

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Dedicated Funding Assessment

Proposed Readoption with Amendments: N.J.A.C. 3:5

Proposed Repeal: N.J.A.C. 3:5-10

Authorized By: Thomas B. Considine, 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.

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

Proposal Number: PRN 2011-157.

Submit comments by September 30, 2011 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:5, its rules governing fees and annual reports which, pursuant to N.J.S.A. 52:14B-5.1, was originally scheduled to expire on June 19, 2011. Amendments to N.J.S.A. 52:14B-5.1b, enacted effective April 6, 2011, extended that expiration date to June 19, 2013. Pursuant to N.J.S.A. 52:14B-5.1c(2), the filing of this notice for publication with the Office of Administrative Law extended the chapter expiration date 180 days, to December 16, 2013.

The Department has reviewed the rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department also proposes to amend references to the various licenses and licensees in response to the enactment of the New Jersey Residential Mortgage Lending Act in P.L. 2009, c. 53 (“RMLA” or “the Act”), which is codified at N.J.S.A. 17:11C-51 et seq. The RMLA was enacted in response to new Federal requirements established in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. §§ 5101 et seq. (SAFE Act).

In order to address the Federal law requirements in the most efficient manner, the New Jersey Licensed Lenders Act (LLA), N.J.S.A. 17:11C-1 et seq., was amended to create two separate regulatory schemes, with the RMLA portion dedicated to mortgage activities, and the other, entitled the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43 (CFLA), addressing non-mortgage lending activities. Accordingly, amendments are proposed to N.J.A.C. 3:5 to incorporate into the nomenclature in the dedicated funding rules the new terms in the RMLA and CFLA.

Specifically, throughout the chapter, references to licensed lenders are supplemented with references to business licensees under the RMLA, and/or licensees under the CFLA, as appropriate. The references to individuals or entities that were licensees under the LLA are retained because in cases where all assessments have not been paid, such persons remain liable for the payment of the assessments notwithstanding that they are no longer licensees under that law.

N.J.A.C. 3:5-1 sets out the purpose and scope of the chapter. References to licensees are amended to refer to business licensees under RMLA and licensees under CFLA in N.J.A.C. 3.5-1.1(b).

N.J.A.C. 3:5-2 sets out the necessary definitions for the chapter. In N.J.A.C. 3:5-2.1, the definitions of “authority” and “other financial entities” are amended to refer to business licensees under RMLA and licensees under CFLA where appropriate.

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.

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

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

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.

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.

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).

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

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.

N.J.A.C. 3:5-4.2(b) states that the total base assessment for licensees with more than one authority shall consist of the accumulated total of the separate base assessments for each of that licensee'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. References to licensees are amended to refer to business licensees under RMLA and licensees under CFLA in N.J.A.C. 3:5-1.1(b).

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

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.

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.

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.

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

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.

N.J.A.C. 3:5-4.3(d)2 states that the Department in determining the complexity factor 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.

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.

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

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

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.

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

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 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.

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.

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.

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.

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.

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.

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. In N.J.A.C. 3:5-4.4(c)1iii, references to mortgage bankers, correspondent mortgage bankers and secondary lenders are amended to refer to business licensees under RMLA.

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. The reference to licensees is amended to refer to licensees under RMLA and CFLA.

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.

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.

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.

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. N.J.A.C. 3:5-4.4(c)4 is amended to clarify that this subparagraph refers to those mortgaging and brokering residential mortgages.

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.

N.J.A.C. 3:5-5 sets forth the rules for determining the maximum assessments permitted under the Act.

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

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. 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.

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.

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.

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.

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.

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.

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.

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.

N.J.A.C. 3:5-10, which set forth the rules to guide the Department and regulated entities to transition from the prior billing methods to the dedicated funding mechanism, is proposed for repeal as the transition is complete.

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

As discussed in the Summary above, the proposed amendments merely change references to licensed lenders to conform to the new terms found in RMLA and CFLA. Accordingly, there should be no effect on these licensees, the public they service or the State.

The readoption of dedicated funding of the Division of Banking will continue to 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.

Economic Impact

The Department does not expect that the rules proposed for reoption with amendments will have a significant economic impact on most regulated entities. The Department believes that its assessments and assessment system are reasonable. 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 are subject to higher assessments, but only commensurate to the regulatory burden they place upon 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 continue to compile the necessary information for the assessment funding system and forward it to the Department in their annual reports. 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 rules proposed for reoption with amendments will affect economically all the industries and individuals who are regulated by the Division of Banking. The rules proposed for reoption with amendments allow for the fair and equitable allocation of the cost of regulation among those who are regulated by the Division. The rules proposed for reoption with amendments 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 rules proposed for re adoption with amendments 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.

Federal Standards Statement

The rules proposed for re adoption and the proposed amendments and repeal do not contain any standards or requirements that exceed standards or requirements imposed by Federal law.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the rules proposed for re adoption with amendments and repeal. The amendments merely change existing nomenclature in the rules to conform to RMLA and CFLA. Licensees will continue to use existing staff or retain outside professionals for continued compliance with the rules without any need for change due to these amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments together with 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 re adoption with amendments and repeal.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., defines a “small business” as any business resident in this State that employs fewer than 100 employees full-time, is independently owned and operated and is not dominant in its field. Many of the regulated entities that will be affected by the rules proposed for readoption with amendments are small businesses employing fewer than 100 full-time employees. The rules proposed for readoption with amendments 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 into 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 continue to 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 rules proposed for readoption with amendments continue to 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 rules proposed for readoption 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. The Department does not believe that

small businesses need to employ professional services in order to comply with the 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 rules proposed for reoption with amendments and repeal will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact Analysis

The rules proposed for reoption with amendments and repeal will have no impact on affordable housing in New Jersey and nor evoke a change in the average costs associated with housing because the rules proposed for reoption with amendments concern the calculation and payment of assessments by financial entities.

Smart Growth Development Impact Analysis

The rules proposed for reoption with amendments and repeal should not evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules

proposed for re-adoption with amendments concern the calculation and payment of assessments by financial entities.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:5.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 3:5-10.

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

SUBCHAPTER 1. PURPOSE AND SCOPE

3:5-1.1 Purpose and scope

(a) (No change.)

(b) These rules apply to banks, savings banks, savings and loan associations, credit unions, [licensed lenders] **persons licensed or registered under the New Jersey Licensed Lenders Act, P.L. 1996, c. 157, N.J.S.A. 17:11C-1 et seq., business licensees under the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq., licensees under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43**, 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.

...

"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, **the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. or the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43.**

...

"Other financial entity" means a person who is **or was** 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.); **or is licensed or registered pursuant to: the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq.; the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43;** [The] **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.)

...

SUBCHAPTER 4. ASSESSMENT COMPUTATION FORMULA

3:5-4.2 Total assessments

(a) (No change.)

(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., **the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. or the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43**, 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.

3:5-4.4 Volume assessments

(a) – (b) (No change.)

(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. – ii. (No change.)

iii. For the purposes of this section, licensees that make loans include mortgage bankers, correspondent mortgage bankers, secondary lenders, **business licensees under the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq.**, 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. (No change.)

v. For **residential** mortgage brokers and for **residential** mortgage [bankers] **lenders** 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 **residential** 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 **residential** mortgage [bankers] **lenders** 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. – viii. (No change.)

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**

New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. or the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43, 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. (No change.)

2. – 3. (No change.)

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., **the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. or the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43**, 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) – (e) (No change.)

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. (No change.)

2. .0001084 times the sum of:

i. (No change.)

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.) **and business licensees under the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq.,** for the preceding five calendar years' data, excluding the two most recent calendar years.