if any," for "and the New Jersey Savings League".

Amended by R.2004 d.50, effective February 2, 2004.

See: 35 N.J.R. 4350(a), 36 N.J.R. 647(a).

In (b), inserted the second sentence.

Amended by R.2006 d.246, effective July 3, 2006.

See: 38 N.J.R. 1493(a), 38 N.J.R. 2795(a).

In (c)1, added "and"; deleted former (c)2; and recodified former (c)3 as present (c)2.

Amended by R.2006 d.287, effective August 7, 2006.

See: 38 N.J.R. 1627(a), 38 N.J.R. 3160(a).

In (b), substituted "The" for "The Department shall post the notice on the Department's website at www.njdoib.org within a week of receipt. In addition, the", inserted "and" preceding "the New Jersey League of Community Bankers" and deleted "and" following "the New Jersey League of Community Bankers,"; and deleted (c).

3:1-2.5 Charter applications; notice and publication

(a) When a charter application is filed with the Department, the Department shall so advise, in writing, the New Jersey Bankers Association, and the New Jersey League

of Community Bankers, or their successor organizations, if any. Notice of receipt of the application shall also be posted on the Department's website at www.njdoib.org.

(b) When the Department finds that a charter application is complete, the Department shall send notice to the applicant setting forth a hearing date. The Department shall also post notice of the hearing on the Department's website at www.njdoib.org within one week of sending the notice. In addition, the Department shall advise through a notice, electronically or in writing, the New Jersey Bankers Association, and the New Jersey League of Community Bankers, or their successor organizations, if any, of the hearing date. The notice shall also contain a statement that an objection, if any, shall be filed with the Department no later than 10 business days prior to the scheduled hearing date and list the requirements for an objection to be considered by the Department as set forth at N.J.A.C. 3:1-2.7(b).

(c) Within 10 calendar days after notification of the formal hearing date for any charter application, the applicant shall publish notice of the application once a week for four successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said charter is proposed to be established, or if there be no such newspaper, then in a newspaper of general circulation in the municipality.

(d) The notice shall contain the following:

1. The names of the incorporators;
2. The name and mailing address of the applicant;
3. The proposed location of the principal office;
4. The amount of capital stock and surplus, or the amount of capital deposits, whichever is applicable;
5. The hearing date; and
6. A listing of the requirements for an objection to be considered by the Department as set forth at N.J.A.C. 3:1-2.7(b) and a statement indicating that any objections to the application must be filed with the Department no later than 10 business days prior to the scheduled hearing date.

(e) The incorporators shall cause a copy of the notice in the form prescribed in (d) above to be forwarded to the chief executive officer of every banking institution having an office within five miles of the proposed location, and to such other offices as the Commissioner shall designate, not more than 10 calendar days after formal notification of the formal hearing date and at least three weeks before the scheduled hearing. Regarding applications of savings and loan associations, the incorporators shall also cause a copy of the notice in the form prescribed by (d) above to be forwarded to the chief executive officer of every savings and loan association having an office within the county where the principal office of the State association is to be located, if not within five miles.

Amended by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Deleted "Or Limited Facility Branch" and inserted "application".

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Objections to Minibranch applications".

Recodified from 3:1-2.4 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.5, "Branch applications; notice and publication", recodified to 3:1-2.6.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (a), inserted "League" preceding "Community and Savings Bankers" and substituted ", and/or their successor organizations, if any," for "and the New Jersey Savings League".

Amended by R.2004 d.50, effective February 2, 2004.

See: 35 N.J.R. 4350(a), 36 N.J.R. 647(a).

In (a), inserted the second sentence.

Amended by R.2006 d.287, effective August 7, 2006.

See: 38 N.J.R. 1627(a), 38 N.J.R. 3160(a).

Inserted present (a); redesignated former (a) through (d) as present (b) through (e); rewrote (b); in (d)4, deleted "and" from the end; in (b)5, substituted "date; and" for "dates." at the end; added (b)6; and in (e), substituted "(d)" for "(b)" two times.

3:1-2.6 Branch applications; notice and publication

(a) When a branch application is accepted, the Department shall send notice to the applicant and shall also post notice of the acceptance on the Department's website at www.njdo.org. The Department shall also advise, in writing, the New Jersey Bankers Association, and the New Jersey League of Community Bankers, or their successor organizations, if any, of the acceptance of the application. Each notice shall contain the following:

1. The name and mailing address of the applicant;
2. A brief statement of the nature of the application;
3. The precise location of the site involved in the particular application;
4. The date the Department accepted the application; and
5. The publication of notice shall also include the following statement:

"An individual, bank, savings bank or savings and loan association may object to any full branch or relocation application, and may request that an oral presentation be conducted. All such requests must be in writing and filed within 10 calendar days of the date of the Department's publication of notice of the accepted application on its website at www.njdo.org. Individuals or financial institutions interested in perfecting an objection or request for oral presentation should immediately consult the Department's procedural rules for guidance."

(b) The notice prescribed by (a) above shall be published on the Department's website.

Amended by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Deleted "a section 25 association branch".

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Oral presentation granted or denied".

Amended by R.1993 d.258, effective June 7, 1993.

See: 25 N.J.R. 1033(a), 25 N.J.R. 2248(a).

Revised (c).

Recodified from 3:1-2.5 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.6, "Charter applications; objections and oral presentations", recodified to 3:1-2.7.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (a) and (b), inserted "League" preceding "Community and Savings Bankers" and substituted ", and/or their successor organizations, if any" for "and the New Jersey Savings League"; deleted former (c).

Amended by R.2004 d.50, effective February 2, 2004.

See: 35 N.J.R. 4350(a), 36 N.J.R. 647(a).

Rewrote the section.

Amended by R.2006 d.287, effective August 7, 2006.

See: 38 N.J.R. 1627(a), 38 N.J.R. 3160(a).

In (a), deleted "and" following "the New Jersey League of Community Bankers,".

Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

3:1-2.7 Charter applications; objections and hearings

(a) An objection to a new charter application of a depositor, if any, shall be filed in the Department no later than 10 business days prior to the scheduled hearing date.

(b) To be considered by the Commissioner, an objection shall be in writing and shall contain:

1. A summary of the reasons for protest;
2. Facts supporting the protest, including relevant economic or financial data;
3. Any adverse effects on the objector which may result from the approval of the application;
4. An indication as to whether the objector intends to appear personally at the charter hearing. A fee of \$750.00 shall accompany a notice of intent to appear at a charter hearing, except that a non-profit public interest objector shall instead include a \$100.00 fee; and
5. A certification that the objection containing the information set forth in (b)1 through 4 above and a request for a copy of the application were mailed or delivered to the applicant, and proof of mailing or delivery to the applicant of the objection and request.

(c) Upon receipt of notice that an objection has been filed, an applicant shall, within five calendar days, forward and deliver to the objector copies of the application and all supportive data submitted relative to the application. The applicant shall file with the Commissioner proof of delivery to and receipt by the objector of this data. Within seven days after receiving this data, the objector may then file additional

comments with the Department regarding matters contained in the application, and shall send copies of all comments to the applicant.

(d) The Commissioner may determine not to consider the objection of any objector not complying with this section.

(e) The Commissioner may extend any time period set forth in this section to allow for an objection and/or for consideration of an objection by the applicant or the Department.

(f) A formal hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., shall be held on all charter applications where an objection(s) has been filed in accordance with this rule. Only those objectors which comply with this section shall be permitted to appear at the hearing.

(g) Where no complying objections have been filed, the hearing on the charter application shall not constitute a "contested case" under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The hearing shall be an investigative, fact-finding hearing. The hearing shall, at the Commissioner's discretion, be conducted by the Commissioner or his or her designee who shall report to the Commissioner and advise him or her on the matter delegated. The Commissioner shall make a determination or issue an order, based upon that advice and report, as he or she shall, in his or her discretion determine, and that determination or order shall have the same force and effect as if the Commissioner had conducted the hearing personally, and shall constitute a final agency decision.

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Charter applications; publication of hearing dates". Recodified from 3:1-2.6 and amended by R.1996 d.483, effective October 7, 1996

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.7, "Branch applications; objections and oral presentations", recodified to 3:1-2.8.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (a), substituted "from" for "of" following "five business days".

Amended by R.2006 d.287, effective August 7, 2006.

See: 38 N.J.R. 1627(a), 38 N.J.R. 3160(a).

Rewrote (a), (d) and (f); in the introductory paragraph of (b), inserted "shall"; in (b)4, substituted "intends to appear personally" for "will object"; rewrote (b)5; in (c), inserted commas preceding and following "within five calendar days"; and added (g).

3:1-2.8 Branch applications; objections and oral presentations

(a) An objection to a branch application must be filed with the Department within 10 days of the publication of the notice prescribed by N.J.A.C. 3:1-2.6(a) on the Department's website, or 30 days after that day if an extension is requested in writing within the 10-day period. An objection to a mini-branch application must be filed within 20 days after publication. An objection to an application to branch accepted as expedited as provided in N.J.A.C. 3:1-2.3(g) shall be filed not later than 10 days after publication of the notice as set forth above.

(b) An objection shall be in writing and contain:

1. A summary of the reasons for protest;
2. Facts supporting the protest, including relevant economic or financial data;
3. Any adverse effects on the objector which may result from approval of the application;
4. An indication as to whether the objector requests to have a branch hearing. A fee of \$750.00 shall accompany an application for a branch hearing, except that a non-profit public interest objector shall instead include a \$100.00 fee. If it is later determined that an oral presentation will not be held, the fee will be returned to each of the objectors requesting an oral presentation; and
5. Proof that the objection and a request for a copy of the application were mailed to the applicant.

(c) Upon receiving notice from the objector that an objection has been filed, an applicant shall within seven calendar days forward and deliver to the objector copies of the application and all supportive data submitted relative to the application. The applicant shall file with the Department proof of delivery to and receipt by the objector of this data. Within 14 calendar days after receiving data from the applicant, the objector may file additional comments with the Commissioner regarding matters contained in the application, and shall send copies of all comments to the applicant.

(d) Within 10 days after receiving final comments from an objector, the Commissioner shall notify the objector and the applicant as to whether the objection is substantial and will therefore be considered. An objection is substantial only if:

1. It is in writing and filed on time;
2. It contains a summary of the reasons for protest, a statement of the specific matters in the application to which the protestant objects and the reason for the objection, facts supporting the protest including relevant economic or financial data, and a summary of any adverse effects on the objector which may result from the approval of the application; and
3. It pertains to at least one of the criteria for approval.

(e) The applying depository may file an answer to any substantial objection within 15 days after receipt of written notice from the Commissioner that such protest is considered substantial by furnishing four copies of the answer to the Commissioner.

(f) The Department may grant a request for oral presentation on branch applications only if:

1. The objector requesting the oral presentation has filed and perfected an objection and oral presentation request in accordance with this section; and

Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding (citing former rule). In re Orange Savings Bank, 172 N.J. Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

Charter hearings for a capital stock association should be conducted by an administrative law judge, unless the commissioner of banking deems it appropriate to himself act as the hearing officer. Atty.Gen. F.O.1979, No. 15.

Branch banking proceedings are not contested cases within the meaning of the Administrative Procedure Act and need not be conducted by administrative law judges. Atty.Gen.F.O.1979, No. 6.

3:1-2.15 Closing of branch offices

(a) A bank, savings bank or savings and loan association shall notify the Department not less than 30 days before closing a full branch office. The institution shall include in this notice the following:

1. The name of the institution and the location of its principal office;
2. The location of the branch office which will be closed;
3. The prospective date of closing;
4. A statement of reasons leading to the decision to close the branch;
5. A map of the general area served by the branch showing all remaining branches of State or Federally chartered banks, savings banks and savings and loan associations within such area; and
6. A statement indicating the effect the branch closing will have on the availability of financial services in the area.

(b) If a bank, savings bank or savings and loan association acquires a branch or deposits of a branch from the Federal Deposit Insurance Corporation or has an option to purchase a branch, and closes it within 180 days, or if it sells a branch to another depository which operates the office as a branch, it may comply with this rule by filing a Certificate of Discontinuance with the Commissioner.

(c) A bank, savings bank or savings and loan association may submit to the Department a copy of the branch closing notice filed with its Federal regulator in lieu of the filings required by (a)1 through 4 above.

(d) Notice requirements for closing of branch offices are as follows:

1. Beginning within 10 calendar days after notification to the Department, the bank, savings bank or savings and loan association shall publish notice of the proposed closing once a week for two successive weeks in a

newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in the notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution.

2. A bank, savings bank or savings and loan association which notifies its customers of the branch closing in accordance with Federal law is exempt from the publication requirement in (d)1 above.

3. For at least 30 days prior to the branch closing, the bank, savings bank or savings and loan association shall conspicuously post notice of the proposed branch closing in the branch to be closed. This notice in the branch shall contain at least the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments regarding the closing of the branch may be made to the institution and to the Department along with the mailing address of the institution and the Department.

4. The notice requirements of this subsection shall not apply to a branch relocation within the same neighborhood where the customers served by the closed branch would be substantially unaffected by the move. In addition, the notice requirements of this subsection shall not apply to a consolidation of branches after a merger or acquisition if the branches are located in the same neighborhood and the nature of the business or customers served is not affected.

(e) If the Commissioner determines that there are valid concerns regarding the effect of the closing upon the local community, the Commissioner shall be authorized to conduct such meetings with the institution closing the branch, and with banks, savings banks, savings and loan associations, community leaders and others, as are necessary in his or her judgment to explore the effect of the branch closing on the community and the possibility of replacing such branch office with other adequate facilities.

(f) The Commissioner may suspend the notice requirements of this rule in the event of an emergency or a supervisory merger or acquisition, or when otherwise in the public interest.

(g) Banks, savings banks and savings and loan associations shall maintain a file in their principal office which is open to the public and which contains a description of any meetings or hearings which occurred pursuant to this section in the past two years.

Repealed by R.1988 d.472, effective October 3, 1988.
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).

Section "Fees; conversion from mutual to capital stock association" repealed.

New Rule, R.1991 d.392, effective August 5, 1991.

See: 23 N.J.R. 801(a), 23 N.J.R. 2305(a).

Amended by R.1991 d.523, effective October 21, 1991.

See: 23 N.J.R. 2208(b), 23 N.J.R. 3133(b).

Posting of closure notice in branch offices required; maintenance of file for public inspection, new (e).

Amended by R.1994 d.318, effective July 5, 1994.

See: 26 N.J.R. 883(b), 26 N.J.R. 2779(a).

Recodified from 3:1-2.17 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former section, "Population", repealed.

Recodified from N.J.A.C. 3:1-2.16 and amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (b), deleted "Resolution Trust Corporation or the" preceding "Federal Deposit Insurance Corporation"; in (d)3, substituted "regarding" for "to", "institution" for "Department" and "Department" for "institution". Former N.J.A.C. 3:1-2.15, Relaxation or dispensation of requirements of subchapter, repealed.

Amended by R.2006 d.287, effective August 7, 2006.

See: 38 N.J.R. 1627(a), 38 N.J.R. 3160(a).

In (b), deleted "along with the required fee" from the end; in (d)1, substituted "to" for "of" following "notification"; and in (f), substituted "of" for "on" following "requirements".

Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

3:1-2.16 Officially recognized data sources

(a) The Department shall take official notice of one or more of the following data sources to test the accuracy of data submitted in connection with applications and objections, to resolve factual discrepancies and to weigh the accuracy, reasonableness and applicability of documentary and oral evidence before it:

1. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Census of Housing (published decennially);

2. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Census of Population (published decennially);

3. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Census of Business (published every five years);

4. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Census of Manufacturers (published every five years);

5. Population Estimates for New Jersey—Official State Estimates, New Jersey Department of Labor and Work-

force Development, PO Box 056, Trenton, NJ 08625-0056, www.state.nj.us/labor/lra (published annually);

6. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Construction Review (published monthly);

7. New Jersey Department of Community Affairs, Division of Local Government Services, PO Box 800, Trenton, NJ, 08625, www.state.nj.us/dca/lgs, Annual Report (published annually);

8. New Jersey Department of Labor and Workforce Development, Division of Labor Planning and Analysis, PO Box 056, Trenton, NJ 08625-0056, www.state.nj.us/labor/lra, State of New Jersey-Residential Construction Authorized by Building Permits (published annually and available also on a monthly basis);

9. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Current Population Reports (published monthly);

10. United States Internal Revenue Service, 31 Hopkins Plaza, Baltimore, MD 21203, www.irs.ustreas.gov, Statistics of Income (published annually);

11. New Jersey Department of Community Affairs, Division of Local Government Services, PO Box 800, Trenton, NJ, 08625, www.state.nj.us/dca, United States Census Data for New Jersey Townships (provides tables of statistical information from the most recent United States Census paralleling those available for non-townships in printed census reports);

12. New Jersey Industrial Directory (published annually);

13. Local zoning ordinances and master plans;

14. Federal Deposit Insurance Corporation, 20 Exchange Place, New York, NY 10005, www.fdic.gov, Operating Banking Offices (published annually);

15. Federal Deposit Insurance Corporation, 20 Exchange Place, New York, NY 10005, www.fdic.gov, Bank Operating Statistics (published annually);

16. Federal Deposit Insurance Corporation, 20 Exchange Place, New York, NY 10005, www.fdic.gov, Changes Among Operating Banks and Branches (published annually);

17. Federal Deposit Insurance Corporation, 20 Exchange Place, New York, NY 10005, www.fdic.gov, Summary of Deposits in All Commercial and Mutual Savings Banks (published annually);

18. Federal Home Loan Bank Board, 101 Park Avenue, New York, NY 10178, www.fhlbny.com; Summary Savings Accounts by Geographic Area (published annually);

19. Thomson Financial Publishing, 4709 W. Gulf Road, Skokie, IL 60076, www.tfp.com, Polk's World Bank Directory (published semiannually);

20. Department of Agriculture, PO Box 330, Trenton, NJ 08625-0330, www.state.nj.us/agriculture, Soil Conservation Services Studies and Reports;

21. New Jersey Department of Labor, Division of Employment Security, PO Box 056, Trenton, NJ 08625-0056, www.state.nj.us/labor/lra, Covered Employment Trends (published annually and available on a monthly basis);

22. Various County Planning Board Reports, for example, population studies and projections, employment trends, industrial-commercial development studies, and so forth; and

23. New Jersey Department of Banking and Insurance, PO Box 325, Trenton, NJ 08625-0325, www.njdoib.org, Annual Report.

(b) Other officially noticeable data will be considered when applicable and relevant.

(c) Any applicant or objector(s) shall, simultaneously with the filing of an application or objection, indicate which of the foregoing sources they object to and detail in writing their reasons for objecting.

Amended by R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

(a): Stylistic revision; (a)22-23: Stylistic revision; deleted (a)24.

Recodified from 3:1-2.18 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.17, "Closing of branch offices", recodified to 3:1-2.16.

Recodified from N.J.A.C. 3:1-2.17 and amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Rewrote (a). Former N.J.A.C. 3:1-2.16, Closing of branch offices, recodified to N.J.A.C. 3:1-2.15.

Amended by R.2006 d.246, effective July 3, 2006.

See: 38 N.J.R. 1493(a), 38 N.J.R. 2795(a).

In (a)5 and (a)8, inserted "and Workforce Development"; in (a)11, substituted "www.state.nj.us/dca" for "www.nj.us/dca/dcahome.htm"; in (a)18, substituted "101 Park Avenue" for "7 World Trade Center, 22nd Floor" and "10178" for "10048-1185"; and in (a)19, substituted "www.tfp.com" for "www.tpf.com".

Amended by R.2006 d.287, effective August 7, 2006.

See: 38 N.J.R. 1627(a), 38 N.J.R. 3160(a).

The intent was to change the web address in (a)19 which was previously corrected at 38 N.J.R. 2795(a).

3:1-2.17 Applications; copies

An original and one copy of all submissions relative to any application shall be filed with the Department.

Recodified from 3:1-2.19 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.18, "Officially recognized data sources", recodified to 3:1-2.17.

Recodified from N.J.A.C. 3:1-2.18 by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Former N.J.A.C. 3:1-2.17, Officially recognized data sources, recodified to N.J.A.C. 3:1-2.16.

3:1-2.18 Charter applications; conditions for approval

(a) The Commissioner shall condition approval of a charter application by a depository on the following factors:

1. If the depository is authorized to take deposits, on the depository becoming a member of the Federal Deposit Insurance Corporation;

2. If the depository is a stock institution, it will issue and sell shares of its authorized capital stock in sufficient amount to raise its capital base before commencement of operations to at least the minimum amount set forth in N.J.A.C. 3:1-2.19, and will obtain prior approval from the Department for any person purchasing more than five percent of the authorized capital stock.

3. The depository shall comply with all requirements with respect to loans and transactions involving the depository and its directors, offices and other persons set forth in subtitles 1 and 2 of Title 17 of the New Jersey Statutes Annotated and Title 3 of the New Jersey Administrative Code, including, but not limited to, N.J.S.A. 17:9A-71, 17:9A-72, and 17:9A-195, and N.J.A.C. 3:1-11, 3:6-3, 3:6-15, and 3:7-5;

4. For the first three years after issuance of the certificate of authority, the depository shall obtain prior approval from the Commissioner before installing any person on the board of directors or employing any person with the depository in an executive officer position as defined in N.J.A.C. 3:6-3.1;

5. For the first three years after issuance of the certificate of authority, the depository shall maintain:

i. A tier I capital-to-assets ratio, as that ratio is defined in 12 C.F.R. § 325.2(k), that is at least eight percent of the bank's total assets unless prior written consent has been received from the Commissioner permitting a lower ratio; and

ii. A fully funded reserve;

6. The depository shall, during the period from the date of the decision approving the charter application until the date of the commencement of business, provide a monthly report to the Chief Examiner of Applications by the 10th calendar day of the month following the month being reported. The report shall include the following:

i. The depository's progress at raising capital;

ii. The depository's progress with respect to the construction of its facilities;

iii. A status report with respect to acquiring staffing and filling executive positions;

iv. A status report with respect to any other regulatory approvals that the depository is seeking;

v. A status report that summarizes the depository's monthly and total expenditures to date; and

vi. Any other matters that management deems relevant; and

7. Such other conditions for a specific applicant as the Commissioner identifies as appropriate.

Repealed by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 947(a), 16 N.J.R. 1967(a).

Section was "Sharing limited facility branch offices; notice, fee".

New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Recodified from 3:1-2.20 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.19, "Applications; copies", recodified to 3:1-2.18.

Amended by R.1998 d.336, effective July 6, 1998.

See: 30 N.J.R. 1112(a), 30 N.J.R. 2421(a).

Rewrote (a)3.

Recodified from N.J.A.C. 3:1-2.19 and amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (a), inserted "factors" at the end of the introductory paragraph, amended the N.J.A.C. reference in 2, substituted "New Jersey Statutes Annotated" for "Revised Statutes" in 3, deleted former 4 and recodified former 5 as 4, inserted a new 5, and substituted "identifies as" for "deems" in 6. Former N.J.A.C. 3:1-2.18, Applications; copies, recodified to N.J.A.C. 3:1-2.17.

Amended by R.2002 d.38, effective February 4, 2002.

See: 33 N.J.R. 3598(a), 34 N.J.R. 731(a).

In (a), substituted "If the" for "The" preceding "depository" and inserted "is a stock institution, it" following "depository" in 2, and rewrote 5.

Amended by R.2006 d.287, effective August 7, 2006.

See: 38 N.J.R. 1627(a), 38 N.J.R. 3160(a).

In (a)5ii, deleted "and" from the end; inserted new (a)6; and recodified former (a)6 as (a)7.

3:1-2.19 Minimum and maximum stock subscriptions

(a) Each charter application for a depository shall provide for stated capital of at least \$6,000,000. If the depository is a stock institution, capital shall include at least \$3,000,000 in capital stock, or such other amount as required by the Commissioner; except that an application for a charter for a trust company, which does not have authority to take deposits, may provide for a stated capital of \$2,000,000 in capital stock; and except that an application for a charter incident to the purchase of a failed institution or a branch or branches of a failed institution, may provide for stated capital of \$5,000,000, or more, or six percent of deposits acquired, whichever is greater, with at least \$2,500,000 in capital stock for a stock institution, so long as the depository agrees to raise additional capital to reach \$6,000,000 within one year following issuance of the Certificate of Authority while also satisfying the capital requirements set forth in N.J.A.C. 3:4.

(b) The incorporators of a depository shall subscribe to all stock listed as issued on the certificate of incorporation, which shall be at least 25 percent of the total capital required by (a) above.

(c) After a charter application is accepted, the balance of the capital stock, if any, shall be offered to the general public

in the area to be served by the depository. The proceeds of such sale shall be placed in escrow and remain in escrow and not released until the bank obtains a Certificate of Authority. The form of the escrow agreement shall be approved by the Department.

(d) On or after May 7, 2007, no individual may subscribe, directly or indirectly (which term shall include, but not be limited to, ownership of a holding company that owns a depository institution, and ownership through the individual's spouse, children, siblings or parents, or business associates acting in concert), for stock in excess of 24.9 percent of the total voting shares of the depository institution, either at formation of the depository or any time subsequent thereto, except where the acquisition is made pursuant to N.J.S.A. 17:9A-411b. Notwithstanding this restriction, the Commissioner may approve the direct or indirect ownership by an individual of more than 24.9 percent of the voting shares of a depository institution if he or she finds that such ownership will not be detrimental to the safety and soundness and proper corporate governance of the depository. In making this determination, the Commissioner shall consider, without limitation, whether:

1. There is a voting trust for the individual's shares in excess of 24.9 percent and whether there are appropriate rules governing the voting of the trust shares that limit the impact of the ownership in excess of 24.9 percent by providing for the independence of the voting of such shares;
2. There is a plan by which the individual will reduce his or her ownership to 24.9 percent or less over time;
3. The individual has experience in banking, and whether his or her involvement in banking institutions demonstrates an appropriate level of expertise in banking;
4. Management of the depository involved demonstrates an appropriate level of expertise in banking;
5. There are independent directors on the board, and if so, their percentage membership of the board;
6. There is a detailed corporate governance plan;
7. There is a policy in place to take detailed corporate minutes;
8. There is a policy in place for the recusal of the individual owner on matters affecting his or her personal interests related to the depository; and
9. There is a policy for review of insider transactions that is independent of the parties involved.

(e) The determination made pursuant to (d) above shall constitute a final agency decision.

Amended by R.1984 d.119, eff. April 16, 1984.

See: 16 N.J.R. 174(a), 16 N.J.R. 870(a).

Specific minimums deleted, Commissioner granted greater discretion; (d) deleted.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Rewrote the section.

Amended by R.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

In the first sentence, substituted "referenced" for "reference", deleted "in Schedule A or 3:1-7.2(c)1 in Schedule B" following "N.J.A.C. 3:1-7.1(a)1", inserted "and" preceding "surrender", deleted "and pay to the Department an address change fee of \$75.00" following "affected license or licenses" and substituted "cashers" for "cashiers"; deleted "and fees" following "documentation" in the second sentence; and in the third sentence, substituted "With the exception of check cashers, while" for "While"; deleted "new" preceding "license or licenses" and inserted "reflecting the new address"; substituted "is" for "and fees are"; deleted "biennial" preceding "licensing period" and inserted "if any".

Amended by R.2008 d.178, effective July 7, 2008.

See: 40 N.J.R. 1399(a), 40 N.J.R. 3989(a).

Section was "Address change". Inserted designation (a); in (a), substituted "Licensed lenders and each" for "Every" and updated the N.J.A.C. references; and added (b).

Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).

See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).

In (a) and (b), substituted "Each" for "Licensed lenders and each" and deleted "(b)" following "3:23-2.1".

3:1-7.5 Fees subject to review

The fees in the schedules of this subchapter shall be subject to periodic review and shall be increased or decreased in accordance with the cost of the services performed by the Department.

Recodified from N.J.A.C. 3:1-7.4 by R.1989 d.407, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2398(a).

Adopted concurrent proposal R.1989 d.510, effective August 31, 1989.

See: 21 N.J.R. 2398(a), 21 N.J.R. 3082(a).

Provisions of emergency amendment R.1989 d.407 readopted without change.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Inserted "cost of the" preceding "services performed".

3:1-7.6 Penalty for late filing of annual reports and/or late payment of assessments

(a) Business licensees under the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. (RMLA), licensees under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43 (CFLA), motor vehicle installment sellers, home repair contractors, home financing agencies, check cashers, money transmitters, debt adjusters, foreign money transmitters, pawnbrokers, insurance premium finance companies, foreclosure consultants, or any other licensees who fail to file an annual report on a timely basis as specified below shall be subject to a penalty as specified in (c) below. With the exception of licensees under RMLA and CFLA, all licensees who file applications to renew their license after the license expiration date shall be subject to a penalty of \$50.00. Business licensees under RMLA and licensees under CFLA who file renewal license applications after the expiration of their licenses shall be subject to N.J.A.C. 3:15-2.7 and 3:17-2.6, respectively, including any penalties specified therein. Individual licensees under RMLA

who file renewal license applications after the expiration of their license shall be subject to N.J.A.C. 3:15-2.15.

1. Annual reports filed electronically will be deemed late if received after the date set in N.J.A.C. 3:23-4.1 of the year following the calendar year covered by the annual report.

2. Annual reports filed by hard copy shall be considered late if mailed or shipped with an overnight delivery service after March 1 of the year following the calendar year covered by the annual report. Hard copy reports may only be filed by licensees who have received an exemption from the Department pursuant to N.J.A.C. 3:23-4.2 prior to filing.

3. Annual reports found by the Department to be incomplete shall be deemed not filed.

4. Any report not filed by the date due, including those deemed not filed, shall be considered late and will be subject to penalty.

(b) A business licensee under the RMLA, a licensee under the CFLA, motor vehicle installment seller, home repair contractor, home financing agency, check casher, money transmitter, debt adjuster, foreign money transmitter, pawnbroker, insurance premium finance company, foreclosure consultants, and any other licensee that submits payment of the assessment imposed upon them pursuant to N.J.S.A. 17:1C-33 et seq. and N.J.A.C. 3:5 after the due date indicated on their assessment statement shall be subject to a penalty.

1. Assessments paid with a dishonored or returned check shall be considered unpaid until a replacement check is received by the Department.

2. Assessments not paid because a replacement check has not been received by the due date as required by (b)1 above shall be subject to a penalty.

(c) Unless otherwise prescribed by a statute applicable to a particular license type, a licensee who files an annual report after the date due as set forth in (a) above and/or whose assessment payment is unpaid as set forth in N.J.S.A. 17:1C-36, shall be subject to a penalty in accordance with the following:

1. For late filing of the annual report, the penalty shall be not more than \$100.00 per day.

2. For late payment of the assessment, the penalty shall be \$150.00 per day up to a maximum of 20 percent of the total assessment due.

(d) In addition to any monetary penalties, a license shall be subject to revocation for an assessment that remains unpaid after the due date indicated on the assessment statement and/or for failing to file an annual report by the due date.

(e) The imposition of penalties shall not prevent the Department from imposing further penalties on the licensee for transacting business without a license.

New Rule, R.1991 d.195, effective April 5, 1991.
 See: 23 N.J.R. 245(a), 23 N.J.R. 1125(a).
 Amended by R.1997 d.257, effective June 16, 1997.
 See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

In first sentence deleted reference to sales finance companies and inserted additional categories subject to penalty; and inserted second sentence.

Amended by R.2001 d.112, effective April 2, 2001.
 See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Rewrote the section.

Amended by R.2006 d.235, effective June 19, 2006.
 See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

Section was "Penalty for late filing". Rewrote the section.
 Amended by R.2007 d.306, effective October 1, 2007.
 See: 39 N.J.R. 2299(a), 39 N.J.R. 4111(a).

In the introductory paragraph of (a), deleted "\$50.00 per day" preceding the first occurrence of "penalty" and inserted "as specified in (c) below"; in the introductory paragraph of (c), substituted "an" for "a late", deleted "and/or whose assessment is unpaid" following "report", and inserted "and/or whose assessment payment is unpaid as set forth in N.J.S.A. 17:1C-36"; and in (c)1, substituted "not more than \$100.00" for "\$50.00".

Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).

See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).

Rewrote the introductory paragraph of (a); in (a)1, substituted "the date set in N.J.A.C. 3:23-4.1" for "April 1st"; and in the introductory paragraph of (b), substituted "business license under the RMLA, a licensee under the CFLA" for "licensed lender" and inserted a comma following "company".

Amended by R.2014 d.015, effective January 6, 2014.

See: 45 N.J.R. 969(a), 46 N.J.R. 65(a).

In the introductory paragraph (a) and of (b), inserted "foreclosure consultants,".

Former N.J.A.C. 3:1-9.1 through 9.9 held valid; N.J.A.C. 3:1-9.10 through 9.22 held invalid as they pertain to national banks. National State Bank, Elizabeth, N.J. v. Long, 469 F.Supp. 1068 (D.N.J.1979) supplemental opinion, modified 630 F.2d 981 (3rd Cir.1980).

3:1-9.2 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. 17:16F-1 et seq.

"Annual percentage rate" means the annual percentage rate of finance charge as calculated in accordance with Federal Reserve Board Regulation Z and its supplements.

"Applicant" means any person who files with a depository institution a written, or oral-in-person, request containing such information as is reasonably required by the depository institution for a mortgage loan as defined in this Act.

"Application" means a signed, completed application form submitted to a depository institution containing such information as required by that depository institution for reviewing a residential mortgage loan request or a home improvement loan request.

"Branch office" means any office approved as a branch of the depository institution by that depository institution's Federal or State supervisory agency. Branch office shall not include an office of a depository institution which is fully automated and solely operated by the customer.

"Census tract" means a geographic area as defined and approved by the United States Bureau of Census for statistical purposes. The census tract definitions to be used are those which have been approved for use in the 1980 Census of Population and Housing.

"Depository institution" means any banking institution as defined in N.J.S.A. 17:9A-1, any association as defined in N.J.S.A. 17:12B-5, or any State or Federal credit union, which makes mortgage loans. Any non-depository, majority-owned subsidiary of a depository institution shall be deemed to be part of its parent depository institution for the purposes of this subchapter. No depository institution may aggregate its reports with any other depository institution, subsidiary, affiliate, or otherwise.

"Federally guaranteed mortgage loans" means FHA, FmHA, or VA loans which are insured under Title II of the National Housing Act or under Title V of the Housing Act of 1949 or which are guaranteed under Chapter 37 of Title 38, United States Code.

"Home improvement loan" means a loan unsecured or secured by collateral other than a first lien on a residential real property:

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. HOME MORTGAGE DISCLOSURE

3:1-9.1 Authority; scope; enforcement

(a) This subchapter is promulgated pursuant to the provisions of N.J.S.A. 17:16F-11 and N.J.S.A. 17:1-8.1 et seq. This subchapter applies to depository institutions that make mortgage loans. Nothing in this subchapter is intended to, nor shall it be construed to, encourage unsound lending practices or the allocation of credit.

(b) Compliance with this subchapter and N.J.S.A. 17:16F-1 et seq. shall be enforced by the Commissioner of Banking and Insurance of the State of New Jersey.

Amended by R.2001 d.112, effective April 2, 2001.
 See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (a), substituted "N.J.S.A. 17:16F-11" for "Chapter I, Public Laws of 1977"; in (b), substituted "N.J.S.A. 17:16F-1 et seq." for "Chapter I, Public Laws of 1977"; substituted "subchapter" for "regulation" throughout.

Case Notes

Standby letters of credit rules cited; N.J.S.A. 17:9A-25(3) held not to limit letters of credit to a one year duration, but only to limit the duration of drafts drawn on such letters. National Surety Corp. v. Midland Bank, 551 F.2d 21 (3rd Cir.1977).

1. The proceeds of which, all or in part, are to be used for the purposes of repairing, rehabilitating, or remodeling an existing residential dwelling located in a State as stated by the borrower to the lender at the time of the loan transaction; or

2. That is recorded on the books of the depository institution as a home improvement loan; or