

beneficiary and not withdrawn, an additional amount of [\$500.00] **\$1,000**, up to a maximum scholarship of [\$3,000] **\$6,000**, subject to funding available therefor, shall be credited toward the qualified higher education expenses of a designated beneficiary at the time of a qualified withdrawal provided the requirements [of] at (a)2 and 3 above are met.

(c)-(e) (No change.)

9A:10-7.22 Eligibility for NJBEST Matching Grant Program

(a) For accounts opened on or after June 29, 2021, the Authority will provide a one-time grant of up to \$750.00 in a dollar-for-dollar match of an account owner's initial deposit into an NJBEST 529 College Savings Plan account provided:

1. The account owner's household adjusted gross income is **equal to or greater than \$0** and does not exceed \$75,000;

2.-3. (No change.)

(b)-(e) (No change.)

SUBCHAPTER 8. LOAN REDEMPTION PROGRAM FOR TEACHERS IN HIGH-NEED FIELDS EMPLOYED IN LOW-PERFORMING SCHOOLS

9A:10-8.4 Application procedures

(a) In order to apply for participation in the Program, an applicant must complete a Program application and submit the complete application to the Authority **by the deadline the Authority posts on its website.**

1. (No change.)

[b] The Authority will consider applications for approval of Program participation in the date order they are received, subject to available funding.

(c) The Authority will determine the applicant's eligibility for the Program based upon the information submitted on the application and will provide notification to the applicant of their acceptance into the Program.]

(b) The Authority will select Program participants from among those applicants who meet the eligibility criteria established pursuant to N.J.A.C. 9A:10-8.3.

(c) In the event there are insufficient funds to select all of the applicants who meet the eligibility criteria, the Authority will rank all of the applications received during the application submission period using predetermined scoring evaluation criteria, which will be updated annually to reflect the most severe shortages of teachers in the State, and posted on the Authority's website no later than one month prior to the date on which applications will be available online each year.

SUBCHAPTER 9. BEHAVIORAL HEALTHCARE PROVIDER LOAN REDEMPTION PROGRAM

9A:10-9.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

...
"Clinical practice" means assessment, diagnosis, treatment and prevention of mental illness, emotional and behavioral disturbances, including, but not limited to, providing individual, group, or family therapy or counseling services; and developing and implementing treatment and modification plans.

...
"Eligible behavioral healthcare providers" means psychiatrists, licensed psychologists, licensed social workers, licensed clinical social workers, psychiatric nurse mental health clinical specialists, board certified behavior analysts, licensed clinical alcohol and drug counselors, licensed associate counselors, and licensed professional counselors. Providers shall engage in direct clinical practice with patients or clients for a minimum of 20 hours a week.

9A:10-9.4 Application procedures

(a) In order to apply for participation in the Program, an applicant must complete a Program application and submit the complete

application to the Authority by October 31, each year. The Program application will be available on the Authority's website beginning on October 1, each year.

1. The program application includes, but is not limited to:

i. The applicant's identification and contact information;

ii. Certification of full-time employment, as well as whether the applicant works primarily with children or adolescents from the applicant's current employer or anticipated employer;

iii. Documentation necessary to demonstrate the applicant's eligibility to practice as a behavioral health provider, which includes, but is not limited to, a copy of the applicant's license to practice as a behavioral health provider, the applicant's undergraduate or graduate transcript, or the applicant's diploma; and

iv. Documentation evidencing qualifying education loan expenses.

(b) The Authority will select Program participants from among those applicants who meet the eligibility criteria established pursuant to N.J.A.C. 9A:10-9.3.

(c) In the event there are insufficient funds to select all of the applicants who meet the eligibility criteria, the Authority will rank all of the applications received during the application submission period using predetermined scoring evaluation criteria, which will be updated annually to reflect the most severe shortages of behavioral healthcare providers in the State, and posted on the Authority's website no later than September 1, each year.

9A:10-9.6 Incentive grants

(a)-(c) (No change.)

(d) Program participants work primarily with children and adolescents if at least 51 percent of their clinical practice is with people under the age of 18.

INSURANCE

(a)

DEPARTMENT OF BANKING AND INSURANCE REAL ESTATE COMMISSION Licensing; Conduct of Business

Proposed Amendments: N.J.A.C. 11:5-3.13, 3.14, and 6.1

Proposed New Rule: N.J.A.C. 11:5-3.16

Authorized By: New Jersey Real Estate Commission, Aurelio Romero, Executive Director.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 45:15-1 et seq.; and P.L. 2021, c. 281.

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

Proposal Number: PRN 2023-100.

Submit comments by December 15, 2023, to:

Denise M. Illes, Chief
 Office of Regulatory Affairs
 New Jersey Department of Banking and Insurance
 20 West State Street
 PO Box 325
 Trenton, NJ 08625-0325
 Fax: (609) 292-0896
 Email: RuleComments@dobi.nj.gov

The agency proposal follows:

Summary

The Real Estate Commission (Commission) proposes amendments and a new rule at N.J.A.C. 11:5. The proposed amendments and new rule implement P.L. 2021, c. 281 (Act), which was signed into law on November 8, 2021.

The Act changes existing law to allow a licensed real estate salesperson or broker-salesperson to form a limited liability company, or any other entity permitted by law, to receive commission income or other valuable

consideration. The legislative enactment was intended to allow real estate licensees to take advantage of the pass-through business income deduction made available pursuant to section 199A of the Federal Internal Revenue Code as part of the Federal tax reforms of the 2017 Tax Cut and Jobs Act. The Act provides that, notwithstanding the formation of a limited liability company or other entity, a salesperson or broker-salesperson who is compensated wholly on a commission basis will not be considered an employee pursuant to the State unemployment compensation law, and certain other labor laws that determine eligibility based on that law. The Act directs the Commission to create a registration process for limited liability companies and other entities to receive a commission or other valuable consideration.

The Act also amends N.J.S.A. 45:15-17.g to require brokers that participate in a promotion or offering of free, discounted, or other services or products that confer a monetary benefit of greater than \$1,000 upon the recipient, to provide written disclosure of the benefit to the recipient and any information concerning the promotion or benefit, as may be required by the Commission. The proposed amendments at N.J.S.A. 45:15-17.g also remove the prohibition on such offerings being contingent upon the recipient's entry into a sale, listing, or other real estate contract as a condition of the promotion or offer.

The proposed amendments and new rule conform the Commission's rules to the Act and set forth the registration process for limited liability companies and other entities to receive commission income or other valuable consideration, pursuant to P.L. 2021, c. 281, § 1. The Act takes effect on the first day of the sixth month next following the promulgation of rules by the Commission to effectuate the Act's purpose.

A summary of the proposed amendments and new rule follows:

The Commission proposes to amend N.J.A.C. 11:5-3.13 to add the entity registration form to the list of forms set forth in that section.

The Commission proposes to amend N.J.A.C. 11:5-3.14 to add the registration fee in the list of fees set forth in that section.

The Commission proposes new N.J.A.C. 11:5-3.16 to set forth the requirements and procedures to register an entity to receive commission income or other valuable consideration, pursuant to P.L. 2021, c. 281, § 1.

The Commission proposes amendments at N.J.A.C. 11:5-6.1(m) to conform the rule to the changes to the law. The proposed amendments streamline the existing rule text and implement the changes at N.J.S.A. 45:15-17(g) made pursuant to P.L. 2021, c. 281, § 2.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Commission anticipates that the proposed amendments and new rule will have a positive impact on real estate licensees. The ability for individual licensees to form business entities to receive commission income or other valuable consideration conforms the rules to the current industry environment, where a majority of salespersons and broker-salespersons practice as independent contractors. The new rule will allow for enhanced organization and more efficient business practices by individual licensees. Further, the proposed amendments at N.J.A.C. 11:5-6.1(m) relax requirements and increase the monetary threshold requiring a written disclosure by real estate brokers engaging in certain promotional practice from a "token value" of \$5.00 to \$1,000. Therefore, the proposed amendments and new rule will have a positive social impact.

Economic Impact

Licensed salespersons and broker salespersons who wish to register an entity to receive commission income will be required to pay the applicable registration fee to the Commission, as well as costs associated with obtaining documents required in the proposed registration process. The licensee will also be responsible for the filing of all documents and payment of all fees and costs associated with the formation, and maintaining the good standing of any entity that is registered with the Commission. These costs are minimal, and the Commission does not anticipate the costs to result in any financial hardship.

As stated in the Summary above, the proposed new rule is intended to ensure that salespersons and broker-salespersons are able to take advantage of the pass-through business income deduction made available

pursuant to section 199A of the Federal Internal Revenue Code. Furthermore, the proposed amendments at N.J.A.C. 11:5-6.4(m) reduce the compliance burden on brokers engaging in promotional offerings by increasing the threshold requiring a written disclosure by real estate brokers engaging in certain promotional practice from a "token value" of \$5.00 to \$1,000.

Federal Standards Statement

The proposed amendments at N.J.A.C. 11:5-6.4(m) require that licensees comply with applicable disclosure standards in the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq. The proposed amendments and new rule are not subject to any other Federal law or standards. Accordingly, the proposed amendments and new rule do not exceed any Federal law or standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Commission does not anticipate that any jobs will be generated or lost due to the proposed amendments and new rule. The Commission invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments and new rule together with their comments on other aspects of the proposal.

Agricultural Industry Impact

The proposed amendments and new rule will not have any impact on the agricultural industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments and new rule apply to "small businesses," as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. N.J.S.A. 52:14B-17 defines small businesses as any business that is resident in this State, independently owned and operated, and not dominant in its field, and that employs fewer than 100 full-time employees. A majority of licensed New Jersey real estate brokers fall within this definition. The business operations of licensed salespersons and broker-salespersons may also constitute "small businesses," pursuant to the statutory definition.

As stated above, the costs and regulatory burden associated with the proposed amendments and new rule are minimal, while ensuring compliance with the Act. By allowing real estate licensees to take advantage of the pass-through business income deduction, the Commission believes that these businesses will experience a net positive due to the rulemaking. The Commission believes that the proposed amendments and new rule should be applied uniformly. Therefore, no exemptions or difference in the compliance requirements is provided based on business size.

Housing Affordability Impact Analysis

The proposed amendments and new rule will not have an impact on housing affordability and are unlikely to evoke a change in the average costs associated with housing in this State because the proposed amendments and new rule relate to real estate brokerage business practices.

Smart Growth Development Impact Analysis

The proposed amendments and new rule will not have an impact on smart growth in this State and there is an extreme unlikelihood that the proposed amendments and new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the proposed amendments and new rule relate to real estate brokerage business practices.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 3. LICENSING

11:5-3.13 Licensing Bureau forms, instructions, processing times, deadlines

(a) The following forms are utilized by the Licensing Bureau:
1.-31. (No change.)

32. The form to request fingerprint scan processing utilized by the State-contracted fingerprint scanning vendor; [and]

33. Change of license type[.]; and

34. Registration of entity to receive commission income or other valuable consideration.

(b)-(e) (No change.)

11:5-3.14 Licensing fees

The fees applicable to transactions processed by the Licensing Bureau are listed in the table below. Renewal fees are assessed biennially for the renewal of licenses for a two-year term pursuant to N.J.S.A. 45:15-15. All other fees are payable in full regardless of when during a license term the application to which the fee pertains is submitted.

LICENSE FEES

Initial License Fees (amounts include \$50.00 application fee and, where applicable, Real Estate Guaranty Fund fees of \$10.00 for salespersons and referral agents, and \$20.00 for brokers and broker-salespersons. See N.J.S.A. 45:15-35. Amounts do not include the processing fee for fingerprint scanning payable directly to the State-contracted vendor):

Registration:

	<u>License</u>	<u>Fee</u>
Registration of entity to receive commission income		\$50.00

11:5-3.16 Registration of entities to receive commission income or other valuable consideration

(a) Pursuant to N.J.S.A. 45:15-16, a salesperson or broker-salesperson may accept payment of a real estate brokerage commission or other valuable consideration or any part thereof from a limited liability company or other entity formed and registered with the Commission. Such registered entity may receive a real estate brokerage commission or other valuable consideration from a broker.

(b) For the purpose of this section, the following definitions shall apply:

1. "Commission or valuable consideration" means compensation for the performance of activities specified at N.J.S.A. 45:15-3.

2. "Domestic entity" means a limited liability company or other entity that is formed pursuant to New Jersey law.

3. "Foreign entity" means a limited liability company or other entity that is formed pursuant to the law of a jurisdiction other than New Jersey.

(c) The following requirements apply to domestic and foreign entities that a salesperson or broker-salesperson seeks to register:

1. A salesperson or broker-salesperson may only have one entity registered with the Commission at a time;

2. The entity must be duly registered to transact business in New Jersey and in good standing with the New Jersey Department of the Treasury;

3. Foreign entities must be in good standing with the state of domicile; and

4. The salesperson or broker-salesperson seeking registration of an entity must be a member, partner, shareholder, or otherwise have an ownership interest in the entity for which registration is being sought.

(d) The registration process shall be on a form prescribed by the Commission and shall require the following:

1. The full legal name of the entity being registered;

2. A Standing Certificate issued to the entity by the New Jersey Department of the Treasury, attesting to the legal status of the entity, dated no more than 30 days prior to the filing date of the request for registration;

3. For domestic entities, a certified copy of the Certificate of Formation, or other formation certificate, issued by the New Jersey Department of the Treasury, Division of Revenue;

4. For foreign entities, a Certificate of Authority to transact business in New Jersey, issued by the New Jersey Department of the Treasury, Division of Revenue; and

5. Payment of the registration fee set forth at N.J.A.C. 11:5-3.14.

(e) The registration of an entity is not required to be renewed as part of the ordinary biennial license renewal requirement, set forth at N.J.S.A. 45:15-10. The registration of an entity shall expire in the following circumstances:

1. Upon the revocation of the license of the salesperson or broker-salesperson to whom the entity is registered;

2. Upon the failure of the salesperson or broker-salesperson to whom the entity is registered to timely reinstate an unexpired license within the timeframes set forth at N.J.S.A. 45:15-9. Upon any subsequent reinstatement of such a license, such a salesperson or broker-salesperson shall complete the registration process in this section, prior to the entity receiving any commission or other valuable consideration; and

3. Upon written request from the salesperson, or broker-salesperson to whom the entity is registered, for the entity to no longer be registered with the Commission.

(f) A salesperson or broker-salesperson who registers an entity, pursuant to this section, must notify the Commission within 30 days of any material change to the registered entity, including, but not limited to:

1. The salesperson or broker-salesperson's transfer of ownership interest or disassociation with the registered entity;

2. The merger or dissolution of a registered entity;

3. The registered entity fails to maintain good standing with the New Jersey Department of the Treasury, Division of Revenue; or

4. For foreign entities, the revocation of the Certificate of Authority to transact business in New Jersey.

(g) A licensed employing or contracting broker may pay a commission or valuable consideration to a registered entity instead of the individual salesperson or broker-salesperson that registered the entity in accordance with this section. The individual salesperson or broker-salesperson who registered the entity in accordance with this section may accept payment of the commission or valuable consideration or any part thereof from the registered entity.

SUBCHAPTER 6. CONDUCT OF BUSINESS

11:5-6.1 Advertising rules

(a)-(l) (No change.)

[(m) Except as herein provided, licensees may include offers of free, discounted or other services or products in advertisements or promotional material. No offering of free, discounted or other services or products, including the offering of a free appraisal, shall be made by a real estate licensee in any advertisement or promotional material or otherwise where the promotion or offering involves a lottery, a contest, a game or a drawing, or the offering of a lot or parcel or lots or parcels, or where the consumer is required to enter into a sale, listing or other real estate contract as a condition of the promotion or offer.

1. Nothing herein shall be construed as prohibiting the use of such words as "included" or "included in the purchase price" in reference to items included by the owner in the sale of any real property or interest therein.

2. The prohibition upon licensees making offerings of free, discounted or other services or products as set forth in (m) above applies to all such offerings which confer a monetary benefit upon consumers. Examples of free or discounted products or services which would be prohibited if offered in a manner proscribed by (m) above include free or subsidized homeowners warranties, property, radon and pest inspections, surveys, mortgage fees, offers to pay other costs typically incurred by parties to real estate transactions, and coupons offering discounts on commissions charged by brokerage firms.

3. "Appraisal" as used herein is given its technical meaning as a study and analysis by an appraiser authorized by law to perform appraisals of

New Jersey real estate to ascertain fair market value by using a process in which all factors that would fix price in the market place must be considered. A comparative market analysis or study is not an appraisal as herein defined. Any written comparative market study or analysis (CMA) provided by a licensee to a consumer shall include a statement indicating that the CMA is not an appraisal and should not be considered the equivalent of an appraisal. The said statement shall appear in print as large as the predominant size print in any writing reporting the results of the CMA.

4. Subject to (m) above, whenever a licensee participates in a promotion or offering of free, discounted, or other services or products which confers upon the recipient a monetary benefit of greater than token value, which for the purposes of this rule shall mean a value of more than \$ 5.00 retail, the licensee shall provide written disclosure to the recipient of the promotional material or offering. The disclosure shall state in a clear and conspicuous manner:

i. That a consumer is not required to enter into any sale, listing or other real estate contract as a condition of their receipt and use of the free, discounted or other services or products included in the promotion or offer;

ii. Whether the consumer is required to perform any action to qualify to receive the free, discounted or other services or products offered and, if so, what specific action(s) the consumer must perform in order to do so. For the purposes of this paragraph, a consumer's attendance at any listing presentation, informational session or other meeting is considered to be an action by the consumer; and

iii. In the event that delivery of the offered services or products does not occur at the time that the disclosure is provided to the consumer, the date by which the services or products will be delivered to the consumer if the offer is accepted. If the delivery date is unknown to the licensee at the time the offer or promotion is extended to the consumer, the written disclosure to be provided by the licensee to the consumer shall so state.

5. In the event that a licensee has received, or will receive, compensation for participating in a promotion or offering of free, discounted, or other services or products, the disclosure required under (m)4 above shall also state the compensation the licensee has received or will receive. Should the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq., be applicable to the arrangement between the broker and the person paying the compensation to the broker, the disclosure shall be in the form and substance required by that Act.

6. The written disclosure referenced in (m)4 and 5 above shall be provided to consumers no later than when the promotion or offer is extended by the licensee to the consumer.

i. For the purposes of this subsection, an offer or promotion is extended to a consumer when the free or discounted product or service is delivered to the consumer, or when written confirmation of the consumer's right to receive the free or discounted product or service at some future time is delivered to the consumer.

7. No licensee may utilize a marketing or promotional program which requires, as a condition of the consumer's receipt of a free or discounted product or service, the taking of any action by the consumer prior to the delivery of the disclosure(s) referenced in (m)4 and 5 above other than an action necessary to accomplish the delivery of the disclosure to the consumer.]

(m) Licensees may include offers of free, discounted, or other services or products in advertisements or promotional material, subject to the requirements and restrictions set forth in this chapter.

1. Examples of such products or services include, but are not limited to, free or subsidized appraisals, homeowners' warranties, property, radon, and pest inspections, surveys, mortgage fees, offers to pay other costs typically incurred by parties to real estate transactions, coupons offering discounts on commissions charged by brokerage firms, and cash payments.

i. "Appraisal" as used in this subsection is given its technical meaning as a study and analysis by an appraiser authorized by law to perform appraisals of New Jersey real estate to ascertain fair market value by using a process in which all factors that would fix prices in the market place must be considered. A comparative market analysis or study (CMA) is not an appraisal, as described herein in this subparagraph. Any written CMA provided by a licensee to a

consumer shall include a statement indicating that the CMA is not an appraisal and should not be considered the equivalent of an appraisal. The statement shall appear in print as large as the predominant size print in any writing reporting the results of the CMA.

ii. Nothing in this subsection shall be construed as prohibiting the use of such words as "included" or "included in the purchase price" in reference to items included by the owner in the sale of any real property or interest therein.

2. No offering of free, discounted, or other services or products, including the offering of a free appraisal, shall be made by a real estate licensee in any advertisement or promotional material, or otherwise, where the promotion or offering involves a lottery, a contest, a game or a drawing, or the offering of a lot or parcel, or lots or parcels.

3. Whenever a licensee participates in a promotion or offering of free, discounted, or other services or products that confers upon the recipient a monetary benefit of greater than \$1,000 retail, the licensee shall provide written disclosure to the recipient of the promotional material or offering. The disclosure shall state in a clear and conspicuous manner:

i. Whether the consumer is required to perform any action to qualify to receive the free, discounted, or other services or products offered and, if so, what specific action(s) the consumer must perform in order to do so. For the purposes of this paragraph, a consumer's attendance at any listing presentation, informational session, or other meeting is considered to be an action by the consumer;

ii. If the delivery of the offered services or products does not occur at the time that the disclosure is provided to the consumer, the date by which the services or products will be delivered to the consumer if the offer is accepted. If the delivery date is unknown to the licensee at the time the offer or promotion is extended to the consumer, the written disclosure to be provided by the licensee to the consumer shall so state; and

iii. If a licensee has received, or will receive, compensation for participating in a promotion or offering of free, discounted, or other services or products, the disclosure shall also state the compensation the licensee has received or will receive. Should the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq., be applicable to the arrangement between the broker and the person paying the compensation to the broker, the disclosure shall be in the form and substance required by that Act.

4. The written disclosure referenced at (m)3 above shall be provided to consumers no later than when the promotion or offer is extended by the licensee to the consumer.

i. For the purposes of this subsection, an offer or promotion is extended to a consumer when the free or discounted product or service is delivered to the consumer, or when written confirmation of the consumer's right to receive the free or discounted product or service at some future time is delivered to the consumer.

5. No licensee may utilize a marketing or promotional program that requires, as a condition of the consumer's receipt of a free or discounted product or service, the taking of any action by the consumer prior to the delivery of the disclosure(s) referenced at (m)3 above, other than an action necessary to accomplish the delivery of the disclosure to the consumer.