

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Consumer Lenders and Sales Finance Companies

Adopted New Rules: N.J.A.C. 3:17

Proposed: January 19, 2010 at 42 N.J.R. 105(a).

Adopted: May 26, 2010 by Thomas B. Considine, Commissioner, Department of
Banking and Insurance.

Filed: May 27, 2010 as R. 2010 d. 130. **with technical changes** not requiring
additional public notice and opportunity for comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8, 8.1 and 15e; 17:1C-33 et seq.; 17:11C-49; and 17:16C-11 et
seq.

Effective Date: June 21, 2010.

Operative Date: July 31, 2010.

Expiration Date: June 21, 2015.

Summary of Public Comments and Agency Responses:

The Commission received comments from the American Financial Services Association
(AFSA).

1. COMMENT: The commenter stated the rules would give the Commissioner discretion
to determine the location of a licensee's principal office, including those located out of
State, pursuant to N.J.A.C. 3:17-1.3.

RESPONSE: The Department disagrees. The rules do not give the Commissioner discretion to determine the location of the licensee's principle office. The rules state that a principal office at which a licensee has direct contact with New Jersey consumers must be in a suitable location. If there is direct contact with a New Jersey consumer at an out-of-State location, the licensee is required to ensure the maintenance of the consumer's right to privacy with respect to conversations and documents involving personal and financial information and to comply with all applicable Federal, state and local laws in the state where the office is located. If the licensee maintains an office where there is no direct contact with New Jersey consumers, N.J.A.C. 3:17-1.3 states that the licensee shall maintain the confidentiality of any financial information in accordance with applicable Federal and state laws and rules at the location.

N.J.A.C. 3:17-1.3(a)1 sets forth the factors to determine whether a location in New Jersey at which there is direct contact with New Jersey consumers is suitable and N.J.A.C. 3:17-1.3(a)2 sets forth the factors concerning an out-of-State office at which there is direct contact with New Jersey consumers. The criteria are substantially the same as those in the prior rule, N.J.A.C. 3:15-1.3. Accordingly, the licensee has discretion in determining the location.

2. COMMENT: The commenter stated trade names would be stringently regulated and authorized at the discretion of the Commissioner pursuant to N.J.A.C. 3:17-1.4. The commenter stated that these rules were "unnecessary and merely adds an additional burden on the licensees."

RESPONSE: The Department disagrees. The “new” rules, N.J.A.C. 3:17-1.4 through 1.6 pertaining to the use of trade names, are identical to the prior rules, N.J.A.C. 3:15-1.4 to 1.6, but for the removal of those provisions which pertained only to mortgage bankers, brokers or solicitors. Therefore, no burdens have been added. The regulation of trade names is necessary for consumer protections and to ensure the public is not misled as to the identity of licensees.

3. COMMENT: The commenter stated that the rules cover many more activities than those under the Retail Installment Sales Act of 1960 (N.J.S.A. 17:16C-1 et seq.) and that “imprecise language makes the rules’ application to the retail financing business unclear.” Specifically, the commenter stated that the proposed rules do not distinguish between a licensee that is a consumer lender and a licensee that is a sales finance company.

RESPONSE: As stated in N.J.A.C. 3:17-1.1, the chapter implements the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-51 et seq., and the Retail Installment Sales Act of 1960, N.J.S.A. 17:16C-1 et seq. Therefore, the rules pertain to consumer lenders and/or sales finance companies licensed under those acts, as applicable.

Provisions which refer to “licensees” without further delineation are applicable to persons licensed under either the New Jersey Consumer Finance Licensing Act or the Retail Installment Sales Act of 1960, or under both acts. Likewise, provisions which refer to both consumer lenders and sales finance companies are applicable to both.

Provisions which refer only to “consumer lenders” are applicable only to licensees and applicants for licenses under the New Jersey Consumer Finance Licensing Act, such as the net worth requirements found in N.J.A.C. 3:17-4.1.

4. COMMENT: The commenter stated “the ‘branch office’ definition of the proposed rules make it very difficult to determine the proper location to obtain a branch license for organizations which have specialty centers for performing various components of account origination, servicing and collection.”

RESPONSE: The ‘branch office’ definition is identical to that in the prior rules but for the removal of those provisions which pertained only to mortgage bankers, brokers or solicitors. In accordance with N.J.S.A. 17:11C-9, a licensee shall obtain a license for each branch office from which the licensee has direct contact with New Jersey consumers regarding any consumer loan business or sales finance company business regulated under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-51 et seq., or the Retail Installment Sales Act of 1960, N.J.S.A. 17:16C-1 et seq. The definition specifies activities which, if conducted at a location, will result in that location being deemed a branch office requiring licensure and activities which, if conducted at a location, will not result in the location being deemed a branch office.

5. COMMENT: The proposed rules define “consumer loan” but do not define “loan” and the section uses both terms.

RESPONSE: The definition of “consumer loan” mirrors the definition found in N.J.S.A. 17:11C-2, which defines it as a loan with specifically listed parameters. The statute does not define “loan.” The Department believes that the plain meaning of the word “loan” is sufficient, and the use of the terms within the section is clear.

6. COMMENT: The proposed criminal background checks from applicants include sole proprietors, partners, members and managers of an LLC and shareholders owning more than 10 percent of a corporate applicant. The commenter is concerned about highly private and sensitive information, such as social security numbers, and respectfully requests that provisions limit the information required from individuals associated with the application and protect the privacy of the information obtained from this large pool of individuals to prevent sensitive information from being disclosed to the general public.

RESPONSE: The information requested is mandated by N.J.S.A. 17:11C-7 and has been required of licensees under the Licensed Lenders Act since it became effective in 1997 without incident. The Department takes very seriously its obligation to protect the privacy of those who disclose sensitive non-public information as part of the licensing process. Pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., a public agency has a responsibility and an obligation to safeguard from public access a individual's personal information with which it has been entrusted when disclosure thereof would violate the individual's reasonable expectation of privacy.

7. COMMENT: N.J.A.C. 3:17-5.7 requires consumer lenders and sales finance companies to make sure that the title to the motor vehicle is in the name of the borrower when a consumer loan or retail installment contract is secured by a lien on a motor vehicle. The section does not clearly state who is responsible for titling the vehicle. The commenter requests that the rules expressly provide that auto dealers continue to be responsible for obtaining and submitting motor vehicle titles to the State.

RESPONSE: N.J.A.C. 3:17-5.7 mirrors the existing rule at N.J.A.C. 3:15-6.11. Neither the New Jersey Consumer Finance Licensing Act nor the Retail Installment Sales Act address the obtaining of a proper title to a motor vehicle as referenced in the comment, nor impose any obligation on automobiles dealers to do so. Accordingly, the responsibility for the titling of a motor vehicle upon which a lien is to be placed as referenced in the comment has not changed and, like the statutes, the rule also does not address who is responsible for the titling of such a motor vehicle.

8. COMMENT: American Financial Services Association requests clarification on the provisions that distinguish different application fees for a consumer lender and a sales finance company.

RESPONSE: N.J.A.C. 3:17-3.2 sets forth the application fees for consumer lender and sales finance company licenses. If an applicant applies for an initial license or a branch office license for either a consumer lender or a sales finance company, the fee will be \$700.00. If an applicant applies for both licenses contemporaneously, the fee will be

\$1,000. If the applicant has either a consumer lender license or a sales finance company license or corresponding branch office license and wishes the other license type, the fee will be \$300.00.

9. COMMENT: The commenter states that the license fee structure should cover the Department's expenses without the need to generate revenue through civil penalties.

RESPONSE: The rules on civil penalties mirror the rules which govern all of the Department's various licensees. The intent of civil penalties is not to generate revenue but to protect consumers and industry by penalizing those who violate the laws of New Jersey and deterring others from committing similar violations.

10. COMMENT: The assessment of a penalty in connection with a license application may be required to be disclosed in other jurisdictions and clarifying that the penalty was assessed for what is "effectively an administrative issue" could result in significant burdens to licensees.

RESPONSE: The Department does not consider deliberately withholding information or making a material misrepresentation in a license application to be a mere "administrative issue." The penalty procedures in the rules clearly state that the licensee receives notice, which includes a concise statement of the facts on which the violation is based, and an opportunity to be heard. Therefore, if such a penalty is assessed, a means of clarification will be readily available to the licensee.

11. COMMENT: The proposed rules found in N.J.A.C. 3:17-5.9 are identical to rules found in N.J.A.C. 3:17-5.1(c) through (h).

RESPONSE: The Department thanks the commenter for pointing out the inadvertent duplication and will delete N.J.A.C. 3:17-5.9 upon adoption.

Federal Standards Statement

The adopted new rules do not contain any standards or requirements that exceed standards or requirements imposed by Federal law, specifically the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 et seq.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks *thus*; deletion from proposal indicated in brackets with asterisks *[thus]*):

*[3:17-5.9 Records retention

(a) Each licensee shall preserve all books, records, accounts and documents related to the business for at least three years after making the final entry on any application or loan.

(b) The denial or withdrawal of an application shall constitute the final entry for an application which is denied or withdrawn.

(c) The assignment or sale of a loan shall constitute the final entry for a loan which is sold or assigned.

(d) In the case of an open-end loan, the licensee shall preserve the books, accounts and records for at least three years after each entry.

(e) All books, records, accounts and documents may be stored electronically so long as the electronically stored information can be produced in electronic format upon request by the Department or reproduced on paper and delivered to the Department within five days of the licensee's receipt of a request from the Department to produce the records.

(f) In the case of a licensee that ceases to do business, the Commissioner may move and store abandoned books, accounts and records in whatever form and make a claim against the bond for costs of moving and storage.]*

Recodify proposed N.J.A.C. 3:17-5.10 through 5.12 as ***5.9 through 5.11*** (No change in text from proposal.)