

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Credit Union Parity

Proposed Amendment: N.J.A.C. 3:21-2.1

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:13-90.

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

Proposal Number: PRN 2005-265

Submit comments by September 30, 2005 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to amend N.J.A.C. 3:21-2.1 which governs parity of New Jersey State-chartered credit unions with Federal credit unions. As amended in 1998, N.J.S.A. 17:13-90 permits the Commissioner of Banking and Insurance (Commissioner) to enact regulations permitting New Jersey State-chartered credit unions to exercise any power, right, benefit or privilege permitted to Federally chartered credit unions. The current rule requires any such parity to be exercised under the terms, conditions and requirements established for Federal credit unions.

Because New Jersey State-chartered credit unions have strong Federal competitors which also operate in New Jersey, it is important that they be allowed to compete fairly with their Federal counterparts, and that a level playing field between the competing institutions be preserved. In the past, such a competitive arrangement has contributed to the ability of New Jersey State-chartered credit unions to provide a full range of financial services to their members in this State. It has produced a dynamic, innovative market in the financial services industry, creating an environment that has served credit union members well by making readily available a wide variety of products and services. Thus, these proposed amendments on parity are intended to maintain the ability of New Jersey State-chartered credit unions to compete effectively with Federal credit unions.

The Department proposes to amend N.J.A.C. 3:21-2.1 by adding a subsection (b). These proposed amendments would clarify the term “power, right, benefit or privilege.” They have the effect of clarifying which powers, rights, benefits or privileges available to Federal credit unions are reachable through parity for New Jersey State-chartered credit unions. The existing N.J.A.C. 3:31-2.1 would become new subsection (a).

The purpose of the 1998 amendments to N.J.S.A. 17:13-90 was to preserve a level playing field for New Jersey State-chartered credit unions so they can continue to compete effectively with their Federally chartered counterparts and provide a full range of innovative services to New Jersey credit union members. The Department has chosen not to define the term “power, right, benefit or privilege.” It has taken this course in this proposal because the term is in common use in the credit union industry and the Department’s research has disclosed no New Jersey statutes or rules that define it, and no Federal definition. The Department has chosen not to undertake such a definition in the first instance. However, the Department has noted what is

excluded from the term “powers, rights, benefits or privileges” based on common usage and practice, as interpreted by the Department.

Proposed N.J.A.C. 3:21-2.1(b) would clarify that certain areas of this State’s regulation of credit unions are not reached by parity because they are not “powers, rights, benefits or privileges.” These proposed limitations apply to a New Jersey State-chartered credit union’s ability to exercise a power, right, benefit or privilege authorized for Federal credit unions.

The Department notes, for example, that some Federal credit unions operating in New Jersey may claim that they are exempt from the requirement of offering New Jersey Consumer Checking Accounts established in N.J.S.A. 17:16N-1 et seq. Consumer Checking Accounts are low cost personal checking accounts that require small amounts of money to open and maintain. The accounts can provide a substantial benefit to young, low income, and elderly people. The Department does not believe that the Legislature intended to permit New Jersey State chartered credit unions to use parity to avoid their responsibilities to comply with this consumer protection law. Accordingly, the Department has identified this law as one that may not be avoided through the use of parity.

Similarly, the proposed amendments would provide that New Jersey credit unions may not use parity to avoid the limitations set forth in the New Jersey Criminal Code, N.J.S.A. 2C:1-1 et seq., including, but not limited to, the limitations on criminal usury set forth at N.J.S.A. 2C:21-19. The Department does not believe that avoiding a state’s criminal law is properly regarded as a “power, right, benefit or privilege”; hence, the provision in the proposed amendments that would preserve the State’s criminal prohibitions, including the criminal usury limitation.

The Department has concluded that the Legislature did not intend to allow as a “power, right, benefit, or privilege” activities that would violate the New Jersey Home Ownership

Security Act of 2002, P.L. 2003, c. 64 (the Act), codified at N.J.S.A. 46:10B-22 et seq. In reaching this conclusion, the Department is sensitive to the subject matter of the Act, to the public concern over predatory lending, to the fact that the law is a general, consumer protection law of the State rather than a financial services law, and to the accepted usage of the term “power, right, benefit or privilege.” The Department also notes that prior to its enactment the Legislature considered and rejected suggestions to exempt depository institutions, including credit unions, from the Act.

The treatment of the phrase “power, right, benefit, or privilege” for credit unions is identical to that in the new rules adopted for state banks and savings banks at 36 N.J.R. 413(a) (April 19, 2004) and for state associations at 37 N.J.R. 1511(b) (May 2, 2005).

The Department notes that the credit union parity statute (N.J.S.A. 17:13-90) grants parity only with Federal credit unions while the statutes for banks, savings banks and savings and loan associations grant parity with banks, savings banks and savings and loan associations chartered by other states as well as those chartered by the Federal government.

The Department is also proposing to amend the current rule to recognize the name change of the Credit Union Affiliates of New Jersey to the New Jersey Credit Union League. Finally, the rules are proposed to be amended to provide for the posting of notices regarding the Commissioner’s early approval or disapproval of the exercise of parity powers, pursuant to the adoption of an enabling regulation by the Federal regulatory agency, on the Department’s web site, with that posting being the primary means of providing such notice. The essential information contained in such a notice would also be provided to each credit union and to the New Jersey Credit Union League.

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

Social Impact

The proposed amendments would apply to all New Jersey State-chartered credit unions providing them substantial competitive parity with their Federal counterparts. By maintaining a level playing field between State and Federally chartered credit unions, competition between those types of institutions will be preserved. The proposed amendments will permit the Department to continue to require credit unions to adhere to safe and sound banking practices and certain key consumer protections. The proposed amendments should therefore have a beneficial social impact on the credit union industry and on their members. Members should gain access to a wider variety of financial services and products, and should benefit from a more innovative credit union system.

Economic Impact

The Department expects that the ability of State-chartered credit unions to exercise powers, rights, benefits, and privileges authorized now or in the future for Federal credit unions will have a positive economic impact. State-chartered credit unions will be able to offer services and products that are not specifically authorized by New Jersey statutes and rules, but which may enable State-chartered credit unions to better serve the financial needs of their members. In so doing, they should increase their competitiveness with their Federal counterparts and, depending upon the efficiency of their operations, their market share and earnings.

Some of these credit unions may choose to seek professional assistance in the form of accountants, financial industry consultants, or attorneys. The cost of professional services will vary, based on the professional retained and the amount of work requested.

Federal Standards Analysis

The proposed amendments provide that certain State statutory and regulatory consumer protection requirements may not be avoided through parity, for example, State criminal usury limitations and protections against predatory lending. In some cases, these limitations on activities by State-chartered credit unions may exceed Federal standards applicable to Federal credit unions. The limitations in the proposed amendments may restrict New Jersey State-chartered credit unions from certain types or levels of activity in which their Federal counterparts may conceivably be permitted to engage at the present or in the future. Notwithstanding these proposed limitations, New Jersey State-chartered credit unions would, because of parity, be able to offer many new services and products to New Jersey consumers not specifically authorized by applicable New Jersey statutes and rules, and reap the resulting economic benefits.

The Department views the proposed limitations as reasonable and necessary to discharge the Commissioner's statutory responsibility to promulgate rules for the appropriate regulation of State credit unions. Solid benefits and important protections will be afforded to New Jersey credit union members by the continued viability of laws addressing criminal acts including usury, and high cost residential mortgages. Finally, the Department sees no technological obstacle to the regulated industry's compliance with these limitations.

Jobs Impact

The Department does not anticipate that any jobs will be lost as a result of the proposed amendments. The proposed amendments will not require additional staff, but if State credit unions increase their business as a result of their parity with their Federal counterparts, they may seek to hire additional staff. The costs of this are discussed in the Economic Impact above.

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

Regulatory Flexibility Analysis

Most State credit unions are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will continue to impose compliance requirements on these entities. The costs for compliance are set out in the Economic Impact above. No new reporting requirements would be imposed by the proposed amendments.

The Department believes that these requirements are generally mandated pursuant to good banking practice. Moreover, the Department does not believe that these requirements are unduly burdensome and should not require professional services for compliance. The purpose of these rules is to assist New Jersey State-chartered credit unions in their operations and to protect

their members. Thus, the purpose of these requirements does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The proposed amendments 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]):

3:21-2.1 Credit union parity with Federally chartered credit unions

(a) In addition to other authority granted by law and unless contrary to State law, a credit union may exercise any power, right, benefit or privilege that is now or hereafter authorized for Federal credit unions to the same extent as Federal credit unions pursuant to Federal law or rules and regulations of the National Credit Union Administration. A credit union in exercising those powers, **rights, benefits or privileges** shall do so in accordance with the terms, conditions and requirements established for Federal credit unions. Such powers, **rights, benefits or privileges** shall be automatically exercisable upon the expiration of 30 days from the date of adoption of the enabling regulation by the Federal regulatory agency, except if the Commissioner of Banking and Insurance within that time provides notice that the power, **right, benefit or privilege** shall not be granted to New Jersey credit unions. Such notice shall be **posted on the Department's website at www.njdobi.org. The pertinent information included in such a notice shall also be** provided to each credit union, and to the **New Jersey**

Credit Union [Affiliates of New Jersey] **League** [for publication]. The Commissioner of Banking and Insurance may permit credit unions to begin the exercise of a power, **right, benefit or privilege** prior to the expiration of the 30-day period by providing notice of permission **through posting the notice on the Department's website at www.njdobi.org**. **The pertinent information included in such a notice shall also be provided** to each credit union, and the **New Jersey** Credit Union [Affiliates of New Jersey] **League**.

(b) **"Power, right, benefit or privilege" shall not mean any activity that would fail to comply with or would violate:**

1. The New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., including, but not limited to, the criminal usury limits established at N.J.S.A. 2C:21-19 as applied to loan products;

2. New Jersey statutes and rules providing for the structure and corporate governance of credit unions, including, but not limited to, statutes and rules governing amendments of certificates of incorporation, adoptions of bylaws, rights of members, membership of boards of directors, applications where there is a supervisory concern, and requests for approvals or no objection opinions where there is a supervisory concern;

3. New Jersey statutes and rules providing the Department with supervisory powers over credit unions with regard to safety and soundness and other matters, including, but not limited to, the power to issue orders and apply for relief from a court of competent jurisdiction established at N.J.S.A. 17:13-115 et seq., and the power to require reports and examination by the Department pursuant to N.J.S.A. 17:13-112 et seq. and similar law;

4. The provisions of N.J.S.A. 17:16N-1 et seq. and any rules regarding Consumer Checking Accounts; and

5. The New Jersey Homeownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq.

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