

TITLE 3

DEPARTMENT OF BANKING

CHAPTER 1

GENERAL PROVISIONS

Authority

N.J.S.A. 17:1-8; 17:1-8.1; 17:1B-2; 17:2A-1 et seq.; 17:9-41; 17:9A-11D et seq., 17:9A-24(a); 17:9A-24(b); 17:9A-25.2; 17:11A-54(a); 17:11B-5; 17:11B-13; 17:12B-20 et seq., 17:12B-48(21); 17:16F-11; 17:16I-16; and 17:16L-2.

Source and Effective Date

R.1991 d.48, effective January 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Executive Order No. 66(1978) Expiration Date

Chapter 1, General Provisions, will expire on January 4, 1996.

Chapter Historical Note

Chapter 1 was readopted pursuant to Executive Order No. 66(1978) by R.1991 d.48, effective January 4, 1991. See: Source and Effective Date.

See: Subchapter and section level annotations for specific rulemaking activities.

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SUBCHAPTER 1. INTEREST AND USURY

3:1-1.1 Interest rates

(a) The maximum rate of interest to be charged, taken or received upon a loan of any money, wares, merchandise goods and chattels, made on or after October 20, 1981, shall be six percent per annum, or shall be 16 percent per annum when there is a written contract specifying a rate of interest, except as herein or otherwise provided by law. Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended.

(b) The maximum rate of interest to be charged on loans secured by a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes, consummated on or after July 1, 1988, shall be at least six percent per annum but not more than the Monthly Index of Long Term United States Government Bond Yields, compiled by the Board of Governors of the Federal Reserve System and as published by said Board of Governors in the monthly Federal Reserve Bulletin, for the second preceding calendar month plus an additional 3.5 percent per annum rounded off to the nearest quarter of one percent per annum. Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended. Any provision in a mortgage commitment contracted prior to the effective date of this regulation providing for an increase in interest rates to be charged based on the highest lawful interest rate shall be null and void.

(c) Contracts for the following classes or types of loans may lawfully provide for any rate of interest which the parties agree upon, and interest at any such rate may lawfully be taken:

1. Loans in the amounts of \$50,000 or more, except loans where the security given is a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes. The rate of interest stated in such contract upon the origination of such loans may be taken notwithstanding that payments thereon reduce the amount outstanding to less than \$50,000;

2. Loans or advances of credit made by savings and loans associations, banking institutions or any Department of Housing and Urban Affairs or Federal Housing Administration approved mortgagees which are subsequently purchased, in whole or in part, by the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, and any successor thereof or by any organization authorized by the Emergency Home Finance Act of 1970 to purchase such loans or by any State or Federal governmental or quasi-governmental organizations.

3. If such loan is not purchased within 395 days from the date the loan instruments are executed, the maximum rate of interest which may be charged on such loan shall not be in excess of that authorized by the commissioner under the provisions of this section and such rate of interest, if in excess of that rate, shall be reduced to the rate in effect at the date of the execution of the loan instruments. No such reduction shall change the maturity date of the loan without the written consent of the borrower nor shall such reduction affect the lien of the mortgage which secures the loan.

(d) Nothing herein shall be construed as being applicable to loans which are subject to the Federal preemption of State usury laws contained in the Depository Institutions Deregulation and Monetary Control Act of 1980, H.R. 4986, Title V.

(e) The rates established herein shall be effective at 12:01 A.M., October 20, 1981, and shall remain in force until such time as this regulation is rescinded or until said rate or rates are revised by a subsequent regulation.

As amended, R.1973 d.191, eff. July 16, 1973.
See: 5 N.J.R. 258(b).
As amended, R.1973 d.366, eff. December 21, 1973.
See: 6 N.J.R. 50(b).
As amended, R.1974 d.132, eff. May 31, 1974.
See: 6 N.J.R. 255(b).
As amended, R.1974 d.140, eff. June 11, 1974.
See: 6 N.J.R. 255(b).
As amended, R.1974 d.247, eff. September 6, 1974.
See: 6 N.J.R. 387(b).

As amended, R.1975 d.21, eff. January 30, 1975.
See: 7 N.J.R. 94(b).
As amended, R.1976 d.240, eff. July 29, 1976.
See: 8 N.J.R. 412(a).
As amended, R.1976 d.404, eff. December 15, 1976.
See: 9 N.J.R. 4(a).
As amended, R.1978 d.204, eff. June 23, 1978.
See: 10 N.J.R. 315(a).
As amended, R.1979 d.190, eff. May 11, 1979.
See: 11 N.J.R. 270(c).
As amended, R.1980 d.151, eff. April 10, 1980.
See: 12 N.J.R. 249(b).

As amended on an emergency basis, R.1981 d.429, eff. October 20, 1981, exp. December 21, 1981. See: 13 N.J.R. 753(b). Readopted, R.1981 d.511, eff. December 22, 1981. See: 13 N.J.R. 753(b), 14 N.J.R. 101(c).

(a): "October 20, 1981" was "April 10, 1980"; "Six" percent was "8" percent; and "or shall be . . . rate of interest" added.

(b): "October 20, 1981" was "April 10, 1980"; "17" percent was "14½" percent.

(c): "October 20, 1981" was "April 10, 1980".
Amended by R.1988 d.282, effective June 20, 1988.
See: 19 N.J.R. 2089(a), 20 N.J.R. 1343(b).

Change "17" to "six" percent per annum. Added text to (b) "but not more . . . 1 percent per annum".

Authority

N.J.S.A. 31:1-1

Case Notes

Commissioner of Banking may, by regulation, establish the rate of interest on loans secured by a first lien on property. In re Stepanski, 20 B.R. 399 (Bankr.N.J.1982).

Mortgage interest rate computation rule cited; purchasers entitled to recover benefit of bargain damages where vendors breached executory contract to convey real property. Donovan v. Bachstadt, 91 N.J. 434, 453 A.2d 160 (1982).

3:1-1.2 Interest rates; other loans

(a) Notwithstanding any provisions of N.J.S.A. 31:1-1 or N.J.A.C. 3:1-1.1 and except as otherwise provided by law, any person may charge a rate of interest on any loan which rate does not exceed one percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank of New York on the date of the loan, at any time when that discount rate exceeds seven percent. Nothing in this subsection shall authorize any person to make any loan which is not authorized by law, nor shall anything in this subsection apply to loans secured by a first lien on real estate on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may also be used for non-residential purposes. Additionally, nothing in this subsection (a) shall be applicable to the exceptions contained in N.J.S.A. 31:1-1(e) and N.J.A.C. 3:1-1.1(c).

(b) Where in any law a rate of interest applicable to loans regulated by this section is referred to as that established by N.J.S.A. 31:1-1, the rate allowable shall be as established herein.

(c) The rate established herein shall be effective for loans made on or after 12:01 A.M., July 27, 1979.

R.1979 d.290, eff. July 27, 1979.
 See: 11 N.J.R. 429(b).
 Readoption: R.1984 d.397, filed August 16, 1984.
 See: 16 N.J.R. 1642(a), 16 N.J.R. 2356(a).

SUBCHAPTER 2. PROCEDURAL RULES

Authority

N.J.S.A. 17:1-8.1

Source and Effective Date

This subchapter was originally filed as R.1980 d.97, effective August 13, 1970. See: 2 N.J.R. 70(a). Subsequent amendments to this subchapter were filed as follows:

As amended, R.1973 d.191, eff. July 16, 1973.
 See: 5 N.J.R. 258(b).
 As amended, R.1973 d.217, eff. August 9, 1973.
 See: 5 N.J.R. 76(c), 5 N.J.R. 298(a).
 As amended, R.1973 d.281, eff. September 26, 1973.
 See: 5 N.J.R. 257(b), 5 N.J.R. 364(d).
 As amended, R.1973 d.342, eff. December 6, 1973.
 See: 5 N.J.R. 364(b), 6 N.J.R. 3(a).
 As amended, R.1973 d.366, eff. December 21, 1973.
 See: 6 N.J.R. 50(b).
 As amended, R.1974 d.132, eff. May 31, 1974.
 See: 6 N.J.R. 255(b).
 As amended, R.1974 d.140, eff. June 11, 1974.
 See: 6 N.J.R. 255(b).
 As amended, R.1974 d.247, eff. September 6, 1974.
 See: 6 N.J.R. 387(b).
 As amended, R.1974 d.298, eff. October 29, 1974.
 See: 6 N.J.R. 463(a).
 As amended, R.1975 d.21, eff. January 30, 1975.
 See: 7 N.J.R. 94(b).
 As amended, R.1975 d.155, eff. June 5, 1975.
 See: 7 N.J.R. 191(a), 7 N.J.R. 292(a).
 As amended, R.1976 d.83, eff. May 1, 1976.
 See: 8 N.J.R. 5(c), 8 N.J.R. 164(a).
 As amended, R.1976 d.240, eff. July 29, 1976.
 See: 8 N.J.R. 412(a).
 As amended, R.1976 d.244, eff. August 3, 1976.
 See: 8 N.J.R. 413(a).
 As amended, R.1976 d.305, eff. October 1, 1976.
 See: 8 N.J.R. 411(b), 8 N.J.R. 499(a).
 As amended, R.1976 d.312, eff. October 8, 1976.
 See: 8 N.J.R. 370(b), 8 N.J.R. 499(b).

As amended, R.1976 d.404, eff. December 15, 1976.
 See: 9 N.J.R. 4(a).
 As amended, R.1977 d.462, eff. December 12, 1977.
 See: 9 N.J.R. 451(c), 10 N.J.R. 2(b).
 As amended, R.1978 d.71, eff. February 27, 1978.
 See: 10 N.J.R. 2(a), 10 N.J.R. 137(a).
 As amended, R.1978 d.204, eff. June 23, 1978.
 See: 10 N.J.R. 315(a).
 As amended, R.1979 d.190, eff. May 11, 1979.
 See: 11 N.J.R. 270(c).
 As amended, R.1979 d.290, eff. July 27, 1979.
 See: 11 N.J.R. 429(b).
 As amended, R.1980 d.151, eff. April 10, 1980.
 See: 12 N.J.R. 249(b).
 As amended, R.1981 d.258, eff. July 9, 1981.
 See: 13 N.J.R. 182(a), 13 N.J.R. 382(b).

3:1-2.1 Definitions

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

“Bank” shall mean a New Jersey chartered bank, as defined in section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1), and shall include a limited purpose trust company.

“Banking institution” shall mean a depository, or a similar institution chartered by the Federal government or another state.

“Branch application” shall mean an application by a depository to establish a full branch or a minibranch office, or to relocate a principal office, full branch office or minibranch office, or to interchange a principal office and full branch office.

“Commissioner” shall mean the Commissioner of the New Jersey Department of Banking.

“Company” means any corporation, partnership, business trust, association or any other person except an individual.

“Controlling interest” means ownership or control of a majority of the issued and outstanding capital stock or securities of a corporation, having voting rights.

“Department” shall mean the New Jersey Department of Banking.

“Depository” shall mean a bank, savings bank or savings and loan association.

“Individual” shall mean a natural person.

"Savings and loan association" shall mean a New Jersey chartered savings and loan association, and shall include a capital stock association and a mutual association.

"Savings bank" shall mean a New Jersey chartered savings bank, and shall include a capital stock savings bank and a mutual savings bank.

Amended by R.1991 d.48, effective February 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Deleted "executed indicia of title" as an acceptable document.
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 "Applications; acceptance".

3:1-2.2 Charter applications

(a) Every applicant for a depository charter is required to file with the Department the following data in addition to the statutorily required certificate of incorporation and affidavits (see N.J.S.A. 17:9A-9, 17:12B-14 and 17:12B-246):

1. An economic feasibility study delineating the proposed trade area to be served by the applicant, as well as yearly deposit estimates for the first five years of operation;
2. A pro forma balance sheet and profit and loss statement which shall project the financial condition and net income or loss of the depository on an annual basis for a period of five years and shall indicate the anticipated break-even date, and a business plan for the depository;
3. Departmental forms completed by each incorporator and prospective officer and director containing biographical and financial information, and authorizations by such persons for background checks;
4. The required non-refundable application filing fee;
5. An indicia of title for the proposed site;
6. If the applicant has applied for a charter which includes the authority to accept deposits, a filed copy of an application to the Federal Deposit Insurance Corporation for deposit insurance;
7. The proposed directors' code of conduct governing activities both inside and outside the bank;
8. If the 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
9. All other information required of a specific applicant by the Commissioner.

(b) The Commissioner may return to the applicant any charter application which does not comply with (a) above.

(c) The Commissioner shall accept or reject a charter 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.

Amended by R.1991 d.48, effective February 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Changed name to N.J. Council of Savings Institutions.
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 "Notice; publication".

3:1-2.3 Branch applications

(a) An application by a depository to establish a branch office or a minibranch office shall contain the following before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and the location of the applied for branch or minibranch office;
2. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application;
4. A map of the trade area of the branch with all State and Federally chartered depositories marked thereon;
5. A copy of the depository's latest Consolidated Reports of Condition and Income as filed with the FDIC or Federal Reserve Board if a bank or a savings bank, or its latest OTS Thrift Financial Report statement of condition if a savings and loan association;
6. If the proposed transaction involves the acquisition of deposits from another banking institution:
 - i. Pro forma balance sheet projections reflecting the acquiring depository before and after the acquisition; and
 - ii. Projections of the ratio of Tier 1 capital to total assets of the depository before and after the acquisition;
7. An executed indicia of title to the proposed site, an agreement to purchase or a lease;
8. 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;
9. A copy of the depository's most recent Community Reinvestment Act Statement; and
10. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(b) An application by a depository to relocate a principal office, full branch office or minibranch office shall contain the following before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and both locations involved in the applied for relocation;

2. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application; and
4. A map of the trade area where the principal office, branch office or minibranch office will be located with all State and Federally chartered depositories marked thereon;
5. An executed indicia of title to the proposed site, an agreement to purchase or a lease;
6. 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;
7. If a savings and loan association, proof of newspaper publication as required by N.J.S.A. 17:12B-27.1; and
8. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(c) An application by a depository to interchange a branch office and a principal office shall contain the following 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. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application; and
4. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

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

(e) 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.

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.

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 Charter applications; notice and publication

(a) When a charter application is complete, the Department shall send written notice to the applicant setting forth a hearing date. In addition, the Department shall send written notice to the New Jersey Bankers Association, the New Jersey Council of Savings Institutions and the New Jersey Savings League for publication in their weekly bulletins.

(b) 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.

(c) 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; and
5. The hearing dates.

(d) The incorporators shall cause a copy of the notice in the form prescribed in (b) 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 (b) above to be forwarded to the chief executive officer of every banking 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".

3:1-2.5 Branch applications; notice and publication

(a) When a branch application is accepted, the Department shall send written notice to the applicant and to the New Jersey Bankers Association, the New Jersey Council of Savings Institutions and the New Jersey Savings League for publication. 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; and
4. The date the Department accepted the application.

(b) Notice prescribed by (a) above shall be published in the weekly bulletins of the New Jersey Bankers Association, the New Jersey Council of Savings Institutions, and the New Jersey Savings League in the week following acceptance thereof. The publication of notice shall also include the following statement:

"You are hereby advised that 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 if so requested in writing and if filed within 10 calendar days of the date of this bulletin. Individuals or financial institutions interested in perfecting an objection or request for oral presentation should immediately consult the Department's procedural rules for guidance."

(c) Within 15 days after receiving notification from the Department that the application was accepted, the applying depository shall publish notice of the application in a newspaper published within the municipality in which it proposes to locate the branch office if there is one, and if there is no such newspaper, in a newspaper published in the county and having a substantial circulation in the municipality. The notice shall contain the name and address of the applying depository, the proposed location and the statement contained in (b) above. The depository shall provide the Commissioner with proof of publication within 10 days after this publication.

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).

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.

3:1-2.6 Charter applications; objections and oral presentations

(a) An objection to a new charter application of a depository must be filed in the Department of Banking within five business days of the last day of publication or notice of application, or within 10 business days after receiving mailed notice from the applicant as provided in these rules, whichever is later.

(b) To be considered by the Commissioner, 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 the approval of the application;
4. An indication as to whether the objector will object at the charter hearing. A fee of \$750.00 shall accompany a notice of intent to appear at a charter hearing; and
5. Proof that the objection and a request for a copy of the application were mailed to the applicant.

(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 dismiss the objection of any objector not complying with this section, and may consider noncompliance by an applicant when considering the charter application.

(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 Procedures Act, N.J.S.A. 52:14B-1 et seq., shall be held on all charter applications. Only those objectors which comply with this section shall be permitted to appear at the hearing.

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".

3:1-2.7 Branch applications; objections and oral presentations

(a) An objection to a branch application must be filed with the Department within 10 days of the last day of

publication of notice, or 30 days after that day if an extension is requested in writing within the 10-day period. An objection to a minibranch application must be filed within 20 days after publication.

(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 applies to have a branch hearing. A fee of \$750.00 shall accompany an application for a branch hearing. 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 until 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 applications for branch application only if:

1. The objector requesting the oral presentation has filed and perfected an objection and oral presentation request; and
2. The objector requesting the oral presentation has presented sufficient reasons indicating that it is necessary and warranted and that the matter cannot be resolved on the papers.

(g) Notwithstanding (f) above, the Department may schedule a hearing or oral presentation on any application if deemed necessary or warranted under the circumstances.

(h) There shall ordinarily be no oral presentations on minibranch, communication terminal branch, auxiliary or limited facility branch office applications.

New Rule, R.1992 d.483, effective December 7, 1992.
See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Old section "Insufficiency of data in support of application; hearing" recodified to 2.8.

3:1-2.8 Insufficiency of data in support of application; hearing

(a) In any matter where the Department shall find that the applicant or objector has not filed sufficient data, information or material in support of or in opposition to a branch application or a charter application, the applicant or objector may be required to file supplementary data, information or material, or be subject to dismissal of the application or objection.

(b) All papers required to be filed must be received in the Department of Banking by close of business on the date due. If the due date falls on a weekend or holiday then the filing must be effected by close of business on the very next business day. Upon good cause shown extensions of time within which to file must be considered if requested in writing with notice to all parties at least five days prior to due date.

(c) Only that data required by rules or required by the Department will be considered.

Recodified from 3:1-2.8 and Amended by R.1992 d.483, effective December 7, 1992.

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

Revised (a); prior 2.8 "Notice of oral presentation" repealed.

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.

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.

3:1-2.9 Oral presentations

(a) If there is to be oral presentation, the Department shall notify the applicant and objector, if any, of the date, time, place and nature of the proceeding.

(b) Any oral presentation pursuant to the subchapter may be held before the Commissioner, or before any deputy commissioner, regulatory officer or any employee of the Department authorized by the Commissioner.

(c) Every oral presentation shall be open to the public unless the Commissioner shall determine that a private presentation would be in the public interest.

(d) Oral presentations on all applications, shall be strictly limited to a total of seven hours. The applicant shall be limited to three hours to present information in support of its application. The objectors shall be limited to two hours for the presentation of affirmative and rebuttal information. A shorter or longer time may be prescribed by the Department with prior notice to all parties.

(e) When multiple objectors appear through separate counsel, each shall be afforded a pro rata portion of the time allotted to objectors, unless otherwise agreed upon by all objectors.

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

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

Added new (a); redesignated existing (a)-(d) as (b)-(e).

Case Notes

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

3:1-2.10 Failure of party requesting oral presentation to appear

When the party requesting the oral presentation or having notified the Department of an intent to appear at a charter hearing fails to appear at a scheduled proceeding without sufficient reason therefor, such failure to appear shall be treated as a withdrawal of the objection and/or the request for an oral presentation. In the event that a party fails to appear at an oral presentation, any fees paid shall be retained by the State.

3:1-2.11 Minibranches; space limitation

(a) For the purpose of N.J.S.A. 17:9A-1(16), a bank shall be deemed to occupy the sum of the enclosed areas which it has leased or purchased in conjunction with an application to establish a minibranch, subject to the exceptions in (c) below.

(b) Occupied space shall include all enclosed customer, teller, work, storage, platform and employee lounge areas.

(c) Occupied space shall not include outside facilities such as drive-up or walk-up windows, apparatus or space; common entrance ways or areas which are shared with one or more other business entities; or restroom facilities.

(d) Applications for minibranches which occupy in excess of 500 square feet will be denied. The applicant for a minibranch shall have the burden of establishing that 500 or less square feet will be occupied.

3:1-2.12 Prehearing conference

(a) Prior to any hearing, or oral presentation, the regulatory officer may, in his/her discretion, direct all parties and counsel to appear before him/her for a prehearing conference for any or all of the following purposes:

1. Simplification and clarification of the issues;
2. Admission and stipulations of fact and of the contents and authenticity of documents; and
3. Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or in (b) below.

(b) Such conference, in the discretion of the regulatory officer, need not be recorded, but the regulatory officer enter in the record an order signed by the parties which recites the results of the conference. Such order, a copy of which shall be furnished to each party, shall include the regulatory officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties; and such order shall control the subsequent course of the proceedings unless notified at the oral presentation for good cause shown by appropriate order of the regulatory officer.

3:1-2.13 Procedure for oral presentation

(a) Both applicant and objector may raise issues and present information only if same have been affirmatively raised in the application, the objection, or the comprehensive objection. All other matters will be excluded unless the person presiding rules otherwise, and then only for good cause shown.

(b) All studies, reports or the like may be offered only if previously submitted to the Department and other interested persons pursuant to the presiding person's direction.

(c) The applicant and the objector shall each be permitted to make an opening statement, stating precisely what information they will present. The applicant and participants may then present witnesses, materials and data. Questions may be addressed to the applicants, objectors and witnesses after each of their presentations by the regulatory officer, applicant or objector. The applicant and objector

shall then concisely summarize their positions. Witnesses shall not be sworn.

(d) The applicant and objectors shall bear a pro rata share of the transcript costs for the transcripts required by the department and all other regulatory agencies requesting same.

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.

3:1-2.14 Priority

(a) When it appears that two or more applications will serve substantially the same trade area, the application which was first filed and complete will receive priority of decision.

(b) All contemporaneous applications which serve substantially the same trade areas will be considered and decided together, no applicant receiving priority of filing or decision.

(c) "Applications" shall mean and include all charter, branch minibranch, branch relocation and interchange applications by banks, savings banks and state associations which are filed and complete.

(d) Applications for offices which will serve substantially the same trade areas shall be considered "contemporaneous" only if the subsequent applications are filed and accepted within 10 days of publication of notice per N.J.A.C. 3:1-2.2 of the first application.

(e) An application with priority or an application which is considered contemporaneous may lose priority or status as a contemporaneous application if it is not diligently pursued or is otherwise unreasonably delayed as a result of its own action or inaction. Delays caused by other applicants or objectors shall not be held against an applicant.

(f) When the merits of contemporaneous applications for offices which will serve substantially the same trade areas are equal, the department will consider the order of filing.

As amended, R.1984 d.301, eff. July 16, 1984.

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

Deleted "manned limited facility branch".

3:1-2.15 Relaxation or dispensation of requirements of subchapter

In any instance where the commissioner or his designee shall determine that the foregoing requirements or procedures of this subchapter shall be unwarranted, inapplicable, unreasonable, unnecessary or not required, he may relax or dispense with the requirements of procedures established herein.

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.

3:1-2.16 Population

In determining the population of a municipality for the purpose of the branching requirements contained in N.J.S.A. 17:9A-19B(3) and N.J.S.A. 17:12B-26, Census of Population and Housing, United States Bureau of the Census, and Population Estimates for New Jersey, prepared by the New Jersey Department of Labor, Division of Planning and Research, Office of Demographic and Economic Analysis, shall be the sole authorities accepted by the Department of Banking. For the years 1980, 1990 and 2000 the official United States Bureau of Census figures will be the only source accepted.

Administrative Correction: Division of Planning and Research, Office of "Business Economics" changed to "Demographic and Economic Analysis".

See: 19 N.J.R. 1572(a).

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.

3:1-2.17 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 Resolution Trust Corporation or 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 merely filing a Certificate of Discontinuance with the Commissioner along with the required fee.

(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) Beginning within 10 calendar days after notification of 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. 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 this publication requirement. In addition, 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 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.

(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 on 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).

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.

3:1-2.18 Officially recognized data sources

(a) The Department will take official notice of one or more of the following data sources when testing the accuracy of data submitted in conjunction with applications and objections, when resolving factual discrepancies and when weighing the accuracy, reasonableness and applicability of documentary and oral evidence before it:

1. United States Department of Commerce, Bureau of the Census, Census of Housing (published decennially);
2. United States Department of Commerce, Bureau of the Census, Census of Population (published decennially);
3. United States Department of Commerce, Bureau of the Census, Census of Business (published every five years);
4. United States Department of Commerce, Bureau of the Census, Census of Manufacturers (published every five years);
5. Population Estimates for New Jersey—Official State Estimates, New Jersey Department of Labor and Industry (published annually);
6. United States Department of Commerce, Bureau of the Census, Construction Review (published monthly);

7. New Jersey Department of Community Affairs, Division of Local Government Services, Annual Report (published annually);

8. New Jersey Department of Labor and Industry, Division of Planning and Research, 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, Current Population Reports (published monthly);

10. United States Internal Revenue Service, Statistics of Income (published annually);

11. New Jersey Department of Community Affairs, Division of Local Services, United States Census Data for New Jersey Townships (provides tables of statistical information from the 1970 United States Census paralleling those available for nontownships in printed census reports);

12. New Jersey Industrial Directory (published annually);

13. Local zoning ordinances and master plans;

14. Federal Deposit Insurance Corporation, Operating Banking Offices (published annually);

15. Federal Deposit Insurance Corporation, Bank Operating Statistics (published annually);

16. Federal Deposit Insurance Corporation, Changes Among Operating Banks and Branches (published annually);

17. Federal Deposit Insurance Corporation, Summary of Deposits in All Commercial and Mutual Savings Banks (published annually);

18. Federal Home Loan Bank Board, Summary Savings Accounts by Geographic Area (published annually);

19. R.L. Polk & Co., Polk's World Bank Directory (published semiannually);

20. Department of Agriculture, Soil Conservation Series Studies and Reports;

21. New Jersey Department of Labor and Industry, Division of Employment Security 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, 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.

3:1-2.19 Applications; copies

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

3:1-2.20 Charter applications; conditions for approval

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

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

2. The depository will not merge, consolidate or sell, either directly or indirectly, with or to any other institution or holding company for five years after issuance of the certificate of authority unless the Commissioner, upon application and as a result of unusual circumstances, deems it advisable;

3. The depository 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. 3:1-2.21, and will obtain prior approval from the Department for any person purchasing more than five percent of the authorized capital stock;

4. The depository shall not make loans to directors of the depository, corporations in which a director has a controlling interest or in which a director together with one or more other directors has a controlling interest, partnerships in which a director is a general or limited partner, and persons owning over five percent of the depository or its holding company, for the first three years after issuance of the certificate of authority;

5. The depository for the first three years after issuance of the certificate of authority shall not offer deposits which yield more than 50 basis points above the highest rate offered by a depository in its trade area;

6. 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; and

7. Such other conditions for a specific applicant as the Commissioner deems 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).

3:1-2.21 Minimum and maximum stock subscriptions

(a) Each charter application for a depository shall provide for stated capital of at least \$6,000,000 which 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 stated capital of \$4,000,000 or more which shall include at least \$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 \$4,000,000 or more, or six percent of deposits acquired, whichever is greater, with at least \$2,000,000 in capital stock, 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) The balance of the capital stock, if any, shall be offered to the general public in the area to be served by the depository if and when the application is approved and under such terms and conditions as set forth in the Commissioner's Decision and Order.

(d) No individual shall subscribe for stock in excess of 24.9 percent of the total capital required by (a) above.

(e) No company may subscribe for stock in excess of 24.9 percent of the total capital required by (a) above, except a holding company that has registered in accordance with state and Federal law and regulations if required.

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.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Minimum changed from \$2,000,000 to \$7,000,000.

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

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

Revised heading and (a)-(c); added (d)-(e).

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

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

Revised (a).

3:1-2.22 Criteria for branch approval: Public interest

(a) In reaching a determination as to whether an applicant meets the requirement that "the interests of the public will be served to advantage by the establishment of such full

branch" (N.J.S.A. 17:9A-20A(2)) the Commissioner shall consider only the following factors:

1. The availability of the proposed office to the general public or that segment of the public to be served as the case may be;

2. The presence and experience of a newly-chartered institution or an institution subject to supervisory review by the Department within the trade area of the proposed office;

3. The conditions set forth in Departmental regulations regarding insider real estate transactions; if any and

4. The current financial condition of the applicant, including but not limited to, capital, asset quality, management, earnings and liquidity. The Department files with respect to the factors contained in this subsection shall be confidential (N.J.S.A. 17:9A-264) and shall not be open or available for review by either the applicant or objectors. The Commissioner's determination with respect to these factors shall be final.

(b) The number of existing institutions and the ability of existing institutions within the trade area of the proposed office to compete with the applicant shall not form a basis for denying the full branch approval.

R.1983 d.573, effective December 5, 1983.

See: 15 N.J.R. 1706(a), 15 N.J.R. 2032(b).

3:1-2.23 Criteria for branch approval: Promise of success

(a) In reaching a determination as to whether an applicant meets the requirements that a full branch office is afforded a "reasonable promise of success" (N.J.S.A. 17:9A-20A(3)) the Commissioner shall consider only the following factors:

1. The costs of purchasing, constructing, leasing or otherwise establishing the proposed office including the costs for staffing, furniture and equipment needed therefor; and

2. The effect of the costs outlined in (a)1 above on the operations of the applying institution as a whole.

(b) The applicant need not demonstrate an ability to operate the proposed office at a profit within a definable period of time based on the generation of new deposits from the market area to be entered except to the extent that losses suffered at the proposed office could affect the profitability or liability of the applicant's overall operations.

R.1983 d.573, effective December 5, 1983.

See: 15 N.J.R. 1706(a), 15 N.J.R. 2032(b).

3:1-2.24 Modification of Order and/or rehearing

(a) When an applicant seeks relief from or modification of an existing Order which restricts stock transfers entered pursuant to authority granted to the Commissioner the applicant shall submit the following:

1. A fee in the amount of \$500.00;
2. An original certification of a copy of a resolution of three-quarters of the duly constituted Board of Directors of the regulated institution approving the request for relief or modification;
3. A memorandum setting forth the grounds for the proposed modification or relief, and outlining the changes in circumstances or new information creating the need for relief.

(b) The Department shall notify the applicant of receipt of a complete application within 10 days, and shall publish notice of the proposed modification in the weekly associations' bulletins of the New Jersey Bankers Association, the New Jersey Council of Savings Institutions, and the New Jersey Savings League. In its notification to the applicant, the Department will advise whether the application on its face appears to require a hearing. If a hearing is deemed necessary, the notice will also indicate the hearing date, location, time, and the procedures to be followed. Upon receipt of such notice from the Department, the applicant shall then mail notice to all shareholders of the affected institution and provide proof of mailing. Said notice shall include: the applicant's name; a brief statement of the nature of the application; if a hearing has been set, its date, time, and location; and the procedure for shareholders to file objections.

(c) The Commissioner reserves the right at any stage in the approval process to order that a hearing shall be conducted. Such order will be transmitted to the applicant and to all objectors and will inform them of the hearing date, time, location, and the procedures to be followed.

(d) The following standards shall be used to determine if relief from the existing Order shall be granted:

1. Would the proposed change contravene the plan which was the subject of existing Order;
2. Would the proposed change have a negative effect on the subject institution, either through disruption of activities, turnover of key personnel, loss of public confidence, or otherwise;
3. Would the proposed change have a chilling effect on other similarly situated institutions;
4. Would the proposed change be fair and equitable to all shareholders;
5. Would the proposed change represent a change in the focus of the regulated institution's activities and create public harm;
6. Would the changes in circumstances render continued compliance with the existing Order burdensome and inequitable; and

7. Such other issues as the parties may deem necessary for a fair and equitable determination by the Commissioner based on all the relevant facts.

(e) In any instance where the Commissioner or his or her designee shall determine that the foregoing requirements or procedures of this section be unwarranted, inapplicable, unreasonable, unnecessary or not required, he or she may relax or dispense with any or all of the requirements and procedures established herein.

New Rule, R.1986 d.293, effective July 21, 1986.
Sec: 17 N.J.R. 2487(a), 18 N.J.R. 1453(a).

3:1-2.25 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

1. For filing an application for charter \$15,000
2. For filing an application for approval of the establishment of a full branch office \$1,500
3. For filing an application for approval of the establishment of a mini-branch office \$1,000
4. For filing an application for approval of the establishment of an automated teller machine \$500.00
5. For filing an application for approval of a change in location of principal office or full branch office \$500.00
6. For filing an application for approval of the cost of the establishment of an auxiliary office \$500.00
7. For filing an application for approval of an interchange between principal office and full branch office \$500.00
8. For filing an agreement of merger, per bank \$3,000
9. For filing plans of acquisition, per company, per bank or savings bank \$3,000
10. For filing an application for conversion:
 - i. From a mutual to a stock savings bank \$3,500
 - ii. From a savings bank to an association \$10,000
 - iii. From a savings bank to a bank \$10,000
 - iv. From a bank to a savings bank \$10,000
 - v. From a bank to a savings bank to an association in a simultaneous application \$10,000
11. For filing a copy of a plan of reorganization \$1,000
12. For the issuance by the Commissioner of a certificate of authority \$500.00
13. For filing a certificate of amendment of a certificate of incorporation, or an amended certificate of incorporation \$200.00
14. For filing any other certificate \$50.00
15. For filing a required report \$100.00
16. For filing a required affidavit \$50.00
17. For filing proof of publication, or other required proof \$50.00
18. For the issuance of a certified copy of any certificate of incorporation or merger or plan of reorganization or any other certificate or affidavit filed in the Department, plus \$2.00 per page \$25.00

- 19. For filing a pension plan\$500.00
- 20. For filing an amendment or alteration to a pension plan.....\$200.00
- 21. For the issuance of any other approval by the Commissioner, plus per diem charges where applicable\$100.00
- 22. For the issuance of any extension by the Commissioner, plus per diem charges where applicable\$50.00
- 23. For filing a certificate of discontinuance and/or closing a branch office\$100.00

(b) In addition to the fees in (a), a per diem charge may be assessed when a special investigation of a filing is required.

Emergency New Rule, R.1989 d.406, effective July 3, 1989 (expires September 1, 1989).
 See: 21 N.J.R. 2397(a).
 New Rule, R.1989 d.449, effective August 21, 1989.
 See: 21 N.J.R. 1601(b), 21 N.J.R. 2473(b).
 Amended by R.1991 d.244, effective May 6, 1991.
 See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).
 Change of term at (a)4., from "communication terminal branch office" to "automated teller machine."
 Amended by R.1991 d.294, effective June 17, 1991.
 See: 23 N.J.R. 929(b), 23 N.J.R. 1919(b).
 Added fee for conversion from a savings bank to an association.
 Amended by R.1994 d.208, effective May 2, 1994.
 See: 26 N.J.R. 286(a), 26 N.J.R. 1827(a).
 Amended by R.1994 d.318, effective July 5, 1994.
 See: 26 N.J.R. 883(b), 26 N.J.R. 2779(a).

3:1-2.26 Fees; State associations

(a) Every State association shall pay to the Commissioner the following fees:

- 1. Application to establish a mutual association\$7,500
- 2. Application to establish a stock association\$15,000
- 3. Application for a bulk sale, pursuant to N.J.S.A. 17:12B-204\$500.00
- 4. Application for a conversion:
 - i. From a mutual to a stock association\$3,500
 - ii. From an association to a savings bank\$10,000
 - iii. From an association to a savings bank to a bank in a simultaneous application\$10,000
- 5. Application for a merger:
 - i. Per insured association\$3,000
 - ii. Per institution when one or more is an uninsured association\$1,500
- 6. Application to establish a branch office, not pursuant to a merger or bulk purchase\$1,500
- 7. Application to establish an automated teller machine\$500.00
- 8. Application to interchange a principal and branch office when such interchange involves two separate municipalities\$500.00

- 9. Application to interchange a principal and branch office within the same municipality\$500.00
- 10. Application to change location of a principal office to another municipality.....\$500.00
- 11. Application to change location of branch office beyond 1,500 feet but within same municipality\$500.00
- 12. Application to change location of branch office to another municipality\$500.00
- 13. Application to share facilities.....\$100.00
- 14. Application for approval of a savings and loan holding company where the resulting holding company will own 100 percent of the insured association as its only capital through an exchange of stock\$2,000
- 15. Filing plans of acquisition, stock savings and loan and existing holding companies....\$3,000
- 16. Application for change of name\$50.00
- 17. Certification by the Commissioner of papers or records on file with the Department, plus \$2.00 per page for each certification\$25.00
- 18. Annual report or certificate\$50.00
- 19. Dissolution.....\$250.00
- 20. Filing of any other certificate.....\$50.00
- 21. Issuance of any other approval by the Commissioner, plus a per diem\$100.00
- 22. For filing a certificate of discontinuance and/or closing a branch office\$100.00

(b) In addition to the fees in (a) above, a per diem charge may be assessed when a special investigation of a filing is required.

Emergency New Rule, R.1989 d.406, effective July 3, 1989 (expires September 1, 1989).
 See: 21 N.J.R. 2397(a).
 New Rule, R.1989 d.449, effective August 21, 1989.
 See: 21 N.J.R. 1601(b), 21 N.J.R. 2473(b).
 Amended by R.1991 d.244, effective May 6, 1991.
 See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).
 Added new (a)7, establishing a \$500.00 fee for ATM application; recodified remaining paragraphs.
 Amended by R.1991 d.294, effective June 17, 1991.
 See: 23 N.J.R. 929(b), 23 N.J.R. 1919(b).
 Added fee for conversion from an association to a savings bank.
 Amended by R.1994 d.208, effective May 2, 1994.
 See: 26 N.J.R. 286(a), 26 N.J.R. 1827(a).
 Amended by R.1994 d.318, effective July 5, 1994.
 See: 26 N.J.R. 883(b), 26 N.J.R. 2779(a).

SUBCHAPTER 3. MORTGAGE LOANS IN DISASTER AREAS

Subchapter Historical Note

Subchapter 3 was adopted by the Commissioner of Banking pursuant to authority delegated at N.J.S.A. 17:2A-1 et seq. and was filed and became effective prior to September 1, 1969. See also Chapter Historical Note.

3:1-3.1 Definitions

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

"Commissioner" means the Commissioner of the Department of Banking of the State of New Jersey or his duly authorized deputy or representative.

"Disaster area" means any area of the State of New Jersey which has been proclaimed to be a disaster by the President of the United States or the Governor of New Jersey, or by any official lawfully succeeding to their respective duties or duly authorized to act for them.

"Financial institution" means any bank, savings bank, savings and loan association, building and loan association or insurance company which is organized under the laws of this State or is authorized to do business and is doing business under the laws of this State and which is subject to the supervision of the Department of Banking of the State of New Jersey.

"Mortgage loan" means any loan made by a financial institution which is secured by a mortgage constituting a lien upon real property or upon a leasehold interest in the fee of real property. Such a mortgage loan may be an existing mortgage loan or part interest thereof purchased or otherwise acquired by a financial institution constituting a lien upon real property or upon a leasehold interest in the fee of real property.

"Period of emergency" means a period of time terminating one year from the date upon which an area was proclaimed to be a disaster area. Such period of time may be extended for not more than six months from the termination date thereof if the Commissioner shall find that emergency conditions affecting mortgage loans still prevail within a disaster area.

3:1-3.2 Duties of Commissioner

(a) When any area of this State has been proclaimed to be a disaster area, the Commissioner shall investigate and review conditions in the disaster area to determine the extent of destruction and damage to real property and to determine whether or not real property which has been destroyed, damaged or materially affected by the disaster is subject to mortgage liens securing mortgage loans by any financial institution.

(b) If the Commissioner determines that real property within the disaster area, constituting the security of mortgage loans held by financial institutions has been destroyed, damaged or materially affected by the disaster, he may authorize financial institutions to exercise emergency mortgage powers as enumerated in N.J.A.C. 3:1-3.3 Emergency mortgage powers exercisable by financial institutions.

(c) The Commissioner shall authorize the exercise of such emergency mortgage powers by declaring this subchapter to be immediately operative and effective and said declaration shall be announced publicly and circulated in newspapers and financial publications throughout the State.

(d) When any financial institution shall exercise or use any emergency mortgage powers, as enumerated in this subchapter, the Commissioner shall ascertain and determine in connection with and as part of the usual examinations and audits conducted by the Department of Banking concerning the affairs, conditions and status of such financial institutions, whether such financial institution has complied with the requirements enumerated in N.J.A.C. 3:1-3.3.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Internal cites corrected.

3:1-3.3 Emergency mortgage powers exercisable by financial institutions

(a) When at any time the Commissioner, pursuant to N.J.A.C. 3:1-3.2, has declared that this Subchapter shall become operative and effective, a financial institution may exercise and use the emergency mortgage powers enumerated in (b) below.

(b) The emergency mortgage powers which a financial institution may exercise and use pursuant to this subchapter shall consist only of the following:

1. If the security of a mortgage loan, when made originally, consisted of real property improved by a one-family dwelling, an additional mortgage loan may be made. The total of such additional mortgage loan, together with the unpaid or unamortized principal balance due upon the existing mortgage loan or loans shall not exceed 160 percent of the appraised value of the real property, according to the appraisal certification on file with the financial institution.

2. If the security of a mortgage loan, when made originally, consisted of real property improved by either a two-family dwelling, three-family dwelling, or four-family dwelling, an additional mortgage loan may be made. The total of such additional mortgage loan, together with the unpaid or unamortized principal balance due upon the existing mortgage loan or loans shall not exceed 100 percent of the appraised value of the real property according to the appraisal certification on file with the financial institution.

3. If a mortgage loan is secured by real property which, when originally made was represented by improvements other than those described in (b)1 and 2 above, a financial institution may make an additional mortgage loan. The total of any such additional mortgage loan, together with the unpaid or unamortized principal balance due upon the existing mortgage loan or loans, shall not exceed 133½ percent of the appraised value according to the appraisal certification on file with the financial institution.

4. When any financial institution holds an existing mortgage loan which by its terms permits additional sums to be advanced or loaned in limited amounts, such financial institution may make additional loans or advances in any amounts, notwithstanding any limitation imposed in the original mortgage instrument; provided, however, that the total of such additional loans or advances shall not exceed the difference between the original principal amount of the existing mortgage loan and the unamortized or unpaid balance thereof.

5. A financial institution may make a mortgage loan secured by real property which is subject to an existing mortgage loan or loans held by another financial institution and such mortgage loan shall be subject to all of the restrictions, limitations and conditions provided herein.

6. A financial institution may reduce the rate of interest on mortgage loans secured by real property within a disaster area.

7. A financial institution may extend the term within which any mortgage loan must be amortized or paid for additional periods of time but in no event shall such an extension exceed a period of time twice the term of the original mortgage loan.

Amended by R.1991 d.48, effective February 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).
Corrected internal cites.

3:1-3.4 Preliminary requirements

(a) Before any financial institution may exercise or use any of the emergency mortgage powers as enumerated in this Subchapter, said financial institution must comply with the following requirements:

1. It must obtain and file a certification to be signed by no less than two persons, one of whom shall be an appraiser appointed by the Board of Directors of the financial institution, which shall set forth the amount and extent of the damage or destruction sustained to real property which is the security of any existing or proposed mortgage loan, a finding that such damage or destruction was caused by the disaster, and the amount required to pay for the cost of any construction, rehabilitation, alteration, repair or improvement of such real property.

2. It must obtain from the borrower or mortgagor a sworn statement which shall set forth the proceeds of any mortgage loan shall be used to pay the cost of construction, rehabilitation, alteration, repair or improvement of the real property.

3. Such certifications and statements shall be kept on file with the financial institution.

(b) In addition to the requirements enumerated in (a)1 and 2 above, a financial institution, prior to the exercise or use of any emergency mortgage powers, shall undertake and complete any and all investigations, appraisals and other precautions which it would ordinarily require in making a

mortgage loan not otherwise provided by N.J.S.A. 17:2A-1 et seq., and this Subchapter.

Amended by R.1991 d.48, effective February 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).
Corrected internal cites.

3:1-3.5 Limitations

(a) Notwithstanding any other provision of this Subchapter no financial institution shall exercise or use any emergency mortgage powers as enumerated herein unless it complies with the following limitations:

1. The amount of funds which a bank may invest or advance in any mortgage loan made pursuant to this Subchapter shall not exceed ten per cent of its aggregate capital stock, surplus and undivided profits accounts.

2. The amount of funds which a savings bank may invest or advance in any mortgage loan made pursuant to this Subchapter shall not exceed ten per cent of its surplus account.

3. The amount of funds, which a savings and loan or building and loan association may invest or advance in any mortgage loan made pursuant to this Subchapter shall not exceed one per cent of capital.

4. The amount of funds which an insurance company may invest or advance in any mortgage loan made pursuant to this Subchapter shall not exceed that permitted under the insurance laws of this State.

(b) No financial institution investing or advancing any funds in connection with mortgage loans made pursuant to this Subchapter may exclude the principal balances owing thereon in determining the aggregate amount of its assets that it may invest in all mortgage loans as prescribed by applicable statutes.

(c) No financial institution shall be authorized or permitted to exercise or use any emergency mortgage power enumerated herein in connection with any real property or improvement thereon not destroyed, damaged or materially affected by the disaster itself.

SUBCHAPTER 4. GOVERNMENTAL UNIT DEPOSIT PROTECTION

Subchapter Historical Note

Unless otherwise expressly noted, all provisions of Subchapter 4 were adopted by the Commissioner of Banking pursuant to authority delegated at N.J.S.A. 17:9-41 and were filed and became effective January 15, 1971 as R.1971 d.9. See: 2 N.J.R. 97(d), 3 N.J.R. 19(c).

3:1-4.1 Public depository; acceptance of deposits

No deposit may be accepted from a governmental unit by any public depository unless the public depository secures such deposit in accordance with the Governmental Unit Deposit Protection Act (hereinafter called the Act).

3:1-4.2 Filing of certified statement by public depository

Every public depository shall file with the Commissioner of Banking, on forms furnished by the Commissioner, a certified statement signed by its president or vice president and one other officer indicating the average daily balance or the alternate average balance as provided in the Act of either collected or uncollected public funds on deposit during the six month period ending on the next preceding valuation date (June 30 or December 31 of each year). The statement shall include information as to the capital funds of the depository and detailed information, including location pertaining to the eligible collateral pledged to secure public funds. The statement shall be filed as of June 30 and December 31 of each year and at such other times as the Commissioner may require. The public depository shall remit to the Department with each such statement a filing fee of \$25.00.

Amended by R.1974 d.119, effective May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

Amended by R.1991 d.186, effective April 1, 1991.

See: 22 N.J.R. 1809(a), 23 N.J.R. 997(a).

Added filing fee of \$25.00.

3:1-4.3 Certified statement; time for filing

A certified statement required to be filed pursuant to the Act or this subchapter shall be filed with the Commissioner within 20 days of the date required by law, regulation or the Commissioner.

3:1-4.4 Computation of public funds

(a) A public depository which has public funds on deposit for more than 15-calendar days but less than the full six-month period preceding the semiannual valuation date shall compute the aforesaid average based on the actual number of calendar days that public funds were on deposit in said depository and such figures shall be its average for the reporting period. In the event a public depository has no public funds on deposit on a valuation date, it shall indicate same on the certified statement and compute the aforesaid average, if any, for the reporting period. If a public depository holds public funds on deposit for less than 15-calendar days during a reporting period, it need not compute the aforesaid average for that period.

(b) While a public depository is not required to have collateral pledged if it does not have public funds on deposit on a valuation date, it is required to use the aforesaid average, if any, computed on the preceding valuation date as its basis for securing public deposits should it resume accepting such deposits during the six-month period subsequent to the preceding valuation date. If a public depository does not maintain its pledge of collateral as a result of not having public funds on deposit on a valuation date, it shall file a certified statement with the Commissioner disclosing same at the time it resumes accepting deposits. If the public depository maintains its pledge based on the said reported average notwithstanding that it has no balance on a valuation date, it may resume accepting public funds without filing an additional certified statement.

(c) If a public depository had no average daily balance of public funds on deposit at the time of the last valuation date, it shall compute the average daily balance of the public funds subsequently acquired for the first 15-calendar days following acquisition of such deposits and submit a certified statement to the Commissioner disclosing such average and such other information as may be required in the certified statement. If the aforesaid 15-day period overlaps a valuation date, the period shall commence on the first date deposits are received.

Amended by R.1974 d.119, effective May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

3:1-4.5 Public funds exceeding 75 percent of capital funds

A public depository which receives and holds on deposit for any period exceeding 15-calendar days public funds of a governmental unit or units which in the aggregate exceed 75 percent of the capital funds of the public depository as reported on the last valuation date shall file a certified statement with the Commissioner indicating the amount of such excess and a description of the eligible collateral pledged to secure said excess. Such collateral shall have a market value at least equal to the amount of such excess and shall be in addition to the five percent security required to be maintained and as noted in the last semi annual certified statement. For purposes of this section, the capital funds of a public depository located in New Jersey which has branches located outside New Jersey shall be its total capital funds multiplied by the percentage of deposits located in New Jersey to total deposits of the depository.

Amended by R.1974 d.119, effective May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

Amended by R.1994 d.558, effective November 7, 1994.

See: 26 N.J.R. 2832(a), 26 N.J.R. 4347(a).

3:1-4.6 Retention of certified statement

A public depository shall retain copies of its certified statement as filed with the Commissioner and any supporting workpapers for a period of three years. Such statements and workpapers shall be made available to examiners when the public depository is examined by the Commissioner or any supervising Federal agency.

3:1-4.7 Scope of terms surplus and undivided profits

(a) As included within the definition of capital funds in N.J.S.A. 17:9-41:

1. The terms "surplus" and "undivided profits" shall, in the case of a State bank or national bank, include any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes, but shall:

i. Exclude any specifically allocated reserves or reserves for known specific changes; and

- ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.
2. The term "surplus" shall, in the case of a savings bank, include undivided profits, any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes, but shall:
- i. Exclude any specifically allocated reserves or reserves for known specific charges; and
 - ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.
3. The term "undivided profits" shall, in the case of an association, include any reserve for contingency and included within the definition of capital funds in N.J.S.A. 17:9-4.1, reserve for bad debts as computed for Federal income tax purposes, but shall:
- i. Exclude any specifically allocated reserves or reserves for known specific charges; and
 - ii. Be reduced by the booked value or any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

Amended by R.1991 d.186, effective April 1, 1991.

See: 22 N.J.R. 1809(a), 23 N.J.R. 997(a).

Required that "surplus" and "undivided profits" be reduced by the booked value or any intangible assets set up on the balance sheet which represent non-material values over and above physical assets.

3:1-4.8 Substitution of collateral

Public depositories shall have the right to make substitutions of eligible collateral between valuation dates without notification to and approval by the Commissioner; provided, that any substituted collateral have a market value as of the date of substitution which is at least equal to the market value of the collateral so replaced as reported on the last valuation date. Any withdrawal of pledged collateral without replacement as mentioned aforesaid requires the prior approval of the Commissioner. A letter to the Commissioner requesting such withdrawal of collateral shall indicate the collateral to be withdrawn and the reason or reasons for such withdrawal. The Commissioner shall transmit in writing his approval or disapproval of such withdrawal to the public depository.

Amended by R.1974 d.119, effective May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

3:1-4.9 Agreement or resolution; custodial depository and Commissioner

(a) The depositories specified in N.J.S.A. 17:9-44(c) shall be known as custodial depositories. A public depository shall not deposit collateral in a custodial depository which is

a parent or subsidiary of the public depository, or is otherwise related to the public depository.

(b) A custodial depository shall be required to have a written agreement with the Commissioner authorizing such depository to hold securities as collateral for public funds under the terms and conditions enumerated therein.

(c) A public depository who pledges mortgage loans, student loans or Small Business Administration loans insured or guaranteed by the United States of America or an instrumentality thereof or by the State of New Jersey or an instrumentality thereof as to the payment of principal and interest shall file with the Commissioner at the time each certification statement is filed a report of the current status of each mortgage, student loan or Small Business Administration loan pledged as collateral on forms subject to the approval of the Commissioner:

1. The bond or note and mortgage collateral instruments shall be deposited with a custodial depository.
2. The underlying mortgage collateral security shall be homes containing not more than four dwelling units.
3. The market value of the mortgage loan, student loan or Small Business Administration loan shall be 80 per cent of the book value of the loan at the date of filing, until the next semiannual valuation date.
4. Mortgage loans, student loans or Small Business Administration loans contractually delinquent more than three months shall not be considered eligible collateral.
5. Individual ledger cards or comparable records shall be marked to indicate items pledged.

(d) If a public depository fails to meet its minimum regulatory capital requirements as established by the appropriate supervising Federal agency or meets the criteria set forth in N.J.S.A. 17:16J-2(a), the Commissioner may:

1. Require that the public depository pledge readily marketable investment grade securities only, and pledge such securities to the extent of 120 percent of the amount of public funds on deposit not insured by the appropriate Federal insurance fund; and/or
2. Issue a limited certificate which prohibits the public depository from accepting public deposits not insured by the appropriate Federal insurance fund.

As amended, R.1974 d.119, eff. May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

Amended by R.1991 d.186, effective April 1, 1991 (operative June 1, 1991).

See: 22 N.J.R. 1809(a), 23 N.J.R. 997(a).

New (d) established those provisions which the Commissioner could enforce if a public depository fails to meet its minimum capital requirement.

3:1-4.10 Agreement or resolution; public depository and custodial depository

(a) Each public depository which is a State bank, national bank or savings bank shall be required to have a written agreement with a custodial depository. Said agreement shall indicate that the collateral pledged is to be held subject to the order of the Commissioner or his or her authorized deputy and is held as security for public funds as required under the Act.

(b) Each public depository that pledges insured or guaranteed mortgages, student loans or Small Business Administration loans as security for public funds shall file with the Commissioner a resolution of the board of the depository at the time of the initial pledge. The resolution must authorize the pledging of such mortgages, student loans or Small Business Administration loans in a custodial depository, together with other documentation which may be required by the Commissioner.

(c) The aforesaid written agreement or resolution shall indicate that collateral pledged is to be held in a custodial depository subject to the order of the Commissioner or his or her authorized deputy and is held as security for public funds as required by the Act.

As amended, R.1974 d.119, eff. May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

Amended by R.1991 d.186, effective April 1, 1991 (operative June 1, 1991).

See: 22 N.J.R. 1809(a), 23 N.J.R. 997(a).

(b) deleted referencing requirements for "associations".

3:1-4.11 Security; State and other public deposits

The securing of public deposits as required under the Act shall not preclude any public depository from securing State or other public deposits which are otherwise required to be secured by law. The deposits which are otherwise required to be secured shall be excluded from the computation of the average balance of public funds as required in this Subchapter.

As amended, R.1974 d.119, eff. May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

3:1-4.12 Records maintained by Commissioner; eligibility

The Commissioner of Banking shall maintain such records as he shall deem necessary in order to determine which public depositories have complied with the provision of the Act. After receipt of the periodic certified statement, the Commissioner shall give written notification to each reporting public depository of its eligibility to act as a depository for public funds.

SUBCHAPTER 5. MORTGAGE APPLICANT'S BIRTH CONTROL PRACTICES**Authority**

Unless otherwise expressly noted, all provisions of this Subchapter were adopted by the Commissioner of Banking pursuant to authority delegated at N.J.S.A. 17:1-8.1, 17:1B-2 and 17:11A-54(a) and were filed and effective June 21, 1973, as R.1973 d.166. See: 5 N.J.R. 136(a), 5 N.J.R. 216(b).

3:1-5.1 Mortgages originated

No State-chartered bank, as defined in N.J.S.A. 17:9A-1(1), savings bank, as defined in N.J.S.A. 17:9A-1(13), savings and loan association, as defined in N.J.S.A. 17:12B-5(1), or secondary mortgage loan licensee, as defined in N.J.S.A. 17:11A-35(c) and 36, may require, accept or consider, directly or indirectly, information as to a mortgage applicant's birth control practices or information otherwise bearing on such applicant's intention or capacity to have children in determining the applicant's credit worthiness or eligibility for a mortgage, or in computing the amount of such mortgage.

3:1-5.2 Mortgages purchased

No State-chartered bank, as defined in N.J.S.A. 17:9A-1(1), savings bank, as defined in N.J.S.A. 17:9A-1(13), savings and loan association, as defined in N.J.S.A. 17:12B-5(1), or secondary mortgage loan licensee, as defined in N.J.S.A. 17:11A-35(c) and 36, may knowingly discount, buy, invest in, hold or otherwise negotiate a bond or note secured by a mortgage or secondary mortgage which mortgage has been approved after the requirement, acceptance or consideration of information as to the mortgage applicant's birth control practices or of information otherwise bearing on such applicant's intention or capacity to have children.

SUBCHAPTER 6. FEES**Authority**

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 17:1-8 and were filed and became effective on August 9, 1974, as R.1974 d.221. See: 6 N.J.R. 254(c), 6 N.J.R. 342(a). Revisions to this subchapter were filed and became effective on December 15, 1977, as R.1977 d.469. See: 10 N.J.R. 3(a).

3:1-6.1 Definitions

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

"Discretionary trust assets" means the discretionary trust assets reported to the Department in the report of trust assets.

“Holding company” means a bank holding company or a savings and loan holding company under the supervision of the Department.

“Licensee” means a person other than a bank, savings bank, savings and loan association or credit union which is regulated or supervised by the Department.

“Non-discretionary trust assets” means the non-discretionary trust assets reported to the Department in the report of trust assets.

“Trust assets” means assets held in trust, as reported to the Department in the report of trust assets.

“Trust company” means a New Jersey bank whose powers are limited by its certificate of incorporation to fiduciary and trust activities, or which has represented to the Department that it will restrict its powers to fiduciary and trust activities.

New Rule, R.1991 d.195, effective April 15, 1991.
See: 23 N.J.R. 245(a), 23 N.J.R. 1125(a).

Section 6.1 was recodified to 6.2.
Amended by R.1991 d.350, effective July 1, 1991.
See: 23 N.J.R. 1073(b), 23 N.J.R. 2028(a).

Added definitions for “discretionary trust assets” and “non-discretionary trust assets”.

3:1-6.2 Assessments

(a) Every bank as defined in N.J.S.A. 17:9A-1(1), every savings bank as defined in N.J.S.A. 17:9A-1(13) and every State association as defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of 0.44 of one cent per \$100.00 of total assets, except that trust assets shall be assessed a yearly fee in accordance with the following schedule:

Trust Assets of each type	Discretionary (cents per \$100 of assets)	Non-Discretionary (cents per \$100 of assets)
0-\$4,999,999,999	.03	.02
\$5 billion-\$20 billion	.02	.01
more than \$20 billion	.01	0

(b) The fee shall be assessed at one-half the yearly rate as of December 31 and one-half the yearly rate as of June 30 of each calendar year.

Emergency amendment, R.1989 d.407, effective July 3, 1989 (expires September 1, 1989).
See: 21 N.J.R. 2398(a).

Fee per \$100 of total assets raised from 0.30 to 0.36; fee per \$100 of total assets raised from 0.15 to 0.18.
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.1991 d.195, effective April 15, 1991.
See: 23 N.J.R. 254(a), 23 N.J.R. 1125(a).

N.J.A.C. 3:1-6.1 and 6.2 are combined as new 6.2(a) and (b); fees and assessments increased.

Amended by R.1991 d.350, July 1, 1991.
See: 23 N.J.R. 1073(b), 23 N.J.R. 2028(a).

Established fee schedule at (a); one-half yearly rate as of December 31 and as of June 30.

3:1-6.3 Payment dates

The fee so assessed shall be made payable to the Treasurer of the State of New Jersey and paid on or before March 31 and September 30 of each calendar year. The payment on or before March 31 shall apply to the fees assessed for the first half of the calendar year. The payment on or before September 30 shall apply to the fees assessed for the second half of the calendar year.

3:1-6.4 Effective date

The fees assessed pursuant to this regulation will first apply to the first half of calendar 1978.

3:1-6.5 Annual review

The fees assessed by this regulation shall be reviewed at least annually and if necessary shall be increased or decreased in accordance with the services performed by the Department of Banking.

3:1-6.6 Examination charge

(a) The individual per diem per person examination charge for an examination of a bank, savings and loan association or holding company shall be \$300.00, plus \$15.00 for travel expenses.

(b) The individual per diem per person examination charge for an examination of a licensee, credit union, trust company or trust department of a bank, savings bank or savings and loan association, or any person not specified in this section shall be \$325.00, plus \$15.00 for travel expenses.

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.1991 d.350, effective July 1, 1991.
See: 23 N.J.R. 1073(b), 23 N.J.R. 2028(a).

Increased examination fees on trust companies and trust departments from \$300.00 to \$325.00.

Amended by R.1992 d.250, effective June 15, 1992.
See: 24 N.J.R. 1420(a), 24 N.J.R. 2242(a).

3:1-6.7 Failure to pay license and examination charges

(a) If a licensee pays an examination charge, application fee, license fee or any other fee or charge with a check which is returned for insufficient funds or is not paid for any other reason, the Department shall advise the licensee by letter. The licensee shall have 20 days from the date of such letter to provide the Department with a certified or cashiers check payable to the State of New Jersey for the amount of the dishonored check plus \$10.00. If the Department does not receive a certified or cashiers check within 20 days of the date of this letter, the Department shall suspend the license of the licensee until payment by certified or cashiers check is received.

(b) If a licensee fails to pay an examination charge within 30 days after the bill is sent, the Department shall send a second billing. The licensee shall have 20 days from the date of such letter to provide the Department with payment

of the fee. If the licensee fails to provide such payment within 20 days, the Department shall suspend the license of the licensee until payment is received.

New Rule, R.1995 d.208, effective April 17, 1995.
See: 27 N.J.R. 20(b), 27 N.J.R. 1576(a).

SUBCHAPTER 7. MISCELLANEOUS FEES

Subchapter Historical Note

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 17:1-8 and were filed and became effective May 14, 1975, as R.1975 d.120. See: 7 N.J.R. 126(c), 7 N.J.R. 247(c).

3:1-7.1 Name change

(a) Every licensee who shall change its name at any time shall, within 30 days of such change, submit proof of the name change to the Commissioner, shall surrender its license or licenses for endorsement of such change and pay to the Department of Banking the fee or fees provided in schedule A of this subchapter.

1. Schedule A:

- i. Motor vehicle installment seller—\$75.00;
- ii. Sales finance company—\$75.00;
- iii. Home repair contractor—\$75.00;
- iv. Home financing agency—\$75.00;
- v. Consumer loan licensee—\$75.00;
- vi. Pawnbroker—\$75.00;
- vii. Foreign money remitter—\$75.00;
- viii. Licensed casher of checks—\$75.00;
- ix. Foreign banks—\$75.00;
- x. Secondary mortgage loan license—\$75.00;
- xi. Insurance premium finance company—\$75.00;
- xii. Licensed seller of checks—\$75.00;
- xiii. Mortgage banker or broker—\$75.00.

(b) For all licensees with more than one office, the Department shall impose a \$25.00 fee for each license at a branch office affected by the name change.

Emergency amendment, R.1989 d.407, effective July 3, 1989 (expires September 1, 1989).

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

Fees raised at (a)1; mortgage banker fees added at (a)1xiii.

Branch office fees added at (b).

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.

3:1-7.2 Duplicate licenses and certificates

(a) A licensee may request a duplicate license or certificate when the original license or certificate issued has been lost or destroyed.

(b) The request for the issuance of such duplicate license or certificate will be made on forms supplied by the Department of Banking.

(c) The licensee shall pay to the Department of Banking the fee, or fees provided in schedule B of this subchapter for such licenses or certificates.

1. Schedule B:

- i. Motor vehicle installment seller—\$25.00;
- ii. Sales finance company—\$25.00;
- iii. Home repair contractor—\$25.00;
- iv. Home financing agency—\$25.00;
- v. Consumer loan licensee—\$25.00;
- vi. Pawnbroker—\$25.00;
- vii. Foreign money remitter—\$25.00;
- viii. Licensed casher of checks—\$25.00;
- ix. Foreign banks—\$25.00;
- x. Secondary mortgage loan licensees—\$25.00;
- xi. Home repair salesmen—\$25.00;
- xii. Insurance premium finance company—\$25.00;
- xiii. Licensed seller of checks—\$25.00;
- xiv. Mortgage banker or mortgage broker—\$25.00.

Emergency amendment, R.1989 d.407, effective July 3, 1989 (expires September 1, 1989).

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

Fees increased; mortgage banker or broker added.

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.

3:1-7.3 Requests for licensee standing and locations

(a) The Department of Banking may furnish, upon written request, information concerning a licensee's standing and location. The information provided shall be in a form prescribed by the Department of Banking.

(b) A requester shall pay to the Department of Banking the fee or fees provided in schedule C of this subchapter.

1. Schedule C:

- i. Motor vehicle installment seller—\$15.00;
- ii. Sales finance company—15.00;
- iii. Home repair contractor—15.00;

- iv. Home financing agency—15.00;
- v. Small loan licensee—15.00;
- vi. Pawnbroker—15.00;
- vii. Foreign money remitter—15.00;
- viii. Licensed cashier of checks—15.00;
- ix. Foreign banks—15.00;
- x. Secondary mortgage loan licensee—15.00;
- xi. Home repair salesmen—15.00;
- xii. Insurance premium finance company—15.00;
- xiii. Licensed seller of checks—15.00;
- xiv. Individual group listings—0.20 per item.

3:1-7.4 Address change

Every licensee referenced in Schedule A or B which changes a licensed business address at any time shall, within 20 days of the change, submit information relative to the address change to the Commissioner, surrender the affected license or licenses for endorsement of the change; and pay to the Department an address change of \$75.00. Motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies are exempt from the \$75.00 fee.

Emergency amendment (new rule), 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.1991 d.195, effective April 15, 1991.

See: 23 N.J.R. 254(a), 23 N.J.R. 1125(a).

Motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies exempted from the \$75.00 fee.

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 services performed by the Department of Banking.

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.

3:1-7.6 Penalty for late filing

Motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies which file renewal license applications after the expirations of their licenses shall be subject to a

\$25.00 penalty. The imposition of this penalty 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).

SUBCHAPTER 8. CREDIT OR LOAN APPLICATIONS

3:1-8.1 Required information

Upon entertaining an application for or upon the extension of any credit or loan, every person, credit institution or lender chartered, licensed or regulated by the New Jersey Department of Banking shall obtain and maintain such information as is necessary for the purpose of ascertaining its creditor's rights and remedies applicable to the particular extension of credit or loan and the identification of the particular applicant.

R.1975 d.146, eff. May 29, 1975.

See: 7 N.J.R. 126(b), 7 N.J.R. 291(b).

SUBCHAPTER 9. HOME MORTGAGE DISCLOSURE

Authority

N.J.S.A. 17:16F-11

Source and Effective Date

R.1983 d.379, effective August 26, 1983.

See: 15 N.J.R. 1146(a), 15 N.J.R. 1575(a).

Historical Note

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 17:16F-11 and were filed and became effective on August 22, 1977, as R.1977 d.308. See: 9 N.J.R. 303(c), 9 N.J.R. 405(c). In compliance, with Executive Order No. 66(1978), this subchapter was readopted effective August 26, 1983 as R.1983 d.379. See: 15 N.J.R. 1146(a), 15 N.J.R. 1575(a).

3:1-9.1 Authority; scope; enforcement

(a) This regulation is promulgated pursuant to the provisions of Chapter 1, Public Laws of 1977, and N.J.S.A. 17:1-8.1 et seq. This regulation applies to depository institutions which make mortgage loans. Nothing in this regulation is intended to, nor shall it be construed to, encourage unsound lending practices or the allocation of credit.

(b) Compliance with this regulation and Chapter 1, Public Laws of 1977, shall be enforced by the Commissioner of Banking of the State of New Jersey.

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).

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 section 1 of the Banking Act of 1948, P.L. 1948 C.67 (C.17:9A-1), any association as defined in the Savings and Loan Act (1963) P.L. 1963, C.144 (C.17:12B-1 et seq.), 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 regulation. 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:

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
3. Which is a secondary mortgage loan or a consumer loan, repayable in equal periodic installments, the proceeds of which, all or in part, are to be used for the purpose of repairing, rehabilitation, or remodeling an existing residential dwelling.

"Metropolitan Statistical Area" (MSA) and "Primary Metropolitan Statistical Area" (PMSA) mean geographical areas as defined by the Office of Management and Budget of the United States government for statistical purposes. The MSA/PMSA definitions to be used are for the following MSA's/PMSA's:

1. Allentown-Bethlehem, PA-NJ;
2. Bergen-Passaic, NJ;
3. Atlantic City, NJ;
4. Jersey City, NJ;
5. Middlesex-Somerset-Hunterdon, NJ;
6. Monmouth-Ocean, NJ;
7. Newark, NJ;
8. Philadelphia, PA-NJ;
9. Trenton, NJ;
10. Vineland-Millville-Bridgeton, NJ;
11. Wilmington, DL-NJ-MD;

"Mortgage loan" means a "residential mortgage loan" as defined in this section or a "home improvement loan" as defined in this section.

"Oral-in-person request" means an inquiry for information about the terms of a mortgage loan, in reference to a specific property, by a natural person on his/her own behalf which is received on the institution's premises by any person at the depository institution who customarily receives or is authorized to receive such requests.

"Residential mortgage loan" means a loan which is secured by a first lien on residential real property located in a State, including a first lien refinancing of an existing loan, but shall not include:

1. Temporary financing (such as a construction loan); or
2. Purchase of an interest in a pool of mortgage loans (such as mortgage participation certificates issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Farmers Home Administration); or
3. A loan made primarily for business or consumer purposes (other than to purchase, repair, rehabilitate, or remodel residential real property) but in connection with which a first lien on residential real property is taken as collateral.

"Residential real property" means real property that has been improved by a residential dwelling, including single family and multi-family dwellings, and individual units of condominiums and cooperatives.

"State" means any State of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

As amended, R.1977 d.470, eff. December 15, 1977.

See: 10 N.J.R. 39(b).

As amended, R.1979 d.415, eff. October 18, 1979.

See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

Amended by R.1985 d.98, effective March 4, 1985.

See: 16 N.J.R. 2872(a), 17 N.J.R. 577(a).

Definition "Standard Metropolitan Statistical Area" changed to "Metropolitan Statistical Area".

3:1-9.3 Exemptions

(a) Any depository institution that has total assets as of the last day of a calendar year of \$10,000,000 or less shall be exempt from the compilation of data and disclosure requirements of the Act and this regulation for that calendar year.

(b) Each and every depository institution with its principal offices in New Jersey, except for those institutions exempted by subsections (a) and (d) of this section, is required to compile and file the data specified by N.J.A.C. 3:1-9.4 for the preceding calendar quarter.

(c) A depository institution that was exempt on or after the effective date of this regulation on the basis of subsection (a) of this section and that ceases to be exempt shall compile the data described in this regulation for each year beginning with the year during which it becomes no longer exempt.

(d) Any national bank with its principal offices in New Jersey shall be exempt from the compilation of data and disclosure requirements of the Act and this regulation.

As amended, R.1979 d.415, eff. October 18, 1979.

See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

Amended by R.1985 d.98, effective March 4, 1985.

See: 16 N.J.R. 2872(a), 17 N.J.R. 577(a).

(b) Deleted text "Any depository institution ... April 30, 1980."

3:1-9.4 Compilation of mortgage and home improvement loan data

(a) Data to be compiled:

1. To satisfy the public disclosure requirements of the Act and N.J.A.C. 3:1-9.5, the data shall be compiled in the format prescribed by the Department of Banking. Such data shall be compiled and aggregated to a calendar year.

2. To satisfy the filing requirements of the Act and N.J.A.C. 3:1-9.6(a), the data shall be compiled in the format prescribed by the Department of Banking. Such data shall be compiled and aggregated to a calendar quarter.

(b) A depository institution shall not include in its mortgage loan data to be compiled pursuant to subsection (a) of this section:

1. A refinancing that it originates involving no increase in the outstanding balance of the principal due on the existing loan where the depository institution and the borrower are the same parties to the existing loan and the refinancing; and

2. A loan originated or purchased by the depository institution acting as trustee or in some fiduciary capacity.

As amended, R.1978 d.304, eff. September 1, 1978.

See: 10 N.J.R. 314(c), 10 N.J.R. 416(b).

As amended, R.1979 d.415, eff. October 18, 1979.

See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Section substantially amended.

Amended by R.1985 d.98, effective March 4, 1985.

See: 16 N.J.R. 2872(a), 17 N.J.R. 577(a).

Deleted cross reference and added "the Department of Banking".

Case Notes

Sections of New Jersey anti-redlining law requiring lending institutions to report and disclose information concerning their residential mortgage loan activities preempted with respect to national banks by the Home Mortgage Disclosure Act; law as it prohibits redlining not preempted. *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).

3:1-9.5 Disclosure to public

(a) Dates disclosure statements due:

1. Each depository institution shall make available to the public, in the format prescribed below, the mortgage loan disclosure statements required to be compiled pursuant to the Act and N.J.A.C. 3:1-9.4(a)1 within 90 days of the end of the calendar year during which the data were compiled.

2. Compliance with the public disclosure requirements of Regulation C shall be deemed compliance with the public disclosure requirements of this regulation through December 31, 1977.

3. Every depository institution shall promptly furnish in person or by mail, as the case may be, to anyone requesting the information, a copy of the required public mortgage loan disclosure statement, imposing no more than a reasonable charge for the cost of reproduction of the data, plus actual mailing costs if applicable.

4. Any mortgage loan disclosure statement required to be made available shall be maintained and made available for a period of five years after the close of the first calendar year during which that disclosure statement is required to be maintained and made available.

(b) Rules concerning the office at which disclosure statements to be made available are as follows:

1. Each depository institution shall make available to the public the disclosure statements required to be compiled by (a) above and by the dates specified in (a) above at its principal and at least one branch office in each MSA/PMSA in which it has an office.

2. Each depository institution shall make appropriate efforts at least once each year to notify its depositors of the availability of its mortgage loan data such as by:

- i. Inserting a notice in a periodic account statement or other communication to depositors; or
- ii. Posting a notice in the lobbies of its principal and branch offices for at least one month, or publishing a notice in a newspaper or newspapers of general circulation in the counties in which its principal and branch offices are located.

As amended, R.1978 d.304, eff. September 1, 1978.
See: 10 N.J.R. 314(c), 10 N.J.R. 416(b).
As amended, R.1979 d.415, eff. October 18, 1979.
See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).
As amended, R.1983 d.85, eff. March 21, 1983.
See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).
Section was recodified with changes from 3:1-9.7.
Amended by R.1985 d.98, effective March 4, 1985.
See: 16 N.J.R. 2872(a), 17 N.J.R. 577(a).
(b) Deleted "SMSA" substituted "MSA/PMSA".

EDITOR'S NOTE: A sample Format of the Home Financing Loan Disclosure Statement was filed as part of this rule but is not reproduced herein. Copies can be obtained from the Department of Banking. CN 040, Trenton, New Jersey 08625.

3:1-9.6 Filing requirements; processing fee

(a) Filings:

1. For purposes of this section, the mortgage loan data shall be deemed to be filed if it is either delivered in person or postmarked by the required dates. All information so filed shall be submitted on forms or in the format prescribed by the Department.

2. Every depository institution shall file with the Department of Banking the data required by N.J.A.C. 3:1-9.5 for the calendar year 1982 and every subsequent year on a quarterly basis on April 30, July 30, October 30, and January 30 for the preceding calendar quarter's mortgage loan applications.

(b) Failure to file the mortgage loan data by the required dates may result in a penalty of \$200 being assessed against the depository institution.

(c) A processing fee of \$50.00 shall accompany each quarterly report. The fee shall be made payable to the Treasurer, State of New Jersey.

As amended, R.1978 d.304, eff. September 1, 1978.
See: 10 N.J.R. 314(c), 10 N.J.R. 416(b).
As amended, R.1979 d.415, eff. October 18, 1979.
See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).
As amended, R.1983 d.85, eff. March 21, 1983.
See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Section was recodified with changes from 3:1-9.7.
Emergency amendment, R.1989 d.407, effective July 3, 1989 (expires September 1, 1989).
See: 21 N.J.R. 2398(a).

Processing fee raised at (c).
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.1991 d.48, effective February 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Deleted (d), to comport with Federal reporting requirements.

3:1-9.7 Violations of the Act

(a) No depository institution shall discriminate by intent or in effort on a basis that is arbitrary or unsupported by a reasonable analysis of the lending risks associated with the applicant for a given loan or the condition of the property to secure it, in the accepting applications, granting, withholding, extending or renewing, or in the fixing of rates, terms, conditions, or provisions of any mortgage loan on real property located in the municipality in which a depository institution has a home or branch office, or in any municipality contiguous to such municipality, merely because such property is located in a specific neighborhood or geographical area.

(b) It shall not be a violation of the Act or this regulation if the mortgage loan is made pursuant to a specific public or private program, the purpose of which is to increase the availability of mortgage loans within a specific neighborhood or geographical area.

(c) No depository institution may discourage, or refuse to allow, receive, or consider, any application, request, or inquiry regarding a mortgage loan, or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on any basis prohibited by law.

As amended, R.1979 d.415, eff. October 18, 1979.
See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

3:1-9.8 Powers of the Commissioner; Investigations and hearings

(a) In order to aid in determining whether the Act or N.J.A.C. 3:1-9.7 hereof has been violated by a depository institution other than a national bank, the Commissioner of Banking shall have the power to hold hearings, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him.

(b) In the case of a failure of any person to comply with any subpoena issued by the Commissioner or to testify to any matter concerning which he may be lawfully interrogated, the Commissioner may apply to the Superior Court for an order requiring the attendance of such person and the giving of testimony or production of evidence.

(c) The Commissioner will grant all written requests for hearing received from national banks. If a national bank requests a hearing and submits voluntarily to the authority of the Commissioner, the Commissioner's powers will be as specified in subsections (a) and (b) of this section.

As amended, R.1979 d.415, eff. October 18, 1979.
See: 11 N.J.R. 426(d), 11 N.J.R. 534(b).
As amended, R.1983 d.85, eff. March 21, 1983.
See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).
Section recodified from N.J.A.C. 3:1-9.10.

3:1-9.9 Orders; grounds; content; hearing; service

(a) If the Commissioner determines that a depository institution is in violation of the Act or N.J.A.C. 3:1-9.7 he shall:

1. Order such depository institution to cease its unlawful practices as provided by N.J.S.A. 17:16F-9; or
2. Order such depository institution other than a national bank to show cause why a cease and desist order should not be issued.

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

1. A statement of the time and place of hearing;
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.

(d) If upon the return of the order to show cause the Commissioner determines that a depository institution is in violation of the Act, he shall order such depository institution to cease and desist such practices.

(e) Service of the cease and desist order shall be made by certified mail, return receipt requested.

As amended, R.1979 d.415, eff. October 18, 1979.
See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).
As amended, R.1983 d.85, eff. March 21, 1983.
See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).
Section recodified with changes from N.J.A.C. 3:1-9.11.

3:1-9.10 Investigatory hearings; presiding officer

Any hearing held pursuant to this subchapter may be conducted by the Commissioner or Deputy Commissioner.

As amended, R.1979 d.415, eff. October 18, 1979.
See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).
As amended, R.1983 d.85, eff. March 21, 1983.
See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).
Recodified from 9.12.
Amended by R.1991 d.48, effective February 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).
Language changed to reflect two levels of hearings, investigatory and contested cases.

3:1-9.11 Presiding officer's powers

(a) It shall be the duty of the presiding officer to inquire fully into the facts as they relate to the matter before him or her. With respect to cases assigned to him or her, the presiding officer shall have the authority, subject to the provisions of this subchapter and the Act, to:

1. Administer oaths and affirmations;
2. Grant applications for subpoenas;
3. Rule upon offers of proof and receive relevant evidence;
4. Take or cause depositions to be taken whenever the ends of justice would be served thereby;
5. Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant;
6. Regulate the course of the investigatory hearing, and, if appropriate or necessary, exclude persons or counsel from the hearings for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper question;
7. Preside over conferences for the settlement or simplification of the issues by consent of the parties;
8. Dispose of procedural requests, motions or similar matters which shall be made part of the record of the proceeding;
9. Call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence;
10. Request the parties at any time during the investigatory hearing to state their respective positions concerning any issue in the case or theory in support thereof; and
11. Take any other action necessary to effectuate the purposes of the Act or to provide for a full and fair investigatory hearing.

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Recodified from N.J.A.C. 3:1-9.13.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Language changed to make clear that the first level of hearing is investigatory.

Case Notes

The commissioner of banking has the authority to find a depository institution in violation of the Antiredeeming Act when the institution's lending criteria for home financing have a disproportionate impact on certain neighborhoods and those lending criteria were not proven by the lending institution at a hearing held by the commissioner to be supported by a reasonable analysis of the risk associated with the applicants for given loans or the condition of the property used to secure those loans. Atty.Gen.F.O.1979, No. 7.

3:1-9.12 Investigatory hearing procedure

(a) Any party, through counsel, shall have the right to call, examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence.

(b) The parties shall not be bound by rules of evidence, whether statutory, common law or adopted by the rules of court. All relevant evidence is admissible. The presiding officer may, in his or her discretion, exclude any evidence or offer of proof if he or she finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion. The presiding officer shall give effect to the rules of privilege recognized by law. Every party, through counsel, shall have a right to present his cause by oral and documentary evidence and to submit rebuttal evidence. Every party, through counsel, and the presiding officer shall have the right to examine and cross-examine as may be required for a full and true disclosure of the facts.

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Recodified from N.J.A.C. 3:1-9.14.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Language changed to make clear that the first level of hearing is investigatory.

3:1-9.13 Report of presiding officer

In any case where a person, other than the Commissioner, shall sit as presiding officer, he or she shall submit a written report of his or her findings and conclusions to the Commissioner together with a recommendation as to the disposition of the matter, unless the Commissioner directs otherwise. Copies shall at the same time be forwarded to all parties appearing at the hearing.

As amended, R.1979 d.415, eff. October 18, 1979.

See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Recodified from N.J.A.C. 3:1-9.15.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Language changed to make clear that the first level of hearing is investigatory.

3:1-9.14 Exceptions to report of presiding officer

An original and one copy of any exceptions to the presiding officer's report and recommendation may be filed by any party with the Commissioner within seven days after service of the report and recommendation.

As amended, R.1979 d.415, eff. October 18, 1979.

See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Recodified from N.J.A.C. 3:1-9.16.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Language changed to clarify first level of hearings is investigatory.

3:1-9.15 Decision by the Commissioner

(a) The Commissioner shall issue a written decision and order. He or she shall mail copies to the parties by certified mail, return receipt.

(b) Upon receipt of the presiding officer's report and recommendation and any exceptions filed thereto, the Commissioner shall issue a decision and order which shall either:

1. Adopt in toto the findings of the fact and conclusions of law of the presiding officer; or
2. Reject the report and recommendation of the presiding officer and make specific, detailed findings of fact and conclusions of law; or
3. Adopt, reject or modify each of the presiding officer's findings of fact and conclusions of law.

(c) If the Commissioner adopts either in whole or in part the report and recommendation of the presiding officer, it shall not be necessary for him or her to repeat those facts and conclusions in his or her order, and they shall automatically be considered part thereof.

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Recodified from N.J.A.C. 3:1-9.15.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Language changed to clarify first level of hearings is investigatory.

3:1-9.16 Continued violation of Act; penalty

(a) A depository institution which continues to violate the provisions of the Act or N.J.A.C. 3:1-9.7 after being ordered by the Commissioner to cease such practices shall be liable to a penalty of \$5,000 for each offense. Such penalty shall be in addition to and not in lieu of any other provisions of law applicable upon a depository institution's failure to comply with an order of the Commissioner.

(b) If the Commissioner determines that a depository institution is continuing to violate the provisions of the Act or N.J.A.C. 3:1-9.7 after being ordered to cease such practices, he or she shall issue and serve such depository institution by certified mail, return receipt requested, an order to pay the applicable penalties assessed against the depository institution.

As amended, R.1979 d.415, eff. October 18, 1979.

See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Recodified from N.J.A.C. 3:1-9.16.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Cite corrected and non-sexist language added.

3:1-9.17 Notice of charges; continued violation of Act

(a) If it appears to the Commissioner that a depository institution, other than a national bank, is continuing to violate the provisions of the Act or N.J.A.C. 3:1-9.7 of this subchapter after being ordered to cease such practices, he shall issue and serve upon such depository institution by certified mail, return receipt requested, a notice of such charges.

(b) The notice shall include:

1. The particular sections of the statutes and rules involved; and
2. A copy of the detailed statement of facts constituting the basis of the alleged violation.
3. A statement that the depository institution has the right to request a hearing on the charges by submitting a written request for a hearing within 10 days of receipt of the charges; however, the time period may be extended at the discretion of the Commissioner. The hearing shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Added provisions for requests for and the holding of hearings.

3:1-9.18 (Reserved)

As amended, R.1979 d.415, eff. October 18, 1979.

See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Recodified from 3:1-9.20.

Repealed by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

3:1-9.19 (Reserved)

As amended, R.1979 d.415, eff. October 18, 1979.

See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 330(b).

Text substantially amended and recodified.

Repealed by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

SUBCHAPTER 10. RESTRICTIONS ON REAL PROPERTY TRANSACTIONS

Authority

N.J.S.A. 17:1-8.1; 17:9A-311B; 17:9A-11D
et seq. and 17:12B-20 et seq.

Subchapter Historical Note

All provisions of this subchapter were filed and became effective on February 21, 1978 as R.1978 d.55. See: 9 N.J.R. 404(c), 10 N.J.R. 92(c). Amendments were filed and became effective on February 8, 1979 as R.1979 d.55. See: 11 N.J.R. 3(c), 11 N.J.R. 117(d). Further amendments were filed and became effective on August 2, 1982 as R.1982 d.242. See: 14 N.J.R. 490(a), 14 N.J.R. 834(a). Subchapter 10 was readopted and amended on March 19, 1984 as R.1984 d.63. See: 16 N.J.R. 2(a), 16 N.J.R. 520(a). See also Chapter Historical Note.

3:1-10.1 Definitions

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

“Affiliated person” means the following:

1. A director, manager or executive officer of an institution;
2. A spouse of a director, manager or executive officer of an institution;
3. A member of the immediate family of a director, manager or executive officer of an institution or an affiliate of an institution;
4. Any corporation or organization of which a director, manager or executive officer of such institution is an officer or partner or is, directly or indirectly either alone or with his spouse, the owner of 10 percent or more of any class of equity securities or the owner with other directors, managers and executive officers of such institution and their spouses of 25 percent or more of any class of equity securities;
5. Any trust or other estate in which a director, manager or executive officer of such institution or the spouse of such person has a substantial beneficial interest or as to which such person or his spouse serves as trustee or in a similar fiduciary capacity.

“Executive officer” means a person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the institution, whether or not: the person has an official title; the title contains a designation of assistant; or the person is serving without salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary, the treasurer and the comptroller are considered to be executive officers, unless by resolution of the board of directors or by the bylaws of the institution any such executive officer is excluded from participation in major policy-making functions, other than in the capacity of a director, and the executive officer does not actually participate therein.

"Immediate family" of any natural person means the following (whether by the full or half blood or by adoption):

1. Such person's spouse, father, mother, children, brothers, sisters and grandchildren;
2. The father, mother, brothers and sisters of such person's spouse; and
3. The spouse of a child, brother or sister of such person.

"Institution" means a bank as defined in N.J.S.A. 17:9A-1(1), a savings bank as defined in N.J.S.A. 17:9A-1(13) and a State association as defined in N.J.S.A. 17:12B-5(1).

As amended, R.1982 d.242, eff. August 2, 1982.
See: 14 N.J.R. 490(a), 14 N.J.R. 834(a).
Amended definition of "Executive officer".

3:1-10.2 Application required on real property transactions

When an institution files an application for a branch, minibranch, limited facility branch, branch relocation, auxiliary or new charter and intends to purchase or lease, directly or indirectly, the premises applied for from an affiliated person, it shall simultaneously file a detailed real estate application concerning the proposed transaction with the Commissioner for his approval. In the event an institution desires to enter into such a transaction on an existing office it must file a detailed real estate application concerning the proposed transaction with the Commissioner for his approval.

3:1-10.3 Approval or denial of real estate applications

(a) The real estate application concerning a transaction with an affiliated person will be denied unless the applicant shall establish to the Commissioner's satisfaction that:

1. The terms and conditions of the proposed transaction are in the best interests of the institution; and
2. The terms and conditions of the proposed transaction are equal to or better than those which the institution would have obtained had the premises been purchased or leased in an arm's length transaction with a non-affiliated third party.

3:1-10.4 Objectors and hearings

The Commissioner's deliberations on the acceptability of a real estate transaction shall be made pursuant to his examination powers and shall be confidential pursuant to N.J.S.A. 17:9A-264. However, this shall not preclude objectors from raising similar and/or parallel issues in written or oral objections which may relate to the applicable statutory criteria for the particular application involved.

SUBCHAPTER 11. RESTRICTIONS ON LOANS INVOLVING AFFILIATED PERSONS

Subchapter Historical Note

Subchapter 11 was adopted pursuant to authority of N.J.S.A. 17:1-8.1 and was filed and became effective on December 15, 1977, as R.1977 d.471. See: 9 N.J.R. 404(b), 10 N.J.R. 3(c). Amendments were filed and became effective on May 5, 1978, as R.1978 d.144. See: 10 N.J.R. 135(c), 10 N.J.R. 219(a). See also Chapter Historical Note.

3:1-11.1 Definitions

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

"Affiliate" means a corporation, association, partnership or any type of business organization whatsoever, in which the banking institution, association or holding company owns at least 20 percent of the outstanding common stock unless the banking institution, association or holding company can rebut the presumption of the exercising of significant influence.

"Affiliated person" means the following:

1. Any corporation or organization (other than the bank or a majority-owned subsidiary of the bank) of which such person is an officer or partner or is directly or indirectly, either alone or together with one or more members of his immediate family, the beneficial owner of 10 percent or more of any class or equity securities;
2. Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as a trustee or in a similar fiduciary capacity;
3. A spouse of a director, manager or executive officer of an institution or an affiliate of an institution.
4. A member of the immediate family of a director, manager or executive officer of an institution or an affiliate of an institution.

"Executive officer" means a person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the institution, whether or not: the person has an official title; the title contains a designation of assistant; the person is serving without salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary, the treasurer and the comptroller are considered to be executive officers, unless by resolution of the board of directors or by the bylaws of the institution any such executive officer is excluded from participation in major policy-making functions, other than in the capacity of a director, and the executive officer does not actually participate therein.

"Immediate family" of any natural person means the following (whether by the full or half blood or by adoption):

1. Such person's spouse, father, mother, children, brothers, sisters and grandchildren;
2. The father, mother, brothers and sisters of such person's spouse; and
3. The spouse of a child, brother or sister of such person.

"Institution" means a bank or a savings bank as defined in N.J.S.A. 17:9A-1 and a State association as defined in N.J.S.A. 17:12B-5(1).

As amended, R.1982 d.243, eff. August 2, 1982.

See: 14 N.J.R. 490(b), 14 N.J.R. 834(b).

Amended definition of "Executive officer." Changed senior to executive officer.

Amended by R.1985 d.556, effective November 4, 1985.

See: 17 N.J.R. 2073(b), 17 N.J.R. 2606(b).

Added "or a savings bank" to Institution.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Corrected internal cite to N.J.S.A.

3:1-11.2 Prohibition

No institution or affiliate thereof may, either directly or indirectly, make a loan to any director or executive officer of an institution or to any affiliated person of such institution, or purchase any such loan, unless the terms and conditions of the loan (including but not limited to interest rate, maturity and collateral) are comparable to those terms and conditions then prevailing for a comparable loan to a non-affiliated person.

As amended, R.1982 d.243, eff. August 2, 1982.

See: 14 N.J.R. 490(b), 14 N.J.R. 834(b).

Added executive to officer.

SUBCHAPTER 12. MULTIPLE PARTY DEPOSIT ACCOUNTS

Authority

N.J.S.A. 17:16I-1 et seq., specifically 17:16I-16.

Subchapter Historical Note

All provisions of this subchapter became effective November 1, 1980 as R.1980 d.480. See: 12 N.J.R. 378(c), 12 N.J.R. 686(d). This subchapter was readopted pursuant to Executive Order 66(1978) effective January 6, 1986 as R.1985 d.660. See: 17 N.J.R. 2488(a), 18 N.J.R. 77(b). See chapter and section levels for further amendments.

3:1-12.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. Reference is made to the Act for the definitions not set out below, which may be necessary to construe this subchapter.

"Act" means chapter 491. Public Laws of 1979, N.J.S.A. 17:16I-1 et seq. which may also be cited as "Multiple-party Deposit Account Act."

"Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account and other like arrangement.

"Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

"Financial institution" means any organization authorized to do business under State or Federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, and savings and loan associations.

"Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship, and regardless whether the names of the parties are stated in the conjunctive or in the disjunctive.

"Multiple party account" means any of the following types of account: a joint account; a P.O.D. account; or a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

"Net contribution" means the contribution of a party to a joint account as of any given time which is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro-rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party, whose net contributions is in question.

"Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal.

"Payment" means a withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party of any setoff, or reduction or other disposition of all or part of an account pursuant to a pledge. Payment to a third person pursuant to check or otherwise is a withdrawal.

"P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

"P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

"Request" means a proper request for withdrawal, or a check or order for payment, including special requirements concerning necessary signatures and regulations of financial institutions. A notice of intent to withdraw is treated as a request for withdrawal.

"Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust of a trust agreement which has significance apart from the account or a fiduciary account arising from a fiduciary relation such as attorney-client.

"Written notice or order" means the notice or order necessary to access or affect an account which notice is effecting for a particular transaction from the time it is brought to the attention of the individual conducting that transaction.

3:1-12.2 Types of contracts

(a) A financial institution may maintain different deposit contracts for "joint accounts," "P.O.D. accounts," and "trust accounts."

(b) Different contract forms should be used for any multiple party deposit account where the parties do not intend to create a right of survivorship.

(c) A single party contract with a power of attorney or formal trust is an acceptable form for parties who do not want present rights to the account for all parties, or who do not intend to create a right of survivorship, or who otherwise intend to create rights and obligations different from those created by the Act.

Administrative correction.
See: 26 N.J.R. 2568(b).

3:1-12.3 Type of accounts

Nothing in the Act or in this subchapter is to be construed as requiring a financial institution to enter into any deposit account contract. Financial institutions are not required to open any multiple-party deposit account which does not provide for rights of survivorship as provided in section 5 of the Act.

3:1-12.4 Specific content of deposit contract

(a) The following information must be included in all multiple-party account contracts:

1. A statement that the account is subject to the provisions of the Multiple Party Deposit Account Act, N.J.S.A. 17:16I-1 et seq. (P.L. 1979, c.491).

2. Express provisions that:

i. Identify the type of account; that is, whether it is a joint account, a P.O.D. account, or a trust account; and

ii. Specify the present interests of all parties with an explanation that parties will share equally in the absence of proof of net contribution unless the parties expressly agree otherwise; and

iii. Specify that unless otherwise provided there is a right of survivorship among parties, but the account must expressly provide for a right of survivorship between or among two or more P.O.D. payees or trust beneficiaries.

3. A statement of no liability to the financial institutions for payments made pursuant to the Act. Any multiple-party account may be paid, on request, to any one or more of the parties, the financial institutions shall not be required to determine net contributions.

4. The necessary form of notice required to effectively change the terms of the deposit contract. Where there is more than one party, that is, joint accounts or two or more original payees in P.O.D. accounts or two or more trustees in trust accounts, the financial institution may require that the party giving the notice pursuant to N.J.S.A. 17:16I-6 or N.J.S.A. 17:16I-12 provide the current address of every other party affected by the notice if such address is known.

5. An acknowledgement of having read the contract which must be signed by all parties.

(b) Model forms may be found in Appendix A to this chapter, incorporated herein by reference.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Added new (b) referencing Model Forms in Appendix A.
Administrative correction.

See: 25 N.J.R. 2860(a).

Case Notes

Bank's policy of not exacting withdrawal penalty upon addition of names to registration of certificate of deposit complied with federal and state law. *Karu v. Feldman*, 119 N.J. 135, 574 A.2d 420 (1990).

3:1-12.5 Additional provisions

A financial institution may include any additional provisions in its form of contract which are necessary to fully inform its depositors of the terms of multiple-party deposit accounts and applicable regulations, provided that such provisions are not inconsistent with the provisions of the Act of this subchapter.

3:1-12.6 Change in contract

No financial institution or party may change the form of contract without the written notice required in the Act.

Amended by R.1991 d.48, effective February 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).
Corrected term "financial institution."

3:1-12.7 Copy of contract

Financial institutions shall provide copies of the multiple-party account provisions. Copies should be made available.

3:1-12.8 Limitation of subchapter

Nothing in this subchapter shall be deemed to supersede specific provisions set out in the Act. Therefore, in the event of any question as to which authority is to be followed, the provisions in the Act will prevail.

Amended by R.1991 d.48, effective February 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).
Corrected a spelling error.

3:1-12.9 Effective dates

As required in the Act, any multiple-party account opened on or after May 28, 1980 is subject to the provisions of the Act. The Act has prospective effect only and therefore will apply only to accounts opened on or after that date. The specific provisions as set out in this subchapter will become effective as of the date of adoption and will have prospective effect only unless all parties to the contract agree to retroactively have them apply to accounts opened on or after May 28, 1980.

SUBCHAPTER 13. INSURANCE ACTIVITIES

Authority

N.J.S.A. 17:1-8.1

Subchapter Historical Note

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

3:1-13.1 Insurance tie-in prohibition

(a) No banking institution, bank holding company, savings and loan association, savings and loan association service corporation, credit union or any other type of lender shall require any borrower to obtain insurance from a licensed insurance agent or broker, owned by or controlled directly or indirectly by that lender, as a precondition for obtaining financing.

(b) In the event a loan or other financing is granted for personal, family or household purposes, and if insurance is required and is available through the lending institution, the terms of the loan agreement or a separate written notice to the borrower shall state that the borrower has the option of securing such insurance from a source of the borrower's own choosing. Nothing herein shall prevent the lender from reserving the right to refuse to accept, for reasonable cause, an insurer or insurance offered by the consumer; provided however, the lender must give written notice to the consumer stating specific reasons why insurance coverage provided by the consumer is unacceptable to the lender.

Amended by R.1984 d.209, effective June 4, 1984.
See: 16 N.J.R. 586(a), 16 N.J.R. 1338(a).
Added "provided however, the . . . to the lender."

3:1-13.2 Amount of fire insurance required

(a) No mortgage lender shall, in connection with any application for a loan secured by a mortgage on real property located in New Jersey, require any mortgagor to obtain by purchase or otherwise a fire insurance policy in excess of the replacement value of the covered premises as permitted under N.J.S.A. 17:36-5.19 as a condition for granting such mortgage loan.

(b) For purposes of this section, the term mortgage lender means any bank, savings bank, savings and loan association, credit union, mortgage banker or broker, secondary mortgage loan licenses, or any other person who makes a loan secured by a first, second or subsequent mortgage on real property located in New Jersey.

New Rule, R.1993 d.520, effective November 1, 1993.
See: 25 N.J.R. 3585(b), 25 N.J.R. 4900(a).

SUBCHAPTER 14. REVOLVING CREDIT EQUITY LOANS

Authority

N.J.S.A. 17:9-24(a), 24(b), 25.2, 17:12B-48(21), 1551.

Subchapter Historical Note

Subchapter 14 was adopted as R.1983 d.378, effective September 19, 1983. See: 15 N.J.R. 1147(a), 15 N.J.R. 1575(b). See also Chapter Historical Note.

3:1-14.1 Authorization

A bank, savings bank or savings and loan association shall have authority to make loans secured by a lien on real estate which shall be known as a "Revolving Credit Equity Loan" and may charge, contract for and receive thereon interest at a rate or rates agreed to by the bank, savings bank or savings and loan association and the borrower.

3:1-14.2 Revolving credit equity loan agreement

(a) A revolving credit equity loan shall be made pursuant to an agreement between the bank, savings bank or savings and loan association and the borrower whereby:

1. The bank, savings bank or savings and loan association may permit the borrower to obtain advances of money from the bank, savings bank or savings and loan association from time to time or the bank, savings bank or savings and loan association may advance money on behalf of the borrower from time to time as directed by the borrower.

2. The amount of each advance and permitted interest charges and/or insurance charges are debited to the borrower's account and payments and credits are credited to the same account;

3. Interest is computed on the unpaid principal balance of the account from time to time; and

4. The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

3:1-14.3 Terms of agreement

(a) If an agreement governing a revolving credit equity loan so provides:

1. The bank, savings bank or savings and loan association may at any time or from time to time change the terms of the agreement, including the terms governing the periodic interest rate, the calculation of interest, or the method of computing the required amount of periodic installment payments, provided however, that the periodic interest rate shall not be changed more than once in each billing cycle nor shall the minimum installment payment be less than $\frac{1}{240}$ of the outstanding principal balance due plus interest accrued at the end of the billing cycle.

2. The bank, savings bank or savings and loan association may apply any changes made pursuant to (a)1 above to all then outstanding unpaid indebtedness in the borrower's account including any indebtedness which shall have arisen from advances obtained prior to the effective date of the change of the periodic interest rates or required minimum periodic installment.

3:1-14.4 Notification of changes

(a) The bank, savings bank or savings and loan association shall notify each affected borrower of any change in terms in the manner set forth in the agreement governing the plan and in compliance with the Truth-In-Lending Act and regulations promulgated thereunder, as in effect from time to time, if applicable; provided, however, that if such change has the effect of increasing the interest rate or other changes to be paid by the borrower, the bank, savings bank or savings and loan association shall mail or deliver to the borrower at least 15 days before the effective date of the change a clear and conspicuous written notice which shall describe the change and the existing term or terms of the agreement affected by the change and shall also set forth the effective date and an explanation, if necessary, of the change.

(b) No notice of a change is required under (a) above if a change in interest rate is made under a properly disclosed variable rate plan that ties the interest rate change to an index or formula.

3:1-14.5 Interest

No interest shall be paid, deducted or received in advance, except that a bank, savings bank or savings and loan association may charge at closing up to three discount points computed as a percentage of the credit extended. Interest shall not be compounded and shall be computed only on unpaid principal balances, except that interest due but unpaid may be considered part of the unpaid principal balance. For purposes of computing interest all installment payments shall be applied no later than the next business day after the date of receipt at the designated office or offices of the bank, savings bank or savings and loan association as set forth in the agreement, and interest shall be charged for the actual number of days elapsed at a daily rate of $\frac{1}{365}$ th of the yearly rate.

Amended by R.1993 d.218, effective May 17, 1993.

See: 25 N.J.R. 1033(b), 25 N.J.R 1965(a).

Revised text.

3:1-14.6 Methods of computing interest

(a) Interest may be computed in each billing cycle by any of the following methods, in accordance with the agreement between the bank, savings bank or savings and loan association and the borrower.

1. By converting each yearly rate to a daily rate and multiplying such daily rate by the applicable portion of the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing each yearly rate by 365; or

2. By multiplying $\frac{1}{12}$ th of each yearly rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycles; or

3. By converting each yearly rate to a daily rate and multiplying such daily rate by the number of days in the billing cycle and then multiplying by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case each daily rate is determined by dividing each yearly rate by 365, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

(b) For all the methods of computation in (a)1-3 above, the billing cycle shall be monthly (except that a month may vary from 27 to 35 days) and the unpaid principal balance on any day shall be determined by addition to any balance unpaid as of the beginning of that day all advances, past due interest, and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

“Deposit account” means an account at a banking institution established by a natural person for personal or family purposes. A deposit account includes but is not necessarily limited to a demand deposit, negotiable order of withdrawal account, money market account, a transaction account, a share draft account and any other personal or family savings account other than a time deposit.

“Personal or family purposes” means purposes other than primarily for business or investment purposes. Any account opened by a corporation, a partnership, a limited partnership or joint venture shall not be for personal or family purposes. A banking institution may rely on the written representation of the deposit account holder as to the purpose of the account.

“Time deposit” means a deposit that the depositor does not have the right to withdraw for a period of seven days or more after the date of deposit.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Amended “after hours deposits”.

SUBCHAPTER 15. AVAILABILITY OF FUNDS

Authority

N.J.S.A. 17:16L-2 and 17:1-8.1.

Subchapter Historical Note

Subchapter 15 was adopted as R.1986 d.73, effective March 17, 1986. See: 18 N.J.R. 13(a), 18 N.J.R. 553(a). See also Chapter Historical Note.

3:1-15.1 Definitions

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

“After hours deposits” means a deposit received after the banking institution’s established close of banking hour for any business day. Such hours may vary at different offices of an institution. After hours deposits shall also include deposits received on a Saturday, Sunday or legal holiday. All after hours deposits shall be deemed to have been deposited on the next banking day of the banking institution.

“Banking institution” means any State or Federally chartered commercial bank, savings bank or savings and loan association.

“Business day” means any day other than a Saturday, Sunday or legal holiday.

“Check” is deemed to include a negotiable order of withdrawal, share draft, traveler’s check, money order or other negotiable instrument used for the purpose of making payments or transfers to third parties.

3:1-15.2 Availability of funds

Every banking institution shall provide written disclosure to all holders of and applicants for deposit accounts which describe the banking institution’s policy with respect to when a deposit account holder may draw against deposits made in a deposit account. Holders of multiple accounts need to be provided only one written disclosure.

3:1-15.3 Content of written disclosure statement

(a) The written disclosure statement may be a narrative or a schedule and shall clearly state when funds deposited at a banking institution on a particular business day will be available for use by the deposit account holder. All statements contained in the disclosure shall be expressed in terms that a layman can readily understand. Terms shall be clearly defined so that a depositor can understand their meaning.

(b) If a banking institution’s availability policy varies with regard to the type or amount of deposited check or on account of any special reason requiring differing treatment, such policy must be disclosed. Examples are as follows:

1. Cash;
2. On us checks;
3. Local banking institution checks;
4. Checks drawn on banking institutions in New Jersey;
5. Checks drawn on banking institutions in other states;
6. Checks drawn by the U.S. Government, the State or other governmental entity;

7. Payroll checks;
8. Foreign checks;
9. Any specific dollar amount limitation on checks;
10. Checks deposited through its own ATM's or through a shared ATM of another institution;
11. New accounts during the first 30 days after the account is opened;
12. Deposit accounts with a history of overdrafts or other problems;
13. Emergency conditions beyond the control of the banking institution that preclude the banking institution from complying with its program;
14. Checks concerning which banking institution has received notice or has reasonable knowledge are to be returned;

(c) The banking institution may require any person opening a deposit account to acknowledge receipt of the disclosures required pursuant to this subchapter, which receipt may be incorporated into the account contract.

(d) If there is more than one owner or holder of the deposit account, disclosure to any such owner or holder shall be sufficient to comply with these regulations.

(e) The banking institution may include, in the disclosures, statements that distinguish the availability of funds from the final crediting of funds to the deposit account so that the account holder will know that there may be instances when his account may be charged for a deposit that did not clear even though the banking institution has permitted drawing against the uncleared item.

(f) Copies of the required disclosure must be available at all principal and branch offices except a communications terminal branch office of the banking institution.

3:1-15.4 Initial written disclosure

(a) Every banking institution shall mail, not later than 60 days after the effective date of these regulations, a written disclosure statement to each of its deposit account holders of record on the effective date of these regulations at their last known address on the banking institution's records. The statement may be part of a general mailing, provided all deposit account holders receive the required notice.

(b) For demand deposit account holders or for other deposit account holders who may receive a periodic statement or other monthly notification, the written disclosure statement may be included with the periodic statement or other notification provided it falls within the 60 day period required in (a) above.

(c) Every applicant for a deposit account shall be provided with a written copy of the banking institution's disclosure statement at the time of, or prior to, the actual opening of the account.

3:1-15.5 Change in policy

In the event there is any significant change in the general policy of a banking institution with respect to when a deposit account holder may withdraw funds deposited into his deposit account, the banking institution shall mail a written summary of the change in policy, or a revised written disclosure statement, to the deposit account holder at least 15 days prior to the implementation of such change.

3:1-15.6 Filing of written disclosure statements

The Commissioner of Banking may periodically require the filing of copies of a banking institution's written disclosure statement with the Department of Banking. Such filings may be used to determine the banking institution's compliance with the law and these regulations.

3:1-15.7 Banking institutions' rights

(a) Nothing contained in these regulations is intended to affect the right of a banking institution to:

1. Accept or reject a check for deposit;
2. Charge back to a depositor's account the amount of a check on which the banking institution had made provisional settlement with the depositor but which is subsequently dishonored and returned to the institution; or
3. Eliminate or modify the rights of a banking institution under the provisions of N.J.S.A. 12A:4-212.

3:1-15.8 Compliance with Federal law

Compliance with Federal Regulation CC, or with a successor to that regulation, shall be deemed to be compliance with this subchapter.

New Rule, R.1991 d.48, effective February 4, 1991.
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

SUBCHAPTER 16. MORTGAGE LOANS, FEES, OBLIGATIONS

Authority

N.J.S.A. 17:1-8.1, 17:11B-5 and 13.

Subchapter Historical Note

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). See also Chapter Historical Note. Revised subchapter heading R.1992 d.149, effective April 6, 1992. See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).

3:1-16.1 Definitions

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

“Application” means the document(s) or information, including the payment of any fees, that a particular lender or broker requires a borrower to submit for the purpose of having the lender or broker begin to process the loan document(s) to determine whether to grant or deny a mortgage loan.

“Borrower” means a natural person or persons who applies for credit or to whom credit is offered or extended primarily for personal, family or household purposes, and shall mean all co-borrowers, except that the lender may require the co-borrowers to designate one of the co-borrowers as the borrower for the purposes of these rules or, at the election of such natural person or persons, shall mean the attorney for the natural person or persons, but shall not mean other agents of the borrower.

“Borrower’s agent” means a person or entity hired, contracted or requested by the borrower to supply information or documentation to the lender. A borrower’s agents may include the seller, the borrower’s attorney, depository institutions, title insurance companies, employer, spouse, surveyor, etc. A borrower’s agents shall not include any person or entity hired, contracted or selected by the lender to perform a service or provide information or documentation to the lender, such as an appraiser, a credit reporting agency, the lender’s attorney, the investor, etc.

“Broker” means any mortgage broker as that term is defined in N.J.S.A. 17:11B-1d, or any lender when accepting and processing a mortgage loan application on behalf of a lender which will issue the commitment or loan denial.

“Business day” means any day on which the office or offices of the lender or broker are open to the public to provide financial services. A day shall not be regarded as a business day solely because the lender or broker conducts some transactions by appointment for particular customers on that day. A day may be a business day even though the lender or broker does not make entries into the books of the business on that day.

“Commitment” means a signed statement issued by a lender in which the lender promises to make a loan of specified terms to a specified borrower, and which is based on a satisfactory underwriting analysis of the appraisal, if an appraisal is required in connection with the loan, and a satisfactory underwriting analysis of the credit report, if a credit report is required in connection with the loan, except that any document indicating approval of a loan application which is contingent on the approval of a party to whom the lender seeks to sell the loan shall not be deemed a commitment.

“Current market yield” means:

1. In the case of a mortgage loan originated under a special program of, or committed for sale before expiration of the lock-in agreement to, a particular secondary market purchaser, the yield being sought by that purchaser for that loan; or

2. In the case of a mortgage loan not originated or committed as described in paragraph 1 above and not to be held in the lender’s portfolio, the yield being sought, for the type of mortgage loan applied for, by the secondary market purchaser which purchased the highest dollar volume of such mortgage loans from the lender during the preceding 12-month period; or

3. In the case of a mortgage loan to be held in the lender’s portfolio, the average commitment rate offered by the lender, for the type of mortgage loan applied for, during the preceding 30-day period.

“Lender” means a State- or Federally-chartered bank, savings bank, savings and loan association, credit union, or a mortgage banker as defined in N.J.S.A. 17:11B-1c.

“Lock-in agreement” means an agreement between the lender and the borrower whereby the lender guarantees until a specified date the availability of a specified rate of interest or specified formula by which the rate of interest will be determined and/or specific number of discount points, provided the loan is approved and closed by the specified date. If a specified date is not determinable, the lender may fulfill the requirement of this provision by setting forth with specificity the method by which the duration of the lock-in period will be determined. The term “lock-in agreement” does not include an agreement to fix the rate executed three or fewer calendar days before closing where appropriate disclosures have been made under the provisions of this subchapter.

“Mortgage loan” means any closed-end loan to a borrower which is secured by a first mortgage on real property located in New Jersey on which there is a one to six family dwelling, a portion of which may be used for nonresidential purposes.

“Promptly refund” or “return” means to refund or return to the borrower within seven calendar days following receipt of a written request for same from the borrower.

“Receipt” (or “received”) means:

1. In the case of the lender, actual receipt (or actually received) at the office or by the person designated by the lender or broker as the place where or the person to whom the application or documentation must be submitted or, if no such place or person is designated, at the lender’s or broker’s principal office or any of its branch offices; or

2. In the case of a borrower:

i. Actual receipt (or actually received) where the document or correspondence is personally delivered to the borrower or sent to the borrower by registered or certified mail or by means of a commercial delivery service; or

ii. The third calendar day following deposit in the regular U.S. mail.

“Substantial fault of the borrower” means that the borrower or the borrower’s agent:

1. Failed to provide in a timely manner information or documentation required by the lender;

2. Provided or omitted any information, in the application or subsequently, which upon verification proves to be significantly inaccurate causing the need for review or further investigation by the lender;

3. Failed to produce on or before the date specified by the lender all of the documentation specified in the commitment or closing instructions as being required for closing, which date may be less than seven calendar days following the date of receipt of the commitment or closing instructions; or

4. Failed to be ready, willing and able to close the loan or before the date specified by the lender.

5. For purposes of this section:

i. A person provides information or documentation “in a timely manner” if such information and documentation is received by the lender within seven calendar days after the person receives a request for same or within the time frame established by the lender if that time frame extends beyond seven calendar days after receipt of the request; and

ii. Information is “significantly inaccurate” if the correct information would, in the reasonable opinion of the lender, cause the borrower to be disqualified for the type of loan for which the borrower has applied or cause the secondary market source for which the loan is being originated to refuse to purchase the loan.

“Trust funds” means funds which are held in accordance with the terms of a written agreement between the lender and the borrower or seller, which provides that upon the occurrence of a specific condition or event the funds or a portion thereof shall be disbursed to the borrower or seller. Trust funds do not include escrows collected or held by the lender for taxes and insurance.

Amended by R.1989 d.332, effective June 19, 1989.
See: 21 N.J.R. 957(a), 21 N.J.R. 1668(b).

Definitions of “borrower” and “borrower’s agent” added. “Current market yield” definition amended to include components specifically addressed to portfolio lenders and special loan programs for which there may be no identifiable secondary market.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).

Revised definitions.
Administrative change.
See: N.J.R. May 4, 1992.

3:1-16.2 Fees

(a) No lender shall charge a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise authorized by State or Federal law, either explicitly or as interpreted by the appropriate regulator in official staff commentary, regulatory bulletins, or memoranda.

1. Application fee: Defined as a fee imposed by a lender or broker for accepting or processing a mortgage loan application. The application fee shall not be based upon a percentage of the principal amount of the loan or the amount financed;

2. Credit report fee, which may not exceed the amount paid, or to be paid, to the party providing the credit report, except that that initial charge to the borrower may be based on a reasonable estimate provided that any amount in excess of the amount paid to the party providing the credit report is refunded to the borrower at or prior to closing;

3. Appraisal fee, which may not exceed the amount paid, or to be paid, to the party providing the appraisal, provided that if the appraisal is done in-house, the fee shall not exceed the going charge for such appraisals by third parties and, except that the initial charge to the borrower may be based on a reasonable estimate provided that any amount in excess of the amount paid to the party providing the appraisal is refunded to the borrower at or prior to closing;

4. Commitment fee: Defined as a fee, exclusive of third-party fees, imposed by a lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its commitment and payable on or after acceptance of the commitment, except a lock-in fee charged pursuant to (a)5 below. The amount of any commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan or the amount financed;

5. Lock-in fee: Defined as that portion of the commitment fee charged by a lender as the consideration for execution and fulfillment of the terms of the lock-in agreement. A lock-in fee may comprise all of the commitment fee. No lock-in fee shall be received by a lender prior to inception of the lock-in period;

6. Warehouse fee: Defined as a fee charged by a lender not to exceed the cost associated with holding the particular mortgage loan pending sale to a permanent investor and payable at closing. The fee shall be based on the actual holding period and warehouse rate and the initial coupon rate on the mortgage loan. No profit shall accrue to the lender from the fee;

7. Third party fees: Limited to the following fees paid or actually incurred by a lender on behalf of a borrower:

i. Overnight delivery, messenger, fax, and other special delivery fees, provided that the type of service is authorized by the borrower in advance in writing or the specific service is authorized by the borrower in writing;

ii. Flood certification fees;

iii. Pest inspection or certification fees;

iv. Final inspection fee, not to exceed the amount of the fee paid or actually incurred to a third party or, if the final inspection is done in-house, not to exceed the going charge for such inspections by third parties;

v. Outside counsels' fees as permitted by N.J.S.A. 46:10A-6;

vi. Certified check fees, not to exceed the amount of the fee paid or actually incurred by the lender to the issuer of the certified check or, if the lender issues the certified check, not to exceed its usual fee for providing this service to its customers;

vii. Update fees to update the borrower's credit report and appraisal, not to exceed the amount of the fee paid or actually incurred by the lender to the credit reporting agency or appraiser or, if the appraisal is done in-house, not to exceed the going charge for such updates by third parties;

viii. One-time mortgage insurance premiums or, if the premiums are not collected on a one-time basis, not more than one-year of premiums;

ix. Survey fees;

x. Recording fees which shall not exceed the statutory amount for recording the deed, mortgage, and note, and which shall not include any amount for recording an assignment of the mortgage;

xi. Title and title search fees, including title insurance premiums;

xii. Taxes;

xiii. Tax service fees;

xiv. Radon test fees; and

xv. Fees not included among the above third party fees may be charged provided that prior written approval is obtained from the Department. The Department will only approve third party fees which are of benefit to the borrower and represent a cost not associated with the lender's overhead. Accordingly, the Department will not approve fees for document preparation, processing, underwriting, file updates, lender reviews, copying, funding, and miscellaneous.

8. Discount points or fractions thereof: A discount point is defined as an amount of money equal to one

percent of the principal amount of the loan and payable only at closing.

9. A service fee not to exceed \$25.00 to cancel the mortgage, providing that the borrower has received prior written notice of the fee required by the lender, and providing further that if the lender collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the lender shall refund the service fee to the borrower.

(b) If a lender or broker uses a term for a fee which is different than a term listed in (a) above, the lender or broker shall be able to document to the Department that the fee fits the definition and description of a permissible fee listed above, and that the fee functions accordingly.

(c) This section does not restrict the imposition of fees after the closing of a mortgage loan, such as late fees and variable-to-fixed rate conversion fees.

(d) The Commissioner is authorized to order any person to make restitution for fees charged which are impermissible or improperly charged, or to make refunds when required, under these rules. Nothing in this subsection is deemed to set a limit on the amount of fees a lender may charge on a mortgage loan.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(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).

3:1-16.3 Application process

(a) Before a lender or broker accepts any application fee in whole or in part, any credit report fee, appraisal fee or any fee charged as reimbursement for third party fees, the lender or broker shall make written disclosure to the borrower (which disclosure may be contained in the application) as required by this section or N.J.A.C. 3:1-16.10, respectively, setting forth:

1. A description and the amount of each such fee;

2. Whether all or any part of such fees are refundable;

3. The terms and conditions for the refund, if all or any part of the fees are refundable, provided that, where applicable, the terms and conditions may be disclosed by making reference to these rules with proper citation;

4. A realistic estimate of the number of calendar days required to issue a commitment following receipt of such fees by the lender. If the lender subsequently determines that the estimate is unrealistic, it may return the application and all fees paid and offer the borrower the opportunity to reapply subject to a new estimate;

5. The name or title of a person within the lender's organization to whom the borrower may address written

questions, comments, or complaints and who will be required to promptly respond to such inquiries; and

6. For mortgage bankers non-servicing, a statement indicating that the licensee is a mortgage banker non-servicing and as such does not hold mortgage loans or service mortgage loans for more than 90 days in the regular course of business.

(b) The disclosures required in (a) above shall be acknowledged in writing by the borrower and maintained by the lender or broker and a copy of such acknowledgment shall be given to the borrower.

(c) Except where explicitly authorized to return an application, or for other reasons consistent with due diligence, a lender is obligated to process an application submitted to it and to exert conscientious effort to either grant or deny the application within the realistic estimate disclosed as required in (a) above.

(d) Not later than three business days after the lender receives the borrower's application, or before closing of the loan, whichever is earlier, the lender shall provide the borrower with a good faith estimate as a dollar amount or range of each fee for a settlement service which the borrower is likely to incur.

1. For the purpose of this subsection, "settlement service" shall mean a service related to the origination, processing, or closing of a mortgage loan, and for which the lender anticipates the borrower will pay a fee at or before settlement based upon the lender's general experience.

2. With respect to the settlement service fees imposed on a borrower by the lender (and not by third parties), the lender shall indicate which, if any, of such fees are refundable in whole or in part and the terms and conditions for such refund.

3. Good faith estimates of fees for settlement services which are made pursuant to, and conform to, Federal Regulation X shall satisfy the disclosure requirement of this subsection, provided that the lender also makes the disclosures required by (d)2 above.

(e) The borrower may, without penalty or responsibility to pay additional fees, withdraw an application at any time prior to acceptance of a commitment. Upon such withdrawal, the lender or broker shall be responsible to refund to the borrower only those fees to which the borrower may be entitled pursuant to the terms set forth in the written disclosure required by (a) above, except that:

1. Where the lender or broker has failed to provide the borrower with the written disclosure required by (a) above, the lender or broker shall promptly refund to the borrower all funds paid to the lender or broker;

2. Where the lender has failed to issue a commitment or justifiable credit denial and its realistic estimate of the time needed to do so has expired through no substantial fault of the borrower and the borrower has withdrawn his or her application as a result, the lender shall promptly refund to the borrower all funds paid to the lender;

3. Where an application is denied, or a commitment is issued on terms and conditions substantially dissimilar to those for which the application was submitted and which are unacceptable to the borrower, for reasons (other than bona fide underwriting considerations) which the lender knew or should have known at the time of application from the facts disclosed on the face of the application, the lender shall promptly refund to the borrower all funds paid to the lender. For purposes of this paragraph, a commitment is issued on terms and conditions which are "substantially dissimilar" to those for which the application was submitted if the interest rate, discount points or commitment fee as set forth in the commitment is higher than, or the term of the loan as set forth in the commitment is different than, the corresponding terms of the loan for which application was made.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).
Amended by R.1993 d.423, effective September 7, 1993.
See: 25 N.J.R. 2625(b), 25 N.J.R. 4063(b).

3:1-16.4 Lock-in agreements

(a) All lock-in agreements shall be in writing and shall contain at least the following provisions:

1. The expiration date of the lock-in, if any;
2. The interest rate locked in, if any;
3. The discount points locked in, if any;
4. The commitment fee locked in, if any;
5. The lock-in fee, if any; and

6. A statement advising of the provisions of (b), (c) and (d) below if applicable and of the provisions of N.J.A.C. 3:1-16.6(a).

(b) The lender shall make a good faith effort to process the mortgage loan application and/or stand ready to fulfill the terms of its commitment before the expiration date of the lock-in agreement and any extension thereof.

(c) In the event a lock-in agreement is executed and the loan applied for is denied, the lender shall promptly refund any lock-in fee paid.

(d) Any lock-in agreement received by a lender by mail or through a broker must be signed by the lender before it will become effective. The borrower may rescind the lock-in agreement until receipt of a copy of the agreement signed by the lender by providing the lender with written notification of such rescission. Mailed notification of rescission shall be effective upon mailing. If a borrower elects to so rescind, the lender shall promptly refund any lock-in fee paid.

Amended by R.1992 d.149, effective April 6, 1992.
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).

3:1-16.5 Commitment process

(a) At or before issuance of a commitment, the lender shall disclose in writing the following:

1. The expiration date of the commitment;
2. The amount financed, which shall have the same meaning as that term is defined in Federal Regulation Z;
3. In the event the interest rate is not subject to increase before expiration of the commitment:
 - i. The finance charge, which shall mean the dollar amount the credit will cost the borrower;
 - ii. The annual percentage rate, which shall mean the cost of the credit to the borrower as a yearly rate; and
 - iii. The payment schedule, which shall mean the number, amounts and timing of payment scheduled to repay the obligation;
4. In the event the interest rate is subject to increase before expiration of the commitment:
 - i. The basis, index or method, if any, which will be used to determine the rate at closing. Such basis, index or method shall be established and disclosed with direct reference to the movement of an interest rate index or of a national or regional index that is available to and verifiable by the borrower and beyond the control of the lender; or
 - ii. A statement in at least 10-point bold type that "The interest rate will be a rate established by the lender in its discretion" followed by a statement in the same type indicating when the prevailing rate would be set and advising the borrower of his or her right to demand redisclosure of the rate and points pursuant to subsection (c) below once they are so set; and
 - iii. In addition to the requirements of (a)4i or ii above, the finance charge, annual percentage rate and payment schedule based on the rate at which a lender is closing or committing loans on the date the disclosure is made, together with a statement in at least the same size type as the disclosure, either immediately above or immediately below the disclosure, to the effect that:

"These figures are for illustrative purposes only. They reflect the rate now in effect, NOT necessarily the rate you will pay at closing, which will be established as indicated in this commitment."

5. The amount of the commitment fee, if any, and whether and under what circumstances the commitment fee shall be refundable, provided that, where applicable, the latter disclosure may be made by referencing either N.J.A.C. 3:1-16.6(a) or N.J.A.C. 3:1-16.6(b) of these rules;

6. All other fees yet to be paid by the borrower, including, but not limited to, warehouse fees and discount points, except that fees previously disclosed by the lender need not be redisclosed;

7. In the event the interest rate, annual percentage rate or term may vary after closing,

- i. An identification and specification of the terms which are variable;
- ii. The circumstances under which the above terms may change;
- iii. Any limitation on a change;
- iv. The effect of a change; and
- v. An example of the payment terms that would result from an increase;

8. The time, if any, within which the commitment must be accepted by the borrower; and

9. Whether any fees or discount points charged by the lender and set forth in the commitment are subject to change before closing and, if so, the circumstances under which such fees or discount points may change.

(b) The information required to be disclosed in this section may be contained in one or more documents, for example, in a Federal Regulation X or Federal Regulation Z form disclosure and a supplement containing the information required under this section but not required by Regulation X or Regulation Z, as the case may be.

(c) The provisions of a commitment cannot be changed prior to expiration of the specified period within which the borrower must accept it. If any information necessary for an accurate disclosure required by (a) above is unknown to the lender at the time disclosure is required, the lender shall make the disclosure based upon the best information reasonably available to it and shall state that the disclosure is an estimate.

(d) If the interest rate (or initial interest rate in the case of a variable rate loan), discount points or fees charged by the lender and set forth in the commitment are subject to increase before closing, such terms shall be fixed no later than midnight of the third business day before the date the loan closes. The borrower may demand that the lender advise him or her, either orally or in writing, of such terms once they are so fixed and the lender shall promptly comply with any such demand. The right conferred by this subsection is not permitted to be modified or waived by the borrower except for a bona fide personal financial emergency. To modify or waive the right, the borrower shall give the lender a dated written statement that describes the emergency, specifically modifies or waives this right, and bears the signatures of all borrowers. Printed forms for this purpose are prohibited.

(e) A lender who commits to make a mortgage loan may assign the commitment to another lender authorized to make mortgage loans in this State, or allow another such lender to close the loan, provided that:

1. The lender who committed to make the mortgage loan shall obtain and maintain in accordance with its record retention schedule a copy of the mortgage note and the closing statement; and

2. The lender who committed to make the mortgage loan shall remain responsible for ensuring that the ultimate lender closes the loan in accordance with the terms and conditions of the commitment and applicable New Jersey and Federal laws and regulations.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).
Amended by R.1994 d.559, effective November 7, 1994.
See: 26 N.J.R. 3234(a), 26 N.J.R. 4347(b).

3:1-16.6 Expiration of lock-in or commitment

(a) In the event a lock-in agreement has been executed, and the loan does not close before the expiration date of either the lock-in agreement or any commitment issued consistent therewith through no substantial fault of the borrower, the borrower may:

1. Withdraw the application or reject or terminate any commitment, whereupon the lender shall promptly refund to the borrower any lock-in fee and any commitment fee paid by the borrower; or

2. Have the lock-in agreement extended for no more than 14 calendar days following expiration of the commitment or, where no commitment issued before expiration of the lock-in, for no more than 14 calendar days following issuance of the commitment. If the borrower elects to extend the lock-in agreement, the lender may elect either to close the loan at or below the lock-in rate, in which case the lender may keep the lock-in fee, or may elect to close the loan above the lock-in rate but no higher than that which would provide a current market yield but no gross profit or "spread" to the lender, in which case the lender shall refund the lock-in fee to the borrower. All other terms and conditions of the loan shall be as specified in the commitment, regardless whether the loan closes before or after the expiration date of the commitment.

(b) In the event a lock-in agreement has not been executed and a commitment has been issued, and the loan does not close before the expiration date of the commitment through no substantial fault of the borrower, the borrower may:

1. Terminate the commitment, whereupon the lender shall promptly refund to the borrower any commitment fee paid by the borrower; or

2. Have the commitment extended for a reasonable period of time, not to exceed 14 calendar days, to permit closing.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).
Revised (a)2 and (b)2.

3:1-16.7 Closing

Provided that the conditions of its commitment have been met, and upon reasonable notice, the lender shall be ready, willing and able to meet any closing date scheduled in accordance with the terms of its commitment.

3:1-16.8 Trust funds

Before accepting any trust funds, each lender shall disclose in writing to the party or parties depositing such funds the purpose for which the fund is established, the amount of the trust fund, the period for which the trust fund will be held and the conditions upon which the funds will be disbursed or released.

3:1-16.9 No private right of action

A failure to comply with this subchapter shall not be deemed to provide a party to the transaction with any legal rights or remedies he or she would not otherwise enjoy pursuant to the contractual relationship between the parties.

3:1-16.10 Special rules for brokers

(a) No broker shall charge or collect from a borrower on its own behalf any fees other than an application fee and discount points or fractions thereof. A broker may collect a fee on behalf of a lender provided that the entire amount of the fee is transmitted to the lender.

(b) Before accepting any loan application, the broker shall make written disclosure to the borrower in a separate service agreement setting forth:

1. The amount of the broker's application fee, if any;
2. Whether and under what circumstances all or any part of the broker's application fee may be refundable;
3. The amount of any discount points which are payable to the broker for its services;
4. A statement advising of the provisions of (c) below;
5. A detailed listing of the specific services that will be provided or performed by the broker, together with a statement that all fees which are payable to the broker will be refunded if the broker does not perform the services indicated; and
6. Whether the broker places loans exclusively with any three or fewer lenders and, if so, the name(s) of such lender(s).

(c) No broker may execute a lock-in agreement or issue a commitment on its own behalf or on behalf of any lender or guarantee acceptance into any particular loan program or promise any specific loan terms or conditions.

(d) No broker may accept a lender's lock-in agreement from a borrower or any lock-in fee in connection therewith unless the lock-in agreement contains all of the disclosures required in N.J.A.C. 3:1-16.4(a).

(e) The disclosures required in (b) above shall be acknowledged in writing by the borrower and maintained by the broker and a copy of such acknowledgement shall be given to the borrower.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).
Revised (a) and (b).
Old section 16.10 "Compliance with Federal laws" was repealed.

3:1-16.11 Operative date

This subchapter shall become operative on July 16, 1989, and shall apply to all applications taken on or after that date. The amendments to this subchapter which were adopted effective April 6, 1992 shall take effect immediately on that date, except that such amendments shall not apply to Federally-chartered financial institutions until June 5, 1992.

Amended by R.1992 d.149, effective April 6, 1992 (operative for Federally-chartered financial institutions is June 5, 1992).
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).
Recodified with revisions from 3:1-16.12. Old section 3:1-11 was "Special rules for brokers."

3:1-16.12 (Reserved)

Recodified to 16.11 by R.1992 d.149, effective April 6, 1992 (operative for Federally-chartered financial institutions is June 5, 1992).
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).
Old section was "Operative date".

SUBCHAPTER 17. AUTOMATED TELLER MACHINES (ATM)

Authority

N.J.S.A. 17:1-8 and 8.1; 17:9A-1, 20D, 316 and 17:12B-8, 37.1 and 226.

Source and Effective Date

R.1991 d.244, effective May 6, 1991.
See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).

3:1-17.1 Definitions

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

"Automated teller machine" means an automated facility or terminal owned or rented by a bank, savings bank or savings and loan association at which a customer may do one or more of the following:

1. Make deposits;
2. Obtain disbursements from a deposit or loan account; or
3. Transfer money from a deposit or loan account.

Included within this definition is a communication terminal branch office as defined in N.J.S.A. 17:9A-1(17), and a remote service unit as defined in N.J.S.A. 17:12B-8(e).

"Bank," "savings bank," "savings and loan association" and "credit union" means State chartered institutions having their principal offices in New Jersey, unless otherwise indicated.

"Foreign financial institution" means a State or Federally chartered bank, savings bank, savings and loan association or credit union with principal offices outside of New Jersey.

"Sharing access" means the ability of financial institutions, other than the institution owning or renting the automated teller machine, to allow their customers to use the machine to consummate transactions, make deposits, initiate inquiries or otherwise conduct business with such financial institutions.

3:1-17.2 On site location

A bank, savings bank or savings and loan association may establish, maintain or operate an automated teller machine or machines on the premises, or within 200 feet of the premises, of its principal office or any of its branch or auxiliary offices, without filing an application with the Department. The 200 feet shall be measured from the portion of the property line of the office or branch closest to the automated teller machine.

3:1-17.3 Off site location

(a) Before establishing an automated teller machine more than 200 feet from its premises, a bank, savings bank or savings and loan association must file an application with the Commissioner containing the following:

1. The proposed location of the automated teller machine or machines;
2. A listing of all other New Jersey institutions which will share access to the machine or machines, or all state, regional and national networks with which the machine or machines will be associated;
3. The anticipated charges to be made for access to the unit;
4. The number of machines to be established at the location; and

5. Such other information as required by the Commissioner.

(b) The following items must accompany each application:

1. The filing fee of \$500.00; and
2. A certified copy of a resolution of the board of the applying institution authorizing the application.

3:1-17.4 Shared ownership

If any bank, savings bank or savings and loan association shares in the ownership, costs of installation or maintenance of an automated teller machine, either directly or indirectly (on other than a transactional fee basis), then this shall be indicated in the application. In addition, the application shall include a certified board resolution from each financial institution sharing in the ownership, costs of installation or maintenance. The application fee shall only be paid by the applying institution, but the machine shall be a branch of every institution sharing the ownership or costs of installation or maintenance.

3:1-17.5 Interstate access

(a) No foreign financial institution shall establish, operate, maintain or share ownership of an automated teller machine anywhere within the State of New Jersey, except that a foreign financial institution may share access to such a machine.

(b) No automated teller machine in this State shall bear any identification of a foreign financial institution, except that a generic name or display identifying or associated with a regional or national network of automated teller machines is not prohibited.

(c) A customer having an account in a foreign financial institution may make deposits to that account from an automated teller machine located in New Jersey.

“Back office operation” shall mean only the following activities:

1. Data processing;
2. Recordkeeping;
3. Accounting;
4. Check and deposit sorting and posting;
5. Computation and posting of interest;
6. Clerical and statistical activities which are similar to the activities in paragraphs 1 through 5 above; and
7. Producing and mailing correspondence and other documents, provided that the correspondence and documents do not include the address of the service facility.

“Back office operation” shall not mean:

1. Making loans;
2. Making underwriting decisions;
3. Receiving payments or signed loan documents directly from customers whether by mail, wire transfer, delivery service, or other means;
4. Accepting deposits;
5. Maintaining credit balances;
6. Advertising or otherwise soliciting business; and
7. Transacting business between a service facility and the foreign financial institution’s customers or the general public.

“Foreign association” shall have the meaning which that term has in N.J.S.A. 17:12B-213.

“Foreign bank” shall have the meaning which that term has in N.J.S.A. 17:9A-315.

“Foreign financial institution” shall include a foreign bank, a foreign association, and an entity which is affiliated in ownership, either directly or indirectly, with a foreign bank or a foreign association, but shall not include an entity which is affiliated, either directly or indirectly, with a foreign bank or foreign association, and which is licensed to transact financial services under New Jersey law, provided that the entity limits its activities to those conferred by its license.

SUBCHAPTER 18. FOREIGN BANKS AND ASSOCIATIONS; REGISTRATION OF SERVICE FACILITIES

Authority

N.J.S.A. 17:1-8.1, P.L. 1991, c.74.

Source and Effective Date

R.1991 d.347, effective July 1, 1991.
See: 23 N.J.R. 1233(a), 23 N.J.R. 2029(a).

3:1-18.1 Definitions

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

3:1-18.2 Registration requirement

(a) Prior to engaging in back office operations in this State, a foreign financial institution shall register a service facility with the Department.

(b) Notwithstanding (a) above, an affiliate of a foreign bank or foreign association which is conducting back office operations in this State on July 1, 1991 may continue to conduct such operations until August 30, 1991 without becoming registered.

3:1-18.3 Registration process

(a) A foreign financial institution may request to register a service facility by mailing to the Department the following:

1. A letter requesting registration of a service facility to conduct back office operations, which letter shall include the name of the foreign financial institution and the address of its principal United States office, the address of the proposed service facility, and the name and address of the foreign financial institution agent in this State for service of process; and

2. The required registration fee.

3:1-18.4 Registration fee

(a) A foreign financial institution shall submit a registration fee of \$500.00 to the Department with its request to become registered, except if the initial registration of the service facility has occurred in the second year of the biennial period, the registration fee shall be \$250.00.

(b) After becoming registered, a foreign financial institution which intends to continue operating a service facility in this State shall submit to the Department biennially a registration renewal fee of \$500.00.

(c) The first biennial period shall end August 31, 1992.

3:1-18.5 Notification of registration or deficiency by the Department

(a) The Department shall, within 30 days of receipt of the materials specified in N.J.A.C. 3:1-18.3, notify the foreign financial institution that the service facility is registered by the Department or, in the event the request for registration is incomplete, the Department shall, within 30 days of receipt of the incomplete request, notify the foreign financial institution of the nature of the deficiency.

(b) The registration of the service facility shall not become effective until the foreign financial institution has received notification from the Department, except that, if the foreign financial institution has not received notification of registration from the Department within 30 days of the Department's receipt of all of the materials specified in N.J.A.C. 3:1-18.3, or notification of deficiency within 30 days of the Department's receipt of an incomplete request, such request for registration shall be deemed to have been granted by the Department.

(c) Nothing in this rule shall prohibit a foreign financial institution from purchasing or leasing office space in this State for use as a service facility, or from preparing such office space for use as a service facility prior to notification of registration by the Department.

(d) A foreign financial institution may register more than one service facility, but shall submit a separate request for registration, with the required fee, for each service facility

and shall receive notification of that registration prior to engaging in back office operations at that service facility.

3:1-18.6 Permitted activities at service facilities

(a) A foreign bank or foreign association may conduct only back office operations at a service facility.

(b) Back office operations conducted by foreign financial institutions in this State may be conducted only at service facilities.

3:1-18.7 Examination of service facilities

(a) A service facility shall be subject to examination by the Department to determine whether the foreign financial institution is operating the service facility in accordance with State law.

(b) The cost for the examination of a service facility shall be paid by the foreign financial institution and shall be billed at the Department's per diem rate for examinations of depository institutions (see: N.J.A.C. 3:1-6.6).

3:1-18.8 Hearing to close service facilities

The Commissioner may, upon notice and a hearing, order a foreign financial institution to close a service facility operated in violation of law. Such hearing shall be conducted in accordance with 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.

SUBCHAPTER 19. NEW JERSEY CONSUMER CHECKING ACCOUNTS
Authority

N.J.S.A. 17:16N-1, specifically 17:16N-3.

Source and Effective Date

R.1992 d.303, effective August 3, 1992.
See: 24 N.J.R. 1667(a), 24 N.J.R. 2710(a).

3:1-19.1 Definitions

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

"Account agreement" means the agreement governing a New Jersey Consumer Checking Account.

"ATM" means automated teller machine.

"Check" means any check as defined in N.J.S.A. 12A:3-104, share draft, negotiable order of withdrawal, or similar means of making payment or transfers to third parties, the customer, or others, which is drawn on an account in a depository institution and is payable on de-

mand. It shall not include debits to the account for maintenance charges, fees, printing checks, pre-arranged automatic withdrawals, and other similar services.

"Consumer" means a natural person who resides in this State, except that a credit union may require that the natural person be a member of the credit union in accordance with the credit union's rules of membership.

"Customer" means a consumer who has a New Jersey Consumer Checking Account.

"New Jersey Consumer Checking Account" or "account" means a deposit account established pursuant to N.J.S.A. 17:16N-3 and with respect to which the account holder is permitted to make payments to third parties or others by check.

"Non-conforming account" means a New Jersey Consumer Checking Account which does not contain the characteristics set forth in N.J.A.C. 3:1-19.2 but has been individually approved by the Commissioner pursuant to N.J.A.C. 3:1-19.3.

3:1-19.2 Features of New Jersey Consumer Checking Accounts

(a) A New Jersey Consumer Checking Account which is subject to subsection c of N.J.S.A. 17:16N-3 shall have all of the following features:

1. The account agreement shall not require more than \$50.00 as an initial deposit amount;
2. The account agreement shall not require the customer to maintain a minimum balance of more than \$1.00 in order to maintain the account;
3. The account agreement shall allow the customer to make at least eight withdrawals by check per periodic cycle from the account without charge. For the purpose of this paragraph, the withdrawal shall be deemed made when paid by the depository institution. This minimum number of withdrawals is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the minimum number shall be adjusted accordingly;
4. The account agreement shall not authorize a charge exceeding \$0.50 for each transaction in excess of the number required by (a)3 above;
5. The account agreement shall allow a customer, of a depository institution which permits withdrawals to be made from checking accounts by means of withdrawal slips, to make unlimited withdrawals by withdrawal slip from the account without charge;
6. The account agreement shall allow a customer to make unlimited deposits into the account without charge;

7. The account agreement shall not authorize a charge for maintaining the account which exceeds \$3.00 per periodic cycle. Also, the maximum amount of the charge is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the maximum amount shall be adjusted accordingly;

8. The account agreement shall not authorize a charge to the customer for printing checks for the account which is more than its charge to its regular checking account holders for that service; and

9. The account agreement may provide that the depository institution may charge customers for ATM usage and for banking services not specified in this chapter if, and to the same degree that, it charges its regular checking account holders for that usage and services.

3:1-19.3 Non-conforming accounts

(a) A depository institution may apply to the Commissioner for approval of any account, which does not conform to the criteria set forth in N.J.A.C. 3:1-19.2, as a New Jersey Consumer Checking Account.

(b) Each application for approval of a non-conforming account shall provide:

1. The initial deposit amount necessary to open the account;
2. The minimum balance required to maintain the account;
3. The maximum number of checks that may be written per month without charge;
4. The maximum number of non-check withdrawals per month without charge;
5. The maximum maintenance charge per month;
6. The maximum number of deposits which may be made per month without charge;
7. The maximum per transaction charge per month for transactions in excess of those specified in (b)3, 4, and 6 above;
8. The length of the periodic cycle of the account; and
9. Any other fees which will be charged the customer.

(c) In deciding whether to approve such an account, the Commissioner shall consider whether the account meets the stated purpose of the Act to make New Jersey Consumer Checking Accounts available to consumers at low cost, and has substantially equivalent characteristics to the account in N.J.A.C. 3:1-19.2.

(d) The Commissioner shall issue a decision on an application for approval of non-conforming accounts within 30 days of receipt of the application, although the Commissioner may extend the time for issuing such decision by notifying the depository institution of such extension within the 30-day period. If neither a decision or a notice of extension has been issued within that time, the application shall be deemed approved.

3:1-19.4 Closing New Jersey Consumer Checking Accounts

(a) A depository institution may refuse to open or may close a New Jersey Consumer Checking Account for the following reasons:

1. For fraudulent activity or overdrafts under the same standards which it applies to holders of its regular checking accounts;
2. If the consumer has a regular checking account or another New Jersey Consumer Checking Account in that depository institution or in any other depository institution;
3. If the consumer makes an intentional material misrepresentation to the depository institution in connection with the account; or
4. If the fees and other revenue obtained from the account are less than the cost to the depository institution to provide the account, provided that the depository institution complies with the requirements of (b) through (d) below.

(b) No depository institution is required to offer a New Jersey Consumer Checking Account at a cost to a customer which is less than the cost to the depository institution to provide the account. In computing the cost of the account, the depository institution shall deduct the investment value of deposits in the account.

(c) A depository institution which determines that the revenue which it obtains through fees which it charges to the account holder is less than its cost for offering a New Jersey Consumer Checking Account, and which intends to discontinue offering the account on that basis, shall notify the Department 30 days prior to such discontinuance, and shall submit with such notice the data supporting its determination regarding cost.

(d) A depository institution which discontinues an account pursuant to (c) above shall not thereby be relieved from its statutory obligation to provide a New Jersey Consumer Checking Account to consumers unless it provides data supporting a conclusion by the Commissioner that the depository institution would lose money on any account which would satisfy the requirements of P.L. 1991, c.210.

3:1-19.5 Consumer information requirements

(a) A depository institution which is required by P.L. 1991, c.210 to offer a New Jersey Consumer Checking

Account shall provide reasonable in-person information and assistance to customers regarding New Jersey Consumer Checking Accounts, checking accounts generally, and related financial services.

(b) A depository institution which is required by P.L. 1991, c.210 to offer a New Jersey Consumer Checking Account shall post in a conspicuous place in the lobby of each office of the depository institution a sign and make material available in the public area which indicates that the office offers New Jersey Consumer Checking Accounts. The notice and material shall explain the material features and limitations of such an account. A depository institution may identify its New Jersey Consumer Checking account by any name, provided that it also indicates conspicuously that the account is a "New Jersey Consumer Checking Account."

APPENDIX A

JOINT ACCOUNTS, P.O.D. ACCOUNTS, TRUST ACCOUNTS

The following statements are presented as model forms only, the language is not mandatory. The language used must accurately reflect the intent of the Act and provide the information required by N.J.A.C. 3:1-12.4.

Joint Accounts

This is a joint account. Ownership of this account cannot be changed by will.

Each party to this account has a present right to payment from this account. Each party owns his/her net contribution to the account. In the absence of proof of net contribution, and unless the parties have specifically otherwise agreed, each party will own an equal share of this account. Upon the death of a party to this account:

(a) Where there is only one surviving party, the entire account will belong to the survivor;

(b) Where there are two or more surviving parties each party will continue to own his/her proportionate share. The portion of the account owned by the deceased party will be shared equally by the survivors.

P.O.D. Accounts

This account is a P.O.D. account. Ownership of this account cannot be changed by will.

This account belongs to the party/parties to this account during their lifetime and belongs to the payee/payees upon the death of all parties. The payee/payees have no present right of withdrawal:

(a) Where there are two or more parties, each party has right to payment from the account. Each party owns his/her net contribution. In the absence of proof of net contribu-

tion, and unless the parties have specifically otherwise agreed, each party will own an equal share of the account during their lifetimes. Upon the death of a party, the surviving party/parties will continue to own his/her proportionate share of the account. The share owned by the deceased party will be shared equally by the surviving party/parties. Upon the death of the sole surviving party, the account will belong to the P.O.D. payee/payees;

(b) Where there are two or more P.O.D. payee/payees, the account will belong to the payee/payees who survive all parties. Unless otherwise specifically stated in the account by the party/parties, each surviving P.O.D. payee will own an equal share of the account. Unless specifically stated in the account by the party/parties, upon the death of a surviving P.O.D. payee, the remaining P.O.D. payee/payees will not own any portion of the deceased payee's share of the account.

Trust Accounts

This is a trust account. Ownership of this account cannot be changed by will.

This account belongs to the trustee/trustees during the lifetime of the trustee/trustees and belongs to the beneficiary/beneficiaries upon the death of all trustees.

(a) Where there are two or more trustees, each trustee has a right to payment from the account. Each trustee owns his/her net contribution. In the absence of proof of net contribution and unless the trustees have specifically otherwise agreed, each trustee will own an equal share of the account during his/her lifetime. Upon the death of a trustee, the surviving trustee/trustees will continue to own his/her proportionate share of the account. The share owned by the deceased trustee will be shared equal by the surviving trustee/trustees. Upon the death of the sole surviving trustee, the account will belong to the beneficiary/beneficiaries;

(b) Where there are two or more beneficiaries, the account belongs to the beneficiary/beneficiaries who survive all the trustees. Unless otherwise specifically stated in the account by the trustee/trustees, each surviving beneficiary will own an equal share of the account. Unless specifically stated upon the death of a surviving beneficiary and remaining beneficiary/beneficiaries will not own any portion of the deceased beneficiary's share of the account.