

## CHAPTER 257

AN ACT concerning the retention of records by certain financial institutions.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.17:16W-1 Declaration regarding records retention.

1. The Legislature declares that it is in the public interest to require State chartered financial institutions to retain certain records for specified periods of time. Creating record retention requirements will assist financial institution regulators in their supervisory role and in the examination of financial institutions, help resolve disputes between financial institutions and others, and prevent fraud against financial institutions. This act is intended to promote simplification of financial institution administration by acting as a basis for parity and uniformity with respect to record retention requirements.

C.17:16W-2 Definitions regarding records retention.

2. As used in this act:

"Date of the passbook" means the date of the last entry by the financial institution of a transaction with respect to the passbook account, or if the form of the passbook is such that it does not provide for entry of transactions, the last date for which the financial institution has a record of an account transaction. If there is no record of activity with respect to a passbook account subsequent to the issuance of the passbook, the date of issuance shall be the date of the passbook.

"Financial institution" means a State chartered bank, savings bank or savings and loan association.

"Owner" means the person or persons in whose name the account was opened.

"Passbook" means a document or record issued by a financial institution, which document or record represents an obligation of the financial institution, which obligation either has no fixed maturity or due date or which by its term is subject to automatic renewal or renewals for an indefinite time or indefinite number of times. Neither a periodic account statement nor any obligation for which applicable law provides a time by which the payment is due is a passbook for the purposes of this act.

"Passbook account" means an account which is evidenced by a passbook, certificate of deposit or similar document.

"Statement account" means an account which is not a passbook account and for which a financial institution supplies a periodic statement of the account's activity, balance or both, or supplies any other statement of the account as the owner and financial institution may agree.

C.17:16W-3 Statement accounts, certificates of deposit, passbook accounts; records.

3. A financial institution shall retain records of its accounts as follows:

a. Statement accounts:

(1) Records of transactions in a statement account sufficient to reconstruct the account and to trace checks, drafts and other orders shall be retained for not less than six years.

(2) Account opening records shall be retained for as long as the account is open, plus not less than six years after the closing of the account.

(3) Account closing records shall be retained for not less than six years after the closing of the account.

(4) A record of the last transaction or contact with the owner, pursuant to section 1 of P.L.1989, c.58 (C.46:30B-18), shall be retained for not less than 10 years after the date of the transaction or contact, as applicable.

b. Certificates of deposit which have a specific maturity date and which are not automatically renewed:

(1) Records of the account opening, transactions regarding the account, if any, and the closing of the account shall be retained for not less than six years following the stated maturity date.

(2) A record of the most recent transaction shall be retained for not less than 10 years after the date of the transaction.

c. Passbook accounts:

(1) Records of transactions in a passbook account sufficient to reconstruct the account shall

be retained for a period of not less than six years.

(2) Account opening records shall be retained for as long as the account is open, plus not less than six years after the closing of the account.

(3) Account closing records shall be retained for not less than 15 years after the closing of the account.

(4) A record of the last transaction or contact with the owner, pursuant to section 1 of P.L.1989, c.58 (C.46:30B-18), shall be retained for not less than 10 years after the date of the transaction or contact, as applicable.

C.17:16W-4 Passbook payment with no financial institution records.

4. The following rules shall apply if a passbook is presented to a financial institution for payment and the financial institution has no record of the account and there is no record of payment of the account to the State pursuant to any applicable escheat or unclaimed property act:

a. If the presentation of the passbook is made by a successor of the owner more than 15 years after the date of the passbook, there shall be a rebuttable presumption that the account was paid in full to or on behalf of the owner or to a successor of the owner. The passbook itself does not rebut this presumption.

b. If the presentation of the passbook is made by a successor of the owner within 15 years after the date of the passbook, there shall be a rebuttable presumption that the account exists and the financial institution is obligated to the owner's heirs, successors or personal representatives. An affidavit of lost passbook by the owner or successor to the owner made prior to the presentation of the passbook shall rebut the presumption of nonpayment and shall create a presumption that the account was duly paid in full to or on behalf of the owner or to a successor to the owner by the financial institution.

c. If the presentation of the passbook is made by the owner, and the presentation is accompanied by a sworn certificate of the owner that the owner never received payment of the account nor transferred the account, there shall be a rebuttable presumption that the account exists and that the financial institution is holding the account for the benefit of the owner. An affidavit of lost passbook by the owner or successor to the owner made prior to the presentation of the passbook shall rebut the presumption of nonpayment and shall create a presumption that the account was duly paid in full to or on behalf of the owner or to a successor to the owner by the financial institution.

C.17:16W-5 Loan, collateralized loans; records.

5. A financial institution shall retain records relating to the making, collection and administration of loans as follows:

a. For all loans:

(1) Records of bankruptcies of borrowers, judgments against parties obligated on the loan, and charge-off loans or closing of loan files shall be retained for at least 20 years after the closing of the loan.

(2) Litigation files shall be retained for not less than six years following the date of the final disposition of the litigation.

(3) Records of approval of loans or credit shall be retained for not less than six years after the closing of the loan or credit files.

(4) Records of denials of a loan applications shall be retained for not less than 25 months after the date of the denial.

(5) Loan files, including, but not limited to, appraisals, financial statements, information regarding collateral and the perfection of security interests, guarantees, credit information and correspondence with the borrower shall be retained for not less than six years after the closing of the loan file. For lines of credit and open-end loans, records of transactions shall be retained for six years after the date of a transaction.

(6) Loan committee minutes shall be retained for not less than six years after the date of the committee meeting.

(7) Record of compliance with all applicable State and federal regulatory requirements shall

be retained for the period specified in the applicable State or federal law or regulation. If no record retention period is specified in the law or regulation, the financial institution shall retain the records necessary to show compliance for not less than six years.

b. Collateralized loans:

(1) Records identifying the collateral perfection of the financial institution's security interest in the collateral and, for tangible personal property, the place and method of possession of the collateral shall be retained for not less than six years after the close of the file.

(2) Records of the disposition of the collateral that is personal property shall be retained for not less than six years after the date of disposition.

(3) For collateral that is real estate, records regarding the title, including searches, title insurance policies and legal opinions as to title shall be retained for at least 20 years after the date of disposition of the property if the property is transferred to a party other than the borrower. If the lien is released or otherwise satisfied and the borrower retains ownership of the property, the title records shall be retained for not less than six years. Records of foreclosure proceedings shall be retained for not less than 20 years after the date of the judgment of foreclosure or if no judgment, from the date of the termination of those proceedings.

(4) Records of escrow analyses and statements and of transactions in escrow accounts shall be retained for not less than six years.

C.17:16W-6 Records of checks, drafts, etc., six year retention.

6. A financial institution shall retain records of checks, drafts, money orders and cashier's checks issued by it for not less than six years after the date of issue. Records of certified checks and electronic transfers and of other means of transferring funds from the financial institution shall be retained for not less than six years after the date of transfer of the funds.

C.17:16W-7 Other records, records retention.

7. A financial institution shall maintain records relating to safe deposit boxes, which records include access records, access agreements, lease agreements, signature cards, records of payment for the rental or use of the box, power of attorney and records of abandoned property, for a period of not less than six years after the date of termination of the lease or access agreement. Correspondence which is not included as a record shall be retained for not less than three years after the date of the correspondence.

C.17:16W-8 Retention time period.

8. If any records are subject to the provisions of more than one of the time periods for the retention of records specified in sections 3 through 7 of this act, the longest time period for which those records are required to be retained shall be applicable.

C.17:16W-9 Retention period for records not covered by this act.

9. For any records not specifically covered by this act and for which there is no applicable state or federal retention period prescribed, the Commissioner of Banking and Insurance may, by regulation, establish minimum record retention requirements. Any regulations shall be consistent with retention periods for federally chartered banks and savings banks and should reflect the legislative intent of this act to provide parity and uniformity among financial institutions.

C.17:16W-10 Claims where records not required to be retained; statutes of limitations not affected.

10. a. In the event of any claim against a financial institution where the claimant relies in any way on records of the financial institution, which records are not required to be retained by the financial institution by the terms of this act or by other applicable State or federal record retention statutes or regulations and the records have not been retained by the financial institution, the fact that the financial institution does not have the records shall not give rise to any inference or presumption against the financial institution as to the content of the records nor shall the lack of the records shift any burden of proof from the claimant to the financial

institution.

- b. Nothing in this act shall be deemed to amend or alter any statute of limitations.

C.17:16W-11 Applicability.

11. The provisions of this act shall apply to all financial institutions chartered by this State and to the records of out-of-State banks, savings banks and savings and loan associations which relate to accounts, loans or other transactions which are made or located in this State. The provisions of this act shall apply to federally chartered banks and savings banks in this State to the extent that they are not inconsistent with applicable federal law.

12. This act shall be effective on the first business day following the date of enactment and shall apply to the records held by financial institutions on the effective date.

Approved October 15, 1999.