

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Audit Requirements

Proposed Readoption with Amendments: N.J.A.C 3:29

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15(e) and 17:12B-176

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

Proposal Number: PRN 2007-121

Submit comments by June 15, 2007 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt, with amendments, N.J.A.C. 3:29, the audit requirements for State associations, which was scheduled to expire on March 14, 2007. Pursuant to N.J.S.A. 52:14B-5.1c, the submission of this notice of proposal to the Office of Administrative Law extended that expiration date 180 days to September 10, 2007.

The Department has reviewed the existing rules pertaining to the audit requirements for State associations, commonly known as savings and loan associations, and has determined them

to be reasonable, necessary and proper for the purpose for which they were originally promulgated.

N.J.S.A. 17:12B-176 requires that a thorough audit be performed by a competent accountant. The rules proposed for readoption with amendments define a competent accountant as a certified public accountant, or an accounting firm licensed and/or registered in New Jersey or approved by the Commissioner. It is the responsibility of the board of directors to choose a competent auditor. However, the rules proposed for readoption with amendments provide that if the board fails to provide for the making of a proper audit or if the required audit is not properly made, prepared and filed, the Commissioner of Banking and Insurance (Commissioner) is charged with the duty of making the audit or causing it to be made.

The rules further provide that the scope of the audit shall, in general, be set forth by the audit program prepared by the American Institute of Certified Public Accountants. The Department proposes an amendment to N.J.A.C. 3:29-1.2, the rules addressing the audit program, to add thereto the web site address of the American Institute of Certified Public Accountants (AICPA). The amendment will make contacting the AICPA quicker and easier. The audit report must contain the following statements: (1) comparative statements of condition; (2) comparative statements of operations; (3) reconciliation of retained earnings; (4) reconciliation of equity capital; and (5) statements of cash flows. Where continuous audits are made, verification notices may be mailed periodically, provided that the members' subsidiary ledgers are reconciled with the general ledger control at the time of each mailing.

The rules proposed for readoption with amendments further provide that the auditor shall comment on pertinent matters affecting the State association. The following are listed as examples of appropriate subjects for comment: (1) investment on which no income is received;

(2) summary of changes in other real estate; and (3) insufficient surety bond coverage and other insurance. At least one audit must be made in a calendar year. Further, it is not necessary that the audit coincide with the fiscal year and the audit may be made on a “surprise” basis.

The rules also provide that the audit must be certified to or sworn to by the person making the audit. The certification must include the following: (1) a statement that the audit was made in accordance with the provisions of N.J.S.A. 17:12B-176 and applicable statutes and rules; and (2) a statement that the financial statements contained in the audit report fairly present the financial position of the association at the audit date and its operations for the periods reported upon. If the auditor cannot make any of the parts of this certification, the certification should be qualified to show any exceptions.

The Department proposes to amend N.J.A.C. 3:29-1.8 to require that a copy of any audit required by the Federal Deposit Insurance Corporation (FDIC), successor to the Federal Savings and Loan Insurance Corporation, be filed with the Department. In the years since that succession occurred, pursuant to N.J.S.A. 17:12B-176(2), State associations insured by the FDIC usually have forwarded copies of such audits to the Department as a courtesy and as good business practice. This amendment also makes it clear that the performance and filing with the Department of any FDIC-required audit satisfies the Department’s audit requirement.

A 60 day comment period is provided for this proposal; 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 rules proposed for readoption with amendments apply to all New Jersey State-chartered associations. They impose reasonable requirements on State associations to ensure that audits are performed periodically and in a meaningful way. These audits allow the Department to identify troubled institutions, to monitor compliance and to make recommendations or suggestions for improvements in internal controls. The soundness of State associations and the safety of depositor funds within those institutions has a beneficial social impact and is furthered by the rules proposed for readoption. The proposed amendments will have no social impact but will make contacting AICPA quicker and easier for State associations and include in the rules the requirement of filing a copy of any FDIC-required audit with the Commissioner of Banking and Insurance.

Economic Impact

The audits prescribed by the rules proposed for readoption are required by statute. Further, it is prudent business practice for a financial institution such as a State association to be periodically audited by an independent auditor. The rules proposed for readoption with amendment that set forth the standards for such audits are also in accord with general practice in the banking industry. Accordingly, it is expected that the rules proposed for readoption with amendment will have little, if any, economic impact on regulated institutions. In the rare instance in which a State association might not otherwise use a certified public accountant or an accounting firm licensed or registered in New Jersey to perform an audit, and the accountant is not approved by the Commissioner, some additional expense may be incurred in the hiring of such professionals. The economic benefit that accrues to the public is the continued soundness

of the institutions being audited and enhanced safety of depositors' funds. The proposed amendments will have no economic impact. They will merely make contacting the AICPA quicker and easier, ensure that the Department receives a copy of any FDIC-required audit and clarify that a duplicate audit for the Department is not required where an FDIC-required audit has been done.

Federal Standards Statement

The rules proposed for re adoption with amendments do not contain standards or requirements that exceed standards or requirements imposed by Federal law. Relevant Federal standards that are equaled but not exceeded are set forth at 12 CFR 363.

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. State associations will use existing staff and a retained professional accountant for continued compliance with the rules. Further, the rules currently in effect are proposed for re adoption with only the minor amendments of adding the website address of the AICPA and requiring that the Department receives a copy of audits performed to comply with the FDIC requirements.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed re adoption with 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 rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments place reporting, recordkeeping and compliance requirements on State associations, approximately 50 percent of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the reporting, recordkeeping and compliance requirements will result in little, if any, administrative costs. Instead, the reporting, recordkeeping and compliance requirements, described in the Summary above, reflect current practice and serve to codify documentation which is typically part of an audit.

The rules proposed for readoption with amendments are intended to enhance the safety and soundness of State associations. It is for this reason that no differentiation in compliance, based on business size, is made.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:29.

Full text of the proposed amendment follows (additions indicated in boldface **thus**):

3:29-1.2 Scope of audit

The auditor shall set forth the scope of his work in the audit report. In general, audit procedure will be acceptable if based on the audit program prepared for audit of savings and loan associations by the American Institute of Certified Public Accountants. A copy of this program can be obtained from the American Institute of Certified Public Accountants, Inc., 1211 Avenue of the Americas, New York, New York 10036. **The Institute's web site address is www.AICPA.org.**

3:29-1.8 Audit report must be certified **and filed**

(a) - (b) (No change.)

(c) If an association is required to perform and file an audit based on the regulations of the Federal Deposit Insurance Corporation, a copy of any such audit shall be simultaneously filed with the Department at:

Department of Banking and Insurance

Division of Banking - Depositories

P.O. Box 40

Trenton, NJ 08625-0040.

Such filing shall satisfy the audit requirements of this chapter.