

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Licensed Lenders: Mortgage Bankers, Correspondent Mortgage Bankers, Mortgage Brokers, Secondary Lenders, Consumer Lenders, Sales Finance Companies

Branch Office Requirements

Proposed Amendments: N.J.A.C. 3:15-2.3 and 3.1

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:11C-49.

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

Proposal Number: PRN 2007-270

Submit comments by October 19, 2007 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to amend N.J.A.C. 3:15, which implements the New Jersey Licensed Lenders Act (Act), N.J.S.A. 17:11C-1 et seq. The proposed amendments introduce alternative regulatory requirements for licensure of a branch office by licensees under the Act. The Department proposes to add new subsection N.J.A.C. 3:15-2.3(g), establishing the alternative regulatory requirements. Existing N.J.A.C. 3:15-2.3(g) will become N.J.A.C. 3:15-2.3(h).

The objective of these amendments is to inject some flexibility into the requirements applicable to branch offices while maintaining an adequate level of consumer protection. The new flexibility to be included will enable the rules to accommodate business models that are not completely consistent with the current restrictions and requirements set forth in N.J.A.C. 3:15-2.3(f) applicable to branch offices. This will be accomplished through an exemption process proposed in new N.J.A.C. 3:15-2.3(g) that is designed to ensure that the same level of consumer protection and regulatory compliance shall apply to all branch offices that are licensed and operated under the Act. To obtain approval for the exemption, licensees will have to enter into an oversight agreement with the Department, provide a schedule of the branch offices to be so licensed, adopt policies and procedures to ensure proper training of staff and supervision of such branch offices, designate a person responsible for branch oversight and internal audits, affirm the licensee's responsibility for regulated activities at the branch offices and, if applicable, certify the appropriate surety bond is or will be in place.

In addition, N.J.A.C. 3:15-3.1 is proposed to be amended to add new subsection (d). This will impose increased bonding requirements on certain licensees with branches established through the alternative exemption process proposed in N.J.A.C. 3:15-2.3(g).

The restrictions in current N.J.A.C. 3:15-2.3(f) are intended to ensure that branch offices operate under appropriate control and supervision by the licensee. The Department believes that the alternative requirements set forth in proposed new N.J.A.C. 3:15-2.3(g) and 3.1(d) meet the goal of appropriate control and supervision of branches. By including the proposed alternative requirements, the rules will better accommodate innovative business models in an evolving marketplace while also protecting consumers.

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 proposed amendments will permit any licensee under the Act who does or applies to do business in New Jersey to apply to operate one or more branch offices using a business model that does not entirely conform with the current requirements applicable to branch offices set forth in N.J.A.C. 3:15-2.3(f).

The proposed amendments will continue to enable the Department to fulfill its consumer protection responsibilities, and will require licensees to maintain appropriate supervision and control of branch offices licensed to transact business pursuant to proposed N.J.A.C. 3:15-2.3(g) and 3.1(d). The requirements are reasonable and necessary to protect New Jersey consumers. Thus, the proposed amendments will have a beneficial social impact.

Economic Impact

The rules currently require licensed lender licensees applying for and maintaining branch office licenses to comply with certain restrictions. Proposed N.J.A.C. 3:15-2.3(g) would establish comparable restrictions on branch office arrangements that could be satisfied through alternative requirements, including compliance with the increased bonding requirements in new N.J.A.C. 3:15-3.1(d), as applicable.

Licensees who seek to utilize the alternative requirements will need to supply to the Department their policies and procedures for supervision and training of those persons

conducting regulated activities at the specified branches, assume full legal and financial responsibility for such business, maintain an internal audit program and designate an officer, principal or member of the licensee to be responsible for compliance with the provisions of new N.J.A.C. 3:15-2.3(g). Such licensees would also need to enter into an oversight agreement with the Department and, as applicable, increase their surety bond amounts based on the number of branches licensed through the alternative procedure. The Department anticipates such licensees will need to use the services of accountants, attorneys, and financial experts to comply. These may be outside or in-house professionals. The Department anticipates that licensees who pursue the alternative procedure will incur additional expenses to set up and maintain branches licensed through the alternative procedure, including costs associated with the training, recordkeeping and reporting required by the rules. These costs will vary based upon a number of factors, including the number of branch offices for which licensure through the alternative procedure is obtained and, in the case of licensees who deal in first mortgages, the number of mortgage solicitors who work from such locations. The Department anticipates that the required higher bond amounts in proposed N.J.A.C. 3:15-3.1(d) will result in higher costs to those licensees subject to the bond requirements. The surety companies that issue such bonds will determine this cost.

The Department anticipates that some mortgage bankers, correspondent mortgage bankers, mortgage brokers, secondary lenders, consumer lenders and sales finance companies may be enticed to enter the New Jersey marketplace for the first time and others may choose to remain here by virtue of the availability of the exemption process. In that regard, the Department anticipates some favorable economic impact on eligible licensed lenders, their various employees and associates, and on consumers due to the increase in competition that may result. The Department also anticipates that applicants for the optional alternative procedure will perform a

cost benefit analysis appropriate to their business model and plan, and will only proceed if the economic benefits appear to outweigh the associated costs.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not believe any jobs will be generated or lost as a result of the proposed amendments, except to the extent that new licensed lenders may be attracted to enter the New Jersey market or current ones may remain and expand as a result of the flexibility afforded to such businesses by the proposed alternative requirements.

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

Some mortgage bankers, correspondent mortgage bankers, mortgage brokers, secondary lenders, consumer lenders and sales finance companies are small businesses as defined in the

Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will impose compliance, reporting and recordkeeping requirements, as discussed in the Summary and Social Impact above.

The amendments will provide for an alternative process for obtaining a branch office license that is entirely optional and that will include appropriate consumer protection and regulatory compliance components. The Department believes that small businesses will seek to use the alternative process to be established through the proposed amendments only if its complexity and cost appear to be outweighed by potential benefits. Costs, including the need for professional services, are discussed in the Economic Impact above.

The Department does not believe that these requirements are unduly burdensome. Moreover, they are consistent with prudent business and regulatory practices and with the intention of the Department to maintain, if not enhance, consumer protection with respect to licensees who qualify to utilize the alternative process set forth in the proposed amendments. These concerns do not vary based upon business size. Accordingly, no differentiation based on business size is provided in the proposed amendments.

Smart Growth Impact

The proposed amendments will 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]):

3:15-2.3 Branch offices; branch licensing requirement; initial branch licensing application

(a) - (e) (No change.)

(f) [Branch]Except as set forth in (g) below, branch office arrangements shall be restricted as follows:

1. - 6. (No change.)

(g) A licensee or an applicant for a license under the Act may apply for an exemption from the restrictions applicable to branch office arrangements established in (f) above in accordance with this subsection.

1. A request for branch office licensure pursuant to this subsection shall include the following:

i. A written request signed by an authorized representative of the requesting party, accompanied by a complete oversight agreement, in the form approved by the Department and available on the Department's website at www.state.nj.us/dobi, providing assurance of adequate oversight by the licensee of all activities subject to regulation under the Act conducted at or through the branch office or offices for which licensure pursuant to this subsection is requested;

ii. A schedule of all branch offices for which such licensure is requested;

iii. If applicable, a certification by the authorized individual licensee that a surety bond in an amount as required by N.J.A.C. 3:15-3.1(d) and that provides coverage of the regulated activities of persons operating at or through the branch office(s) to be so licensed is currently in force or will be in force within 30 days of the date of the certification;

iv. A copy of a written statement of the official policy and procedures of the licensee, approved by its proprietor, partners, or board of directors, which shall, in terms subject to review and approval by the Department, pursuant to this chapter, provide for the conduct of regulated activity by the licensee, any mortgage solicitors and/or any other persons operating at or through the branch office(s) and for the training of any mortgage solicitors and/or other persons conducting regulated activity at or through the branch office(s);

v. A statement, in the form of a corporate resolution or comparable authoritative document, affirming the assumption by the licensee of full legal and financial responsibility for all activities subject to regulation under the Act conducted by persons operating at or through the branch office(s); and

vi. Such other information as the Commissioner may determine is necessary after having considered all available information pertaining to the requesting party including, without limitation, the requesting party's most recently filed annual report and/or application for initial or renewed licensure.

2. The oversight agreement referenced in (g)1i above shall have attached true copies of the items listed in (g)1 above and shall contain:

i. The assumption by the licensee of full legal and financial responsibility for all activities subject to regulation under the Act conducted by persons at or through the branch office(s);

ii. An agreement by the licensee to, within 30 days of the granting of an exemption pursuant to this subsection, establish and maintain an internal audit program that shall, on an annual basis, report on the compliance by the licensee and any mortgage

solicitors and/or other persons engaging in regulated activity under the authority of the licensee, with all laws, regulations, policies and procedures, including all provisions of the oversight agreement, applicable to the regulated activities conducted at or through any exempted branch office so licensed;

iii. With respect to licensees required to maintain principal offices of record in the State, an agreement by the licensee to maintain all documentation regarding compliance with the requirements of this subsection, including, but not limited to, the reports referenced in (g)3ii below, at the licensee's principal office of record in this State, or at such other location as the Department may permit in accordance with N.J.A.C. 3:15-6.3, and, in accordance with N.J.S.A. 17:11C-42 or other applicable law, to make all such documentation available for examination at such principal office or other location permitted by the Department, except that, with respect to a licensee that engages solely in the sales finance company business and does not maintain a principal place of business in this state, the agreement shall specify another location in this state where such documentation shall be maintained and available for such examination; and

iv. The designation of the officer, principal or member of the licensee who shall be responsible for performing the activities set forth in (g)3 below. Licensees who designate more than one qualified individual as being responsible for the performance of these activities shall specify the locations for which each designated individual shall be responsible. The licensee shall notify the Department in writing of any change in such designation within three business days of the effective date of any such change.

3. The person designated as set forth in (g)2iv above shall:

i. Continuously monitor all regulated activity conducted at or through any branch office of the licensee that is licensed hereunder and personally visit each such branch office on no less than a quarterly basis to oversee and verify compliance by any mortgage solicitors and/or other persons operating at or through the location so licensed with all applicable laws, regulations, policies and procedures, including all provisions of the oversight agreement;

ii. Provide the licensee and any individual licensee of record with written reports no less than quarterly, which reports shall set forth the results of the monitoring and visits required by (g)3i above; and

iii. Not be the individual appointed by the licensee as the office manager of any branch office location.

4. The Commissioner shall, within 30 days of receipt of a completed request for licensure of a branch office under this subsection, review the request and, upon determining that the licensee has complied with all applicable requirements, approve such licensure.

5. A licensee that has been granted one or more branch office licenses pursuant to this subsection may request the licensure of additional branch offices under this subsection in the following manner:

i. If the additional branch license to be issued is with respect to a branch office currently licensed in accordance with (f) above, the licensee may submit a written request for the licensure of the additional branch office under this subsection, which request shall include an amendment to the schedule of branch offices attached to the licensee's oversight agreement, and, if applicable, a surety bond certification in accordance

with N.J.A.C. 3:15-3.1(d) addressing the proposed additional branch office to be so licensed.

ii. If the additional branch license to be issued is with respect to a currently unlicensed location, the licensee shall submit a complete application in accordance with (a) through (d) above with the appropriate application fee as set forth in N.J.A.C. 3:15-4.2 and a written request that the location be licensed under this subsection, which request shall include an amendment to the schedule of branch offices attached to the licensee's oversight agreement, and, if applicable, a surety bond certification in accordance with N.J.A.C. 3:15-3.1(d) addressing the proposed additional branch office to be so licensed.

iii. Subject to the Commissioner determining that the licensee is in compliance with the oversight agreement and all applicable laws and regulations, such a request for the licensure of an additional branch office under this subsection shall be granted within 30 days of the Department's receipt of the request and, if applicable, the complete application and fee as set forth in this chapter. In the event that an additional license is granted, the oversight agreement shall have full force and effect with respect to the amended schedule of branch offices licensed pursuant to this subsection.

6. The failure by a licensee to whom a branch office license was granted under this subsection to comply with the terms of the oversight agreement and/or with any applicable law or regulation including, but not limited to, the requirement imposed by N.J.S.A. 17:11C-43 to submit an annual report covering the activity conducted at branch offices, shall subject the licensee to sanctions pursuant to N.J.S.A. 17:11C-18, 47 and 48 and all other applicable laws and rules.

[(g)] **(h)** (No change in text.)

3:15-3.1 Bond requirements

(a) – (c) (No change.)

(d) For licensees that qualify for the issuance of one or more branch office licenses under N.J.A.C. 3:15-2.3(g), the amount of the surety bond required as set forth in (a), (b) and (c) above shall be increased based upon the number of branch offices that are to be so licensed, in increments of \$250,000 per groups of 25 offices, as set forth below.

1. For between one and 25 branch offices, the amount of the bond shall be increased by \$250,000;

2. For between 26 and 50 branch offices, the amount of the bond shall be increased by \$500,000;

3. For between 51 and 75 branch offices, the amount of the bond shall be increased by \$750,000;

4. For between 76 and 100 branch offices, the amount of the bond shall be increased by \$1,000,000; and

5. For 101 or more branch offices, the amount of the bond shall be increased by \$1,250,000 or such additional amount to be determined based upon the number of branch offices consistent with this subsection.