

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Licenses; Dedicated Funding; Licensees Ceasing Business; Licensed Lenders; Office of Consumer Finance

Proposed Amendments: N.J.A.C. 3:1-7.6, 3:5-4.4 and 5.1; 3:15-4.2, 3:22-1.3; 3:23-1.1, 3:24-6.1 and 3:27-3.3

Proposed New Rule: N.J.A.C. 3:23-2.2

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 8.1, 17:1-15(e), 17:1C-33 et seq., 17:11C-8, 11, 17:15A-40, 17:15C-9, 17:16C-7, 8, 82, 17:16D-4, 17:16G-4, 45:22-4 and 46:10B-22 et seq., and P.L. 2007, c. 81.

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

Proposal Number: PRN 2007-196

Submit comments by August 17, 2007 to:

Robert J. Melillo, Chief
Office of Legislative and Regulatory Affairs
New Jersey Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance is proposing amendments and a new rule related to the assessment funding mechanism for the Division of Banking implemented pursuant to P.L. 2005, c.199, and amendments to the Banking Division's general licensing rules and the rules specifically applicable to licensed lenders and money transmitters. The proposed amendments are intended to clarify and refine the current rules regarding application fees, caps

on assessments, the payment of assessments when a licensee ceases operations or is acquired, the per day penalty for licensees who file their annual reports late and the dates by which annual reports from insurance premium finance companies and check cashers must be filed. Proposed new rule N.J.A.C. 3:23-2.2 specifies the terms of all license types referenced in N.J.A.C. 3:23-2.1. The Department proposes the following changes.

N.J.A.C. 3:1-7.6 and 3:27-3.3 are proposed to be amended to revise the references therein to the penalty for the late filing of annual reports from \$50.00 per day in N.J.A.C. 3:1-7.6 and \$100.00 per day in N.J.A.C. 3:27-3.3 to an amount up to \$100.00 per day. These changes are needed to conform the rules to P.L. 2007, c. 81, which was enacted May 4, 2007. N.J.A.C. 3:1-7.6(c) is also being amended to clarify the statements therein regarding the late filing of annual reports and the late payment of assessments.

N.J.A.C. 3:5-4.4(d) is proposed to be amended to require regulated entities to notify the Department at least 30 days prior to ceasing business or being acquired, and provide the name, address and telephone number of a contact person. Further, it is proposed that upon receipt of such notification, the Department will inform such entities of the base assessment amount due for the year preceding the year in which the discontinuance of business or acquisition occurs. The proposed amendments also require that upon being so informed, such regulated entities pay the amount specified in the notification from the Department and return their license(s) or other credential(s) to the Department within the time periods specified. Lastly, the proposed amendments require such regulated entities to file an annual report for the last year in which the discontinuance of business or acquisition occurs and to pay any assessments due when the notice is provided. Proposed new subsection N.J.A.C. 3:5-4.4(e) provides for the imposition of penalties for failure to comply with the provisions of N.J.A.C. 3:5-4.4(a) through (d).

The Department proposes to amend N.J.A.C. 3:5-5.1(a)2 to change the number used to calculate the cap on the total dedicated funding assessment to regulated entities in any fiscal year (from .00015 to 0001084 times the sum in paragraph (a)2) and to consider the average total assets of banks, savings banks and savings and loan associations and the average total loan volume of licensed lenders for the preceding five calendar years, excluding the two most recent years, in this calculation. These amendments will conform the rule to P.L. 2007, c. 81.

The Department also proposes to amend N.J.A.C. 3:15-4.2 regarding application fees for licensed lenders. The proposed amendment clarifies the existing practice that licensees applying for a branch office license must pay a separate application fee in addition to the application fee for initial licensure of the business entity. The application fee for each branch office license is based on the number of activities under the Licensed Lenders Act that the licensee is authorized to conduct as set forth in N.J.S.A. 17:11C-8.

N.J.A.C. 3:22-1.3 and 3:24-6.1 are proposed to be amended to delete from them dates by which annual reports must be filed by insurance premium finance companies and check cashers, respectively. These amendments are necessary in order to conform the rules to amendments made to N.J.S.A. 17:16D-7 and N.J.S.A. 17:15A-45, respectively, by P.L. 2007, c. 81. The dates by which such annual reports must be filed in order to avoid a penalty for late filing are specified in N.J.A.C. 3:1-7.6.

Finally, the Department proposes a new rule at N.J.A.C. 3:23-2.2, License terms. This proposed new rule will, commencing July 1, 2007, establish a license term of two years starting July 1 of each odd numbered year for all of the license types mentioned in N.J.A.C. 3:23-2.1. Further, the Department proposes to amend N.J.A.C. 3:23-1.1, Purpose and scope, to reflect the

full scope of the expanded chapter. Lastly, the heading of Chapter 23 and Subchapter 2 are proposed to be amended for clarity.

The Department's 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 requirements of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments and new rule will improve the clarity of the rules and render them consistent with controlling statutory law, as recently amended by P.L. 2007, c. 81, thereby eliminating a potential source of confusion for regulated entities. They will also add requirements that will assist the Department in promptly collecting assessments owed by licensees that cease doing business or are acquired. The Department anticipates that the proposed amendments and new rule will also reduce confusion with respect to license terms and branch office application fees for regulated entities. As such, they will have a beneficial social impact on entities regulated by the Department.

Economic Impact

The proposed amendments to N.J.A.C. 3:5-5.1 modify the formula to establish the cap on the total amount of all dedicated funding assessments that may be imposed in a given year by the Department on New Jersey depositories and other regulated entities. The modification is required to conform the rule to N.J.S.A. 17:1C-47 as recently amended by P.L. 2007, c. 81. The incorporation of a "rolling average" of the total assets of depositories and the total loan volume of licensed lenders into the calculation set forth in the rule will provide a more stable figure for

use in the formula, smoothing out spikes or dips in business activity that may occur in a given year. By reducing the multiplier in N.J.A.C. 3:5-5.1(a)2., the proposed amendment will have the overall effect of limiting the maximum possible amount of the total annual assessment.

The proposed amendments to N.J.A.C. 3:27-3.3 and 3:1-7.6 eliminate a mandatory \$100.00 per day penalty in N.J.A.C. 3:27-3.3 and \$50.00 per day penalty in N.J.A.C. 3:1-7.6 and give the Department discretion to assess a penalty of not more than \$100.00 per day. This may have a positive economic impact on certain licensees who fail to timely file their annual reports as the Department will have discretion to consider mitigating factors when assessing such penalties. The proposed new rule at N.J.A.C. 3:23-2.2 regarding license terms will have no economic impact as, regardless of the terms of the licenses, renewal fees are no longer charged.

The proposed amendments to N.J.A.C. 3:15-4.2 will clarify the rule's applicability to branch office license applications by licensed lenders. The costs associated with compliance will not change, as the fees specified were authorized by statute at P.L. 2005, c. 199. The proposed amendments to N.J.A.C. 3:5-4.4 will clarify the timing of the assessment payments that the rule currently requires of licensees who cease doing business or who are acquired. These and the other proposed amendments should have no economic impact.

Any compliance costs associated with the new rule and amendments are mandated by statute at P.L. 2005, c. 199 and P.L. 2007, c. 81. Regulated entities should not need outside professional assistance to comply with proposed amendments and new rule.

Federal Standards Statement

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

Jobs Impact

The Department does not anticipate that any jobs will be lost or generated as a result of the proposed amendments and new rule.

Agriculture Industry Impact

The Department does not expect that any agriculture industry impact will result from the proposed amendments and new rule.

Regulatory Flexibility Analysis

The proposed amendments and new rule will apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Some financial entities regulated by the Department have fewer than 100 employees and are not dominant in their field and are therefore “small businesses.” The Department does not believe that the proposed amendments and new rule will impose any substantial compliance costs on financial entities. Clarifying when assessments are payable, what application fees are required and the amounts that are due, and setting a uniform license term are beneficial to the financial entities regulated by the Department irrespective of the size of the entity. The same may be said for the amendments being proposed to conform the rules to the operable statutes as amended by P.L. 2007, c. 81, with respect to the annual assessment cap formula, the dates by which the annual reports by insurance premium finance companies and check cashers must be filed, and the penalties for the failure to timely file annual reports. Financial entities will not need to employ professional services in order to comply with the amendments and new rule. Therefore, no distinctions are made in the proposed amendments and new rule based on business size.

Smart Growth Impact

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

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

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER 7. MISCELLANEOUS

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

(a) Licensed lenders, motor vehicle installment sellers, home repair contractors, home financing agencies, check cashers, money transmitters, debt adjusters, foreign money transmitters, pawnbrokers, insurance premium finance companies, or any other licensees who fail to file an annual report on a timely basis as specified below shall be subject to a [\$50.00 per day] penalty **as specified in (c) below**. With the exception of licensed lenders, all such licensees who file applications to renew their license after the license expiration date shall be subject to a penalty of \$50.00. Licensed lenders who file renewal license applications after the expiration of their licenses shall be subject to N.J.A.C. 3:15-2.6, including any penalties specified therein.

1 – 4. (No change.)

(b) (No change.)

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

1. For late filing of the annual report, the penalty shall be [\$50.00] **not more than \$100.00** per day.

2. (No change.)

(d) – (e) (No change.)

CHAPTER 5

DEDICATED FUNDING ASSESSMENT

3:5-4.4 Volume assessments

(a) – (c) (No change.)

(d) A regulated entity that ceases business or **that** is acquired shall be responsible for **the filing of an annual report for the calendar year in which operations ceased or the acquisition occurred and** the payment of the base assessment and any volume assessment for [that] **the entire preceding** calendar year **and for the year in which its operations ceased or it was acquired, as set forth below in this subsection.** An entity that ceases business or is acquired shall [pay];

1. Notify the Department in writing of its intention to cease business or be acquired at least 30 days prior to the date on which it will cease operating or be acquired, and provide the name, address and telephone number of the person within the

licensee's operation to whom all communications from the Department should be directed and who will be responsible to ensure the payment of assessment(s) and filing of the final annual report;

2. Pay all assessments that are due and owing [and prepay] as of the date on which the notice referenced in (1) above is provided and that may be subsequently issued;

3. Prepay the base assessment for the year of the discontinuance or acquisition by paying the amount of the most recently billed base assessment. Such prepayment shall be due within 15 days [after ceasing business or upon being acquired] of being notified by the Department of the amount of the prepayment due. Adjustments to the base assessment, if any, and the final volume assessment for the year of discontinuance or acquisition will be billed in the year following the discontinuance or acquisition; and

4. Return all license(s) or other credential(s) issued by the Department no later than 30 days after ceasing business or being acquired.

(e) Failure to comply with the above will subject the regulated entity to the penalties authorized by N.J.S.A. 17:1C-42, 43, or 44, together with any penalties applicable to the particular type of regulated entity as authorized by statute.

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. (No change.)
2. [.00015] **.0001084** times the sum of:

i. The **average** total assets for State-chartered banks, savings banks, and savings and loan associations for the preceding **five** calendar [year] **years' data, excluding the two most recent calendar years**; 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 **five** calendar **years' data, excluding the two most recent calendar** years.

CHAPTER 15

LICENSED LENDERS; MORTGAGE BANKERS; CORRESPONDENT MORTGAGE BANKERS; MORTGAGE BROKERS; SECONDARY LENDERS; CONSUMER LENDERS AND SALES FINANCE COMPANIES

3:15-4.2 Application fees

(a) A person who is applying for [a] **an individual or company or branch office** license under the Act shall pay an application fee to the Department as follows:

1. [One] **On an application for any license set forth in (a) above with one** authority [for an individual and/or company]: \$700.00;

2. [Two] **On an application for any license set forth in (a) above with two** authorities [for an individual and/or company]: \$1,000;

3. [Three] **On an application for any license set forth in (a) above with three** authorities [for an individual and/or company]: \$1,300; and

4. [Four] **On an application for any license set forth in (a) above with four** authorities [for an individual and/or company]: \$1,600

(b) A licensee who [subsequently] applies for an additional authority **on any currently held license** shall pay an application fee for each such application of \$300.00 per **additional** authority for each individual [and/] **or** company **or branch office license**.

(c) (No change.)

CHAPTER 22

INSURANCE PREMIUM FINANCE COMPANY ACT

3:22-1.3 Annual report; fee

Each insurance premium finance company licensee shall file[, on or before February 1,] an annual report as mandated by N.J.S.A. 17:16D-7. In accordance with N.J.A.C. 3:1-7.6, the Department shall assess a penalty against any licensee for each report the licensee files late.

CHAPTER 23

FEES, **LICENSE TERMS** AND ANNUAL REPORTS **FOR LICENSEES**

3:23-1.1 Purpose and scope

(a) This chapter shall implement the provisions of N.J.S.A. 17:1-[8.1]**§ et seq., 17:11C-1 et seq., 17:15A-1 et seq., 17:15C-1 et seq., 17:16C-1 et seq., 17:16C-82 et seq., 17:16D-1 et seq., 17:16G-1 et seq., 45:22-1 et seq. and 46:10B-22 et seq.** which permit[s] the Commissioner of Banking and Insurance to establish application fees for new licenses issued by

the Commissioner, **to set the length of license terms and to require the submission of annual reports by licensees.**

(b) (No change.)

SUBCHAPTER 2. [BIENNIAL AND ANNUAL LICENSE] **APPLICATION FEES AND LICENSE TERMS**

3:23-2.2 License terms

(a) All newly issued licenses referenced in N.J.A.C. 3:23-2.1 shall run from the date of issuance to the end of the license term during which the initial license was issued.

(b) Commencing with the license term that begins July 1, 2007, the license term for all licenses referenced in N.J.A.C. 3:23-2.1 shall be two years, beginning on July 1 of each odd numbered year and ending on June 30 of the next odd numbered year.

CHAPTER 24

CHECK CASHING

3:24-6.1 Annual report

Each check cashing licensee shall file[, on or before March 1,] an annual report as mandated by N.J.S.A. 17:15A-45. In accordance with N.J.A.C. 3:1-7.6, the Department shall assess a penalty against a licensee for each report the licensee files late.

CHAPTER 27

MONEY TRANSMITTERS

3:27-3.3 Annual report

(a) – (c) (No change.)

(d) Any licensee who fails to file a complete annual report in a timely manner, as set forth in (a) above, shall pursuant to N.J.S.A. 17:15C-12 be assessed a penalty of **not more than** \$100.00 per day for each day after the due date that the complete report remains unfiled.

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