

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Consumer Lenders and Sales Finance Companies

Proposed New Rules: N.J.A.C. 3:17

Authorized By: Neil N. Jasey, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 8.1 and 15e; 17:1C-33 et seq.; 17:11C-49; and 17:16C-11 et seq.

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

Proposal Number: PRN 2010-028

Submit comments by March 20, 2010 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) has proposed to substantially amend N.J.A.C. 3:15 in response to the enactment of the New Jersey Residential Mortgage Lending Act in P.L. 2009, c. 53 (RMLA), which is codified at N.J.S.A. 17:11C-51 et seq. (see 41 N.J.R. 2829(a)) The RMLA incorporates new Federal requirements on licensing and business practices in the residential mortgage business established in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. §§5101 et seq. (SAFE Act) into New Jersey law. In order to address the new Federal law requirements in the most efficient manner, the current New Jersey Licensed Lenders Act (NJLLA) has been completely revised and supplemented, creating two separate regulatory schemes, with one part dedicated to the regulation of residential mortgage activities, as set forth in the RMLA, and the other reorganizing the retained provisions from the NJLLA which concern non-mortgage lending activities, titled the New Jersey Consumer Finance Licensing Act (“NJCFA” or “the Act”). Accordingly, the Department proposes a new and separate chapter of rules at N.J.A.C. 3:17 for those non-mortgage lenders licensed in accordance with the NJCFA, while amendments and new rules for mortgage lenders are set forth in the separate proposal mentioned above.

The New Jersey Consumer Finance Licensing Act, P.L. 2009, c. 53, §§40 et seq., regulates non-mortgage lending activities in the State and supersedes the provisions of the New Jersey Licensed Lenders Act that address such lending. The proposed new rules implement these statutory changes while otherwise reflecting the familiar licensing scheme for consumer lenders and sales finance companies found in the NJLLA.

Subchapter 1 sets forth the general provisions of the new chapter. With the exception of terms only applicable to RMLA, definitions previously defined in N.J.A.C. 3:15 are unchanged in proposed N.J.A.C. 3:17-1.2. The terms defined in this subchapter include: accrual basis of

accounting, act, advertisement, alternate name, billing cycle, borrower, branch office, closed end loan, Commissioner, consumer lender, consumer loan, consumer loan business, controlling interest, Department, direct contact, individual, insolvent, license name, license or licensing period, licensee, liquid assets, open end loan, person, sales finance company, substantial stockholder, time price differential, trade name, and true name. These remaining terms have been edited to remove or change references to provisions in the NJLLA to appropriate references in the NJCFA. In addition, the term “business card” has been added to the definition of “advertisement.”

Proposed N.J.A.C. 3:17-1.3 establishes the factors that the Commissioner shall consider in determining what constitutes a suitable office location. The set of factors to be considered depends on whether the licensee has direct contact with New Jersey consumers in an in-State or out-of-State location. Licensees shall certify as to the suitability of the location and those with more than one licensed office shall designate a principal office.

Proposed N.J.A.C. 3:17-1.4 establishes the requirements for license names; proposed N.J.A.C. 3:17-1.5 addresses the maximum number of alternate or trade names that may be used; proposed N.J.A.C. 3:17-1.6 governs the grounds for denying use of alternate or trade names; and proposed N.J.A.C. 3:17-1.7 addresses display of the license.

Subchapter 2 contains the proposed new rules regarding licensing. The subchapter addresses the documents required as part of the initial and renewal application process and the branch application and renewal process. The subchapter further specifies the license duration, and provides that application fees as specified in N.J.A.C. 3:17-3.2 are non-refundable. Restrictions on branch office arrangements are enumerated at proposed N.J.A.C. 3:17-2.3(e). N.J.A.C. 3:17-2.2(b)3, 2.3(b)4 and 3.2(c) state that all application fees are nonrefundable.

Proposed N.J.A.C. 3:17-2.6 addresses late renewal of licenses, late filing fees, and reinstatement fees, while proposed N.J.A.C. 3:17-2.7 governs approval for a change of control of direct ownership of 25 percent or more of the licensee. Unless the Commissioner issues a preliminary denial of such an application and affords the applicant an opportunity for a hearing within 90 days of receipt of a completed application, the application shall be deemed approved. Proposed N.J.A.C. 3:17-2.8 establishes the steps to be taken when a consumer lender or sales finance company discontinues its licensed business operations in New Jersey, while proposed N.J.A.C. 3:17-2.9 outlines the occurrences, such as the arrest, indictment, conviction, filing for bankruptcy or reorganization petition of a licensee or owner, officer, or director of a licensee, that trigger a licensee's obligation to notify the Department within 15 days of the triggering event.

Subchapter 3 establishes the application fees for new licenses, renewals and branch offices as follows: application for one license for either consumer lender or sales finance company: \$700.00; application for one license for both a consumer lender and a sales finance company: \$1,000. Licensees who apply for additional licenses shall pay an application of \$300.00 per additional license for each individual, company, or branch office.

Subchapter 4 provides the rules for net worth, liquid assets and insolvency that apply to each corporation, partnership, limited liability company or sole proprietorship that is licensed as a consumer lender. This subchapter also addresses the factors that the Commissioner shall consider in determining whether to suspend, revoke or refuse to renew the license of a consumer lender who has failed to maintain net worth or liquid assets requirements.

Subchapter 5 addresses books and records, examinations, and annual reports. This subchapter identifies how and where consumer lenders and sales finance companies maintain their books and records and when prior Departmental approval is required. Proposed N.J.A.C.

3:17-5.4 governs loan numbering and index requirements for consumer lenders as well as the requirement that each consumer lender establish a complete file for each loan. The remainder of the subchapter addresses documentation of loans at N.J.A.C. 3:17-5.5; mandatory file information for judgment records of consumer lenders and sales finance companies at N.J.A.C. 3:17-5.6; motor vehicle lien requirements for consumer lenders at N.J.A.C. 3:17-5.7; retention of advertisements for at least two years at N.J.A.C. 3:17-5.8; general records retention for at least three years after the final entry at N.J.A.C. 3:17-5.9; and requirements that an official report of examination be submitted to the licensee, that annual reports must be filed by May 1 of each year, and that the Department may charge for investigations of unlicensed or unregistered persons. This fee has been reduced to a fee of \$50.00 per hour to be consistent with the fee charged under RMLA at N.J.A.C. 3:15-6.11. The date on which annual reports are due has been changed from April 1 to May 1, consistent with RMLA at N.J.A.C. 3:15-6.12. Finally, in order to clarify who must maintain records of nonjudicial foreclosures of security, N.J.A.C. 3:17-5.6(b) states that sales finance companies as well as consumer lenders shall maintain records of nonjudicial foreclosures of security, such as repossession pursuant to the terms of the contract.

Subchapter 6 governs insurance matters for consumer lenders, including disclosures, recordkeeping, premium collection, refunds to borrowers of unearned premiums, and credit life insurance notifications and construction.

Subchapter 7 addresses advertising and insurance costs, verbal advertisements, and prohibited types of advertising.

Subchapter 8 identifies characteristics of loans. This subchapter includes provisions at N.J.A.C. 3:17-8.1 applicable to all loans (for example, repayment of consumer loan at any time without penalty; borrower given a copy of every document required to sign), and characteristics

applicable only to consumer loans found at N.J.A.C. 3:17-8.2 (for example, repayment in substantially equal monthly installments of principal and interest).

Subchapter 9 concerns other lines of business for consumer lenders that may be performed in the same office as the consumer lending business without securing specific approval from the Commissioner, as well as those activities that require approval of the Commissioner. Activities not requiring specific approval include home financing agency business, insurance premium finance company business, income tax preparation service, etc. conducted pursuant to the provisions of other law. An itemized list of permitted activities is found at N.J.A.C. 3:17-9.2(a). Those activities that a lender seeks to perform on the premises of the consumer lender office that are not itemized in N.J.A.C. 3:17-9.2(a) require approval from the Commissioner, which shall be sought in the manner outlined in N.J.A.C. 3:17-9.2(b). The Commissioner shall approve or deny such an application within 90 days of receipt or it shall be deemed approved. Violations of these rules or the Act may result in suspension or revocation of a licensee's approval.

Subchapter 10 sets forth the standards for imposition of administrative penalties, including initiation of action, failure to respond to notice, consent to an administrative penalty, and request for a hearing within 20 calendar days of service of the notice of intent to impose an administrative penalty. These standards which were codified as N.J.S.A. 17:11C-18 and are effective July 31, 2010 include the imposition of a civil penalty not to exceed \$25,000 on any person for a violation of the Act.

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 new rules apply to consumer lenders and sales finance companies. The new rules will continue to implement the licensing and compliance requirements regarding these types of lenders previously imposed by the NJLLA. These rules will have a positive social impact by enhancing the professionalism of licensees and the quality of the services they provide to the public. The rules impose standards which are consistent with provisions in the licensing law and necessary to implement its provisions. Moreover, the proposed new rules will continue to enable the Department to carry out its mission of ensuring consumer lenders and sales finance companies conduct their business in a manner that protects consumers. Therefore, the proposed new rules will have a beneficial social impact on consumer lenders and sales finance companies and the general public.

Economic Impact

The proposed new rules apply to consumer lenders and sales finance companies. Persons or entities engaging in these businesses will be required to pay the application fees, file annual reports, maintain records and meet any net worth standards, as set forth in these rules. With the exceptions of an increased civil penalty amount imposed for violations in accordance with N.J.S.A. 17:11C-18, and a decrease in the fee for investigations of unlicensed persons, any fees or costs to consumer lenders and sales finance companies remain the same.

Consumer lenders and sales finance companies may incur additional costs due to the increase in the civil penalty amount imposed for violations. However, the increased penalty also increases consumer protection and enhances the deterrent effect of the penalty on other licensees.

Consumer lenders and sales finance companies are not impacted by the fee change for unlicensed entities.

Federal Standards Statement

The proposed new rules do not contain any standards or requirements that exceed standards or requirements imposed by Federal law, specifically the Truth in Lending Act, 15 U.S.C. §§1601 et seq., the Fair Credit Reporting Act, 15 U.S.C. §§1681 et seq., and the Equal Credit Opportunity Act, 15 U.S.C. §§1691 et seq.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rules. Consumer lenders and sales finance companies will use existing staff or retain outside professionals for continued compliance with the new rules.

The Department invites commenters to submit any data or studies concerning jobs impact of the proposed new rules together with written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed new rules.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., defines a “small business” as any business resident in this State that employs fewer than 100 employees full-time, is independently owned and operated and is not dominant in its field. Many of the licensees affected by the new rules proposed are small businesses.

The proposed new rules will impose recordkeeping, reporting and other compliance requirements on these entities, as discussed in the Summary above. Costs are discussed in the Economic Impact above. Some consumer lenders and sales finance companies may choose to use the services of outside professionals, such as accountants or attorneys, for assistance with compliance. The costs for this will vary based on the professional chosen and the amount of work requested.

The proposed new rules will require consumer lenders and sales finance companies to operate in a manner that is responsible to the industry, their customers and the general public. The Department does not believe that these requirements are unduly burdensome. They are consistent with prudent regulatory practices. 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 new rules will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the new rules would evoke a change in the average costs associated with housing because the proposed new rules concern the activities of consumer lenders and sales finance companies engaged in non-mortgage lending.

Smart Growth Development Impact

The proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the regulation 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 because the proposed new rules concern the activities of consumer lenders and sales finance companies engaged in non-mortgage lending.

Full text of the proposed new rules follows:

CHAPTER 17

CONSUMER LENDERS AND SALES FINANCE COMPANIES

SUBCHAPTER 1. GENERAL PROVISIONS

3:17-1.1 Purpose and scope

(a) This chapter implements the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 et seq., and the Retail Installment Sales Act of 1960, N.J.S.A. 17:16C-1 et seq.

(b) This chapter shall apply to all consumer lender and/or sales finance companies whose activities require that they be licensed.

3:17-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise.

"Accrual basis of accounting" means the accounting method by which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether received or not received.

"Act" means the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 et seq. and, as applicable, the Retail Installment Sales Act of 1960, N.J.S.A. 17:16C-1 et seq.

"Advertisement" means any announcement, statement, assertion, or representation that is placed before the public in a newspaper, magazine, or other publication or in the form of a business card, notice, circular, pamphlet, letter or poster or over any radio or television station, by means of the internet or by other electronic means of distributing information, or in any other way.

"Alternate name" means an alternate name registered pursuant to N.J.S.A. 14A:2-2.1(2) or 42:2B-4b.

"Billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date.

"Borrower" means any individual applying for a consumer loan from a lender licensed under the Act, whether or not the loan is granted, and any individual who has actually obtained such a loan.

"Branch office" means any location where, in the regular course of business, applications for consumer loans or sales finance contracts are distributed to or received from consumers, loan

records are maintained, underwriting decisions are made, or any fees or charges relating to the loan are received from consumers.

1. A home or place of business of a consumer shall not be considered a branch office.

2. A location shall not be considered a branch office merely because any or all of the following activities are conducted at the location:

i. Consumers receive information concerning available loan products from a computer terminal;

ii. Consumers are prequalified for a loan, so long as no additional fee is charged for this service; and

iii. Advertising materials are distributed to consumers so long as the materials do not in any way resemble an application for a loan.

3. A branch office of a licensee under the Act does not also constitute a branch office of another licensee merely because the first licensee distributes or receives applications of that other licensee at the branch office.

"Closed-end loan" means a consumer loan pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time and which meets the requirements of the Act.

"Commissioner" means the Commissioner of Banking and Insurance.

"Consumer lender" means a person licensed, or a person who should be licensed, under the Act to engage in the consumer loan business.

"Consumer loan" means a loan of \$50,000 or less made by a consumer lender, payable in one or more installments, pursuant to the terms of the Act and not a residential mortgage loan as defined by N.J.S.A. 17:11C-53.

"Consumer loan business" means the business of making loans of money, credit, goods or things in action which are to be used primarily for personal, family or household purposes in the amount of value of \$50,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefor than the lender would be permitted by law to charge if he or she were not a licensee hereunder, except as authorized by the Act and without first obtaining a license from the Commissioner. Any person directly or indirectly engaging in the business of soliciting or taking applications for such loans of \$50,000 or less, or in the business of negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$50,000 or less, or in the business of buying, discounting or endorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$50,000 or less, shall be deemed to be engaging in the consumer loan business.

"Controlling interest" means ownership, control or interest of 25 percent or more of the licensee or applicant.

"Department" means the Department of Banking and Insurance.

"Direct contact" means in-person contact, and contact by means of a telephone, computer terminal, Internet or other electronic means during which contact, in the regular course of business, applications for consumer loans or sales finance contracts are distributed to or received from consumers, underwriting decisions are made, or any fees or charges relating to the loan are authorized.

“Individual” means a natural person.

"Insolvent" means having negative net worth, or being unable to pay debts when due.

"License name" means any name listed on the license issued by the Department including the true name and any alternate or trade names.

"License or licensing period" means the two-year period beginning on July 1 of each odd numbered year and ending on June 30 of the next odd numbered year.

"Licensee" means a person who is licensed under the Act or who should be so licensed.

"Liquid assets" means cash, marketable securities, and accounts receivable.

"Open-end loan" means a consumer loan made by a consumer lender pursuant to a written agreement with the borrower whereby:

1. The consumer lender may permit the borrower to obtain advances of money from the consumer lender from time to time or the consumer lender may advance money on behalf of the borrower from time to time as directed by the borrower;

2. The amount of each advance and permitted interest and charges are debited to the borrower's account and payments and other credits are credited to the same account;

3. Interest is computed on the unpaid principal balance or balances of the account from time to time; and

4. The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

"Person" means an individual, sole proprietorship, association, joint venture, partnership, limited partnership association, limited liability company, corporation, trust, or any other group of individuals however organized.

"Sales finance company" shall have the meaning ascribed to that term in the Act.

"Substantial stockholder" means a person or entity owning 10 percent or more of the stock of a licensee.

"Time price differential" shall have the meaning of that term in N.J.S.A. 17:16C-1(*l*) and shall be computed as provided in N.J.S.A. 17:16C-41.

"Trade name" means an assumed name filed pursuant to N.J.S.A. 56:1-2.

"True name" means the legal name of the licensed entity and shall not include any alternate or trade name.

3:17-1.3 Suitable location for office

(a) A licensee shall maintain a principal office. The maintenance of a principal office at which there will be no direct contact with New Jersey consumers shall not relieve the licensee of the obligation to maintain the confidentiality of any financial information in accordance with all applicable Federal and State laws and rules. A principal office where the licensee has direct contact with New Jersey consumers shall be in a suitable location as determined by the Commissioner.

1. The Commissioner shall consider the following factors in determining whether a location in New Jersey at which there is direct contact with New Jersey consumers as referenced in (a) above is suitable:

i. The location shall have a space that may only be utilized for the purposes of the licensee's business and by the licensee and its employees, structured in such a way as to ensure the maintenance of a consumer's right to privacy with respect to conversations and documents involving personal and financial information;

ii. The location shall conform to all local ordinances and zoning requirements;

iii. The location shall be reasonably accessible to the public;

iv. Any signage proposed for the location shall clearly identify the licensee;

v. The location shall be reasonably free of noise and other distractions so as to permit customers to give appropriate consideration to the loan transaction; and

vi. A location in a residence shall not be considered suitable unless the office is separate from the residential area and conveniently accessible to all consumers through a separate business entrance.

2. The Commissioner shall consider the following factors in determining whether an out-of-State location at which there is direct contact with New Jersey consumers as referenced in (a) above is suitable:

i. The location shall ensure the maintenance of a consumer's right to privacy with respect to conversations and documents involving personal and financial information; and

ii. The location of the out-of-State office shall comply with all applicable Federal, state and local laws in the state where the office is located.

3. Applicants for a license shall certify, on a form as prescribed by the Commissioner, that the location of their principal office is in compliance with the requirements set forth in this subsection.

(b) A licensee may maintain more than one place of business and shall secure a license for every branch office as required by N.J.A.C. 3:17-2.3.

(c) Each licensee that maintains more than one licensed office shall designate one licensed office as the principal office. The designation of the principal office shall be filed with the Commissioner. Any change in the designation shall be filed within 10 days of the effective date of the change. If the filing is complete, the Commissioner shall issue a new license reflecting the new designation.

(d) A licensee changing its name or changing the address of the principal office or any branch office shall comply with N.J.A.C. 3:1-7.1 and 7.4, as applicable.

3:17-1.4 License name

(a) A licensee may use alternate or trade names, and may change such name or names, in connection with business under the Act, following approval by the Commissioner and subject to the provisions of N.J.A.C. 3:17-1.5 and 1.6.

(b) The true name and all alternate or trade names shall appear on the license issued by the Department.

(c) A licensee may use its true name, any or all of its alternate or trade names, or any combination of them, in its advertising.

(d) In closing documents, a licensee shall use its true name plus the alternate or trade name that it used in its contacts with the consumer involved in the transaction.

3:17-1.5 License names permitted

(a) The number of alternate or trade names that may be used by a licensee in this State shall not exceed three, unless:

1. The licensee provides evidence to the Commissioner that prohibiting it from using four or more alternate or trade name would produce a substantial and unreasonable hardship on the licensee beyond the mere inability to market under the new name, and the licensee can satisfy the Department that procedures have been established to assure that consumers will not be misled about the true identity of the licensee. The Commissioner shall not grant an exception to the limitation of three alternate or trade names under this paragraph except in extraordinary circumstances; or

2. The licensee has, prior to November 4, 2002, been approved to use four or more alternate or trade names, in which case the licensee may continue to use those names, but shall not be approved to use an additional alternate or trade name until the total number of alternate or trade names being used by that licensee is two or fewer, unless a larger number is permitted pursuant to (a)1 above.

3:17-1.6 Grounds for denying use of alternate or trade names

(a) The Commissioner may deny an application to use an alternate or trade name if:

1. The name is lewd, offensive or otherwise inappropriate for the conduct of the licensed activity; or

2. The name would create a substantial risk of misleading or confusing consumers.

3:17-1.7 Display of license

The consumer lender or sales finance company license shall state the name of the licensee and the licensee's place of business or businesses, as applicable. No licensee shall transact business regulated by the Act under any name other than that reflected in the license. The license shall be posted conspicuously in the place or places of business of the licensee. A licensee or any other person shall not photocopy or otherwise reproduce the license except for legitimate business purposes.

SUBCHAPTER 2. LICENSING

3:17-2.1 Requirement to be licensed

(a) Unless exempt under N.J.S.A. 17:11C-6, no person shall engage in business as a consumer lender or sales finance company without first obtaining a license pursuant to the Act.

(b) The Department shall issue a license which shall specify whether the licensee may act as a consumer lender or a sales finance company. A licensee may not engage in a licensed activity under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 et seq., or the Retail Installment Sales Act of 1960, N.J.S.A. 17:16C-1 et seq., unless the license issued by the Department specifies that the licensee may engage in that licensed activity.

3:17-2.2 Application for a license

(a) A person applying for a license pursuant to the Act who does not already hold a license pursuant to the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 et seq., or the Retail Installment Sales Act of 1960, N.J.S.A. 17:16C-11 et seq., or a business license pursuant to the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq., shall submit the following:

1. A completed form as prescribed by the Commissioner which shall include the following:

- i. The true name of the applicant and no more than three trade names or alternate names conforming to N.J.A.C. 3:17-1.4 and 1.5 to be utilized;
- ii. The location of the principal office;
- iii. Information regarding officers and stockholders;
- iv. The name and address of the applicant's registered agent in this State;
- v. Information regarding incorporation, registration, and authorization to do business in this State and, if applicable, to use the trade name(s) or alternate name(s) included in the application; and
- vi. The applicant's Federal Tax Identification Number or Social Security Number, as applicable;

2. Personal certifications permitting the Department to make inquiries to the New Jersey State Police as to any information it may have on file with respect to the applicant, that is, the person, sole proprietor, partners, members and managers of a limited liability company, corporate officers, directors and shareholders owning 10 percent or more of the shares of the corporation, including a criminal history record background check of the

applicant, based upon information provided to and received from the Division of State Police. The background check shall include a State criminal history record background check based upon an exchange of fingerprint data with the State Bureau of Identification in the Division of State Police, for which the Division shall promptly notify the Commissioner if the subject of the original criminal history record background check is arrested for a crime or offense in this State after the date the background check was performed, and a check of both criminal and non-criminal information as requested from and distributed to the Federal Bureau of Investigation and any other governmental agency. The Department may make such inquiries on the basis of answers to questions in the application or on the basis of any other information which the Department receives that would make such an inquiry relevant to the decision on the application;

3. An unqualified audited financial statement prepared by a certified public accountant or public accountant, in good standing, demonstrating proof of net worth and liquid assets for the applicant as specified in N.J.S.A. 17:11C-16;

4. An application for a corporate license by a corporation organized under the laws of this State shall be accompanied by a copy of the applicant's Certificate of Incorporation as filed with the New Jersey Department of the Treasury, Division of Revenue. A foreign corporation shall submit a copy of its Certificate of Incorporation from the state where it is incorporated, and a copy of its Certificate of Authority to do business in this State approved by the New Jersey Department of the Treasury, Division of Revenue. If an alternate name is to be utilized, a copy of the registration of that name with the New Jersey Department of the Treasury, Division of Revenue shall be provided;

5. An application for a sole proprietorship or partnership license where a trade name is to be used shall be accompanied by a copy of a trade name certificate filed with the County Clerk's office in the county in which the licensee is to be located, and any filing made with the New Jersey Department of the Treasury, Division of Revenue. An application for a limited liability company license shall be accompanied by a copy of the applicant's Certificate of Formation as filed with the New Jersey Department of the Treasury, Division of Revenue. A foreign limited liability company shall submit a copy of its formation document from the state where it was established. If an alternate name is to be utilized, a copy of the registration of that name with the New Jersey Department of the Treasury, Division of Revenue shall be provided;

6. The application fee as specified in N.J.A.C. 3:17-3.2; and

7. A completed branch office application as specified in N.J.A.C. 3:17-2.3, if applicable.

(b) A person applying for a license pursuant to the Act who holds a license pursuant to the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 et seq., or the Retail Installment Sales Act of 1960, N.J.S.A. 17:16C-1 et seq.; or a business license pursuant to the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq., shall submit the following:

1. Any information required in (a) above which has changed since the initial application;

2. A certification on a form prescribed by the Commissioner that the information previously submitted to the Department is current and correct; and

3. The application fees prescribed by N.J.A.C. 3:17-3.2 which shall be non-refundable.

(c) A license shall run from the date of issuance to the end of the current licensing period.

3:17-2.3 Branch offices; branch licensing requirement; initial branch licensing application

(a) Applicants for branch office licenses shall certify on a form prescribed by the Commissioner that the location of the branch office is in compliance with the requirements of this section. A branch office location at which activity as a consumer lender or sales finance company is conducted but at which there is no direct contact with New Jersey consumers shall be licensed and shall comply with the requirement regarding the maintenance of the confidentiality of financial information set forth in N.J.A.C. 3:17-1.3(a)1 for in-State offices or N.J.A.C. 3:17-1.3(a)2 for out-of-State offices and this section, with the exception of the standards prescribed in (e)2 through 5 below regarding the suitability of office locations at which a licensee at an in-state location has face to face contact with New Jersey consumers. Prior to conducting activities as a consumer lender or sales finance company that include direct contact with New Jersey consumers regarding origination from a branch office in this State or from a branch office outside this State, the licensee shall obtain a license for the branch office from the Department.

(b) The application for a branch office license shall include the following:

1. The true name of the licensed entity and no more than three trade names or alternate names conforming to N.J.A.C. 3:17-1.4 and 1.5;
2. The address of the principal office;
3. The address of the branch to be licensed; and

4. The application fee prescribed by N.J.A.C. 3:17-3.2 which shall be non-refundable.

(c) A proposed branch at which the licensee will have direct contact with New Jersey consumers shall be in a suitable location in accordance with the applicable suitability criteria set forth in N.J.A.C. 3:17-1.3(a).

(d) If an applicant for a branch license meets the requirements of this section and N.J.S.A. 17:11C-9, the Commissioner shall issue the branch license which shall run from the date of issuance to the end of the current licensing period.

(e) Branch office arrangements shall be restricted as follows:

1. A branch office shall not be a separate business entity. If an office of another entity is purchased by or merged into a licensee, the licensee shall file for a branch office license. The filing shall include documentation evidencing the acquisition and/or merger of that entity into the surviving licensed entity;

2. A branch office shall not pay its own operating expenses. Operating expenses shall include, but are not limited to, compensation of branch office employees, and payments for equipment, furniture, office rent, and other similar expenses incurred in operating a consumer lending business;

3. A branch office shall not maintain a bank account or accounts for the payment of expenses of that branch that is separate from the account or accounts of the licensee;

4. A branch office shall not maintain contractual relationships with vendors for items such as leases, telephones, utilities, and advertising in the name of the branch office; and

5. A branch office shall not indemnify the licensee against damages incurred from any apparent, express, or implied agency representation by or through the branch office's actions.

3:17-2.4 Application for renewal of a license

(a) A person who holds in good standing a license as a consumer lender or sales finance company who seeks to renew a license pursuant to this section shall submit the following in connection with the renewal application:

1. A completed renewal application form as prescribed by the Commissioner which shall include the following:

i. The name of the applicant;

ii. The location of the principal place of business of the applicant; and

iii. A certification that the applicant has net worth and liquid assets as specified in N.J.S.A. 17:11C-16, in the case of a consumer lender.

(b) No license shall be renewed unless all assessments due and owing as of the expiration date of the current license and any late fees accrued have been paid.

3:17-2.5 Branch offices; renewal of branch licenses

(a) A licensee in good standing who holds a license for a branch or branches for the conduct of the business of a consumer lender or sales finance company who wishes to renew a branch license pursuant to this section shall submit the following in connection with the renewal application:

1. A completed renewal application form as prescribed by the Commissioner which shall include the following information for each branch to be renewed:

- i. The true name of the licensed entity and all trade names or alternate names conforming to N.J.A.C. 3:17-1.4 or 1.5 to be utilized;
- ii. The address of the principal New Jersey place of business; and
- iii. The address of each branch whose license is being renewed.

3:17-2.6 Late renewal of licenses; late filing fees; reinstatement fees

(a) A person who submits a renewal application after the expiration of the license, but no later than 30 calendar days after such expiration, may renew by paying a penalty for late filing of \$500.00.

(b) A person who submits a renewal application later than 30 but no more than 60 calendar days following the expiration of the license shall be required to submit an application for reinstatement of the license. Such application for reinstatement shall be on a form as prescribed by the Commissioner and shall be accompanied by a penalty for late filing of \$700.00 per license.

(c) A person who submits a renewal application later than 60 days following the expiration of the license shall be required to submit an application with the non-refundable application fee as specified in N.J.A.C. 3:17-3.

(d) Payment of the fees or penalties under (a), (b) and (c) above shall be submitted in the form of a check made payable to "Treasurer--State of New Jersey."

(e) The date of submission for this section shall be the date on which the electronically submitted complete renewal application was accepted for processing.

(f) Submission of an application for renewal of a license following the expiration of a licensing period does not authorize the formerly licensed person or entity to engage in any activity subject to licensure prior to the renewal of their license. The Department may take administrative action against anyone who engages in a licensed activity without being properly licensed.

3:17-2.7 Change of control

(a) A licensee shall file a completed application for approval whenever a change of control of ownership of 25 percent or more of the licensee is planned. The change of control request shall be submitted at least 90 days prior to the anticipated sale date and shall include:

1. A fully executed change of control form as prescribed by the Commissioner;
2. A copy of the executed stock purchase agreement or other agreement evidencing the proposed sale; and
3. A copy of the corporate resolution providing that existing officers and/or directors cease to hold positions and that new officers or directors are appointed, if applicable; and personal certifications permitting the Department to make inquiries to the New Jersey State Police as to any information it may have on file with respect to the applicant, that is, the person, sole proprietor, partners, members and managers of a limited liability company, corporate officers, directors and shareholders owning 10 percent or more of the shares of the corporation, including a criminal history record background check of the applicant, based upon information provided to and received from the Division of State Police. The background check shall include a State criminal history record background check based upon an exchange of fingerprint data with the

State Bureau of Identification in the Division of State Police, for which the Division shall promptly notify the Commissioner if the subject of the original criminal history record background check is arrested for a crime or offense in this State after the date the background check was performed, and a check of both criminal and non-criminal information as requested from and distributed to the Federal Bureau of Investigation and any other governmental agency. The Department may make such inquiries on the basis of answers to questions in the application or on the basis of any other information which the Department receives that would make such an inquiry relevant to the decision on the application.

(b) The Commissioner shall approve the change of control unless, after an opportunity for a hearing, it is determined that there are sufficient grounds to deny the application. Unless the Commissioner issues a preliminary denial of the application and affords the applicant an opportunity for a hearing within 90 days of the Commissioner's receipt of the completed application, the application shall be deemed approved.

3:17-2.8 Discontinuation of business activity

(a) When a consumer lender or sales finance company discontinues its licensed business operations in New Jersey, the licensee shall:

1. Surrender the entity's current license as well as the license of each branch office;
2. Identify, in writing, if there are any New Jersey consumer loan retail installment sales contracts or retail charge account agreements being processed and

provide the total number of any such transactions together with the consumers' names and addresses for each transaction;

3. Identify, in writing, the location of loan or agreement files required to be maintained under New Jersey law and regulations;

4. Identify, in writing, any arrangements that have been made to have other entities take over consumer loan or retail charge account agreement files together with complete information on the name, address, telephone number, and contact person of entities involved in such arrangements;

5. Identify, in writing, the name and telephone number of person(s) within the licensee's operation designated to handle any consumer problems that may arise;

6. Satisfy all outstanding obligations owed to the Department including all assessments due and owing and prepay the dedicated funding base assessment for the year of the discontinuance by paying the amount of the most recently billed base assessment within 15 days after ceasing business or upon being acquired. Adjustments to the base assessment, if any, and the final volume assessment for the year of discontinuance will be billed in the year following the discontinuance;

7. Satisfy all filing requirements including submitting a final annual report for the year in which the licensee discontinues its licensed business operations in New Jersey; and

8. Identify, in writing, the name, address, and phone number of the person within the licensee's operation responsible for the payment of assessments.

3:17-2.9 Licensee notification requirements

(a) A licensee shall notify the Department in writing within 15 days of the occurrence of any of the following:

1. Upon each arrest, indictment or conviction of the licensee, or of any officer, director, partner, member, owner or substantial stockholder of the licensee in this State, in another state, or in any Federal jurisdiction for any offense, crime or misdemeanor, except for a motor vehicle violation;

2. Upon each revocation, denial, suspension or restraint of a business or professional license, registration, certificate or other right to engage in business issued to the licensee, or to any officer, director, partner, member, owner or substantial stockholder of the licensee, or to any affiliate thereof, by this State, by another state, by the Federal government, or by any agency or instrumentality thereof;

3. Upon filing a petition of bankruptcy or reorganization by the licensee, or by any officer, director, partner, member, owner or substantial stockholder of the licensee, or by any affiliate thereof;

4. Upon the fining, penalizing or disciplining of the licensee, or any affiliates, by this State, by another state, by the Federal government, or by any agency or instrumentality thereof; and

5. Upon the involvement of the licensee, or any officer, director, partner, member, owner or substantial stockholder of the licensee, or any affiliate thereof, in any activity that may have a substantial impact on the ability of a licensee to engage in the licensed activity in a prudent or worthy manner.

SUBCHAPTER 3. FEES

3:17-3.1 Fees - general

All fees shall be paid by a check made payable to "Treasurer--State of New Jersey."

3:17-3.2 Application fees

(a) An applicant for a new license or a branch office license for a consumer lender or a sales finance company shall pay an application fee for a company or branch office license under the Act to the Department as follows:

1. On an application for one license set forth in (a) above for either a consumer lender or a sales finance company: \$700.00; and

2. On an application for one license set forth in (a) above for both a consumer lender and a sales finance company: \$1,000.

(b) A licensee who applies for a license in addition to their existing consumer lender license or sales finance license shall pay an application fee for each such application of \$300.00 per company or branch license.

(c) Application fees are non-refundable.

SUBCHAPTER 4. NET WORTH, LIQUID ASSETS AND INSOLVENCY

3:17-4.1 Applicability of provisions

The requirements of this subchapter shall apply to each corporation, partnership, limited liability company, or sole proprietorship that is licensed as a consumer lender or that is an applicant for a license as a consumer lender.

3:17-4.2 Accounting method for determining net worth

Net worth shall be computed on the accrual basis of accounting.

3:17-4.3 Requirement to achieve and maintain net worth and liquid assets

Each applicant for a license as a consumer lender shall achieve and maintain the net worth and liquid assets as required by N.J.S.A 17:11C-16.

3:17-4.4 Failure to maintain net worth or liquid assets; action by the Department

(a) If the net worth or liquid assets of a consumer lender falls below the amounts required by N.J.S.A. 17:11C-16, or if the consumer lender is insolvent, the Department may take such action as it deems appropriate and necessary to protect the public. The action may include requiring the consumer lender to operate pursuant to a memorandum of understanding, or directing the consumer lender to submit and comply with a capital plan within a time frame established by the Department to attain the net worth or liquid assets required by the Act.

(b) When considering whether to suspend, revoke or refuse to renew the license of a consumer lender who does not have the net worth or liquid assets required by the Act, the Commissioner shall consider the following factors:

1. How far the consumer lender is below the level of net worth or liquid assets required by the Act;
2. The correspondent relationship that a consumer lender may have with another financial institution;
3. The number and amount of loans typically made by the consumer lender;

4. The history of consumer complaints received by the Department concerning the consumer lender;

5. Whether the consumer lender has committed to make loans that it has been unable to fund; and

6. Any other factors reflecting on the ability and fitness of the consumer lender to transact business in its licensed capacity.

SUBCHAPTER 5. BOOKS AND RECORDS; EXAMINATIONS; ANNUAL REPORTS

3:17-5.1 Methods and accounting

(a) Each licensee shall maintain books, records, accounts and documents related to the business in accordance with recognized accounting principles.

(b) If a person licensed to act as a consumer lender maintains books and records on a basis other than the accrual method of accounting, that licensee shall also maintain books and records on the accrual basis of accounting which states the net worth of the licensee.

(c) Licensees shall preserve all books, records, accounts and documents related to the business for at least three years after making the final entry on any application or loan.

(d) The denial or withdrawal of an application shall constitute the final entry for an application which is denied or withdrawn.

(e) The assignment or sale of a loan shall constitute the final entry for a loan which is sold or assigned.

(f) In the case of an open-end loan, the licensee shall preserve the books, accounts and records for at least three years after each entry.

(g) All books, records, accounts and documents may be stored electronically so long as the electronically stored information can be produced in electronic format upon request by the Department or reproduced on paper and delivered to the Department within five days of the licensee's receipt of a request from the Department to produce the records.

(h) In the case of a licensee that ceases to do business, the Commissioner may move and store abandoned books, accounts and records in whatever form and make a claim against the bond for costs of moving and storage.

3:17-5.2 Reproduction of documents

A licensee may reproduce documents and records relating to the operation of its business for the purpose of complying with this subchapter and may substitute the copy for the original.

3:17-5.3 Location of books and records

(a) Each licensee shall notify the Department of the office in which the books and records are kept. If the licensee moves the books and records, the licensee shall notify the Department prior to the move.

(b) A licensee may keep its records at:

1. A licensed principal or branch office in or out of this State;
2. An unlicensed site in or out of this State, provided that the licensee secures the prior approval of the Department pursuant to (c) below; or
3. A licensed branch office outside of this State, provided that the licensee secures the prior approval of the Department pursuant to (c) below.

(c) The approval of the Department to keep records at a site or office specified in (b)2 and 3 above shall be given only if the licensee enters into an agreement with the Department governing the maintenance and production of records at the site. The provisions of the agreement shall include, but shall not be limited to, the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations and investigations, if any, and the right of the Department to rescind the agreement.

(d) Licensees operating more than one licensed office may maintain the general ledger at their principal office. The trial balance or balance sheet and profit and loss statement of the licensed office shall be made available upon request to the examiner or investigator at the office where the general ledger is kept.

(e) The books, accounts and records of a licensee who holds both a consumer lender and a sales finance company license shall maintain separate books, accounts and records for each of those licensed activities and those records shall be maintained separate and apart from the books, accounts and records of all non-licensed lines of business conducted by the licensee and shall be maintained so that an examiner or investigator can efficiently examine the various types of licensed activities.

3:17-5.4 Loan numbering, original document envelope, and index requirement for consumer lenders

(a) Each consumer loan made shall have its proper consecutive or individual number and all instruments evidencing or securing any consumer loan shall bear the respective loan number.

(b) Each consumer lender shall maintain an alphabetical index of all borrowers, comakers, endorsers, guarantors and sureties that shall show the name of the borrower, loan number, date of loan and amount of loan.

(c) Each consumer lender shall maintain an envelope or other file for each loan in which shall be kept all the original notes, security agreements or other evidences of indebtedness or security, which have been signed by the borrower.

3:17-5.5 Documentation

(a) The borrower, or an agent applying on behalf of a borrower, shall sign each loan application. If more than one borrower applies, each borrower and each agent applying on behalf of a borrower shall sign the application.

(b) Each credit report for which an applicant is charged a separate fee shall be memorialized in a written memorandum or other written documentation. The memorandum or documentation shall indicate that the credit history of the applicant was investigated and by whom.

3:17-5.6 Judgment records requirement for consumer lenders and sales finance companies

(a) When a consumer lender or sales finance company has reduced a note to judgment, the licensee shall maintain a file containing the following information:

1. The date of judgment;
2. The judgment debtor's name and address;
3. The date suit was filed;
4. The nature of the suit;

5. The name and location of the court;
6. The amount of judgment, showing the separate items comprised in the judgment as follows:
 - i. Principal;
 - ii. Interest;
 - iii. Attorney's fees;
 - iv. Court cost (itemized); and
 - v. Total amount of judgment; and
7. A description of the legal procedures followed to enforce the judgment.

(b) Consumer lenders and sales finance companies shall maintain records of nonjudicial foreclosures of security, such as repossession pursuant to the terms of the contract.

3:17-5.7 Motor vehicle lien requirement for consumer lenders

Whenever a consumer loan or retail installment contract is secured by a lien on a motor vehicle, it shall be the responsibility of the consumer lender or sales finance company to see that the title to the motor vehicle is in the name of the borrower. If the motor vehicle used as security is the property of a comaker, surety or guarantor, then the title of such motor vehicle shall be in the name of the comaker, surety or guarantor.

3:17-5.8 Retention of advertisements

One copy of each advertisement, including radio and television scripts, and any materials disseminated over the Internet or by any other electronic means, shall be kept on file in

the licensee's office for at least two years after the last date on which any such advertisement was utilized, said date to be noted on each such advertisement.

3:17-5.9 Records retention

(a) Each licensee shall preserve all books, records, accounts and documents related to the business for at least three years after making the final entry on any application or loan.

(b) The denial or withdrawal of an application shall constitute the final entry for an application which is denied or withdrawn.

(c) The assignment or sale of a loan shall constitute the final entry for a loan which is sold or assigned.

(d) In the case of an open-end loan, the licensee shall preserve the books, accounts and records for at least three years after each entry.

(e) All books, records, accounts and documents may be stored electronically so long as the electronically stored information can be produced in electronic format upon request by the Department or reproduced on paper and delivered to the Department within five days of the licensee's receipt of a request from the Department to produce the records.

(f) In the case of a licensee that ceases to do business, the Commissioner may move and store abandoned books, accounts and records in whatever form and make a claim against the bond for costs of moving and storage.

3:17-5.10 Copy of examination reports to licensee

The official report of examination shall be submitted to the licensee or to a representative of the licensee which has been designated by the licensee for such purpose.

3:17-5.11 Charges for investigations

For any person not licensed by the Department, the Department may charge for investigations at the rate of \$50.00 per hour. For the purposes of this section, investigations for which the Department may charge shall not include routine efforts by the consumer services unit to research or resolve consumer complaints.

3:17-5.12 Reports to the Department

Each consumer lender and sales finance company shall file a report with the Department annually on or before May 1 of each year. The report shall be submitted on forms provided by the Department and shall indicate the net worth and liquid assets of the consumer lender, as required. In accordance with N.J.S.A. 17:11C-43, the Department shall assess a penalty against any consumer lender or sales finance company for each annual report filed late up to \$100.00 per day.

SUBCHAPTER 6. INSURANCE

3:17-6.1 Insurance matters for consumer lenders

(a) Consumer lenders are subject to the provisions concerning insurance set forth in N.J.S.A. 17:11C-21.

(b) If insurance is lawfully required or obtained in connection with a loan, the insurance shall be written or obtained by or through an insurance producer who is licensed in good standing in this State, and written by an insurance company authorized to do business in this State.

(c) It shall be the responsibility of the consumer lender to explain clearly to each borrower the benefits and limitations of any credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance which the borrower contemplates obtaining in connection with a loan.

(d) Each consumer lender shall keep a record of all policies for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance sold to a borrower in connection with a loan, all premiums collected in connection with such loans, all refunds of unearned premiums caused by payment in full of an amount or by renewal, and a detailed record of all claims paid by the insurer.

(e) If a consumer lender collects a premium from a borrower for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance, and such insurance does not become effective, the consumer lender shall immediately give written notice to the borrower and shall promptly refund to or credit to the account of the borrower the amount collected from him or her or charged to him or her for such insurance.

(f) If a credit life policy issued in connection with a loan contains no provision for designation of a second beneficiary, it shall be handled under the usual procedure contained in a facility of payment clause authorizing the insurance company to pay any insurance in excess of the unpaid balance of the indebtedness to the estate, wife, husband, children or other blood relative or person equitably entitled thereto as determined by the insurance company.

3:17-6.2 Insurance provisions applicable to consumer lenders

(a) When a consumer loan is repaid in full or renewed, or if the insurance is terminated prior to the scheduled maturity date of a consumer loan, the consumer lender shall refund to the borrower any unearned insurance premiums.

(b) If a borrower has repaid a consumer loan in full, or if a beneficiary named in a policy under a claim is due a refund of unearned premiums and the consumer lender is unable to locate the borrower or beneficiary after due diligence, but in no event longer than 180 days, the licensee shall return all unearned premiums to the insurer, stating the reason therefor. The consumer lender shall file evidence in the borrower's file of his or her efforts to locate the borrower.

(c) All refunds and credits made by consumer lenders pursuant to this section shall be computed by the "Sum of Digits Method" commonly known as the "Rule of 78ths." These are rules for computing refunds of unearned finance charges on early payment of a loan so that the refund is proportional to the monthly unpaid balance. Tables for calculating refunds and credits according to this methodology can be obtained from Financial Publishing Company, 82 Brookline Drive, Brookline, MA 02212, (617) 262-4040, www.financial-publishing.com. When the refund or credit of the unearned insurance premium is less than \$1.00, no refund is required.

(d) If a borrower has credit life insurance, interest charges shall cease accruing on the account at the death of the insured.

(e) If a consumer loan contract contains credit life insurance, the consumer lender shall file a death claim with the insurer upon receipt of notice of the death of the insured. The death claim filed by a consumer lender with an insurer shall be made for the full amount of the coverage held at death by the insured.

(f) A policy for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance may provide for the insurance of more than one person. If the policy is silent regarding whether the insurance covers more than one person, the person whose signature appears on the first line of the lines provided for the signatures on the loan contract shall be considered as the only borrower insured by the policy and the consumer lender shall disclose to the borrower in writing the effect of the order of signing the loan contract.

SUBCHAPTER 7. ADVERTISING

3:17-7.1 Advertising and insurance costs

If a consumer lender requires a borrower to insure the collateral assigned as security for a loan, the licensee shall not advertise that there are "no other costs," or use words of similar meaning, unless the terms represented in the advertisement include the cost of the insurance or unless the advertisement states that an additional charge for insurance is required.

3:17-7.2 Verbal advertisements

Each verbal advertisement for a loan, which a licensee makes or authorizes to be broadcast or disseminated by radio, television, Internet or other electronic means, shall include a statement indicating whether the advertisement is for a consumer loan, retail installment contract, or retail charge account. The statement may be made by either verbal or visual means, provided that, if visual means are used, the statement shall appear for the entire time the advertisement is broadcast or disseminated.

3:17-7.3 Prohibited types of advertising

(a) No advertising shall contain false, misleading or deceptive claims or misrepresentations. In all advertisements that make express or implied claims that are likely to be misleading in the absence of certain qualifying information, such qualifying information shall be disclosed in the advertisement in a clear and conspicuous manner.

(b) The use of any of the following types of advertising shall be deemed to be misleading or deceptive:

1. A form which has the appearance of a check, money order, draft or other instrument that is normally used for the transfer of funds, except that a consumer lender may use such an instrument if:

i. The consumer lender sends this type of solicitation only to current or prior customers of the consumer lender, including customers of consumer credit affiliates of the consumer lender;

ii. Each such solicitation allows the customer an option not to receive future solicitations of this type;

iii. The instrument is negotiable for not more than six months, and the consumer is advised to destroy the instrument if it is not going to be negotiated; and

iv. The solicitation contains the following statement in a prominent place in a 10-point print: "THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS CHECK!"; and

2. Reference to loans by terms such as savings, thrift, share passbook, account, deposit, certificate or any other word or phrase of similar meaning, used individually or collectively.

(c) No consumer lender shall permit a supply of blank notes, chattel mortgages, security agreements, applications or other similar forms to be placed in any place other than a licensed office.

(d) A person who is not licensed or exempt under the Act and these rules shall not offer to act as a consumer lender or sales finance company in this State through direct or indirect solicitation or advertisement in print, electronic or any other medium.

SUBCHAPTER 8. CHARACTERISTICS OF LOANS

3:17-8.1 Provisions applicable to all licensees

(a) No licensee shall charge an interest rate that is in excess of the rate permitted by N.J.S.A. 2C:21-19.

(b) No licensee shall charge any fee other than those permitted by N.J.S.A. 17:11C-33.

(c) A borrower may repay a consumer loan at any time without penalty.

(d) A licensee may only compute interest accrued between monthly payments using the 365/365 method (actual number of days between payments) or the 360/360 method (each month assumed to be 30 days). Sales finance companies may charge a time price differential on retail charge accounts rather than interest.

(e) A borrower shall be given a copy of every document he or she is required to sign.

(f) Where any disclosure is required pursuant to this chapter that is also required by any Federal law or regulation, compliance with such Federal law or regulation shall be deemed to be compliance with this subchapter.

(g) No licensee shall require, as a precondition for the granting of credit, or for any other benefit or consideration from the licensee in connection with a loan, that the borrower engage in any other business activity with the licensee. Nothing in this subsection shall prohibit a licensee from offering to a borrower other services or products in connection with a loan.

(h) A licensee shall not require, nor receive, from a borrower a rebate of any portion of the proceeds of a loan that is not a permissible fee under N.J.S.A. 17:11C-33.

3:17-8.2 Consumer loans

(a) All consumer loans, except variable rate loans permitted pursuant to N.J.S.A. 17:11C-32, shall be repaid in substantially equal monthly installments of principal and interest computed on unpaid balances sufficient to liquidate the principal thereof, except as provided in subsection (b) below.

(b) In fixing the date of the first installment beyond one month, the number of days in excess of one month, but not in excess of 15 days, shall be counted after the expiration of one month from the date of the loan. The amount of the first installment may be increased by the amount of interest for the number of days in excess of one month.

(c) A consumer lender shall not knowingly grant a loan in one office to any borrower who already has a loan in another office operated by the same entity or by an affiliate, parent, subsidiary or under the same ownership, management or control, whether partial or complete.

(d) When a consumer lender knows or has reason to know that the proceeds of loan of \$50,000 or less are to be delivered by the borrower to an individual already indebted to such consumer lender on a loan of \$50,000 or less, then such loans shall be construed as a single loan to such individual for the purpose of interest computations. If the aggregate of such loans ever exceeds \$50,000, interest on such accounts earned from the date such excess occurred shall be restricted to the rate on unpaid balances authorized by the Interest and Usury Law, N.J.S.A. 31:1-1 et seq., and its implementing rule set forth at N.J.A.C. 3:1-1.1.

(e) Whenever a consumer lender has placed an account in the hands of an attorney or other agent for collection, all payments thereafter received by the consumer lender or by such attorney or agent, prior to entry of judgment on such account, shall be credited by the consumer lender to the account as of the date of receipt of such payment to the licensee or to such attorney or agent, and any such attorney or agent shall notify the consumer lender of the day any such payment is received.

(f) All out-of-State loans purchased shall be reported as a separate item in the consumer lender's annual report to the Commissioner.

(g) The required information concerning the amount of interest payable over the term of the loan shall be given on the assumption that the contract will be paid in accordance with the terms originally agreed upon. A variance tolerance of \$1.00 in the total amount of interest set forth in the loan contract is hereby authorized.

SUBCHAPTER 9. OTHER PERMISSIBLE LINES OF BUSINESS FOR CONSUMER LENDERS

3:17-9.1 All activities prohibited except as authorized by this subchapter

No consumer lender shall conduct any business activities in its office except activities authorized under the consumer lending license, activities specified in N.J.A.C. 3:17-9.2, and activities for which the consumer lender has obtained specific approval from the Commissioner as provided in N.J.A.C. 3:17-9.2.

3:17-9.2 Approved business activities for consumer lenders

(a) A consumer lender may engage in the activities related to that license without securing specific approval from the Commissioner. The activities may be conducted in the same office, room or place of business where the consumer lender conducts the business of making consumer loans.

1. Any licensed activity permitted under the Act provided that the consumer lender secures proper licensing from the Department;

2. Mortgage loan business. Any such business shall be conducted in accordance with the provisions of the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq., provided that the consumer lender secures proper licensing from the Department;

3. The home repair financing agency business. Any such business shall be conducted in accordance with the provisions of N.J.S.A. 17:16C-62 et seq., the Home Repair Financing Act;

4. The insurance premium finance company business. Any such business shall be conducted in accordance with the provisions of N.J.S.A. 17:16D-1 et seq., the Insurance Premium Finance Company Act;

5. The making of business or commercial loans;

6. The financing of installment contracts involving the time sale of goods or services that are to be utilized by the buyer for business or commercial purposes;

7. The leasing of personal property for business or commercial purposes;

8. Income tax preparation service;

9. First lien loans on non-residential real property provided that such business is conducted in accordance with the provisions of N.J.S.A. 31:1-1 et seq., N.J.A.C. 3:1 or Sections 501 et seq., of the Federal Depository Institutions Deregulation and Monetary Control Act of 1980, P.L. 96-221; and

10. Purchase of owner originated second mortgages under such reasonable terms and conditions as may be agreed to between the consumer lender and the mortgagee.

(b) A consumer lender who wishes to engage in the same office, room or place of business in an activity related to the financial services business not authorized by the consumer lending license or specified in (a) above, may apply to the Commissioner for approval to engage in such activity. Such application shall:

1. Be in writing;

2. Identify that it is an application by a consumer lender to engage in an activity pursuant to N.J.A.C. 3:17-9.2;

3. Describe in detail how the activity in which the consumer lender wishes to engage is related to the financial services business;

4. Include a statement that the consumer lender will not require that a borrower engage in the activity as a precondition for granting a consumer loan; and

5. Include a statement that the consumer lender will conduct the activity in conformity with all applicable law and regulations.

(c) The Commissioner shall approve or deny an application submitted pursuant to (b) above within 90 days of receipt. If the Commissioner does not, within 90 days of receipt, deny a consumer lender's application submitted pursuant to (b) above, the application shall be deemed approved.

(d) Consumer lenders who obtained, prior to July 1, 1997, approval from the Commissioner to engage in an activity not specified in N.J.A.C. 3:17-9.2 shall be deemed to be approved to engage in that activity under the Act.

3:17-9.3 Suspensions or revocations of approved business activities

The Commissioner may, by written directive and after the licensee has been provided with notice and an opportunity to be heard, suspend or revoke a licensee's approval to engage in any of the business activities specified in N.J.A.C. 3:17-9.2 if it is determined that the licensee has violated the Act or this chapter.

SUBCHAPTER 10. IMPOSITION OF ADMINISTRATIVE PENALTIES

3:17-10.1 Administrative penalties

(a) The Commissioner may refuse to issue and may revoke, suspend or refuse to renew a license, or impose a penalty pursuant to the Act, if the Commissioner finds, after notice and an opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., that any person, applicant for or holder of the license has:

1. Violated any of the provisions of the Act or any order, rule or regulation made or issued pursuant to the Act;

2. Failed at any time to meet the requirements for licensure, or withheld information or made a material misstatement in an application for a license;

3. Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or had a final judgment entered against the person in a civil or administrative action upon grounds of fraud, misrepresentation, or deceit, or failure to maintain books, accounts, records and other documents as required by N.J.S.A. 17:11C-19 or N.J.A.C. 3:17-5;

4. Become insolvent, or failed to attain or maintain the required net worth;

5. Demonstrated unworthiness, incompetence, bad faith or dishonesty in the transaction of business as a licensee; or

6. Engaged in any other conduct which would be deemed by the Commissioner to be the cause for denial, revocation, suspension, or refusal of the license or license renewal.

(b) A license may be suspended, revoked, or not renewed by the Commissioner if any officer, director, partner, or owner of the licensee has committed any act which would be cause for suspending, revoking or not renewing a license if issued to that person as an individual.

(c) If the license is suspended or revoked pursuant to (b) above, the license shall remain suspended or revoked, unless within the time fixed by the Commissioner, in the case of a partnership, the connection therewith of the offending individual shall be severed and that individual's interest in the partnership and share in its activities brought to an end, or in the case of an association, corporation, or other legal entity, the offending individual shall be discharged

and shall have no further participation in the legal entity's activities. In the case of an offending individual who is an officer or director of the corporation or other legal entity, that individual shall be required to fully divest himself or herself of all ownership in the entity including any stock, bonds or other corporate holdings.

(d) The Commissioner may access and examine books, accounts, records and other documents maintained by a consumer lender or sales finance company licensee pursuant to N.J.S.A.17:11C-19.

(e) The Commissioner may conduct investigations, which may include the subpoenaing of witnesses and documents, pursuant to N.J.S.A.17:11C-42.

(f) Whenever it appears to the Commissioner that any person has engaged, is engaging, or is about to engage, in any practice or transaction prohibited by Act, the Commissioner may, in addition to any other remedy available, bring a summary action in a court of competent jurisdiction against the person, and any other person concerned or in any way participating in or about to participate in a practice or transaction in violation of the Act to enjoin the person from continuing the practice or transaction engaged in, or from engaging in the practice or transaction, or doing any act in furtherance of engaging in the practice or transaction.

(g) The Commissioner may impose a civil penalty not exceeding \$25,000 on any person for a violation of the Act. Each violation of the Act, including any order, rule or regulation made or issued pursuant to the Act, shall constitute a separate offense. Additionally, each violation which constitutes a knowing violation shall be considered a crime of the third degree.

(h) The Commissioner may order that any person who has been found to have knowingly violated any provision of the Act and has thereby caused financial harm to consumers, be barred for a term not exceeding 10 years from acting as a consumer lender or sales finance company, or

a stockholder, or an officer, director, partner or other owner, or an employee of a consumer lender or sales finance company licensee, or acting in any other capacity pursuant to the Act. Pursuant to N.J.S.A. 17:11C-18, violation of any such final order shall be considered a crime of the third degree.

3:17-10.2 Initiation of action

(a) Before an administrative penalty is imposed, the Department shall direct a notice by certified mail and regular mail, or by personal delivery, to the last known business or mailing address of the alleged violator. The notice shall include:

1. A reference to the statute, rule and/or administrative order alleged to be violated;
2. A concise statement of the facts on which the violation is based;
3. A statement of the administrative penalty, penalties or other relief sought to be imposed; and
4. A statement advising the alleged violator of the right to a hearing and the procedure for requesting a hearing.

(b) The notice may describe more than one violation, or more than one specific penalty or other relief for each violation. A single form of notice may be used to notify several alleged violators, so long as all are named and served with a copy of the notice in conformity with the provisions of (c) below.

(c) The notice shall be served by personal delivery, or by certified mail and regular mail to the alleged violator's last known business or mailing address, according to the files maintained

by the Department. Service in this manner shall be considered lawful service on the alleged violator.

3:17-10.3 Failure to respond to notice

(a) The alleged violator's failure to respond, as required by the notice, within the time provided in the notice, shall be deemed to be an admission of all of the allegations, charges and conclusions contained in the notice, and no further proceeding shall be required prior to the execution of a final order that imposes the administrative penalty, penalties or other relief described in the notice.

(b) If no response is received within the time provided in any notice to suspend or revoke a license or authority to conduct any activity regulated by the Act, the Department shall prepare a final order suspending or revoking the license or authority to conduct such activity, and mail a copy of the order to the violator at his or her last known business address on file with the Department.

(c) If the notice issued pursuant to this section provided for the payment of any fine, restitution or reimbursement to the Department for investigative or examination cost, and payment or proof of payment has not been received, the Department may proceed without further notice to suspend or revoke the license or authority of the violator as provided in N.J.S.A. 17:11C-18.

3:17-10.4 Consent to an administrative penalty

(a) In order for matters set forth in a notice to be deemed concluded by means of a consent by the alleged violator to the imposition of the administrative penalty or other relief described in the notice, the Department may require any or all of the following:

1. That the licensee return his or her license to the Department for cancellation;
2. The payment of a monetary penalty;
3. The reimbursement to the Department of the costs of investigation and examination;
4. The restitution of moneys owed any person; and
5. The execution of an administrative order that may include admissions of material facts, conclusions of law, and such other terms and conditions as the Commissioner, or his or her authorized designee, may deem to be necessary and appropriate under the circumstances.

3:17-10.5 Request for a hearing

(a) An alleged violator shall have 20 calendar days from service of the notice of intent to impose an administrative penalty within which to deliver a written request for a hearing to: Chief of Investigations, Enforcement Bureau, New Jersey Department of Banking and Insurance, PO Box 040, Trenton, New Jersey 08625-0040.

(b) A request for a hearing shall include:

1. The name, address and daytime telephone number of the alleged violator;
2. A copy of the notice;
3. A statement requesting a hearing;

4. A specific admission, denial or explanation of each fact alleged in the notice, or a statement that the person is without knowledge thereof; and

5. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense.

(c) If a hearing request fails to include a specific admission, denial or explanation of each fact alleged, or a statement that the person is without knowledge thereof, the facts alleged in the notice shall be deemed to have been admitted.

(d) If a hearing request lacks any of the elements in (b) above, the Department shall, by certified mail and regular mail, or by personal delivery, advise the person of the deficiencies and provide an additional 10 calendar days from the issuance of the deficiency letter to correct them. If no reply correcting the deficiencies is received by the Department within 10 calendar days, the Department may issue a final order without granting a hearing.

(e) Upon receipt of a properly completed request for a hearing, the Chief of Enforcement, or such other Department personnel as may be designated by the Commissioner, shall examine the request and may conduct or direct such further proceedings as may be appropriate, including, but not limited to, an interview with the alleged violator.

(f) Not later than 60 days after the receipt of a properly completed request for a hearing, the Chief of Enforcement, or such other Department personnel as may be designated by the Commissioner, shall advise the alleged violator of the manner of disposition, which may be as follows:

1. Terminated with or without prejudice;

2. Resolved by consent order, which may provide for a lesser or different administrative penalty; or

3. A finding that the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In such a case, the Department shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Practice Rules, N.J.A.C. 1:1.