

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Qualified Educational Institutions

Proposed Readoption with Amendment: N.J.A.C. 3:35

Authorized By: Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-15.e and 17:9A-213.

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

Proposal Number: PRN 2014-025.

Submit comments by April 4, 2014, to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt, with one amendment, N.J.A.C. 3:35, which is scheduled to expire on July 7, 2014, pursuant to N.J.S.A.

52:14B-5.1.c. The Department has reviewed Chapter 35 and has determined that the rules set forth therein, subject to the one proposed amendment, are necessary, reasonable, and proper for the purpose for which they were originally promulgated.

Chapter 35, Qualified Educational Institutions, implements N.J.S.A. 17:9A-213, which defines a qualified educational institution and permits such institutions to exercise certain trust powers as set forth in N.J.S.A. 17:9A-28(6) and (9). This chapter applies to all educational institutions that seek to exercise powers pursuant to N.J.S.A. 17:9A-213(b), except those exempt from the requirements pursuant to N.J.S.A. 17:9A-213(f). N.J.A.C. 3:35-1.1 provides the purpose and scope of the subchapter; N.J.A.C. 3:35-1.2 defines the terms relating to qualified educational institutions; N.J.A.C. 3:35-1.3 specifies the required disclosures and minimum standards necessary to qualify an educational institution for the exercise of trust powers; and N.J.A.C. 3:35-1.4 lists the requirements necessary for an educational institution to register as a qualified entity. Annual report filing requirements are set forth in N.J.A.C. 3:35-1.5.

The authority for conducting financial examinations of qualified educational institutions by the Commissioner or his or her designee is set forth in N.J.A.C. 3:35-1.6 and the procedures for the Commissioner providing for the public's access to the qualified institutions' names and addresses are prescribed in N.J.A.C. 3:35-1.7. The Department proposes to amend this subchapter by eliminating the \$25.00 per request fee for written confirmation by the Department of whether a particular institution has a current registration. The Department has determined that such requests should be governed by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. The Commissioner's powers of revocation and suspension of a qualified educational institution's registration is the subject of N.J.A.C. 3:35-1.8.

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 rules proposed for readoption with amendment continue to provide a mechanism for not-for-profit qualified educational institutions within New Jersey to exercise powers as a trustee of funds in which the qualified educational institution has a qualifying interest. In accordance with N.J.S.A. 17:9A-213 et seq., these rules permit not-for-profit qualified educational institutions to exercise those powers specified in N.J.S.A. 17:9A-28(6) and (9) as a trustee with respect to moneys, securities, and other properties held in trusts in which the institution is an income beneficiary or a principal beneficiary, or both, where the trust is a charitable remainder trust, a charitable lead trust, or a pooled income fund as defined by the Internal Revenue Service Code of 1986, 26 U.S.C. §§ 501(c)(3) and 115, subject to the registration and regulatory requirements set forth in the rules. As a result, the qualified institutions obtain a greater financial benefit from the trust holdings, which ultimately makes the higher education they provide more available to students. In addition, the interests of the other beneficiaries of the trusts, if any, enjoy certain protections. For these reasons, the rules proposed for readoption with amendment have a favorable social impact.

Economic Impact

The rules proposed for readoption with amendment make no change in the previously established definition of approved qualified educational institutions within New Jersey. The readoption of the rules will continue to enhance the safety and soundness of financial trust

holdings by these qualified educational institutions, allowing them to continue to contribute to the economic vitality of the communities in which they are located and to provide educational opportunities for their students. These rules proposed for readoption also make no change to previously established costs for applications, annual renewals, and examinations performed by the Department. Future annual costs of compliance with these rules are not expected to differ from current annual costs. The proposed repeal of the fee in N.J.A.C. 3:35-1.7 will have no economic effect on the Department as no such requests have been received in years. The economic impact on the public will be favorable, as information on registered institutions will be accessible at a lower cost.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendment relate to the business of State banking and involve qualified educational institutions that have a qualified interest as an income or principal beneficiary in this State. Although the qualified educational institution must meet the requirements of the Internal Revenue Service Code of 1986, 26 U.S.C. §§ 501(c)(3) and 115 for tax purposes and the registration and regulatory requirements of the Department set forth in N.J.S.A. 17:9A-213 et seq., there is no conflict in the rules proposed for readoption with amendment with any Federal requirements or standards on this subject.

Jobs Impact

The Department does not believe that these rules proposed for readoption with amendment will cause any jobs to be generated or lost.

The Department invites interested parties to submit any data or studies concerning the jobs impact of the rules proposed for re adoption with amendment together with their written comments on other aspects of the proposal.

Agriculture Industry Impact

The Department does not expect any impact upon the State agriculture industry by these rules proposed for re adoption with amendment.

Regulatory Flexibility Analysis

Some qualified educational institutions regulated by the rules in this chapter are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Some compliance, recordkeeping, and reporting requirements will continue to be imposed by this chapter. Costs are discussed in the Economic Impact above.

The Department has determined that all such compliance, recordkeeping, and reporting requirements, as discussed in the Summary above, continue to be reasonable and necessary for the purpose for which they were originally proposed. The required recordkeeping is fully consistent with current standards for prudent business practice. These rules continue to apply to all State qualified educational institutions without regard to size, since they implement statutory provisions and/or regulatory policies. The rationale for those policies and the need for the reporting or compliance actions they require apply irrespective of the business size of the institution. The re adoption of these rules will impose no new recordkeeping, reporting, or other compliance requirements, but merely continue those requirements that have been in existence. The additional use of professional services by the qualified educational institutions

as a result of the rules proposed for readoption is not anticipated. These rules will permit qualified educational institutions to manage their trust assets themselves, but require that it be done in a manner that is responsible to the grantors of the property, the institution, other beneficiaries, if any, and the general public.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendment will not have an impact on housing affordability in this State in that the rules relate to non-profit educational institutions.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendment will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules would 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 in that the rules relate to non-profit educational institutions.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:35.

Full text of the proposed amendment follows (deletion indicated in brackets [thus]):

3:35-1.7 Records of registration

The Commissioner shall provide public access to the names and addresses of all qualified educational institutions registered pursuant to this subchapter. [There shall be a fee of

\$25.00 per request to provide a written confirmation whether a particular institution has a current registration.]