

RULES AND REGULATIONS

Title 10—BANKS AND BANKING

DEPARTMENT OF BANKING [10 PA. CODE CH. 41] Consumer Discount Companies

The Department of Banking (Department), under the authority contained in section 12 of the Consumer Discount Company Act (CDCA) (7 P. S. § 6212) amends the regulations to the CDCA codified in Chapter 41 (relating to consumer discount companies). The amendments implement the act of July 2, 1996 (P. L. 490, No. 80) (Act 80).

Purpose

The purpose of the amendments is to eliminate any discrepancy between the CDCA and its regulations.

Explanation of Regulatory Requirements

Act 80 amended the CDCA by raising the ceiling on permissible consumer discount company loans from \$15,000 to \$25,000. Act 80 amended the CDCA to permit licensed consumer discount companies to utilize a fictitious name as a substitute for, or in addition to, its corporate name. Act 80 removed the former requirement that a consumer discount company's corporate name contain the words "consumer discount company." The amendments remove the discrepancy between the CDCA and Chapter 41 as a result of the amendments to the CDCA in Act 80. Thus, the amendments make technical changes to Chapter 41. The amendments change "\$15,000" to "\$25,000" in several different provisions of the regulations. Additionally, the amendments set forth language which recognizes the new ability of a licensed consumer discount company to utilize a fictitious name as a substitute for, or in addition to, its corporate name.

Entities Affected

The final-form regulations will affect 76 licensed consumer discount companies in this Commonwealth, as well as any State or Federally-chartered banks or savings associations which originate loans under the CDCA. The final-form regulations also conform to the liberalized statutory requirements under which a licensed consumer discount company can extend credit to a consumer.

Public Comment

Written comments received by the Department were from the Independent Regulatory Review Commission (IRRC); J. W. Fleetwood, Vice President, Central Credit Fund, Inc.; Matthew Conlon, PHEA; James Novinger, Secretary/Treasurer, Jador, Inc.; and Linda S. Davis, Vice President and Deputy General Counsel, Commercial Credit.

Cost and Paperwork Requirements

These final-form regulations will impose no additional paperwork or costs to the Commonwealth, the Department or a political subdivision of this Commonwealth. The final-form regulations also will not impose additional costs or paperwork requirements upon the regulated community.

Effective/Sunset Date

The effective date is July 6, 1998.

There is no sunset date applicable to the regulations.

Summary of Comments and Responses on the Proposed Rulemaking

Notice of proposed rulemaking was published at 28 Pa.B. 44 (January 3, 1998).

The Department considered the written comments received in formulating the final-form regulations. The Department has completed a review of the comments and has prepared a Comment and Response Document that addresses each comment on the proposed amendments which is available from the Department.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 19, 1997, the Department submitted a copy of the proposed rulemaking to IRRC and the Chairpersons of the House Committee for Business and Economic Development and the Senate Committee on Banking and Insurance. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), the final-form regulations were deemed approved by the House and Senate Committees on May 4, 1998. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 7, 1998, and approved the final-form regulations.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 28 Pa.B. 44 (January 3, 1998).

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 10 Pa. Code Chapter 41, are amended by amending § 41.3 to read as set forth at 28 Pa.B. 44 (January 3, 1998) and by amending § 41.2 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order, 28 Pa.B. 44 and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary of the Department shall submit this order, 28 Pa.B. 44 and Annex A to IRRC and the Senate Committee on Banking and Insurance and House Committee on Business and Economic Development as required by the Regulatory Review Act.

(d) The Secretary of the Department of Banking shall certify this order, 28 Pa.B. 44 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect July 6, 1998.

RICHARD C. RISHEL,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)

Fiscal Note: Fiscal Note 3-36 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 10. BANKS AND BANKING

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

CHAPTER 41. CONSUMER DISCOUNT COMPANIES

§ 41.2. Advertising.

(a) In a printed or written advertisement, a licensee shall set forth its corporate or fictitious business name, or both, as designated in its license certificate; except that with respect to direct mail solicitation, it is only necessary for a licensee to set forth its corporate or fictitious business name, or both, once on any one of the pieces constituting a mail solicitation. A licensee shall set forth prominently its corporate or fictitious business name, or both, as designated in its license certificate on or at the entrance to its place of business. A licensee shall retain copies of advertising matter for at least 6 months following the final public dissemination of the advertising and shall make the advertising available upon request for inspection by the Administrator.

(b) The Administrator will prohibit the use of advertising matter by a licensee which, in his opinion, is false, misleading or deceptive or encourages the purchase of debt instruments from a licensee or its affiliates when the licensee knows or has reason to know that the debt instrument may not be paid at maturity. A licensee referring to payments on loans in an advertisement shall specify the amounts of the payments and the number of payments or period of time required to discharge the obligation.

(c) A licensee may not use the term "legal rates" in an advertisement, nor may similar phrases be used in an advertisement wherein the use might mislead the public into believing that the rate charged is the legal rate established by section 202 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 202). A licensee may not use the phrases "low rates," "lower rates," "lowest rate in the city" or other similar phrases unless the licensee is able to substantiate the statements to the satisfaction of the Department, upon request.

(d) Advertisements of a licensee shall be limited to the business contemplated by the act, except that a licensee may combine an advertisement of that business with an advertisement of another leading business if the advertisement clearly distinguishes the amounts of loans or the types of transactions offered by the respective businesses. The charges applicable to each type of loan or transaction shall be shown when reference is made to rates charged in combined advertising.

(e) On direct loans referred to licensees by dealers or merchants in which a part of the loan is paid to dealers or merchants in payment for goods or services, as authorized by a consumer, the Administrator reserves the right to ascertain whether the selling price of the goods or services is reasonable in order to detect the concealment of illegal commissions, fees or other charges to a consumer. A licensee who knowingly participates in the granting or solicitation of loans embodying illegal fees or in the granting or solicitation of loans where consumers are induced by a person to purchase merchandise to obtain a loan shall refund the charges to the consumer and shall be subject to the penal provisions of the act and revocation of license.

[Pa.B. Doc. No. 98-922. Filed for public inspection June 12, 1998, 9:00 a.m.]

Title 22—EDUCATION

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

[22 PA. CODE CH. 213]

Benefit Payment Plan

The Public School Employees' Retirement Board (Board) is adopting an amendment to § 213.45 (relating to change in benefit payment plan) to read as set forth in Annex A, by removing the requirement that once an application for an annuity (benefit payment plan) has been filed, the option selection is irrevocable.

Purpose of the Final-Form Rulemaking

The amount of a member's retirement annuity depends on many factors, chief of which are the member's final average salary and years of service. Although the Public School Employees' Retirement System (PSERS) maintains records on these factors for each of its 300,000 members, the source of this information is the members' employers. The collection and verification of this data, particularly when a member retires, has the potential to delay a member's annuity.

As a consequence, PSERS, in an effort to provide an immediate source of income to newly retired members, calculates the amount of a member's annuity using the information then available to the PSERS. This results in a member receiving his first annuity check within 2—3 weeks of retirement and thus avoids a major disruption in a member's lifestyle. Once benefit payments commence, PSERS proceeds to audit the final salary and service information from the member's annuity. If this final audit shows that the initial annuity payments made to the member were either over or under stated, then an adjustment is made prospectively to reflect the correct final annuity. Further, all over or under payments, if any, made to the member from the date of retirement to the date of the final audit of the annuity are collected from or paid to the member, as the case may be.

Because of this delay between the initial payment and final audit of the member's account, a trap is created to the unwary member by the current regulation. The purpose of the final-form regulation is to eliminate that trap. The final-form rulemaking has not enlarged the scope of the proposed rulemaking.

Specifically, the present regulation requires a member to finalize the retirement contract (by selecting from a

series of complex retirement options) when the member files the retirement application. Because this application is what commences PSERS' process in determining a member's initial and final annuity, the member is, in effect, forced to make irrevocable choices which could adversely affect a member's pension for the rest of the member's life, without full knowledge of the final status of his account. For example, a member may decide to retire believing that he has 30 years of service and thus is eligible to retire below the normal retirement age (known as "30 and out") without suffering an early retirement reduction in his pension. Having made the decision to retire with expectations of an annuity at a certain amount, the member learns for the first time after the final audit is conducted that, in fact, he has only 29.9 years of service. The result is that the member suffers a large and permanent reduction in his pension benefit.

The final-form rulemaking seeks to correct this problem by making the member's retirement contract final, not when the retirement application is filed with incomplete knowledge, but when the final audit has occurred. The amendment will allow the member a reasonable period of time to make an informed and final election. In short, PSERS is seeking to revise the present regulation to conform its rule on the finality of retirement application with its current practice on the payment of final, audited retirement benefits. By doing so, PSERS will not only have a consistent operating procedure but, more important, will eliminate a potential significant hardship for its members.

Statutory Authority

The Board's authority to promulgate rules and regulations for the uniform administration of the PSERS is in the Public School Employees' Retirement Code (Retirement Code) 24 Pa.C.S. § 8502(h).

The final-form rulemaking is authorized by 24 Pa.C.S. §§ 8307(a), 8345(a), 8505(g) and 8507(j). The Board's authority to promulgate rules and regulations for the uniform administration of the PSERS is under 24 Pa. C.S. § 8502(h).

Public Comment

The Board received no comments from the public on the proposed amendment.

Comments from IRRC, the House Education Committee and the Senate Finance Committee

The Board received comments from the standing committees, the Public Employee Retirement Commission (Retirement Commission) and IRRC. These comments are considered as follows:

1. IRRC commented that the definition of "effective date of retirement" provided in the proposed amendment contained substantive requirements rather than defining the term in question.

To remedy this concern, the amendment to the definition of "effective date of retirement" has been deleted from the final-form regulation. Further definition of "effective date of retirement" is not necessary to the administration of the change in benefit payment plan regulation.

2. The House Education Committee recommended that PSERS "provide language to limit the discretionary nature of the benefit." The Committee was concerned that the regulation was providing a general right to all members, even though only 21 out of approximately 20,000 members who filed an application for an annuity

since February 1994 have appealed their retirement elections to the Board.

To address these concerns, subsection (a) in the final-form regulation has been redrafted to limit eligibility to annuitants who file an intent to change the final terms of the benefit payment plan within 30 days of the member's receipt of the initial benefit letter sent to the member by the PSERS. The letter is deemed received by the member 3 business days after mailing by the PSERS. This change in the final-form regulation was deemed necessary to address the issue of the members having to make a complicated set of retirement decisions in a short time frame, which was part of the rationale for the proposed amendment.

Subsection (b) of the final-form regulation has been added to address the issue of limiting the discretionary nature of the ability to file an intent to change the benefit payment plan. Subsection (b) allows the filing of an intent to change the benefit payment plan within 30 days after the member's receipt of the statement provided in 24 Pa.C.S. § 8505(g) (relating to the initial annuity payment and certification of accumulated deductions, service credit, final average salary and total annuity payable). The statement is deemed received 3 business days after mailing. An intent to change may be filed, only if: (1) the annuitant's retirement records contain a mistake and the mistake results: (i) either in a change in the monthly annuity of 5% or more; or (ii) the member losing eligibility for a benefit other than an annuity; or (2) there is a written error on the application.

3. IRRC commented that the window of opportunity for an annuitant to request a change in annuity payment has been left wide open because the Board has not established any time limit within which annuitants must take advantage of the opportunity. IRRC suggested a 60-day window. This would limit the amount of time that the Board could expect 2-year old accounts to resurface for consideration. The Retirement Commission also commented that it is not clear why the regulation was proposed to be retroactive to February or April 1994.

To address this concern, subsection (j) of the final-form regulation has been redrafted. The regulation will be effective upon final promulgation in the *Pennsylvania Bulletin*, except for the relatively few annuitants, who, prior to the effective date: (1) requested a change in their benefit payment plan; (2) appealed the PSERS's denial; and (3) otherwise qualify under the regulations.

4. Both IRRC and the Retirement Commission commented that the proposed amendment should be clarified so it is clear that the PSERS shall provide counseling to the annuitant within 30 days after the Board receives the declaration of intent to change the benefit payment plan. The proposed amendment did not impose a counseling duty on anyone.

IRRC also commented that since a member is not required to go through counseling prior to the initial election, counseling is not necessary for every member requesting a change in benefit payment plan. IRRC suggested a revision to allow members options, such as telephone counseling sessions, to lessen the potential burdensomeness of this requirement.

In response to these comments, the counseling subsection (d) has been rewritten to: (1) make clear that the PSERS has a duty to counsel; and (2) allow the member to waive counseling, or receive telephone counseling. The long paragraphs in the proposed amendment have been simplified in the final-form regulation.

5. The proposed amendment provided that a document is not filed with the PSERS until the PSERS has actual, physical receipt in its offices. The Retirement Commission recommended that at least a 'modified mailbox rule' be adopted.

In response to this concern, subsection (i) of the regulation has been rewritten to allow the PSERS to accept the postmark date as the date of filing if a document has been properly sent certified mail, return-receipt requested. The regulation also allows the PSERS to accept the date a document is sent by facsimile as the filing date if the original is received by the Board within 10 days.

6. The proposed amendment lacked language indicating that the so-called "accelerated benefit option" is not available to annuitants who retired after January 1, 1995.

In response, subsection (a)(2) of the proposed rule-making (subsection (c) of the final-form regulation) has been deleted in the final-form regulation. A change to the "accelerated benefit option" will not be an allowable change under the final-form regulation.

7. During the final-form regulation review process, several minor technical corrections were made to the proposal, as follows: (i) subsection (a) gives the member 30 days (rather than the originally proposed 15) days to elect to change an option after the member's receipt of the PSERS's initial benefit letter. Receipt is presumed 3 business days after mailing; (ii) the member has another option to change within 30 days after the member's receipt of the PSERS's final benefit letter, if one of the two listed conditions has been met. Receipt is presumed 3 business days after mailing of the final benefit letter; and (iii) the word "scrivener's" in the second condition has been changed to "written" to clarify that the member can change an option if the member demonstrates that a written error was made on the application for annuity.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 232 (January 20, 1996), to IRRC and the Chairpersons of the House Education Committee and the Senate Finance Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing this final-form regulation, the Board has considered all comments received from IRRC, the Committees and the public.

IRRC disapproved the final-form regulation at its March 12, 1998, meeting for several minor technical corrections. The revised final-form regulation was deemed approved by the House Education Committee and the Senate Finance Committee on May 6, 1998. IRRC met on May 7, 1998, and approved the final-form regulation in accordance with section 5(c) of the Regulatory Review Act.

Fiscal Impact and Paperwork Requirements

The final-form regulation does not impose increased costs or increased paperwork requirements on the Commonwealth, local governments, the private sector or the general public. The Board will be required to provide additional benefit counseling to members seeking to amend their original retirement contract.

Persons Affected

The final-form regulation affects all retiring members of PSERS, including those members who have multiple service membership.

Effective Date

This section shall be effective immediately upon final promulgation in the *Pennsylvania Bulletin*. This regulation also applies to those annuitants who, prior to the effective date: (1) requested a change in their benefit payment plan; (2) appealed the PSERS's denial; and (3) otherwise qualify under these regulations.

Sunset Date

A sunset date is not being established for this regulation because it is necessary for the administration of the substantive provisions of the Retirement Code. The Board will closely monitor the regulation for its effectiveness.

Further Information

Individuals who need information about the final-form regulation may contact Frank Ryder, Director, Government Relations, Public School Employees' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17101.

Finding

The Board finds that:

(1) Public notice of the Board's intention to adopt the regulation herein was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form regulation is necessary and appropriate for the administration of the Public Retirement Code.

Order

The Board, acting under its authorizing statute orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 213, are amended by amending § 213.45 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and Office of General Counsel as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES A. PERRY,
Secretary

(Editor's Note: The proposal to amend § 211.2 (relating to definitions) included in the proposed rulemaking published at 26 Pa.B. 232 (January 20, 1996) has been withdrawn by the Board.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)

Fiscal Note: 43-6. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XIII. PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

CHAPTER 213. CONTRIBUTIONS AND BENEFITS

§ 213.45. Change in benefit payment plan.

(a) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the initial benefit letter sent to the member by the System. The letter will be deemed to be received by the annuitant 3 business days after the date of mailing.

(b) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the statement provided for in section 8505(g) of the code (relating to statement will be deemed to be received by the annuitant 3 business days after the date of mailing), if one of the following conditions are met:

(1) The annuitant's retirement records contain an error regarding service credit, salary or accumulated deductions which was not corrected by the System until after the application for an annuity was filed, and one of the following applies:

(i) The difference between the monthly annuity as corrected and the monthly annuity calculated with the error is more than 5%.

(ii) The error results in the member losing eligibility for a benefit other than an annuity.

(2) The annuitant demonstrates that the annuitant, or the annuitant's agent, made a written error on the application for an annuity. The System will not consider a change in the life circumstances of the annuitant, beneficiaries or survivor annuitants (for example—death, divorce, illness and accident) as evidence of a written error.

(c) The intended changes may include one or a combination of the following:

(1) A change in the amount of money withdrawn under Option 4.

(2) A change in the retirement annuity type, if the member is otherwise eligible for the annuity.

(3) A change in the retirement option, including a change in the survivor annuitant under the existing option selection.

(4) A voiding of the application for an annuity.

(5) A change in the effective date of retirement, if the date is not:

(i) Before the earliest date the annuitant was eligible to select on the date the original application for an annuity was filed.

(ii) Later than 90 days after the intent to change is filed.

(d) An annuitant who has declared an intent to change under subsection (a) or (b) will not be permitted to complete the change unless the annuitant receives counseling on the benefits available under the code, or

executes a written waiver of counseling on a form prescribed by the System. The counseling is subject to the following rules:

(1) The counseling shall be provided by an employee or an authorized representative of the System.

(2) Counseling, or a written waiver, shall take place within 30 days of the filing of the intent to change.

(3) The Secretary of the Board may extend the period for counseling upon written request filed within the 30-day period, but the period for counseling may not be greater than 90 days.

(4) If counseling takes place over several sessions, the sessions shall take place within the allowed time period.

(5) If the annuitant fails to receive counseling, or to file a written waiver, within the allowed time period, the intent to change will be deemed withdrawn.

(6) Counseling may be conducted by telephone when approved, and under conditions specified, by the Secretary.

(e) A formal request to void or change the application for an annuity shall be filed with the System within 30 days of the date of completion of counseling, or within 30 days of the filing of the written waiver of counseling. If the System does not receive the formal request to void or change the application for an annuity within the prescribed time period, the intent to change will be deemed withdrawn.

(f) The right to void or change a benefit payment plan is personal to the annuitant and may only be exercised by the annuitant or the annuitant's attorney in fact. The estate, spouse, alternate payee, survivor annuitants or beneficiaries of an annuitant may neither file nor complete an intent to void or change the benefit payment plan. If an annuitant dies before filing or completing an intent to void or change the benefit payment plan, the intent will be deemed withdrawn.

(g) An annuitant may file an intent to change one time under subsection (a) and one time under subsection (b).

(h) Changes will be retroactive to the member's original effective date of retirement unless the date is changed as part of the changed application for an annuity.

(1) For a changed application to become effective, the annuitant shall return any excess monthly annuity payments or moneys withdrawn under Option 4 by one of the following methods:

(i) A lump sum payment within 30 days after the date of certification of the amount due

(ii) Actuarial reduction.

(2) For an annuity to be voided, the annuitant shall either return all moneys received in a lump sum within 30 days after the date of certification of the amount due or elect a debt to be applied to the annuitant's account.

(3) If the annuitant fails to return the required amounts or elect a debt as the case may be, the intent to change or void will be deemed withdrawn.

(i) For purposes of this section, the System will consider a document as filed only upon actual receipt by the System. For a document properly sent certified mail, return receipt requested, the System will deem the postmark date to be the date of filing. For a document sent by facsimile, the System will accept the date of the

facsimile as the date of filing, if the original document is actually received within 10 days of the date of the facsimile.

(j) This section is effective June 13, 1998. This section also applies to annuitants who, prior to June 13, 1998:

- (1) Requested a change in their benefit payment plan.
- (2) Appealed the System's denial.

(3) Otherwise qualify under this section.

(k) Nothing in this section allows the annuitant to change a benefit payment plan in a manner inconsistent with the terms of an approved domestic relations order under sections 8533.1—8533.4 of the code.

[Pa.B. Doc. No. 98-923. Filed for public inspection June 12, 1998, 9:00 a.m.]
