

BANKING.  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

Dedicated Funding Assessment

Adopted New Rules: N.J.A.C. 3:5

Adopted: May 24, 2006 by Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1-15, and 17:1C-33 et seq.

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**To view the formal Notice of Adoption filed with the Office of Administrative Law visit the [Department's Office of Legislative and Regulatory Affairs](#) and click on "[Adopted Rules](#)."**

**Full text** of the new rules as adopted follows:

CHAPTER 5  
DEDICATED FUNDING ASSESSMENT

SUBCHAPTER 1. PURPOSE AND SCOPE

3:5-1.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the funding mechanism for the support of the Division of Banking in the Department of Banking and Insurance as required by N.J.S.A. 17:1C-33 et seq., and to distribute the financial burden proportionately among depository institutions and other financial entities that the Division of Banking, in the Department of Banking and Insurance, charters, licenses and registers consistent with the Division's regulatory activities.

(b) These rules apply to banks, savings banks, savings and loan associations, credit unions, licensed lenders, check cashers, money transmitters, consumer lenders, pawnbrokers, sales finance companies, insurance premium finance companies, home repair contractors, home repair finance agencies, motor vehicle installment sellers, debt adjusters and high cost home loan counselors.

## SUBCHAPTER 2. DEFINITIONS

### 3:5-2.1 Definitions

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

"Act" means N.J.S.A. 17:1C-33 et seq.

"Application fees for licensees" means the non-refundable charges imposed on other financial entities for processing of applications submitted by them to the Department.

"Assessment" means the assessment imposed for the special functions of the Division relative to the financial regulation, supervision and monitoring of depository institutions and other financial entities that it licenses during the previous fiscal year.

"Authority" means one of the activities permitted for a licensee pursuant to the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.: either mortgage banker, correspondent mortgage banker or mortgage broker; secondary lender; consumer lender; or sales finance company.

"Call report" means the report of general financial condition submitted by all insured depository institutions to the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration, as the case may be, on a quarterly

basis and shall include reports filed with the Department by limited purpose companies on a semiannual basis pursuant to N.J.S.A. 17:9A-256.

“Charter fees” means the nonrefundable charges imposed for the initial review by the Division of those seeking New Jersey approval for the initial establishment of a bank, savings bank, savings and loan association or credit union or for the designation as a low income credit union.

“Commissioner” means the Commissioner of Banking and Insurance.

"Consumer Finance" means the Office of Consumer Finance in the Division of Banking in the Department of Banking and Insurance.

“Department” means the Department of Banking and Insurance.

"Depositories" means the Office of Depositories in the Division of Banking in the Department of Banking and Insurance.

“Depository institution” means any entity holding an approval from the Department for the initial establishment of a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

“Division” means the Division of Banking in the Department of Banking and Insurance.

"Licensee" means any regulated entity other than a depository institution or credit union.

“Other financial entity” means a person who is licensed or registered pursuant to: the New Jersey Licensed Lenders Act, P.L. 1996, c. 157 (N.J.S.A. 17:11C-1 et seq.); The Check Cashers Regulatory Act of 1993, P.L. 1993, c. 383 (N.J.S.A. 17:15A-30 et seq.); the New Jersey Money Transmitters Act, P.L. 1998, c. 14 (N.J.S.A. 17:15C-1 et seq.); the Insurance Premium Finance Company Act, P.L. 1968, c. 221 (N.J.S.A. 17:16D-1 et seq.); the Retail Installment Sales Act of 1960, P.L. 1960, c. 40 (N.J.S.A. 17:16C-1 et seq.); the Door-to-Door Retail

Installment Sales Act of 1968, P.L. 1968, c. 223 (N.J.S.A. 17:16C-61.1 et seq.); the Home Repair Financing Act, P.L. 1960, c. 41 (N.J.S.A. 17:16C-93 et seq.); the Door-to-Door Home Repair Sales Act of 1968, P.L. 1968, c. 224 (N.J.S.A. 17:16C-95 et seq.); the Debt Adjusters Act, P.L. 1979, c. 16 (N.J.S.A. 17:16G-1 et seq.); the Pawnbroking Law, P.L. 1931, c. 294 (N.J.S.A. 45:22-1 et seq.) or the New Jersey Home Ownership Security Act, P.L. 2003, c. 64, §11 (N.J.S.A. 46:10B-32.)

“Regulated entity” means a depository institution, other financial entity or person chartered, licensed or registered by the Division of Banking or that should be chartered, licensed or registered.

### SUBCHAPTER 3. CERTIFICATION OF EXPENSES; SPECIAL FUNCTION APPORTIONMENT

#### 3:5-3.1 Expense certification

(a) In accordance with N.J.S.A. 17:1C-33 et seq. the Director of the Division of Budget and Accounting in the Department of the Treasury shall, on or before August 15 in each year, ascertain and certify to the Commissioner by category the total amount of expenses incurred by the State in connection with the administration of the special functions of the Division of Banking in the Department of Banking and Insurance relative to the financial regulation, supervision and monitoring of depository institutions and other financial entities it licenses during the preceding fiscal year. Those expenses shall include, in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of employee benefits and the workers' compensation paid for and on account of personnel, rentals for space occupied in State-owned or State-leased buildings and all other direct and indirect costs of the administration of

those functions of the Department, as well as any amounts remaining uncollected from the assessment of the previous fiscal year. Certification made pursuant to this subchapter shall be made by the Director of the Division of Budget and Accounting.

(b) Upon receipt of the certification made by the Director of the Division of Budget and Accounting pursuant to (a) above, but no later than September 1 in each year following the close of the previous fiscal year, the Commissioner shall issue the assessment for the amount of the expenses incurred by, or on behalf of, the special functions of the Division. Statements of the individual assessments made pursuant to this subsection and in accordance with N.J.A.C. 3:5-4 shall be distributed via mailing among all regulated entities.

(c) The Commissioner shall certify the amount of the individual assessment issued to each regulated entity. Each regulated entity shall remit the amount so certified and assessed to it to the Department. Amounts collected by the Department shall be used for reimbursement to the State for expenses incurred in connection with the special functions of the Division relative to the financial regulation, supervision and monitoring of depository institutions and other financial entities it charters, licenses or registers, provided that the amount collected for those expenses shall not exceed the amount appropriated by the Legislature for those expenses.

#### SUBCHAPTER 4. ASSESSMENT COMPUTATION FORMULA

##### 3:5-4.1 Departmental expenses

(a) The direct expenses of the Office of Depositories and the Office of Consumer Finance shall be maintained and allocated to each Office separately.

(b) Centralized expenses such as the Commissioner's Office, and other centralized operating units which supply support to Depositories and Consumer Finance shall be apportioned

between Depositories and Consumer Finance on the basis of the percentage of full time employees in each Office.

(c) The direct expenses for Depositories shall be added to the Depositories' apportioned share for centralized expenses. This will produce the total amount of the expenses for Depositories for the preceding fiscal year.

(d) The direct expenses for Consumer Finance will be added to the apportioned share for centralized expenses attributable to Consumer Finance. This will produce the total amount of the expenses for Consumer Finance for the preceding fiscal year.

#### 3:5-4.2 Total assessments

(a) All regulated entities shall be assessed a total assessment. The total assessment shall consist of the total of a base assessment and a volume assessment if applicable.

(b) For the purposes of determining the total assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., licensees with more than one authority shall pay an aggregate base assessment consisting of a separate base assessment for each separate authority, which shall be added to a single volume assessment, if any, based on the aggregate dollars loaned or the equivalent for all their authorities.

#### 3:5-4.3 Base assessments

(a) Base assessments shall be determined by the Commissioner in accordance with N.J.S.A. 17:1C-46 taking into account such factors as the average size of the regulated entities within each regulated industry and the extent of the Division's regulatory activities required with respect to each type of regulated industry. The Department shall also consider the potential

impact of the base assessment amount on business entities of various sizes in an effort to allocate the total assessment in a manner proportionate to the Department's regulatory activities with respect to each regulated entity.

(b) With the exception of credit unions, the base assessment for depository institutions shall not exceed \$5,000.

(c) The base assessment for credit unions shall not exceed the following limits:

1. Credit unions having \$10 million or less in assets: \$500.00;
2. Credit unions having more than \$10 million, but not more than \$40 million in assets: \$1,500; and
3. Credit unions having more than \$40 million in assets: \$5,000.

(d) The base assessment for licensees shall be limited in the following manner:

1. The Department shall assign a weight to the manner and complexity of regulating the businesses of licensees by determining a complexity factor greater than zero and not more than five.
2. In determining the complexity factor, the Department shall consider criteria such as statutorily mandated regulatory activities, number and locations of business sites, varying degrees of complexity in oversight and/or reporting requirements and any other criteria that the Commissioner deems appropriate.
3. The Department shall multiply the complexity factor by an amount not to exceed \$300.00, which amount shall be published annually by the Department in the New Jersey Register as a public notice and in a Departmental Bulletin.

### 3:5-4.4 Volume assessments

(a) The volume assessment for depository institutions shall be calculated as follows:

1. The Department shall deduct the total base assessments for depositories from the total expenses for Depositories for the preceding calendar year.

2. Using filings of each depository institution, the Department shall calculate, to nine decimal places, the percentage of total assets under supervision held by each depository institution in relation to the total assets under supervision for all depository institutions as of December 31 of the prior calendar year.

3. The Department shall multiply the percentage for each depository institution times the expenses remaining after the total of the base assessments of depository institutions has been deducted from the total amount of expenses for Depositories for the preceding fiscal year.

4. The volume assessment for each depository institution shall be added to the base assessment for each depository institution.

(b) The volume assessment for credit unions shall be calculated as follows:

1. There is no volume assessment for credit unions with assets under \$40 million.

2. The Department shall calculate the volume assessment for credit unions with assets of \$40 million dollars or more by comparing the assets of each such individual credit union with the assets of a depository institution of equal size and assessing the credit union the same volume assessment that the credit union would have been assessed if the credit union had been a depository institution.

3. In order to calculate the volume assessments set forth in (b)2 above, the



Department will calculate, to nine decimal places, the percentage of the assets of each individual credit union, based on filings made by the credit union, as compared to the total assets for depository institutions which was used to calculate the volume assessment for depository institutions in (a)1 above. This figure will be multiplied by the expenses remaining after deduction of base assessments for depository institutions calculated pursuant to (a)2 above.

4. The total assessment for each credit union with assets under \$40 million shall equal the base assessment for the credit union.

5. The volume assessment for each credit union with assets of \$40 million or more shall be added to that credit union's base assessment, to produce the total assessment.

(c) The volume assessment for licensees shall be calculated as follows:

1. Using filings of each licensee, the Department shall calculate the percentage, to nine decimal places, of the loan volume and/or its equivalent as calculated below for each licensee, in relation to total loan volume and/or its equivalent for all licensees as of December 31 of the prior calendar year.

i. The volume assessment for licensees of Consumer Finance shall be calculated on the basis of the total loan volume and/or its equivalent as calculated by the Department.

ii. The Department shall determine the total loan volume for licensees that make and/or purchase loans based on the total dollar amount of regulated closed loans made, purchased and brokered by all licensees during the preceding calendar year, as reported in the licensees' annual reports.

iii. For the purposes of this section, licensees that make loans

include mortgage bankers, correspondent mortgage bankers, secondary lenders, consumer lenders, pawnbrokers, sales finance companies, insurance premium finance companies, home repair contractors, and motor vehicle installment sellers. Licensees that purchase loans include consumer lenders, sales finance companies and home financing agencies.

iv. For purposes of the calculation of the volume assessment for those who make loans, the Department shall consider the dollar volume of such loans. In calculating the volume assessment for licensees that purchase loans, the volume of loans purchased shall be considered as if it were dollars loaned. In calculating the volume assessment for sales finance companies that both make and purchase loans, the Department shall consider the total loan volume of such licensees to be the dollar volume of loans made plus the dollar volume of loans purchased by such licensees.

v. For mortgage brokers and for mortgage bankers who broker loans, the Department shall determine the dollar volume of closed loans brokered by each licensee for the preceding calendar year as reported in the licensee's annual report. For purposes of calculation of the volume assessment for mortgage brokers, the Department shall consider the volume of closed loans brokered for each licensee as if it were the volume of dollars loaned by a licensee. In calculating the volume assessment for mortgage bankers who also broker loans, the Department shall consider the total loan volume of such licensees to be the dollar volume of loans made plus the dollar volume of closed loans brokered by such licensees.

vi. For check cashers, the Department shall consider the dollar volume of checks cashed for a fee by each licensee for the preceding calendar year, as reported in the licensee's annual report. The volume shall include all checks cashed for a fee or other compensation, whether received directly or indirectly, and shall treat the dollar volume of such

checks as if it were a volume of dollars loaned. The volume shall include payroll services as defined in N.J.S.A. 17:15A-31..

vii. For money transmitters and foreign money transmitters, the Department shall consider the dollar volume of money transmitted, the dollar volume of bills paid and the dollar volume of checks sold by each licensee for the preceding calendar year as reported in the licensee's annual report. This total dollar volume shall be treated for assessment purposes as if it were dollars loaned.

viii. For the purposes of determining the volume assessment for sales finance companies and motor vehicle installment sellers licensed under N.J.S.A. 17:16C- 1 et seq., the Department shall consider the dollar volume of loans for goods as defined by N.J.S.A. 17:16C-1(a) and the dollar volume of loans for services. For sales finance companies, the Department shall consider the dollar volume of such loans made plus the dollar volume of such loans purchased by those licensees.

ix. For the purposes of determining the volume assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., the volume assessment shall be based on the aggregate dollars loaned or its equivalent as determined in accordance with this chapter for all their authorities.

x. There will be no volume assessment for entities licensed to act as debt adjusters pursuant to N.J.S.A. 17:16G-1 or high cost home loan credit counselors registered pursuant to N.J.S.A. 46:10-22 et seq.

2. The Department shall multiply the percentage for each licensee

regulated by Consumer Finance times the expenses remaining after the total assessments for credit unions and the base assessments of licensees have been deducted from the total amount of expenses for Consumer Finance for the preceding fiscal year.

3. The volume assessment, if any, for each entity regulated by Consumer Finance shall be added to their previously determined base assessment.

4. For the purpose of determining the total assessment for licensees under the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., licensees with more than one authority shall pay a separate base assessment for each separate authority, which shall be added to a single volume assessment, if any, based on the aggregate dollars loaned or its equivalent for all their authorities.

(d) A regulated entity that ceases business or is acquired shall be responsible for the payment of the base assessment and any volume assessment for that calendar year. An entity that ceases business or is acquired shall pay all assessments due and owing and prepay the 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.

## SUBCHAPTER 5. MAXIMUM TOTAL OF ASSESSMENTS

### 3:5-5.1 Maximum assessment

(a) The total amount assessable to regulated entities in any fiscal year for the purposes of this subchapter shall not exceed the lesser of:

1. The total amount of expenses incurred by the State in connection with

the administration of the special functions of the Division pursuant to N.J.A.C. 3:3-5.3 during the preceding fiscal year as ascertained by the Director of the Division of Budget and Accounting in the Department of the Treasury, on or before August 15 in each year, and certified to the Commissioner by category; or

2. .00015 times the sum of:

- i. The total assets for State-chartered banks, savings banks, and savings and loan associations for the preceding calendar year plus
- ii. The total average loan volume for residential mortgage loans closed by licensed lenders pursuant to the New Jersey Licensed Lenders Act, P.L. 1996, c. 157 (N.J.S.A. 17:11C-1 et seq.) for the three preceding calendar years.

## SUBCHAPTER 6. OBJECTION TO ASSESSMENT

### 3:5-6.1 Time to object and decision on objections

(a) Within 15 days after the date of mailing a statement of the assessment as provided in N.J.A.C. 3:5-3.1(b), a regulated entity may file objections to its assessment with the Commissioner. All such objections must be filed in writing.

(b) Upon being filed, the validity of such objections shall be determined by the Commissioner in accordance with N.J.S.A. 17:1C-36 and 37.

(c) If, after having determined the validity of an objection, the Commissioner finds any part of the assessment against the objecting regulated entity excessive, erroneous, unlawful or invalid, he or she shall transmit to the objector, by registered mail, his or her findings and an amended statement of the assessment in accordance with those findings, which shall have the same force and effect as an original statement of the assessment. If the Commissioner finds the

entire statement of the assessment unlawful or invalid, he or she shall notify the objector, by registered mail, of that determination, and the original statement of the assessment shall be null and void. If the Commissioner finds that the statement as rendered is neither excessive, erroneous, unlawful nor invalid, in whole or in part, he or she shall transmit notice thereof to the objector by registered mail.

## SUBCHAPTER 7. COLLECTION; NOTICE OF DELINQUENCY

### 3:5-7.1 Unpaid assessments

(a) If any regulated entity to which a statement of the assessment has been mailed fails or refuses to pay the amount within 30 days of the date of mailing, or fails to file with the Commissioner objections to the statement of the assessment as provided in N.J.A.C. 3:5-6, the Commissioner shall transmit to the State Treasurer a certified copy of both the statement of the assessment and the notice of the neglect or refusal of the regulated entity to pay the amount thereof, and at the same time shall mail by registered mail to the entity a copy of the statement of the assessment and the notice of the neglect or refusal transmitted to the State Treasurer.

(b) If a statement of the assessment against which objections are filed is not paid in full within 30 days after the date of mailing to the objector of notice of a finding that the objections have been disallowed, or if an amended statement of the assessment is not paid within 30 days of the date a copy thereof is mailed by registered mail to the objector, the Commissioner shall give notice of the delinquency to the State Treasurer and to the objector, and the State Treasurer shall proceed to make the collection.

(c) In accordance with N.J.S.A. 17:1C-40, no action or proceeding shall be maintained in any court for the purpose of restraining or delaying the collection or payment of a statement of

the assessment rendered in accordance with the provisions of this chapter and N.J.S.A. 17:1C-33 et seq.

(d) No action for recovery of an amount paid shall be maintained in any court unless objections have been filed with the Commissioner. In an action for recovery of any payments, plaintiff may raise any relevant issue of law, but the Commissioner's findings of fact shall be presumptive evidence of the facts therein stated.

### 3:5-7.2 Collection; sale of goods

In accordance with N.J.S.A. 17:1C-43 within 10 days after receipt of the notice and certified copy of the statement of the assessment, the State Treasurer shall proceed to collect the amount stated to be due, with legal interest, by seizure and sale of any goods or chattels, including stocks, securities, bank accounts, surety bonds, realty, evidences of debt and accounts receivable belonging to the regulated entity anywhere within the State. The State Treasurer shall not seize any goods or chattels held by the regulated entity on behalf of another.

### 3:5-7.3 Additional remedy

As provided in N.J.S.A. 17:1C-44 as an additional remedy, the State Treasurer may issue a certificate to the Clerk of the Superior Court that a regulated entity is indebted under these rules in an amount stated in the certificate. The clerk shall immediately enter upon his record of docketed judgments the name of the regulated entity, and of the State, the amount of debt so certified, and the date of the entry. The entry shall have the same force and effect as the entry of a docketed judgment in the Office of the Clerk, and the State Treasurer shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or

taken upon the recovery of a judgment in a civil action, but without prejudice to the regulated entity's right of appeal.

SUBCHAPTER 8. REGULATED ENTITIES EXEMPT FROM FEES AND CHARGES;  
EXCEPTIONS

3:5-8.1 Fees and exemptions

(a) Notwithstanding any law or regulation to the contrary, a regulated entity paying the amounts assessed to it in statements of the assessment made pursuant to N.J.A.C. 3:5-3 shall be exempt from all fees or charges imposed by the Division pursuant to any other provision of law or regulation, except for:

1. Charter fees;
2. Application fees for licenses;
3. Mortgage solicitor registration application fees;
4. Fees for entry by a foreign depository institution whether from another state of the United States or from another country into New Jersey for branch, trust or other activities;
5. Fees charged under the Governmental Unit Deposit Protection Act, P.L. 1970, c. 236 (N.J.S.A. 17:9-41 et seq.);
6. Fees charged any entity not chartered, licensed or registered by this State, including, but not limited to, activities conducted by foreign banks pursuant to section 316 of P.L. 1948, c. 47 (N.J.S.A. 17:9A-316) or foreign associations pursuant to section 214 of P.L. 1963, c. 144 (N.J.S.A. 17:12B-214);



7. Fees charged qualified corporations authorized pursuant to section 213 of P.L. 1948, c. 67 (N.J.S.A. 17:9A-213) to perform either registrar and transfer agent activities or activities permitted for qualified educational institutions; and

8. Such other fees as may be specified as not exempt pursuant to N.J.S.A. 17:1C-33 (P.L. 2005, c. 199) and any amendments thereto.

(b) Nothing in this section shall exempt a regulated entity from paying any fine or penalty imposed by the Commissioner for a violation of a statute or regulation.

(c) Except as provided in paragraph (1) of subsection d. of section 7 of the New Jersey Home Ownership Security Act of 2002, P.L. 2003, c. 64 (N.J.S.A. 46:10B-28), all fees, charges, fines and penalties as described in (a) and (b) above shall be remitted to the State Treasurer for deposit into the General Fund, and those fees, charges, fines and penalties shall not be part of the assessment funding mechanism or considered in the calculation pursuant to N.J.A.C. 3:5-5.

## SUBCHAPTER 9. IMPROPER REPORTING OF INFORMATION TO THE DEPARTMENT

### 3:5-9.1 Penalty for improper reporting

(a) A depository institution that submits figures on assets, deposits or any other factor used by the Department to compute the depository institution's assessment that are substantially or materially in error shall be liable for an administrative penalty not to exceed \$10,000 for each submission that contains substantially or materially incorrect information.

(b) A licensee that submits figures on loan volume, number of branches, or any other factor used by the Department to compute the licensee's assessment that are substantially or materially in error shall be liable for an administrative penalty not to exceed \$10,000 for each submission that contains substantially or materially incorrect information.

(c) In addition to any monetary penalty that may be imposed against a licensee pursuant to (b) above, the Commissioner may take action to revoke, suspend or refuse to renew the license of a licensee that submits substantially or materially erroneous figures. The suspension, revocation or refusal to renew a license shall be in addition to any monetary penalty imposed pursuant to (b) above.

(d) The administrative penalty authorized pursuant to this subsection may be recovered in a summary proceeding in accordance with the Penalty Enforcement Law of 1999, P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.). Pursuant to N.J.S.A. 17:1C-48d, a willful violation of this section shall be considered a crime of the third degree.

## SUBCHAPTER 10. TRANSITION TO DEDICATED FUNDING

### 3:5-10.1 Credits and elimination of examination bills

(a) In calculating the initial assessments to be imposed pursuant to this chapter:

1. Banks, savings banks and savings and loan associations shall be given prorated credit for unused portions of assessments currently collected under N.J.A.C. 3:1-6 and N.J.S.A. 17:1-8, if any; and
2. Licensees shall be given prorated credit for unused portions of licensing periods, if any.

(b) The Department shall not issue an examination bill for an examination that has not been completed by June 30, 2006. For purposes of this transition period, an examination shall be deemed to be complete when the examination team concludes its examination activities on site at the institution. In cases where the examination team has concluded its activities on site at the institution by June 30, 2006 but the Department has not completed the processing and review of

the examination report by that date, the bill issued for such an examination shall not include any charges for work performed after June 30, 2006 which was required for the Department to complete the processing and review of the examination report and/or to meet with the management or board of the regulated entity with regard to the examination findings.