

CHAPTER 43**LOANS IN GENERAL****§431. Applicability of chapter**

The sections of this chapter govern loans made by financial institutions subject to the provisions of this Title. [PL 1997, c. 398, Pt. I, §20 (AMD).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1997, c. 398, §120 (AMD).

§431-A. Loan powers

1. General loan authority. Unless otherwise prohibited by state law, a financial institution may make, sell, purchase, arrange, participate in, invest in or otherwise deal in loans or extensions of credit, as defined in section 439-A, for any purpose.

[PL 1997, c. 398, Pt. I, §21 (NEW).]

2. Written loan policy. A financial institution's governing body shall establish a written loan policy, which must be reviewed and ratified at least annually, that addresses at a minimum, the following:

A. Individual lending officer authority; [PL 1997, c. 398, Pt. I, §21 (NEW).]

B. Loan mix and diversification; [PL 1997, c. 398, Pt. I, §21 (NEW).]

C. Loan quality parameters; and [PL 1997, c. 398, Pt. I, §21 (NEW).]

D. Delegation of authority to officers and committees responsible for administering the portfolio.

[PL 1997, c. 398, Pt. I, §21 (NEW).]

[PL 1997, c. 398, Pt. I, §21 (NEW).]

SECTION HISTORY

PL 1997, c. 398, §121 (NEW).

§432. Interest on loans

1. Interest absent in writing. The maximum legal rate of interest on a loan made by a financial institution, in the absence of an agreement in writing establishing a different rate, shall be 6 percent per year.

[PL 1975, c. 500, §1 (NEW).]

2. Interest: noncommercial or consumer loans.

A. The legal rate of interest, whether set forth in writing or not, on a noncommercial or consumer loan, shall be established in accordance with and subject to the limitations set forth in Title 9-A.

A loan made by a financial institution which is secured by a first mortgage on real estate shall not be within the interest limitations set forth in Title 9-A; provided that the security interest in real estate is not given for purpose of evading said Title 9-A. [PL 1975, c. 500, §1 (NEW).]

[PL 1975, c. 500, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW).

§433. Fair credit extension

Every financial institution authorized to do business in this State shall be subject to and shall comply with the provisions of Title 5, sections 4595 to 4598 providing for the fair extension of credit by lenders in this State. [PL 1975, c. 500, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW).

§434. Loan participations and purchases

(REPEALED)

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1987, c. 785, §1 (AMD). PL 1997, c. 398, §122 (RP).

§435. Minority of borrower

1. Limitation on disability. The disability of minority of any person otherwise eligible for a loan, or guaranty or insurance of a loan, pursuant to the Act of Congress entitled the "Servicemen's Readjustment Act", 38 U.S.C. § 1801 et seq., as amended, and of the minor spouse of any eligible veteran, in connection with any transaction entered into pursuant to said Act of Congress, shall not affect the binding effect of any obligation incurred by such eligible person or spouse as an incident to any such transaction, including incurring of indebtedness and acquiring, encumbering, selling, releasing or conveying property, or any interest therein, if all or part of any such obligation be guaranteed or insured by the Government or the Administrator of Veterans' Affairs pursuant to said Act and amendments thereto; or if the Administrator be the creditor, by reason of a loan or a sale pursuant to said Act and amendments.

[PL 1975, c. 500, §1 (NEW).]

2. No additional rights. This section shall not create, or render enforceable any other or greater rights or liabilities than would exist if neither such person nor such spouse was a minor.

[PL 1975, c. 500, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW).

§436. Open-end mortgages

1. Authorization; requirements. Any interest in real property which may be mortgaged to a financial institution authorized to do business in this State may be mortgaged to secure existing debts or obligations, to secure debts or obligations created simultaneously with the execution of the mortgage, to secure future advances necessary to protect the security and to secure future advances to be made at the option of the parties up to a total amount stated in the mortgage; and all such debts, obligations and future advances, from and as of the time the mortgage is filed for record as provided by law, shall be secured by such mortgage and have priority over the rights of all persons who subsequent to the recording of such mortgage acquire any rights in or liens upon the mortgaged real estate. A mortgage securing future advances remains valid and retains its priority even if no funds have been advanced or all advances have been repaid so long as an agreement regarding advances remains in effect. Upon termination of the agreement regarding future advances and repayment of all advances, the mortgage shall be discharged. Such priority over subsequent persons shall be only to the extent that the aggregate amount outstanding at any one time of such debts, obligations and future advances does not exceed the total amount stated in the mortgage; except that:

A. The mortgagor or his successor in title is authorized to file for record, and the same shall be recorded in the same recording office as the original mortgage, a notice limiting the amount of optional future advances secured by such mortgage to not less than the amount actually advanced

at the time of such filing; provided that a copy of such filing is filed with the mortgagee; and [PL 1975, c. 500, §1 (NEW).]

B. The priority of such debts, obligations and future advances shall not include any future optional advances secured by such mortgage made by such institution after any such person, in addition to acquiring such subsequent right or lien, sends to the institution by registered mail or delivers to an officer of the institution and secures a receipt therefor, express written notice stating that any such optional advances thereafter made will be junior to such person's mortgage or lien upon or rights in such real estate. [PL 1975, c. 500, §1 (NEW).]

[PL 1985, c. 647, §7 (AMD).]

2. Future advances. "Future advances" referred to in subsection 1 shall include only those made to recipients designated in the mortgage.

[PL 1975, c. 500, §1 (NEW).]

3. Applicability limited. The provisions of this subsection may not be construed to affect or otherwise change the present law that allows mortgages stating nominal or no consideration to secure existing debts or obligations, or debts or obligations created simultaneously with the execution of the mortgage, to the extent of the actual debts or obligations, existing or granted; but such mortgages, when not also expressly providing for future advances to be made at the option of the parties, may not afford security for any future advances except those necessary to protect the security.

[RR 1991, c. 2, §23 (COR).]

4. Exemption. This section does not apply to mortgages that are recorded on or after January 1, 1994.

[PL 1993, c. 229, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1985, c. 647, §7 (AMD). RR 1991, c. 2, §23 (COR). PL 1993, c. 229, §1 (AMD).

§437. Repayment of noncommercial and consumer loans

(REPEALED)

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1997, c. 398, §123 (RP).

§438. Federal funds loans or sales

(REPEALED)

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1979, c. 429, §9 (AMD). PL 1997, c. 398, §124 (RP).

§439. Attorneys

(REPEALED)

SECTION HISTORY

PL 1979, c. 531 (NEW). PL 1983, c. 150, §2 (AMD). PL 1985, c. 311, §6 (RP).

§439-A. Lending limits

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Loans or extensions of credit" includes all direct or indirect advances of funds to a person that are made on the basis of any obligation of that person to repay the funds or that are repayable from

specific property pledged by or on behalf of the person. "Loans or extensions of credit" may include, to the extent specified by the superintendent, any liability of a financial institution to advance funds to or on behalf of a person pursuant to a contractual commitment. [PL 1991, c. 34, §8 (NEW).]

B. "Person" has the same meaning as defined in section 131, subsection 30. In determining loan limitations pursuant to subsection 2, the superintendent may further define "person," including, through rulemaking, the establishment of standards regarding the aggregation of loans with respect to related persons. [PL 1991, c. 34, §8 (NEW).]

[PL 1991, c. 34, §8 (NEW).]

2. Limitations. A financial institution subject to this Title or a service corporation established pursuant to section 445 may not make loans or extensions of credit outstanding at one time to a person in excess of 20% of its total capital. Except as provided in paragraph A, total loans or other extensions of credit in excess of 10% of total capital must be approved by a majority of the governing body or the executive committee of that institution or corporation. Any loan made in violation of this section is subject to the remedies prescribed in section 465-A.

A. The superintendent may grant a partial or full waiver of the voting requirement for loans or other extensions of credit in excess of 10% of total capital for good cause shown. In granting this waiver, the superintendent shall consider capital, management and resources of the financial institution or other relevant factors as determined by the superintendent. [PL 1999, c. 205, §1 (NEW).]

B. Any waiver granted pursuant to paragraph A may be withdrawn by the superintendent upon written notice to the financial institution. [PL 1999, c. 205, §1 (NEW).]

[PL 1999, c. 205, §1 (AMD).]

3. Exclusions from limitations. The limitations contained in subsection 2 are subject to the following exceptions:

A. Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse; [PL 1991, c. 34, §8 (NEW).]

B. Loans or extensions of credit to municipal corporations located within this State upon their bonds or notes; [PL 1991, c. 34, §8 (NEW).]

C. Loans or extensions of credit to the extent that they are secured or covered by guarantees, or by commitments or agreements to take over or purchase the loans or extensions of credit, made by any Federal Reserve Bank, the United States, this State or any department, bureau, board, commission, agency, authority, instrumentality or establishment of the United States or this State, including any corporation owned directly or indirectly by the United States or this State; [PL 1991, c. 34, §8 (NEW).]

D. Loans or extensions of credit secured by a segregated deposit account in the lending bank; [PL 1991, c. 34, §8 (NEW).]

E. Obligations as endorser, with or without recourse, or as guarantor, conditional or unconditional of dealer-originated obligations; and [PL 1991, c. 34, §8 (NEW).]

F. Sales of federal funds, interbank deposits, which do not include certificates of deposit, and clearings. [PL 1991, c. 34, §8 (NEW).]

[PL 1991, c. 34, §8 (NEW).]

4. Record of directors' actions. When loans in excess of 10% of total capital are approved, the records of the financial institution or service corporation must show who voted in favor of the loan. These records and those required by section 222 constitute prima facie evidence of the truth of all facts

stated in the records in prosecutions and civil actions to enforce the provisions and penalties under section 465-A.

[PL 1991, c. 681, §1 (AMD).]

5. Rulemaking. The superintendent may adopt rules to administer and carry out this section, including rules to define or further define terms used in this section and to establish limits or requirements other than those specified in this section if the superintendent determines that such action is necessary for the protection of depositors, investors or the public. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[PL 1997, c. 398, Pt. I, §26 (AMD).]

SECTION HISTORY

PL 1991, c. 34, §8 (NEW). PL 1991, c. 681, §1 (AMD). PL 1997, c. 398, §§125,26 (AMD). PL 1999, c. 205, §1 (AMD).

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