

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Dedicated Funding Assessment

Proposed New Rule: N.J.A.C. 3:5

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

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1-15, and 17:1C-33 et seq. (P.L. 2005, c. 199)

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

Proposal Number: PRN 2006-21

Submit comments by March 4, 2006 to:

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The agency proposal follows:

Summary

P.L. 2005, c. 199 (the Act), enacted August 18, 2005, and codified at N.J.S.A. 17:1C-33 et seq. revises the manner by which the costs the Division of Banking (Division) in the Department of Banking and Insurance (Department) incurs as the result of its oversight responsibilities of depository institutions and other financial entities are funded. The Act establishes an assessment funding mechanism for the support of the Division. N.J.S.A. 17:1C-35b(2) states that assessments shall be distributed among all

regulated entities in accordance with regulations promulgated by the Commissioner of the Department of Banking and Insurance. (Commissioner)

The Department proposes to add new rules to be codified at N.J.A.C. 3:5 to implement the Act. The proposed new rules set forth the assessment funding mechanism of regulated entities for the support of the Division of Banking. The proposed new rules also clarify which depository institutions and other financial entities are subject to the assessment. In consultation with the Office of Administrative Law, new rules on predatory lending previously proposed on September 6, 2005 at 37 N.J.R. 3102(a) as Chapter 5 will, if adopted, be codified as Chapter 30.

Currently, the Department uses a special purpose apportionment on insurers, health maintenance organizations and other entities to fund the regulatory operations of the Division of Insurance. (See N.J.S.A. 17:1C-19 et seq. and N.J.A.C. 11:1-32.) In 1996, the Department of Banking and the Department of Insurance were combined to form one executive branch agency, the Department of Banking and Insurance. In 2001, five years after the merger, the Banking and Insurance Study Commission (Commission) reviewed the operations of the merged Departments and issued a report pursuant to N.J.S.A. 17:1-24. The Commission found that the economies of operation and uniformity of regulatory mission that were the impetus for the merger in 1996 remained strong. The Report recommended that, like the Division of Insurance, the Division of Banking should operate under a dedicated funding model. Dedicated funding for both Divisions creates greater opportunities for regulatory uniformity and cost-savings. Thus, this implementing rulemaking also satisfies one of the recommendations of the Commission.

With the enactment of P.L. 2005, c. 199, the Division of Banking now has substantially identical authority as the Division of Insurance to establish the assessment funding mechanism for the support of the Division of Banking. The proposed new rules closely follow the Act and are similar to the statutory language governing the Division of Insurance assessment funding mechanism.

Further, this funding mechanism will assist the Department in maintaining its accreditation by the Conference of State Bank Supervisors (CSBS). The need for dedicated funding is a national standard set by CSBS. Based on its detailed knowledge of state banking regulators nationwide, CSBS has concluded that dedicated funding is the preferred mechanism for funding financial entity regulation activities because it provides the best assurance that the regulator will be able to perform its functions adequately if there are general economic fluctuations adversely affecting the state budget.

The Department will calculate the assessment in accordance with N.J.S.A. 17:1C-46 by distributing the financial burden proportionately among depository institutions and other financial entities that the Department, through the Division of Banking, charters, licenses or otherwise credentials.

The initial step in calculating an assessment consists of the allocation of expenses between the Office of Consumer Finance (Consumer Finance) and the Office of Depositories (Depositories) within the Division of Banking. The direct expenses of Consumer Finance and Depositories are maintained as separate tabulations by both the Department and the State Treasurer. In addition, the direct expenses will include assessments that were not recoverable by Treasury for previous years' billings. Direct

expenses do not include centralized expenses, for example expenses for centralized operating units such as the Commissioner's Office. Those costs will be apportioned to the two Offices on the basis of the percentage of fulltime employees in each Office.

Depositories' direct expenses will be added to Depositories' apportioned centralized expenses to produce the total amount of the expenses for Depositories for the preceding fiscal year. The assessment of those industries regulated by Depositories for the preceding year will be limited to the combined total amount of these expenses.

The direct expenses for Consumer Finance will be added to Consumer Finance's apportioned centralized expenses to produce the total amount of the expenses for Consumer Finance for the preceding fiscal year. The assessment of those regulated by Consumer Finance for that preceding year will be limited to the combined total of those expenses.

The Department will then calculate base assessments. The Department determines base assessments in compliance with the statutory mandate by distributing the financial burden on the regulated industries consistent with the Division's regulatory activities, taking into account such factors as the average size of the regulated entities within each regulated industry and the Division's regulatory activities with respect to each regulated industry. The Department shall also consider the potential impact of the base assessment amount on business entities of various sizes in an effort to allocate the burden of the total assessment in a manner that is consistent with the provisions and intent of the Act.

The purpose of the base assessment amount for each depository institution is to offset the basic expenses of the Department in maintaining the charters and to assure that

a fair share of those regulatory expenses is paid by each institution, including those with lower assets. When calculating the base assessment, the Department will consider the impact of the total assessment on small versus large institutions to make sure that all institutions are treated fairly. The base assessment amount for depository institutions shall be determined by the Department based on the factors specified in N.J.S.A. 17:16C-46 and shall not exceed an annual amount of \$5,000.

The Department shall determine the base assessment on credit unions in a separate calculation according to their size, as determined by their assets, assessing those in the largest category of assets as if they were a bank, savings bank or savings and loan association. The Department recognizes the public policy rationale underlying the establishment of credit unions, including their service to specific membership bases and their non-profit status. The Department also recognizes the relatively small size of many credit unions. As a consequence of these considerations, a credit union having \$10 million or less in assets shall be assessed a base assessment, to be determined by the Department based on statutory guidelines, which will not exceed \$500.00. The Department shall assess a credit union having more than \$10 million, but not more than \$40 million in assets a base assessment amount not to exceed \$1,500. The Department shall assess a credit union having more than \$40 million in assets ("high asset credit union") a base assessment amount not to exceed \$5,000, the same amount as the base assessment for other depository institutions.

As credit unions are currently regulated by Consumer Finance, the amount collected from these base assessments shall be deducted from the total expenses of that Office. While assessing high asset credit unions in the same manner as other depository

institutions, the Department will not include the assets of high asset credit unions in the aggregate assets used to calculate the volume assessment for other depository institutions. The Department will, instead, calculate an assessment for high asset credit unions by calculating an assessment for the high asset credit union that is equal to the volume assessment of any other depository institution if it had that volume of assets.

The Department shall assess each licensee regulated by Consumer Finance a base assessment amount. The base assessment amount shall be determined by the Department so as to offset the basic expenses of the Department in maintaining and servicing each license type for a year. The base assessment amount shall also ensure that licensees with low loan volumes pay their fair share of regulatory expenses. When calculating the total assessment, the Department shall also consider the impact of the base assessment amount on small versus large licensees to ensure that, consistent with the intent of the Act, all licensees are assessed an amount that reasonably relates to the financial burden their regulation imposes upon the Department in proportion to the burdens imposed by other regulated entities.

As N.J.S.A. 17:1C-46c states, the purpose of the assessment is to distribute the financial burden proportionately among the regulated industries consistent with the Division's regulatory activities. The Department, therefore, will charge different types of licensees different base assessment amounts, as well as calculate the total assessments for various licensees based on the amount of regulatory oversight and administration that each license type requires and the complexity of that oversight and administration. Some criteria that the Department shall consider in determining the complexity of regulation

include statutorily mandated regulatory activities, such as reporting, examination, Bank Security Act compliance, bonds, net worth, liquidity and supervision.

With regard to the Division's regulatory activities, the Department has analyzed each type of entity regulated by Consumer Finance (with the exception of credit unions, as discussed above.) These entities shall be referred to collectively as "licensees." Based upon that analysis, the Department has derived a "complexity factor" that reflects the extent of the Department's regulatory activities with respect to each licensed industry for the current assessment period. Moving forward, the Department will review these complexity factors annually.

The Department will multiply these "complexity factors" by a dollar amount, determined by the Department based on the statutory mandate to allocate the assessment burden proportionately among each regulated entity, which shall not exceed \$300.00. The result will be the base assessment amount to be paid by all licensees within each license type. The dollar amount to be used in computing the upcoming assessment will be published annually in the New Jersey Register as a public notice and in a Departmental Bulletin to be posted on the Department's website. As N.J.A.C. 3:5-4.3(d)1 establishes the range of the complexity factors by which that amount will be multiplied, publishing the dollar amount will serve to give notice to licensees of the minimum and maximum amounts of the base assessment for that year.

To illustrate: For industries regulated by the Office of Consumer Finance, if the Department used a base assessment factor of \$100.00 and the following complexity factors, the base assessments would be those indicated below:

Base Assessment = Complexity factor x Base assessment factor* <i>*(example base assessment factor used \$100)</i>	Assumed Complexity Factor	Resulting Base Assessment
High cost home loan counselors	0.5	\$50
Debt adjusters	1.0	\$100
Motor vehicle installment sellers	1.5	\$150
Home repair finance agencies	1.5	\$150
Home repair contractors	2.0	\$200
Insurance premium finance companies	2.0	\$200
Sales finance companies	2.0	\$200
Pawnbrokers	2.5	\$250-
Consumer lenders	2.5	\$250
Check Cashers	3.5	\$350
Foreign money transmitters	3.5	\$350
Secondary lenders	3.75	\$375
Money transmitters	4.0	\$400
Mortgage brokers	4.5	\$450
Correspondent mortgage bankers	5.0	\$500
Mortgage bankers	5.0	\$500

Once they have been calculated, the total amount of the base assessments to be paid by licensees will be subtracted from the total amount of expenses attributable to Consumer Finance. (As stated above, the base assessments of credit unions will have already been deducted from this amount.) An additional assessment, based on volume of business, will then be calculated to recoup the balance of the total expenses for Consumer Finance.

To calculate the volume assessment for depository institutions regulated by the Office of Depositories (that is, banks, savings banks, and savings and loan associations but excluding credit unions), the total of the base assessment amounts paid by all depository institutions except credit unions shall be subtracted from the total amount of Depositories' calculated expenses. The Department shall then use information filed by

the institution to determine the percentage of total assets under supervision held by each depository institution as of December 31st of the prior calendar year. This percentage shall be carried out to nine decimal points.

For each depository institution, the Department shall multiply its percentage of the total assets by the amount of the Office of Depository's expenses remaining after deducting the total amount of the base assessments. The Department will add each depository institution's base assessment and volume assessment to determine the total assessment for the individual depository institution.

For purposes of calculating the volume assessment for credit unions with assets of \$40 million or more, the Department will treat the assets of the high asset credit union as if it were a bank, savings bank or savings or loan association and assess the credit union the same volume assessment that the credit union would have been assessed if the credit union had been another type of depository institution. The volume assessment for each high asset credit union will be added to its base assessment to produce the high asset credit union's total assessment.

The volume assessment for licensees of Consumer Finance is calculated on loan volume (that is, dollars loaned) and/or its equivalent as calculated by the Department. The Department shall determine the total loan volume for licensees that lend and/or purchase loans based on the total dollar amount of regulated loans made or purchased by all licensees for the preceding calendar year, as reported in the licensees' annual report. Licensees that make loans include mortgage bankers, correspondent mortgage bankers, secondary lenders, consumer lenders, pawnbrokers, sales finance companies, insurance premium finance companies, home repair contractors, and motor vehicle installment

sellers. Licensees that purchase loans include consumer lenders, sales finance companies and home repair financing agencies. For purposes of the calculation of the volume assessment for these licensees, the volume of loans purchased shall be considered as if it were dollars loaned.

With respect to mortgage bankers, because their license authorizes them to both make and broker loans, the Department will consider both the loans they made and the closed loans they brokered in the preceding calendar year when calculating their volume assessment. The dollar volume of closed loans brokered will be considered dollars loaned by the licensee.

With regard to mortgage brokers, for purposes of the volume assessment calculation the Department will determine the volume of closed loans brokered by each licensee for the preceding calendar year as reported in the licensee's annual report. The Department shall consider the volume of closed loans brokered by each licensee as if it were dollars loaned by a mortgage banker licensee.

When determining the volume assessment for check cashers, the Department shall consider the dollar volume of checks cashed for a fee by each licensee for the preceding calendar year, as reported in the licensee's annual report. The volume shall include all checks cashed for a fee or other compensation, whether received directly or indirectly, and shall, for assessment purposes, treat that volume as if it were dollars loaned. The volume shall include payroll services where the check casher receives a fee or other compensation from either the employer or from the employees/payees. When determining the volume assessment for money transmitters and foreign money transmitters, the Department shall consider the dollar volume of money transmitted, the

dollar volume of bills paid, and the dollar volume of checks sold by each licensee for the preceding calendar year as reported in the licensee's annual report. This total dollar volume will be treated for assessment purposes as if it were dollars loaned.

For purposes of determining the volume assessment for motor vehicle installment sellers licensed under N.J.S.A. 17:16C-8, the Department shall consider the dollar volume of loans for goods as defined by N.J.S.A. 17:16C-1(a).

For the purposes of determining the assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., the volume assessment will be based on the aggregate dollars loaned, or its equivalent as determined in accordance with the rules, for all their authorities.

For credit counselors and high cost home loan credit counselors, the Department shall charge only the base assessment amount in recognition of the non-profit nature of the licensed credit counseling business. Also, as stated previously, all credit unions with assets under \$40 million, that is credit unions with assets under \$10 million and those with assets over \$10 million but under \$40 million, will be charged only a base assessment.

The Department shall add the total volumes calculated (loans made, purchased loans, closed brokered loans, checks cashed, money transmitted, checks sold, and bills paid) for each licensee and calculate the percentage of the total volume attributable to each licensee. This percentage shall be carried out to nine decimal points.

The Department shall multiply the percentages calculated by the amount of Consumer Finance expenses remaining after the total assessments against credit unions

and the base assessments against licensees have been deducted. The result shall be the amount of each licensee's volume assessment.

The Department shall add the base assessment amount to the additional assessment amount based on volume, if any, to determine the total amount of that year's assessment for each licensee.

For the purposes of determining the total assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., licensees with more than one authority shall pay an aggregate base assessment consisting of a separate base assessment for each authority, which shall be added to a single volume assessment based on the aggregate dollars loaned or their equivalent for all of the licensee's authorities.

Any previously uncollectible amounts that were allocated by Treasury as direct expenses and are later collected shall become a prorated credit in the next year's assessment for the affected industry.

A regulated entity that ceases business or is acquired shall be responsible for the payment of the base assessment amount and any volume assessment for that calendar year. An entity that ceases business or is acquired shall pay the base assessment for the previous year within 15 days after ceasing business or upon being acquired. The entity will be billed for the remainder of the assessment for the year in which it ceased operations or was acquired at the same time all other entities are billed, after the annual reports are received and the assessments for all regulated entities are calculated.

In order to implement the legislative intent of the Act to distribute the burden of the assessment in proportion to the cost of the Division's regulatory activities with respect to each regulated entity, the yearly assessments will be calculated on the basis of

the data submitted by those entities in their annual reports for the preceding calendar year. Due to fluctuating interest rates and/or other market conditions, in some years the total assets or loan volume of regulated entities may vary significantly from the preceding year. In such circumstances, the Department may be required to adjust the dollar amounts of the base assessments for the various types of depositories and/or the dollar amount to be multiplied by the complexity factors when determining the base assessments for Consumer Finance licensees. The brief timeframe specifically imposed by N.J.S.A. 17:1C-35 for the calculation of the assessment (certification of the total amount of expenses incurred for the Division of Banking on or before August 15th of each year and issuance by the Department of the assessment by no later than September 1st in each year) precludes the inclusion in the rules of specific dollar amounts to be used each year in calculating the base assessments of depositories and Consumer Finance licensees. Hence the need to have the rules set forth ranges for those amounts. Based upon its analysis as referenced above, the Department has concluded that the ranges proposed reasonably reflect the maximum amounts that would be needed, while providing to the Department the flexibility necessary to efficiently and fairly implement an assessment process that is consistent with the intent of the Act. If current economic conditions change so significantly as to require the Department to reconsider those maximum amounts, any action in that regard would be taken through the rulemaking process, with affected entities being afforded ample opportunity to comment on any proposed revisions.

Proposed N.J.A.C. 3:5-1 sets out the purpose and scope of the chapter.

Proposed N.J.A.C. 3:5-2 sets out the necessary definitions for the chapter. The terms “depository institution” and “charter fees” are defined solely for the purpose of this chapter, and have a wider scope than other definitions in other chapters.

Proposed N.J.A.C. 3:5-3 sets forth the procedure and time frames for the Department of Treasury to certify to the Commissioner the total amount of expenses incurred in connection with the administration of special functions of the Division in the Department of Banking and Insurance. It also sets forth the time frame for the Commissioner to issue an assessment to a regulated entity.

Proposed N.J.A.C. 3:5-4 sets forth the assessment computation formula.

Proposed N.J.A.C. 3:5-4.1 sets forth the regulations for the allocation of expenses for Depositories and Consumer Finance.

Proposed N.J.A.C. 3:5-4.1(a) states that the expenses of Depositories and Consumer Finance will be maintained and allocated to each Office separately.

Proposed N.J.A.C. 3:5-4.1(b) states that centralized expenses, which are expenses generated by operating units that are used by both Depositories and Consumer Finance and not separately allocated, will be apportioned by calculating the percentage of employees in each Office and using that ratio to allocate the expenses between the Offices.

Proposed N.J.A.C. 3:5-4.1(c) and (d) state that the expenses for each Office which were separately maintained and allocated as described in N.J.A.C. 3:5-4.1(a) are added to the apportioned centralized expenses as calculated in N.J.A.C. 3:5-4.1 (b).

Proposed N.J.A.C. 3:5-4.2 sets forth the components of the total assessment for the regulated entities.

Proposed N.J.A.C. 3:5-4.2(a) states that all regulated entities shall be assessed a total assessment and the total assessment shall consist of the total of a base assessment and a volume assessment if applicable.

Proposed N.J.A.C. 3:5-4.2(b) states that the total base assessment for licensed lenders with more than one authority shall consist of the accumulated total of the separate base assessments for each of that Licensed Lender's separate authorities. The total of these base authorities is then added to the volume assessment for all their authorities which is based on the aggregate dollars loaned or equivalent.

Proposed N.J.A.C. 3:5-4.3 sets forth the regulations for determining base assessments for all regulated entities.

Proposed N.J.A.C. 3:5-4.3(a) states that base assessments shall be determined by the Commissioner in accordance with N.J.S.A. 17:1C-46c taking into account such factors as the average size of the regulated entities within each regulated industry and the extent of the Division's regulatory activities with respect to each regulated industry. The Department shall also consider the potential impact of the base assessment amount on business entities of various sizes in an effort to allocate the burden of the total assessment in a manner proportionate to the size of the regulated entities as required by N.J.S.A. 17:1C-33 et seq.

Proposed N.J.A.C. 3:5-4.3(b) states that the base assessment of depository institutions (excepting credit unions) shall not exceed \$5,000.

Proposed N.J.A.C. 3:5-4.3(c) states that credit union base assessments shall not exceed the following limits: credit unions having \$10 million or less in assets \$500.00;

credit unions having more than \$10 million, but not more than \$40 million in assets: \$1,500; and credit unions having more than \$40 million in assets: \$5,000.

Proposed N.J.A.C. 3:5-4.3(d) sets forth the limitations for the base assessment for licensees.

Proposed N.J.A.C. 3:5-4.3(d)1 states that the Department shall assign a weight to the manner and complexity of regulating the businesses of licensees by determining a factor greater than zero and less than or equal to five.

Proposed N.J.A.C. 3:5-4.3(d)2 states that the Department in determining the complexity factor such consider criteria such as statutorily mandated regulatory activities, number and locations of business sites, varying degrees of complexity in oversight and/or reporting requirements and any other criteria that the Commissioner deems appropriate.

Proposed N.J.A.C. 3:5-4.3(d)3 states that the Department shall multiply the aforementioned complexity factor by an amount not to exceed \$300.00. This amount, or multiplier, shall be published annually by the Department in the New Jersey Register as a public notice and in a Departmental Bulletin.

Proposed N.J.A.C. 3:5-4.4 sets forth the regulations for the calculation of volume assessments.

Proposed N.J.A.C. 3:5-4.4(a)1, 2 and 3 set forth the regulations for calculating the volume assessment for depository institution.

Proposed N.J.A.C. 3:5-4.4(a)4 states that the volume assessment for each depository institution shall be added to the base assessment for each depository institution.

Proposed N.J.A.C. 3:5-4.4(b) sets forth the regulations for volume assessments for credit unions. Proposed N.J.A.C. 3:5-4.4(b)1 states that there is no volume assessment for credit unions assets under \$40 million.

Proposed N.J.A.C. 3:5-4.4(b)2 and 3 set forth the regulations for calculating the volume assessment for credit unions with assets over \$40 million dollars or more by comparing the assets of each individual credit union with the assets of a depository institution of equal size and assessing the credit union the same volume assessment that the credit union would have been assessed if the credit union had been a depository institution and then performing a volume assessment calculation.

Proposed N.J.A.C. 3:5-4.4(b)4 states that the total assessment for each credit union with assets under \$40 million shall equal the base assessment for the credit union.

Proposed N.J.A.C. 3:5-4.4(b)5 states that the volume assessment for each credit union with assets of \$40 million or more shall be added to that credit union's base assessment to produce the total assessment.

Proposed N.J.A.C. 3:5-4.4(c) sets forth the regulations for the calculation of the volume assessment of licensees regulated by the office of Consumer Finance.

Proposed N.J.A.C. 3:5-4.4(c)1 states that the Department shall use the filings of each licensee to calculate the percentage, to nine decimal places, of the loan volume and/or its equivalent for each licensee, in relation to total loan volume (and/or its equivalent) for all licensees as of December 31 of the prior calendar year.

Proposed N.J.A.C. 3:5-4.4 (c)1i states that the volume assessment for licensees of Consumer Finance shall be calculated on the basis of the total loan volume (and/or its equivalent) as calculated by the Department.

Proposed N.J.A.C. 3:5-4.4 (c)1ii through viii state which information will be considered loan volume or loan volume equivalent in the calculation of assessments. Specifically, the rule states that the Department shall consider the following as loan volume or loan volume equivalent for purposes of calculating a volume assessment:

(a) For licensees that lend or purchase loans (mortgage bankers, correspondent mortgage bankers, secondary lenders, consumer lenders, pawnbrokers, sales finance companies, insurance premium finance companies, home repair contractors, home repair finance agencies, and motor vehicle installment sellers), the total dollar volume of loans made or purchased by all licensees during the preceding calendar year, as reported in the licensees' annual report;

(b) For those who purchase loans, the dollar volume of loans purchased shall be considered as if it were dollars loaned;

(c) For mortgage brokers and mortgage bankers that broker loans, the dollar volume of closed loans that are brokered by each licensee for the preceding calendar year as reported in the licensee's annual report shall be considered as if it were the volume of dollars loaned by a licensee;

(d) For check cashers, the dollar volume of checks cashed for a fee by each licensee for the preceding calendar year, as reported in the licensee's annual report, shall be considered as if it were a volume of dollars loaned. The volume shall include all checks cashed for a fee or other compensation, whether received directly or indirectly. The volume shall include payroll services where the check

cashier receives a fee or other compensation from either the employer or from the employees/payees;

(e) For money transmitters and foreign money transmitters, the dollar volume of money transmitted, the dollar volume of bills paid and the dollar volume of checks sold by each licensee for the preceding calendar year as reported in the licensee's annual report shall be treated for assessment purposes as if it were dollars loaned; and

(f) For sales finance companies and motor vehicle installment sellers, the dollar volume of loans for goods as defined by N.J.S.A. 17:16C-1(a) and the dollar volume of loans for services.

Proposed N.J.A.C. 3:5-4.4(c)1ix states that the volume assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., shall be based on the aggregate dollars loaned or equivalent as determined in accordance with the chapter for all their authorities.

Proposed N.J.A.C. 3:5-4.4(c)1x states that there will be no volume assessment for debt adjusters licensed pursuant to N.J.S.A. 17:16G-1 or high cost home loan credit counselors registered pursuant to N.J.S.A. 46:10-22 et seq.

Proposed N.J.A.C. 3:5-4.4(c)2 states that the Department shall multiply the percentage for each licensee regulated by Consumer Finance times the expenses remaining after the total assessments for credit unions and the base assessments of licensees have been deducted from the total amount of expenses for Consumer Finance for the preceding fiscal year.

Proposed N.J.A.C. 3:5-4.4(c)3 states that the calculated volume assessment, if any, for each entity regulated by Consumer Finance shall be added to their previously determined base assessment.

Proposed N.J.A.C. 3:5-4.4(c)4 states that for the purposes of determining the total assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., licensees with more than one authority shall pay a separate base assessment for each separate authority, which shall be added to a single volume assessment, if any, based on the aggregate dollars loaned or its equivalent for all their authorities.

Proposed N.J.A.C. 3:5-4.4(d) sets forth the regulations for a regulated entity that ceases business or is acquired. The subsection states that the regulated entity shall be responsible for the payment of the base assessment and any volume assessment for that calendar year. An entity that ceases business or is acquired shall pay all assessments due and owing and prepay the base assessment for the year of the discontinuance by paying the amount of the most recently billed base assessment within 15 days after ceasing business or upon being acquired.

Proposed N.J.A.C. 3:5-5 sets forth the rules for determining the maximum assessments permitted under the Act. Due to the volatility in mortgage lending the Department is proposing that the component of the formula generally set forth in N.J.S.A. 17:11C-47a.(2) that references the loan volume of residential mortgages closed by licensed lenders should be determined by the average loan volume over the preceding three years. Taking this average amount will maintain some consistency in this component of the formula and avoid inappropriately large variations in the maximum assessment amount driven by the affects of short-term market conditions upon residential loan volume.

Proposed N.J.A.C. 3:5-6.1(a) and (b) set forth the regulations for timely submission of objections and decisions regarding assessments

Proposed N.J.A.C. 3:5-6.1(c) sets forth the procedures to be followed by the Commissioner regarding the objection to an assessment by a regulated entity. Proposed N.J.A.C. 3:5-6.1(c) closely follows the Act and is similar to the statutory language governing the Division of Insurance assessments.

Proposed N.J.A.C. 3:5-7.1(a) and (b) set forth the procedures to be followed in the event of a non-payment of an assessment within 30 days of mailing of that assessment including the rules for the Commissioner's transmission of the assessment to Treasury.

Proposed N.J.A.C. 3:5-7.1(c) prohibits a court action to restrain or delay collection of payment of an assessment. It does permit a regulated entity, after payment of an assessment, within two years of the date of payment, to bring an action against the State to recover the amount with interest, on the ground that the assessment was excessive, erroneous, unlawful or invalid in whole or in part.

Proposed N.J.A.C. 3:5-7.1(d) sets forth the requirements that no action for recovery of an amount paid on an assessment may be maintained unless objections had been filed with the Commissioner. It also creates a presumption, in any action at law, that the Commissioner's findings of fact issued in the notice to be rendered as part of N.J.A.C. 3:5-7 shall be presumptive evidence.

Proposed N.J.A.C. 3:5-7.2 sets forth the procedures for the collection of unpaid assessments including legal interest by State Treasurer by the seizure and sale of any goods or chattels.

Proposed N.J.A.C. 3:5-7.3 sets forth an additional remedy the State Treasurer may take which is to docket a certificate of indebtedness as an assessment as a judgment with Clerk of the Superior Court.

Proposed N.J.A.C. 3:5-8 sets forth the general rule that regulated entities subject to assessment are exempt from fees or charges imposed by the Division but sets forth the fees that will still be payable by regulated entities subject to assessment.

Proposed N.J.A.C. 3:5-9 sets forth the penalties, including an administrative penalty up to \$10,000 for each erroneous submission, and action to revoke or refuse to renew a license, if a regulated entity submits figures used to compute what a regulated entity is assessed that are substantially or materially in error.

Proposed N.J.A.C. 3:5-10 sets forth the rules to guide the Department and regulated entities to transition from the prior billing methods to the dedicated funding mechanism.

This rule proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The implementation of the dedicated funding of the Division of Banking through the proposed rules will have a positive effect on the Division of Banking, the industries and individuals that the Division regulates and the general public. The use of dedicated funding ensures that the Division has adequate funding to effectively protect and educate consumers and to regulate the industries in an efficient and timely manner. Moreover,

the new system promotes administrative efficiencies for industry by streamlining the number of fees paid and by providing more predictability on the financial burden imposed upon the affected industries by the regulatory system. Finally, enhancing the efficiency and timeliness of the regulation of the affected industries should foster a business environment which promotes growth, financial stability and efficiency.

Economic Impact

The Department does not expect that the proposed new rules will have a significant economic impact on most regulated entities. The Department believes that its current fees and assessments are reasonable and that the new assessment system should result in overall costs to regulated entities that, on average, are about the same as those that currently exists. Entities that generally transact a larger volume of business and require the expenditure of a larger percentage of the Division's resources to effectively regulate and service their operations may experience an increase in their overall costs but only commensurate to the regulatory burden placed on the Department. Ultimately, regardless of an entity's size or business volume, regulatory fees are a necessary cost of transacting business in New Jersey.

Regulated entities will need to compile the necessary information for the new assessment funding system and forward it to the Department in their annual reports. The information to be reported, in most cases, is already being maintained by the regulated entities and most of the information is currently being supplied to the Department. Regulated entities may employ outside professional assistance from accountants and

attorneys for compliance, but such assistance should not be necessary. The costs of this will vary depending on the professional utilized and the services requested.

The proposed new rules will affect economically all the industries and individuals who are regulated by the Division of Banking. The proposed new rules allow for the fair and equitable allocation of the cost of regulation among those who are regulated by the Division. The proposed new rules seek to assure that all the regulated entities, regardless of size, pay the costs associated with the basic services provided by the Department that are related to their regulation. The proposed new rules also seek to assure that those entities which generate more work and expense for the Division, due to its greater regulatory responsibilities with respect to such industries, bear the cost of their regulation in a manner which takes that greater burden into account. The proposed new rules implement N.J.S.A. 17:1C-33 et seq. and eliminate many separate fees currently charged, which will result in substantial efficiencies for the regulated industries and the Department, as the submission and processing of numerous small payments each year will no longer be required.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not believe any jobs will be generated or lost as a result of the proposed new rules. Assessed entities will use existing staff or, in rare circumstances retain outside professionals for compliance with the proposed new rules.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed new rules 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 proposed new rules.

Regulatory Flexibility Analysis

Many of the regulated entities that will be affected by the proposed rules are small businesses employing fewer than 100 full-time employees. The proposed new rules and the formula have been constructed to ensure that the economic burden on small industries is less than that on larger industries, while still being fair to all industries and adequate to recover all expenses of the Division. This balance is achieved by the use of a funding formula based on both a base assessment, which takes in to account the Department's base-line regulatory costs in relation to each particular industry, and a volume assessment which focuses on the relative size of each individual regulated entity. As a result, small businesses will pay their fair share of the cost of regulation in their base assessment and little or no volume assessment. Conversely, in addition to their base assessments larger businesses pay more in their volume assessments.

The proposed new rules will impose recordkeeping, reporting and other compliance requirements on all regulated entities, as discussed in the Summary above. Costs are discussed in the Economic Impact above. The proposed new rules will continue to require regulated entities to operate in a manner that is responsible to their customers and the general public and to supply information to the Department that is necessary to implement the provisions of the laws applicable to the assessment of regulated entities. Requiring the submission of annual reports by those regulated entities not currently making such reports will increase the reporting, recordkeeping and compliance burden on those entities. As was noted above, however, to a great extent such entities are currently maintaining the data to be submitted in the annual reports. In such instances, compliance will involve configuring that data so as to provide the specific information to be supplied in the annual reports and submitting it annually in the required format. The Department does not anticipate that small businesses will need to employ professional services in order to comply with the proposed new rules.

The Department does not believe that these requirements are unduly burdensome. Moreover, they are consistent with prudent financial service industry practices. The purpose of these requirements does not vary based upon business size. Many of the affected businesses are involved in handling monies belonging to others, creating loan obligations. These obligations exist regardless of the size of the business. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

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

Full text of the proposed new rules follows:

CHAPTER 5 DEDICATED FUNDING ASSESSMENT

SUBCHAPTER 1. PURPOSE AND SCOPE

3:5-1.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the funding mechanism for the support of the Division of Banking in the Department of Banking and Insurance as required by N.J.S.A. 17:1C-33 et seq., and to distribute the financial burden proportionately among depository institutions and other financial entities that the Division of Banking, in the Department of Banking and Insurance, charters, licenses and registers consistent with the Division's regulatory activities.

(b) These rules apply to banks, savings banks, savings and loan associations, credit unions, licensed lenders, check cashers, money transmitters, consumer lenders, pawnbrokers, sales finance companies, insurance premium finance companies, home repair contractors, home repair finance agencies, motor vehicle installment sellers, debt adjusters and high cost home loan counselors.

SUBCHAPTER 2. DEFINITIONS

3:5-2.1 Definitions

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

"Act" means N.J.S.A. 17:1C-33 et seq.

“Application fees for licensees” means the non-refundable charges imposed on other financial entities for processing of applications submitted by them to the Department.

“Assessment” means the assessment imposed for the special functions of the Division relative to the financial regulation, supervision and monitoring of depository institutions and other financial entities that it licenses during the previous fiscal year.

"Authority" means one of the activities permitted for a licensee pursuant to the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.: either mortgage banker, correspondent mortgage banker or mortgage broker; secondary lender; consumer lender; or sales finance company.

"Call report" means the report of general financial condition submitted by all insured depository institutions to the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration, as the case may be, on a quarterly basis and shall include reports filed with the Department by limited purpose companies on a semiannual basis pursuant to N.J.S.A. 17:9A-256.

“Charter fees” means the nonrefundable charges imposed for the initial review by the Division of those seeking New Jersey approval for the initial establishment of a bank, savings bank, savings and loan association or credit union or for the designation as a low income credit union.

“Commissioner” means the Commissioner of Banking and Insurance.

"Consumer Finance" means the Office of Consumer Finance in the Division of Banking in the Department of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Depositories" means the Office of Depositories in the Division of Banking in the Department of Banking and Insurance.

"Depository institution" means any entity holding an approval from the Department for the initial establishment of a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

"Division" means the Division of Banking in the Department of Banking and Insurance.

"Licensee" means any regulated entity other than a depository institution or credit union.

"Other financial entity" means a person who is licensed or registered pursuant to: the New Jersey Licensed Lenders Act, P.L. 1996, c. 157 (N.J.S.A. 17:11C-1 et seq.); The Check Cashers Regulatory Act of 1993, P.L. 1993, c. 383 (N.J.S.A. 17:15A-30 et seq.); the New Jersey Money Transmitters Act, P.L. 1998, c. 14 (N.J.S.A. 17:15C-1 et seq.); the Insurance Premium Finance Company Act, P.L. 1968, c. 221 (N.J.S.A. 17:16D-1 et seq.); the Retail Installment Sales Act of 1960, P.L. 1960, c. 40 (N.J.S.A. 17:16C-1 et seq.); the Door-to-Door Retail Installment Sales Act of 1968, P.L. 1968, c. 223 (N.J.S.A. 17:16C-61.1 et seq.); the Home Repair Financing Act, P.L. 1960, c. 41 (N.J.S.A. 17:16C-93 et seq.); the Door-to-Door Home Repair Sales Act of 1968, P.L. 1968, c. 224 (N.J.S.A. 17:16C-95 et seq.); the Debt Adjusters Act, P.L. 1979, c. 16 (N.J.S.A. 17:16G-1 et seq.);

the Pawnbroking Law, P.L. 1931, c. 294 (N.J.S.A. 45:22-1 et seq.) or the New Jersey Home Ownership Security Act, P.L. 2003, c. 64, §11 (N.J.S.A. 46:10B-32.)

“Regulated entity” means a depository institution, other financial entity or person chartered, licensed or registered by the Division of Banking or that should be chartered, licensed or registered.

SUBCHAPTER 3. CERTIFICATION OF EXPENSES; SPECIAL FUNCTION APPORTIONMENT

3:5-3.1 Expense certification

(a) In accordance with N.J.S.A. 17:1C-33 et seq. the Director of the Division of Budget and Accounting in the Department of the Treasury shall, on or before August 15 in each year, ascertain and certify to the Commissioner by category the total amount of expenses incurred by the State in connection with the administration of the special functions of the Division of Banking in the Department of Banking and Insurance relative to the financial regulation, supervision and monitoring of depository institutions and other financial entities it licenses during the preceding fiscal year. Those expenses shall include, in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of employee benefits and the workers' compensation paid for and on account of personnel, rentals for space occupied in State-owned or State-leased buildings and all other direct and indirect costs of the administration of those functions of the Department, as well as any amounts remaining uncollected from the assessment of the previous fiscal year. Certification made pursuant to this subchapter shall be made by the Director of the Division of Budget and Accounting.

(b) Upon receipt of the certification made by the Director of the Division of Budget and Accounting pursuant to (a) above, but no later than September 1 in each year following the close of the previous fiscal year, the Commissioner shall issue the assessment for the amount of the expenses incurred by, or on behalf of, the special functions of the Division. Statements of the individual assessments made pursuant to this subsection and in accordance with N.J.A.C. 3:5-4 shall be distributed via mailing among all regulated entities.

(c) The Commissioner shall certify the amount of the individual assessment issued to each regulated entity. Each regulated entity shall remit the amount so certified and assessed to it to the Department. Amounts collected by the Department shall be used for reimbursement to the State for expenses incurred in connection with the special functions of the Division relative to the financial regulation, supervision and monitoring of depository institutions and other financial entities it charters, licenses or registers, provided that the amount collected for those expenses shall not exceed the amount appropriated by the Legislature for those expenses.

SUBCHAPTER 4. ASSESSMENT COMPUTATION FORMULA

3:5-4.1 Departmental expenses

(a) The direct expenses of the Office of Depositories and the Office of Consumer Finance shall be maintained and allocated to each Office separately.

(b) Centralized expenses such as the Commissioner's Office, and other centralized operating units which supply support to Depositories and Consumer Finance shall be

apportioned between Depositories and Consumer Finance on the basis of the percentage of full time employees in each Office.

(c) The direct expenses for Depositories shall be added to the Depositories' apportioned share for centralized expenses. This will produce the total amount of the expenses for Depositories for the preceding fiscal year.

(d) The direct expenses for Consumer Finance will be added to the apportioned share for centralized expenses attributable to Consumer Finance. This will produce the total amount of the expenses for Consumer Finance for the preceding fiscal year.

3:5-4.2 Total assessments

(a) All regulated entities shall be assessed a total assessment. The total assessment shall consist of the total of a base assessment and a volume assessment if applicable.

(b) For the purposes of determining the total assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., licensees with more than one authority shall pay an aggregate base assessment consisting of a separate base assessment for each separate authority, which shall be added to a single volume assessment, if any, based on the aggregate dollars loaned or the equivalent for all their authorities.

3:5-4.3 Base assessments

(a) Base assessments shall be determined by the Commissioner in accordance with N.J.S.A. 17:1C-46 taking into account such factors as the average size of the regulated entities within each regulated industry and the extent of the Division's

regulatory activities required with respect to each type of regulated industry. The Department shall also consider the potential impact of the base assessment amount on business entities of various sizes in an effort to allocate the total assessment in a manner proportionate to the Department's regulatory activities with respect to each regulated entity.

(b) With the exception of credit unions, the base assessment for depository institutions shall not exceed \$5,000.

(c) The base assessment for credit unions shall not exceed the following limits:

1. Credit unions having \$10 million or less in assets: \$500.00;
2. Credit unions having more than \$10 million, but not more than \$40 million in assets: \$1,500; and
3. Credit unions having more than \$40 million in assets: \$5,000.

(d) The base assessment for licensees shall be limited in the following manner:

1. The Department shall assign a weight to the manner and complexity of regulating the businesses of licensees by determining a complexity factor greater than zero and not more than five.

2. In determining the complexity factor, the Department shall consider criteria such as statutorily mandated regulatory activities, number and locations of business sites, varying degrees of complexity in oversight and/or reporting requirements and any other criteria that the Commissioner deems appropriate.

3. The Department shall multiply the complexity factor by an amount not to exceed \$300.00, which amount shall be published annually by the Department in the New Jersey Register as a public notice and in a Departmental Bulletin.

3:5-4.4 Volume assessments

(a) The volume assessment for depository institutions shall be calculated as follows:

1. The Department shall deduct the total base assessments for depositories from the total expenses for Depositories for the preceding calendar year.

2. Using filings of each depository institution, the Department shall calculate, to nine decimal places, the percentage of total assets under supervision held by each depository institution in relation to the total assets under supervision for all depository institutions as of December 31 of the prior calendar year.

3. The Department shall multiply the percentage for each depository institution times the expenses remaining after the total of the base assessments of depository institutions has been deducted from the total amount of expenses for Depositories for the preceding fiscal year.

4. The volume assessment for each depository institution shall be added to the base assessment for each depository institution.

(b) The volume assessment for credit unions shall be calculated as follows:

1. There is no volume assessment for credit unions with assets under \$40 million.

2. The Department shall calculate the volume assessment for credit unions with assets of \$40 million dollars or more by comparing the assets of each such individual credit union with the assets of a depository institution of equal size and

assessing the credit union the same volume assessment that the credit union would have been assessed if the credit union had been a depository institution.

3. In order to calculate the volume assessments set forth in (b)2 above, the Department will calculate, to nine decimal places, the percentage of the assets of each individual credit union, based on filings made by the credit union, as compared to the total assets for depository institutions which was used to calculate the volume assessment for depository institutions in (a)1 above. This figure will be multiplied by the expenses remaining after deduction of base assessments for depository institutions calculated pursuant to (a)2 above.

4. The total assessment for each credit union with assets under \$40 million shall equal the base assessment for the credit union.

5. The volume assessment for each credit union with assets of \$40 million or more shall be added to that credit union's base assessment, to produce the total assessment.

(c) The volume assessment for licensees shall be calculated as follows:

1. Using filings of each licensee, the Department shall calculate the percentage, to nine decimal places, of the loan volume and/or its equivalent as calculated below for each licensee, in relation to total loan volume and/or its equivalent for all licensees as of December 31 of the prior calendar year.

i. The volume assessment for licensees of Consumer Finance shall be calculated on the basis of the total loan volume and/or its equivalent as calculated by the Department.

ii. The Department shall determine the total loan volume for licensees that make and/or purchase loans based on the total dollar amount of regulated closed loans made, purchased and brokered by all licensees during the preceding calendar year, as reported in the licensees' annual reports.

iii. For the purposes of this section, licensees that make loans include mortgage bankers, correspondent mortgage bankers, secondary lenders, consumer lenders, pawnbrokers, sales finance companies, insurance premium finance companies, home repair contractors, and motor vehicle installment sellers. Licensees that purchase loans include consumer lenders, sales finance companies and home financing agencies.

iv. For purposes of the calculation of the volume assessment for those who make loans, the Department shall consider the dollar volume of such loans. In calculating the volume assessment for licensees that purchase loans, the volume of loans purchased shall be considered as if it were dollars loaned. In calculating the volume assessment for sales finance companies that both make and purchase loans, the Department shall consider the total loan volume of such licensees to be the dollar volume of loans made plus the dollar volume of loans purchased by such licensees.

v. For mortgage brokers and for mortgage bankers who broker loans, the Department shall determine the dollar volume of closed loans brokered by each licensee for the preceding calendar year as reported in

the licensee's annual report. For purposes of calculation of the volume assessment for mortgage brokers, the Department shall consider the volume of closed loans brokered for each licensee as if it were the volume of dollars loaned by a licensee. In calculating the volume assessment for mortgage bankers who also broker loans, the Department shall consider the total loan volume of such licensees to be the dollar volume of loans made plus the dollar volume of closed loans brokered by such licensees.

vi. For check cashers, the Department shall consider the dollar volume of checks cashed for a fee by each licensee for the preceding calendar year, as reported in the licensee's annual report. The volume shall include all checks cashed for a fee or other compensation, whether received directly or indirectly, and shall treat the dollar volume of such checks as if it were a volume of dollars loaned. The volume shall include payroll services where the check casher receives a fee or other compensation from either the employer or from the employees/payees.

vii. For money transmitters and foreign money transmitters, the Department shall consider the dollar volume of money transmitted, the dollar volume of bills paid and the dollar volume of checks sold by each licensee for the preceding calendar year as reported in the licensee's annual report. This total dollar volume shall be treated for assessment purposes as if it were dollars loaned.

viii. For the purposes of determining the volume assessment for sales finance companies and motor vehicle installment sellers licensed

under N.J.S.A. 17:16C- 1 et seq., the Department shall consider the dollar volume of loans for goods as defined by N.J.S.A. 17:16C-1(a) and the dollar volume of loans for services. For sales finance companies, the Department shall consider the dollar volume of such loans made plus the dollar volume of such loans purchased by those licensees.

ix. For the purposes of determining the volume assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., the volume assessment shall be based on the aggregate dollars loaned or its equivalent as determined in accordance with this chapter for all their authorities.

x. There will be no volume assessment for entities licensed to act as debt adjusters pursuant to N.J.S.A. 17:16G-1 or high cost home loan credit counselors registered pursuant to N.J.S.A. 46:10-22 et seq.

2. The Department shall multiply the percentage for each licensee regulated by Consumer Finance times the expenses remaining after the total assessments for credit unions and the base assessments of licensees have been deducted from the total amount of expenses for Consumer Finance for the preceding fiscal year.

3. The volume assessment, if any, for each entity regulated by Consumer Finance shall be added to their previously determined base assessment.

4. For the purpose of determining the total assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., licensees with more than one authority shall pay a separate base assessment for each separate authority,

which shall be added to a single volume assessment, if any, based on the aggregate dollars loaned or its equivalent for all their authorities.

(d) A regulated entity that ceases business or is acquired shall be responsible for the payment of the base assessment and any volume assessment for that calendar year. An entity that ceases business or is acquired shall pay all assessments due and owing and prepay the base assessment for the year of the discontinuance by paying the amount of the most recently billed base assessment within 15 days after ceasing business or upon being acquired. Adjustments to the base assessment, if any, and the final volume assessment for the year of discontinuance will be billed in the year following the discontinuance.

SUBCHAPTER 5. MAXIMUM TOTAL OF ASSESSMENTS

3:5-5.1 Maximum assessment

(a) The total amount assessable to regulated entities in any fiscal year for the purposes of this subchapter shall not exceed the lesser of:

1. The total amount of expenses incurred by the State in connection with the administration of the special functions of the Division pursuant to N.J.A.C. 3:3-5.3 during the preceding fiscal year as ascertained by the Director of the Division of Budget and Accounting in the Department of the Treasury, on or before August 15 in each year, and certified to the Commissioner by category; or
2. .00015 times the sum of:
 - i. The total assets for State-chartered banks, savings banks, and savings and loan associations for the preceding calendar year plus

ii. The total average loan volume for residential mortgage loans closed by licensed lenders pursuant to the New Jersey Licensed Lenders Act, P.L. 1996, c. 157 (N.J.S.A. 17:11C-1 et seq.) for the three preceding calendar years.

SUBCHAPTER 6. OBJECTION TO ASSESSMENT

3:5-6.1 Time to object and decision on objections

(a) Within 15 days after the date of mailing a statement of the assessment as provided in N.J.A.C. 3:5-3.1(b), a regulated entity may file objections to its assessment with the Commissioner. All such objections must be filed in writing.

(b) Upon being filed, the validity of such objections shall be determined by the Commissioner in accordance with N.J.S.A. 17:1C-36 and 37.

(c) If, after having determined the validity of an objection, the Commissioner finds any part of the assessment against the objecting regulated entity excessive, erroneous, unlawful or invalid, he or she shall transmit to the objector, by registered mail, his or her findings and an amended statement of the assessment in accordance with those findings, which shall have the same force and effect as an original statement of the assessment. If the Commissioner finds the entire statement of the assessment unlawful or invalid, he or she shall notify the objector, by registered mail, of that determination, and the original statement of the assessment shall be null and void. If the Commissioner finds that the statement as rendered is neither excessive, erroneous, unlawful nor invalid, in whole or in part, he or she shall transmit notice thereof to the objector by registered mail.

SUBCHAPTER 7. COLLECTION; NOTICE OF DELINQUENCY

3:5-7.1 Unpaid assessments

(a) If any regulated entity to which a statement of the assessment has been mailed fails or refuses to pay the amount within 30 days of the date of mailing, or fails to file with the Commissioner objections to the statement of the assessment as provided in N.J.A.C. 3:5-6, the Commissioner shall transmit to the State Treasurer a certified copy of both the statement of the assessment and the notice of the neglect or refusal of the regulated entity to pay the amount thereof, and at the same time shall mail by registered mail to the entity a copy of the statement of the assessment and the notice of the neglect or refusal transmitted to the State Treasurer.

(b) If a statement of the assessment against which objections are filed is not paid in full within 30 days after the date of mailing to the objector of notice of a finding that the objections have been disallowed, or if an amended statement of the assessment is not paid within 30 days of the date a copy thereof is mailed by registered mail to the objector, the Commissioner shall give notice of the delinquency to the State Treasurer and to the objector, and the State Treasurer shall proceed to make the collection.

(c) In accordance with N.J.S.A. 17:1C-40, no action or proceeding shall be maintained in any court for the purpose of restraining or delaying the collection or payment of a statement of the assessment rendered in accordance with the provisions of this chapter and N.J.S.A. 17:1C-33 et seq.

(d) No action for recovery of an amount paid shall be maintained in any court unless objections have been filed with the Commissioner. In an action for recovery of

any payments, plaintiff may raise any relevant issue of law, but the Commissioner's findings of fact shall be presumptive evidence of the facts therein stated.

3:5-7.2 Collection; sale of goods

In accordance with N.J.S.A. 17:1C-43 within 10 days after receipt of the notice and certified copy of the statement of the assessment, the State Treasurer shall proceed to collect the amount stated to be due, with legal interest, by seizure and sale of any goods or chattels, including stocks, securities, bank accounts, surety bonds, realty, evidences of debt and accounts receivable belonging to the regulated entity anywhere within the State. The State Treasurer shall not seize any goods or chattels held by the regulated entity on behalf of another.

3:5-7.3 Additional remedy

As provided in N.J.S.A. 17:1C-44 as an additional remedy, the State Treasurer may issue a certificate to the Clerk of the Superior Court that a regulated entity is indebted under these rules in an amount stated in the certificate. The clerk shall immediately enter upon his record of docketed judgments the name of the regulated entity, and of the State, the amount of debt so certified, and the date of the entry. The entry shall have the same force and effect as the entry of a docketed judgment in the Office of the Clerk, and the State Treasurer shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in a civil action, but without prejudice to the regulated entity's right of appeal.

SUBCHAPTER 8. REGULATED ENTITIES EXEMPT FROM FEES AND CHARGES;
EXCEPTIONS

3:5-8.1 Fees and exemptions

(a) Notwithstanding any law or regulation to the contrary, a regulated entity paying the amounts assessed to it in statements of the assessment made pursuant to N.J.A.C. 3:5-3 shall be exempt from all fees or charges imposed by the Division pursuant to any other provision of law or regulation, except for:

1. Charter fees;
2. Application fees for licenses;
3. Mortgage solicitor registration application fees;
4. Fees for entry by a foreign depository institution whether from another state of the United States or from another country into New Jersey for branch, trust or other activities;
5. Fees charged under the Governmental Unit Deposit Protection Act, P.L. 1970, c. 236 (N.J.S.A. 17:9-41 et seq.);
6. Fees charged any entity not chartered, licensed or registered by this State, including, but not limited to, activities conducted by foreign banks pursuant to section 316 of P.L. 1948, c. 47 (N.J.S.A. 17:9A-316) or foreign associations pursuant to section 214 of P.L. 1963, c. 144 (N.J.S.A. 17:12B-214);
7. Fees charged qualified corporations authorized pursuant to section 213 of P.L. 1948, c. 67 (N.J.S.A. 17:9A-213) to perform either registrar and transfer agent activities or activities permitted for qualified educational institutions; and

8. Such other fees as may be specified as not exempt pursuant to N.J.S.A. 17:1C-33 (P.L. 2005, c. 199) and any amendments thereto.

(b) Nothing in this section shall exempt a regulated entity from paying any fine or penalty imposed by the Commissioner for a violation of a statute or regulation.

(c) Except as provided in paragraph (1) of subsection d. of section 7 of the New Jersey Home Ownership Security Act of 2002, P.L. 2003, c. 64 (N.J.S.A. 46:10B-28), all fees, charges, fines and penalties as described in (a) and (b) above shall be remitted to the State Treasurer for deposit into the General Fund, and those fees, charges, fines and penalties shall not be part of the assessment funding mechanism or considered in the calculation pursuant to N.J.A.C. 3:5-5.

SUBCHAPTER 9. IMPROPER REPORTING OF INFORMATION TO THE DEPARTMENT

3:5-9.1 Penalty for improper reporting

(a) A depository institution that submits figures on assets, deposits or any other factor used by the Department to compute the depository institution's assessment that are substantially or materially in error shall be liable for an administrative penalty not to exceed \$10,000 for each submission that contains substantially or materially incorrect information.

(b) A licensee that submits figures on loan volume, number of branches, or any other factor used by the Department to compute the licensee's assessment that are substantially or materially in error shall be liable for an administrative penalty not to

exceed \$10,000 for each submission that contains substantially or materially incorrect information.

(c) In addition to any monetary penalty that may be imposed against a licensee pursuant to (b) above, the Commissioner may take action to revoke, suspend or refuse to renew the license of a licensee that submits substantially or materially erroneous figures. The suspension, revocation or refusal to renew a license shall be in addition to any monetary penalty imposed pursuant to (b) above.

(d) The administrative penalty authorized pursuant to this subsection may be recovered in a summary proceeding in accordance with the Penalty Enforcement Law of 1999, P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.). Pursuant to N.J.S.A. 17:1C-48d, a willful violation of this section shall be considered a crime of the third degree.

SUBCHAPTER 10. TRANSITION TO DEDICATED FUNDING

3:5-10.1 Credits and elimination of examination bills

(a) In calculating the initial assessments to be imposed pursuant to this chapter:

1. Banks, savings banks and savings and loan associations shall be given prorated credit for unused portions of assessments currently collected under N.J.A.C. 3:1-6 and N.J.S.A. 17:1-8, if any; and

2. Licensees shall be given prorated credit for unused portions of licensing periods, if any.

(b) The Department shall not issue an examination bill for an examination that has not been completed by June 30, 2006. For purposes of this transition period, an examination shall be deemed to be complete when the examination team concludes its

examination activities on site at the institution. In cases where the examination team has concluded its activities on site at the institution by June 30, 2006 but the Department has not completed the processing and review of the examination report by that date, the bill issued for such an examination shall not include any charges for work performed after June 30, 2006 which was required for the Department to complete the processing and review of the examination report and/or to meet with the management or board of the regulated entity with regard to the examination findings.

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