

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Advertising

Proposed Readoption with Amendments: N.J.A.C. 3:2

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance

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

Calendar Reference: See Summary below for explanation of exceptions to calendar requirement

Proposal Number: PRN 2005-308

Submit comments by November 5, 2005 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:2, which is scheduled to expire on January 22, 2006, pursuant to N.J.S.A. 52:14B-5.1a. N.J.A.C. 3:2 requires any depository institution, licensed lender or other person or entity subject to supervision, licensing or regulation by the Department that advertises interest rates, to comply with applicable disclosure requirements. The chapter also prohibits any advertising that is misleading, deceptive, inaccurate, false or that negatively affects public confidence in a financial

institution or financial institutions in general in accordance with N.J.S.A. 17:16H-1 et seq. The rules proposed for readoption also provide examples of advertising that shall be deemed deceptive or misleading. Finally, the rules proposed for readoption provide procedures for notice and hearing regarding possible violations of N.J.S.A. 17:16H-1 et seq. and provide for penalties for violations. The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department has also determined to propose the following amendments.

In N.J.A.C. 3:2-1.3, the heading is amended to more broadly reflect the section's content as a result of the proposed amendments. In N.J.A.C. 3:2-1.3, new subsection (c) is added to require that advertisements for a mortgage loan by a mortgage broker (or a mortgage banker acting solely as a mortgage broker) state that the mortgage broker arranges loans with third party providers.

In N.J.A.C. 3:2-1.4 paragraph (b)3 is amended to clarify the requirement that advertisements disclose any material limitations on the unqualified access to credit that may exist including but not limited to, limitations such as the percentage of down payment required, that a higher interest rate or points may be required, or that restrictions as to the maximum principal amount of the loan offered may apply. A new paragraph (b)8 is added to make clear that a failure of any advertisement to comply with the provisions of N.J.A.C. 3:2-1.3 is a violation of the Act. Additionally, new subsection (e) is added to N.J.A.C. 3:2-1.4 to provide that no financial institution is permitted to advertise a loan that does not comply with the provisions of the New Jersey Home Ownership Security Act (HOSA), N.J.S.A. 46:10B-27 et seq., even if the entity to whom the financial institution may broker such loan is not subject to HOSA by operation of Federal preemption.

In N.J.A.C. 3:2-1.5, subsection (a) is amended to provide that if it appears to the Commissioner that an advertisement of a financial institution is in violation of the Act or this chapter, the Commissioner may order the financial institution to show cause why an order directing it to cease and desist from using the advertisement in question should not be issued. Subsections (b) and (c) have been deleted and subsection (d) has been recodified with a typographical modification as new subsection (b). Subsection (e) has been recodified as new subsection (c).

A 60-day comment is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments apply to all financial institutions subject to supervision, regulation or licensing by the Department. They will continue to implement N.J.S.A. 17:16H-1 et seq. by requiring financial institutions to inform consumers of financial products the institutions offer in a full and complete fashion. Moreover, the rules proposed for readoption with amendments will continue to require that the institution have a reasonable number of advertised products available for qualified applicants, and will continue to provide standards for financial institutions to comply with N.J.S.A. 17:16H-1 et seq. Additionally, the rules proposed for readoption with amendments will require financial institution loan advertisements to comply with the provisions of the New Jersey Home Ownership Security Act (“HOSA”), N.J.S.A. 46:10B-27 et seq., even if the entity to whom the financial institution may broker such a loan is not subject to HOSA by operation of Federal

preemption. Through the promulgation of these requirements, the rules proposed for reoption with amendments will have a beneficial social impact on consumers and financial institutions.

Economic Impact

The rules proposed for reoption with amendments will not likely have a significant negative economic impact upon New Jersey financial institutions. The requirement that advertising by a financial institution not be inaccurate or misleading is mandated by N.J.S.A. 17:16H-1 et seq., and is a reasonable and anticipated commercial requirement. Moreover, the full truthful disclosure of information on loan and savings products required by the rules proposed for reoption with amendments will continue to provide a substantial measure of protection for the consumer, thereby averting potential negative economic consequences to the consumer. Those licensees that advertise mortgage loans or mortgage loan services may incur a nominal additional cost to include in their advertisements the language required by the proposed amendments.

Federal Standards Statement

A Federal standard is not required because the rules proposed for reoption with amendments do not exceed any Federal requirements or standards. The rules proposed for reoption with amendments continue to apply certain Federal rules and regulations to New Jersey financial institutions. The Federal rules and regulations involved are 12 U.S.C. §§4301 et seq., 12 C.F.R. 230, 15 U.S.C. §§1601 et seq. and 12 C.F.R. 226 et seq.

Jobs Impact

The Department does not anticipate any jobs will be generated or lost as a result of the rules proposed for readoption with amendments. Financial institutions will use existing staff for continued compliance with the existing rules. The amendments similarly will not require additional staff.

The Department invites comments with supporting data or studies concerning the jobs impact of the proposed readoption with amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

Some New Jersey financial institutions are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments will continue to impose compliance requirements on these entities. The rules proposed for readoption with amendments will continue to require financial institutions to fairly disclose interest rates and to advertise loan and savings products in an accurate manner. The cost of compliance is discussed in the Economic Impact above. Financial institutions should not have to employ professional services to comply.

The Department believes that these requirements are generally mandated pursuant to N.J.S.A. 17:16H-1 et seq. Moreover, the Department does not believe that these requirements

are unduly burdensome. The purpose of N.J.S.A. 17:16H-1 et seq. is to ensure that all consumers receive disclosures designed to ensure that the advertising of loan products is truthful and not deceptive or misleading. Thus, the purpose of these requirements does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.S.A. 3:2.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:2-1.3 [Disclosure of interest rates] **Required disclosure**

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

(b) (No change.)

(c) **All advertisements for loan products by a mortgage broker (or a mortgage banker acting solely as a mortgage broker with respect to the advertised products) shall**

contain a statement to the effect that the mortgage broker (or mortgage banker acting as set forth above) arranges loans with third-party providers.

3:2-1.4 Violations of the Act

(a) (No change.)

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

1.- 2. (No change.)

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

4. (No change.)

5. The advertisement of a mortgage loan by a mortgage broker (or mortgage banker that acts merely as a mortgage broker with regard to the advertised loan) [which] **that** does not specifically and conspicuously state that the advertiser will not make any mortgage loan commitments or fund any mortgage loans under the advertised program;

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

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

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

(c) – (d) (No change.)

(e) No financial institution shall advertise a loan that does not comply with the provisions of the New Jersey Home Ownership Security Act (HOSA), N.J.S.A. 46:10B-27 et seq., even if the entity to whom the financial institution may broker such loan is not subject to HOSA by operation of Federal preemption.

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

(a) If it appears to the Commissioner, based on his or her examination of the advertisement of a financial institution, that the financial institution is in violation of the Act or [N.J.A.C. 3:2-1.4], **this chapter**, the Commissioner [shall notify such financial institution of the possible violation and request a response] **may order such financial institution to show cause why an order directing the financial institution to cease and desist from using the advertisement in question should not be issued.**

[(b) Within 10 days of the date of such notification, the financial institution shall submit an explanation or its interpretation of the statute relative to the possible violation or an indication of corrective action.

(c) If the Commissioner deems such explanation, interpretation or corrective action to be unsatisfactory; or if the financial institution fails to respond within the 10 day period, the Commissioner may order such financial institution to show cause why a cease and desist order should not be issued.]

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

1. - 3. (No change.)

[e] **(c)** (No change in text.)

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