Hawaii Statutes

**§ 412:9-100. Definitions**

In this article:

"Consumer loan" means a loan made to a natural person primarily for personal, family, or household purposes:

(1) In which the principal amount does not exceed $25,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding $25,000; or

(2) Which is secured by real property, or by personal property used or expected to be used as the borrower's principal dwelling.

"Depository financial services loan company" means a financial services loan company that is authorized to accept deposits by this chapter and whose deposits are insured by the Federal Deposit Insurance Corporation.

"Financial services loan company" means a corporation which is engaged in making loans where the interest charged, contracted for or received is in excess of rates permitted by law other than this article. No person may use the term financial services loan company or hold itself out as engaging in the business of a financial services loan company unless licensed or authorized in accordance with this chapter. Financial services loan companies were previously known as "industrial loan companies".

"Nondepository financial services loan company" means a financial services loan company that is not authorized to accept deposits.

"Open-end credit" means a loan by a financial services loan company under a plan which:

(1) The financial services loan company reasonably contemplates repeated transactions;

(2) The financial services loan company may impose a finance charge from time to time on an outstanding unpaid balance; and

(3) The amount of credit that may be extended to the borrower during the term of the plan (up to any limit set by the financial services loan company) is generally made available to the extent that any outstanding balance is repaid.

"Principal" or "principal amount" means the face amount of the note or other form of contract.

"Service corporation" means a corporation whose stock is owned entirely by one or more depository financial services loan companies.

Credits
Laws 1993, ch. 350, § 1.

**§ 412:9-101. Necessity for financial services loan company license**

Except as expressly permitted by federal law or this chapter, no person shall engage in any activity for which a license to operate as a financial services loan company is required by this chapter, including without limitation, making loans and extensions of credit where the interest charged, contracted for, or received is in excess of rates permitted by law other than this article, the use of the term "financial services loan company", or the exercise of such other powers or privileges restricted to financial services loan companies under applicable law unless it is a corporation incorporated in this State and has such a license; provided that a nondepository financial services loan company shall not be required to be incorporated in this State.

Credits
Laws 1993, ch. 350, § 1; Laws 1996, ch. 63, § 6; Laws 2002, ch. 40, § 32.

**§ 412:9-103. Display of license**

Every financial services loan company shall display a copy of its principal office license in a conspicuous place at its principal office and shall display a copy of a branch office license in a conspicuous place at the branch office designated on the branch office license.

Credits
Laws 2008, ch. 196, § 1, eff. July 1, 2008.

**§ 412:9-200. General powers**

Except as expressly prohibited or limited by this chapter, a financial services loan company shall have the power to make loans where the interest charged, contracted for, or received is in excess of rates permitted by law, other than this article, and to engage in other activities that are usual or incidental to the business for which it is licensed, and shall have all rights, powers, and privileges of a corporation organized under the laws of this State, including but not limited to, the power to:

(1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;

(2) Borrow money from any source within or without this State;

(3) Charge or retain a fee for the originating, selling, brokering, or servicing of loans and extensions of credit;

(4) Discount, purchase, or acquire loans, including but not limited to notes, credit sales contracts, mortgage loans, or other instruments;

(5) Become the legal or beneficial owner of tangible personal property and fixtures and such other real property interests as shall be incidental thereto, to lease such property, to obtain an assignment of a lessor's interest in a lease of the property, and to incur obligations incidental to the financial services loan company's position as the legal or beneficial owner and the lessor of the property;

(6) Sell or refer credit related insurance products, and collect premiums or fees for the sale or referral thereof, including, but not limited to, credit life insurance, credit disability insurance, accident, and health or sickness insurance, involuntary unemployment insurance, personal property insurance, and mortgage protection insurance;

(7) Make investments as permitted under this article;

(8) Charge to a borrower a returned check fee if a check that has been tendered by the borrower in payment on account of a loan is returned unpaid; provided that:

(A) The fee shall not exceed $20;

(B) The fee shall be imposed under a separate billing, and shall not be added to a borrower's outstanding loan balance nor deducted from a loan payment; and

(C) A failure to pay the fee shall not constitute a default under any outstanding loan agreement between the borrower and the financial services loan company; and

(9) Charge to a borrower a "below minimum draft fee" of $10 per draft for the processing costs involved on a draft written below the minimum amount established on an open-ended loan.

Credits
Laws 1993, ch. 350, § 1; Laws 1995, ch. 26, § 1; Laws 2005, ch. 38, § 1; Laws 2013, ch. 172, § 8, eff. June 24, 2013.

**§ 412:9-201. Powers that require regulatory approval**

(a) A financial services loan company may sell or refer the following products and services and collect premiums or fees for the sale or referral thereof only after obtaining the approval of the commissioner:

(1) Accidental death and dismemberment insurance, whether or not connected with a loan, provided that the purchase of this insurance must be voluntary and not required as a condition of a loan. The approval of the insurance commissioner must also be obtained prior to the sale of any insurance product; and

(2) Auto club memberships and home and automobile security plans, whether or not connected with a loan and extension of credit, provided that the purchase of any such service or product must be voluntary and not required as a condition of a loan.

(b) In approving any request to sell or refer the products and services in subsection (a), the commissioner may impose such conditions and restrictions that are in the public interest.

(c) A financial services loan company may issue standby letters of credit only after obtaining the written approval of the commissioner. In approving any request to issue standby letters of credit pursuant to this subsection, the commissioner may impose conditions and restrictions that are in the public interest. Any depository financial services loan company issuing standby letters of credit shall include those standby letters of credit with all other loans and extensions of credit for the purpose of calculating the limit on loans and extensions of credit to one borrower under section 412:9-404. Any nondepository financial services loan company issuing standby letters of credit shall report the aggregate amount of their standby letters of credit outstanding under MEMORANDA--Total Standby Letters of Credit Outstanding, on their financial statements submitted to the commissioner pursuant to section 412:3-112. The aggregate amount of the standby letters of credit outstanding shall not exceed twenty per cent of a nondepository financial services loan company's capital and surplus. Standby letters of credit issued by a nondepository financial services loan company shall not be used for consumer loan transactions. The issuing nondepository financial services loan company shall identify itself as a nondepository financial services loan company in the standby letter of credit.

Credits
Laws 1993, ch. 350, § 1; Laws 1996, ch. 9, § 1.

**§ 412:9-202. Prohibitions**

Except as otherwise expressly authorized by this chapter, a financial services loan company shall not:

(1) Employ its funds, directly or indirectly, in trade or commerce by buying or selling ordinary goods, chattels, wares, and merchandise, or by owning or operating industrial or manufacturing plants of any kind;

(2) Issue commercial letters of credit;

(3) Sell real estate, securities, or insurance; or

(4) Engage in any activity requiring a charter as a trust company under article 8.

Credits
Laws 1993, ch. 350, § 1.

**§ 412:9-300. General requirements for loans and extensions of credit**

A financial services loan company shall make loans and extensions of credit that are consistent with prudent lending practices, and in compliance with all applicable federal and state laws.

Credits
Laws 1993, ch. 350, § 1.

**§ 412:9-301. Interest computation methods**

A financial services loan company may charge, contract for, and receive interest on loans on a precomputed basis or a simple interest basis.

(1) Precomputed loans are loans where interest is paid or deducted in advance at the inception of the loans. The two types of precomputed loans, discount and add-on, are as follows:

(A) Under the discount method, interest is computed on the principal amount of the loan for the full term of the loan as though the principal amount were to remain outstanding and unpaid for the full term of the loan. The interest and other authorized and permitted charges may be deducted from the principal amount at the time the loan is made and may be retained by the financial services loan company and applied (in the case of other charges) for the purposes authorized by this article. Interest may be computed and retained in this manner notwithstanding the fact that periodic payments to reduce the principal amount are required on the loan and the borrower does not receive the full principal amount, but only the balance thereof after the deductions;

(B) Under the add-on method, interest is computed on the amount to be actually received by the borrower, as though the amount were to remain outstanding and unpaid for the full term of the loan. Interest and other authorized and permitted charges may be added to the amount to be actually received by the borrower, and the total amount produced by the addition may then be constituted the principal amount of the loan. The amount of the interest and other authorized and permitted charges so added may then be deducted from the principal amount and retained by the financial services loan company at the time the loan is made. Interest may be computed and retained in this manner notwithstanding the fact that periodic payments to reduce the principal amount are required on the loan and that the amount received by the borrower is less than the principal amount by the amount of the interest and other charges;

(2) Simple interest loans are loans on which interest is computed on the principal balance remaining unpaid from time to time. “Principal balance remaining unpaid” is defined as the original principal amount less payments applied to reduce the original principal amount.

Credits
Laws 1993, ch. 350, § 1.

**§ 412:9-302. Interest rates**

(a) A financial services loan company shall have the right to charge, contract for, and receive interest, fees and other charges on loans, as permitted by chapter 478, or as otherwise permitted by law.

(b) In addition to and without limiting the authority granted by subsection (a), for any loan on which interest is calculated under the authority of section 412:9-301, a financial services loan company may charge, contract for, and receive interest at any rate which does not exceed the maximum rate allowed by this section:

(1) For precomputed loans, interest that is paid or deducted in advance shall not exceed fourteen per cent a year for the first eighteen months or portion thereof, plus ten and one-half per cent a year for the next twelve months or portion thereof, plus seven per cent a year for the next twelve months or portion thereof, plus four per cent a year for the last six months or portion thereof, of the term of the loan. The maximum term of a precomputed loan where the preceding rates are charged will be forty-eight months. If the term of a precomputed loan exceeds forty-eight months, the financial services loan company may charge, contract for, and receive a "finance charge" in any form or forms at an "annual percentage rate" not to exceed twenty-four per cent a year, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The terms "finance charge" and "annual percentage rate" shall have the same meaning as under the Truth in Lending Act.

(2) For simple interest loans, a financial services loan company may charge, contract for, and receive a "finance charge" in any form or forms at an "annual percentage rate" not to exceed twenty-four per cent a year, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The terms "finance charge" and "annual percentage rate" as used in this subsection shall have the same meaning as under the Truth in Lending Act.

The rate in this subsection shall be applicable to any simple interest loan, whether or not the Truth in Lending Act applies to the transaction, notwithstanding the fixed or variable manner in which interest or a finance charge may be computed under the loan, and whether or not the contract uses the terms "interest" or "annual percentage rate" or "finance charge" or any combination of such terms.

For rate computation purposes the financial services loan company conclusively shall be presumed to have given all disclosures in accordance with the terms of the loan that are contemplated by the Truth in Lending Act, including those necessary to exclude any charges from the finance charge.

(c) On maturity of a loan, the rate of interest on the unpaid principal balance of the loan shall be twenty-four per cent a year, unless a lesser rate is specified in the note or other form of contract signed by the borrower as an after-maturity interest rate.

(d) Any open-end loan account that is also a "credit card agreement" as defined in section 478-1 shall be subject to the rate limitations in section 478-4 rather than the rate limitations in this article.

Credits
Laws 1993, ch. 350, § 1.

**§ 412:9-303. Effect of excessive interest**

If a greater rate of interest than that permitted under this article is contracted for in any loan under this article, the loan shall not, by reason thereof, be void. But, if in any action on the loan, proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the financial services loan company shall only recover the amount actually received by the borrower in cash, credit or the equivalent thereof plus the charges, if any, which were properly charged to the borrower and which have not been deducted from the principal amount of the contract or otherwise paid by the borrower. The borrower shall only recover costs. If interest has been paid, judgment shall be for the recoverable amount less the amount of interest paid. Sections 478-5 and 478-6 shall not apply to loans made under this article by financial services loan companies.

Credits
Laws 1993, ch. 350, § 1.

**§ 412:9-304. Consumer loan charges**

Unless specifically authorized in this article or by rule adopted by the commissioner, a financial services loan company shall only have the right to charge, contract for, and receive in advance or otherwise, the following charges in addition to the interest permitted in section 412:9-302 for a consumer loan made under this article, including but not limited to a first-lien mortgage loan:

(1) Late charges under the consumer loan on any delinquent installment, or portion of the delinquent installment where there has been no extension or deferment. Delinquency occurs when the installment or payment is not paid on the due date. Late charges shall not be collected more than once for the same delinquent installment. Late charges on any consumer loan shall not exceed five per cent of the delinquent installment, and late charges shall not be assessed on any consumer loan after acceleration of the maturity of the consumer loan;

(2) A prepayment penalty as provided in the note or other form of contract signed by the borrower on any amount that is voluntarily prepaid; provided that:

(A) The prepayment penalty on any consumer loan with a term of five years or more that is primarily secured by an interest in real property and in which the interest rate is computed under section 412:9-301(2) and which is prepaid within five years of the date of the loan shall be computed on the amount prepaid in excess of twenty per cent of the original principal amount of the loan in any twelve-month period measured from the date of the loan or from any anniversary of the loan date. The prepayment penalty may be charged only on amounts in excess of the twenty per cent amount in each twelve-month period in such five-year period and shall not exceed six months of interest at the then-applicable loan interest rate on the amount prepaid; provided that the interest rate is permissible under applicable usury law;

(B) The prepayment penalty shall not be charged on a consumer loan that is a variable rate or open-end loan, on a precomputed loan on which interest is computed under section 412:9-301(1), or on loans that are not secured by real estate; and

(C) The prepayment penalty shall not be charged on any amount that is paid because of the exercise of any acceleration provision by the financial services loan company;

(3) Extension or deferment charges on any payment on account of the principal balance of a loan, or a portion thereof, that is due on a particular date, but is extended or deferred to a later date by mutual agreement. The charges shall be based upon the amount so extended or deferred at interest not exceeding that permitted upon the original loan under section 412:9-302, for the actual period of the extension or deferment. The extension or deferment charges may be collected either in advance at the commencement of the period of extension or deferment or otherwise as agreed. The term and conditions of the extension or deferment, including the amount of the consumer loan so extended or deferred, and the period of, and the charge for the extension or deferment shall be set forth in writing and signed by the borrower with one copy given to the borrower;

(4) Nonrefundable discount, points, loan fees, and loan origination charges; provided that:

(A) Discount, points, loan fees, and loan origination charges shall not be charged on precomputed loans on which interest is computed under section 412:9-301(1); and

(B) The nonrefundable discount, points, loan fees, and loan origination charges shall be permitted on consumer loans on which interest is computed under section 412:9-301(2) if the consumer loan is secured by an interest in real property or if the consumer loan is made to a lessee of land subject to the Hawaiian Homes Commission Act and the loan, but for the provisions of the Act, would be secured by a mortgage on the leasehold interest. Provided further that, except for open-end loans, the nonrefundable discount, points, loan fees, and origination charges shall be included as interest to determine compliance of the loan with the interest rate limits under section 412:9-302(b)(2) when the consumer loan is made.

The nonrefundable discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan commitment agreement or other form of contract is executed and the commitment fee paid, or on the date the consumer loan is made, and shall not be subject to refund on prepayment of the consumer loan;

(5) Fees, charges, and expenses reasonably related to the consumer loan that are retained by the financial services loan company; provided that the fees, charges, and expenses are charged only on consumer loans that are secured by an interest in real property; and provided further that the total dollar amount of the fees, charges, and expenses, whether or not itemized, shall not exceed one per cent of the principal amount of the loan. The fees, charges, and expenses may include but are not limited to notary fees, appraisal fees, appraisal review fees, and fees for the development, processing, and preparation of loan documents, including deeds, promissory notes, mortgages, and reconveyance, settlement, and similar documents;

(6) Fees, charges, and expenses reasonably related to the consumer loan that are actually paid to third parties, affiliates, or subsidiaries for services actually rendered, no portion of which is rebated, refunded, or paid directly or indirectly to the financial services loan company by the third parties, affiliates, or subsidiaries. The fees, charges, and expenses may

include but are not limited to charges for credit reports, actual taxes, and fees charged by a governmental agency for recording, filing, or entering of record any security agreements or instruments, including the partial or complete release of such security agreements or instruments, insurance premiums of the kind and to the extent described in paragraph (2) of subsection (e) of section 226.4 of Regulation Z of the Board of Governors of the Federal Reserve System and to the extent that the insurance premium does not exceed $20, appraisal fees, appraisal review fees, title report or title insurance fees, mortgage reserve funds to be used for payment of taxes, insurance, lease rent and condominium assessments, real property tax services fees, wire transfer fees, and attorney's fees and expenses for documentation of the consumer loan or for the collection of any consumer loan in default.

Credits
Laws 1993, ch. 350, § 1; Laws 1995, ch. 26, § 2; Laws 1995, ch. 39, § 1; Laws 1995, ch. 44, § 1; Laws 1997, ch. 158, § 2; Laws 2005, ch. 38, § 2; Laws 2008, ch. 196, § 7, eff. July 1, 2008.

**§ 412:9-305. Open-end consumer loans**

(a) Open-end consumer loans made under the authority of this article shall be subject to the following special restrictions:

(1) A financial services loan company shall not compound interest on any open-end consumer loan by adding any unpaid interest to the unpaid principal balance of the open-end loan. However, the unpaid principal balance may include charges other than interest and late charges;

(2) Regardless of the interest computation method used in each billing cycle under an open-end loan agreement, the unpaid principal balance of any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts (other than interest) charged to the borrower, and deducting all payments and other credits made or received that day;

(3) If credit life insurance or credit disability insurance is provided, the additional charge for the insurance shall be calculated in each billing cycle by applying the current monthly premium rate (which may be calculated daily), as approved by the insurance commissioner, to the entire outstanding balances, or to as much of the outstanding balances that the insurance covers, using the same method used for the calculation of loan interest. A financial services loan company shall not be obligated to advance to the insurer any premiums for the insurance on a borrower who is delinquent in making the required minimum payments on the loan if one or more of the payments is past due for ninety days or more. However, the financial services loan company shall advance to the insurer the amounts required to keep the insurance in force during the ninety-day period. The advanced amounts may be debited to the borrower's open-end account; and

(4) A financial services loan company may retain any security interest in real or personal property securing the open-end loan until the open-end loan is terminated.

(b) A financial services loan company may impose charges on an open-end consumer loan for:

(1) Participation in an open-end loan account, whether assessed on an annual, periodic, or other basis; and

(2) Payment of items that overdraw an open-end loan account.

Credits
Laws 1993, ch. 350, § 1; Laws 1995, ch. 45, § 1.

**§ 412:9-306. Refunds on prepayment of a precomputed loan**

(a) A borrower shall be entitled to a refund of the unearned interest that has been paid in advance when a precomputed loan is paid in full or refinanced prior to maturity, or on which judgment has been obtained:

(1) The amount of the refund on a loan with an original term of sixty months or less shall be computed under a method no less favorable to the borrower than the Rule of 78ths method (also known as the Sum of the Digits method). The refund shall represent at least as great a proportion of the total finance charge as the sum of the periodical time balances, after the day of prepayment, bears to the sum of all the periodical time balances under the schedule of payments in the loan agreement;

(2) If the original term of a precomputed loan exceeds sixty months, the amount of refund of unearned interest shall be equal to the difference between the total interest originally charged and the actuarially earned amount;

(3) Refunds on precomputed loans originated prior to July 1, 1993, shall be made in accordance with the terms of existing loan agreements, provided that the refund provision complied with applicable law at the consumer loan origination.

(b) No refund less than $1 need be made and the financial services loan company shall not be required to refund any portion of the unearned interest that has been paid in advance which results in a minimum interest retained on the precomputed loan of less than $15.

Credits
Laws 1993, ch. 350, § 1.

**§ 412:9-307. Fraction of a month**

In computing interest, late charges, or refunds for precomputed loans under sections 412:9-302, 412:9-304 and 412:9-306 any fraction of a month may be considered as a whole month.

Credits
Laws 1993, ch. 350, § 1.

### § 412:9-308. Repayment terms

Nothing in this article shall prohibit loans with a demand feature, including but not limited to a single payment demand loan.

Credits
Laws 1993, ch. 350, § 1.

### § 412:9-309. Assignments, sale or pledge of loans

Any loan made under this article may be assigned, sold, or pledged in whole or in part to any person. That person may charge, contract for, and receive interest on, and enforce the terms of, the loan to the same extent permitted except for the assignment, sale, or pledge; provided that no loan shall be assigned, sold or pledged to another person doing business in the State unless that other person is a financial institution or has the right to charge, contract for, or receive interest at the same interest rate and on the same terms as provided for in the loan, and if there is an assignment or sale, that loan is assigned or sold without recourse. Notwithstanding the foregoing, any financial services loan company may assign loans to a person or persons that are not financial institutions for purposes of collection of delinquent payments. That person or persons may enforce the terms of the loan to the same extent as the financial services loan company that originated the loan.

Credits
Laws 1993, ch. 350, § 1.

### § 412:9-400. Special powers of a depository financial services loan company

In addition to the powers granted in parts II and III of this article, depository financial services loan companies, but not nondepository financial services loan companies, shall have the right, power, and privilege to:

(1) Solicit, accept, and hold deposits from any person, whether or not a resident of or domiciled in this State, and issue documents evidencing the accounts; provided that a depository financial services loan company shall not solicit, accept, or hold demand deposits or authorize a depositor to make transfers by check, draft, debit card, negotiable order of withdrawal, or similar order, payable to third parties;

(2) Sell fixed rate annuities and collect premiums and fees for the sale or referral of those fixed rate annuities, if the written approval of the commissioner is first obtained. The depository financial services loan company shall comply with all applicable requirements of chapter 431. Sales shall be made by a producer licensed pursuant to chapter 431. In approving any request to sell or refer fixed rate annuities pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest; and

(3) Offer gifts, premiums, other considerations, or promotional items to solicit deposits. Premiums may be offered in lieu of all or part of the interest on deposits.

Credits
Laws 1993, ch. 350, § 1; Laws 1996, ch. 9, § 2; Laws 2003, ch. 212, § 13.

**§ 412:9-401. Required reserve for a depository financial services loan company**

(a) Every depository financial services loan company shall maintain and have on hand at all times a reserve composed of cash and other securities in an amount equal to seven per cent of the depository financial services loan company's liabilities on outstanding deposits with an original term not exceeding one year, and five per cent of the depository financial services loan company's liabilities on outstanding deposits with an original term of one year or more. The reserve shall not be pledged. The reserve requirement shall be determined as of the same calendar day in each calendar week and shall be based on the daily average of all outstanding deposits of the immediate preceding seven calendar days. During the succeeding seven calendar day period beginning with each determination date, the average daily balance of the reserve shall equal or exceed the reserve amount so determined. Determination of the reserve requirement shall be computed within two working days after the determination date.

(b) Cash reserves shall be limited to cash on hand, cash in federal reserve banks, federal home loan banks, and federally insured financial institutions, and direct obligations of the United States, this State or its counties. Cash reserves may be deposited in United States branches of non-United States banks, with the written approval of the commissioner. The cash reserve shall at all times be at least fifty per cent of the reserve required by this section.

(c) Other securities used as reserves shall be limited to obligations of the United States and its agencies and of this State and its counties that qualify as permitted investments under sections 412:9-409(a)(1) and (2) and 412:9-409(b), reverse repurchase agreements whereby the depository financial services loan company has purchased obligations of the United States under terms which require the seller to repurchase the obligations of the United States for cash on demand or in not less than thirty days, bankers acceptances, irrevocable lines of credit of one year or more approved by the commissioner, and securities listed on the New York or the American stock exchanges or the National Market System of the NASDAQ Stock Market. Not more than twenty-five per cent of the total reserve shall be held in securities listed on the New York or American stock exchanges, or the National Market System of the NASDAQ Stock Market.

(d) If the reserve or cash reserve portion of the reserve of any depository financial services loan company falls below the amount required by this section, the depository financial services loan company shall promptly take action to correct the deficiency. Upon discovery of any deficiency, the depository financial services loan company shall notify the commissioner of the deficiency and inform the commissioner of any action being taken to correct the deficiency. If the deficiency has not been corrected, the commissioner may in writing direct the depository financial services loan company to take action necessary to cure the deficiency.

Credits
Laws 1993, ch. 350, § 1; Laws 1999, ch. 264, § 1; Laws 2001, ch. 170, § 11.

## § 412:9-402. Membership in federal home loan bank

Any depository financial services loan company may become a member of a federal home loan bank organized under authority of the Federal Home Loan Bank Act, or any successor or similar systems of federal home loan banks established by Congress, and may purchase and hold the shares of such federal home loan bank. The depository financial services loan company may have and exercise all powers not in conflict with the laws of this State incident to such membership; provided, however, that notwithstanding such membership the depository financial services loan company and its directors, officers, and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any law of this State.

Credits
Laws 1993, ch. 350, § 1.

## § 412:9-403. Service corporations

Subject to the approval of the commissioner, one or more depository financial services loan companies may form and own a service corporation only under the following conditions:

(1) The depository financial services loan company or companies participating in the formation of the service corporation are in and will remain in a safe and sound condition, and the depository financial services loan company's or companies' solvency will not be adversely affected by the formation or ownership of the service corporation;

(2) A depository financial services loan company may not own or invest in any capital stock, securities, or other interest of a service corporation if, together with its investment in the capital stock, securities, or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed fifty per cent of the depository financial services loan company's capital and surplus;

(3) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written acknowledgment by the applicant that the service corporation shall be subject to:

(A) The supervision of the commissioner;

(B) Examination pursuant to this section; and

(C) Any other terms and conditions as the commissioner deems appropriate;

(4) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a depository financial services loan company in the service corporation and whether the activities of the service corporation pose a significant risk of loss to the parent depository financial services loan company. The service corporation shall pay the entire cost of the examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner;

(5) A service corporation may engage in any activity permitted to its parent depository financial services loan company and any other activity as the commissioner may approve;

(6) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures;

(7) Whenever a service corporation engages in an activity that is not permitted under this section, and because of the activity a depository financial services loan company's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the depository financial services loan company:

(A) The improper activity shall be discontinued; or

(B) The depository financial services loan company shall divest itself of its ownership or investment in the service corporation.

The service corporation or the depository financial services loan company may appeal the commissioner's decision and request a hearing in accordance with chapter 91; and

(8) The depository financial services loan company shall notify the commissioner in writing within five days of closing a service corporation. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the service corporation were disposed.

Credits
Laws 1993, ch. 350, § 1; Laws 2006, ch. 228, § 42.

**§ 412:9-404. Limitations on loans and extensions of credit to one borrower**

(a) No depository financial services loan company shall permit a person to become indebted or liable to it, either directly or indirectly, on loans and extensions of credit, including any credit exposure arising out of derivative transactions entered into by a depository financial services loan company and its subsidiaries, in a total amount outstanding at any one time in excess of twenty per cent of the depository financial services loan company's capital and surplus; provided that such aggregate amount may be increased to one hundred per cent of the depository financial services loan company's capital and surplus if the loans and extensions of credit made to the person in excess of twenty per cent of the depository financial services loan company's capital and surplus are fully secured by real property as provided in section 412:9-405.

(b) As used in this section, a “derivative transaction” includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, any quantitative measure of, or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(c) The limitations set forth in this section shall not apply to:

(1) Loans and extensions of credit to the extent secured by a pledge or security interest in a deposit account in the lending depository financial services loan company; and

(2) Loans and extensions of credit secured by the interest-bearing obligations of the United States or those for which the faith and credit of the United States are distinctly pledged to provide for the payment of principal and interest thereof or of the State or any county or municipal or political subdivision of this State, issued in compliance with the laws of this State, where the market value of the security shall be at any time not less than one hundred five per cent of the face amount of the loans and extensions of credit.

(d) In computing the total loans and extensions of credit made by a depository financial services loan company to any person, all loans and extensions of credit by the depository financial services loan company to the person and to any partnership, joint venture, or unincorporated association of which the person is a partner or a member and all credit exposure arising from a derivative transaction with any person and with any partnership, joint venture, or unincorporated association of which the person is a partner or a member shall be included unless the person is a limited partner, but not a general partner, in a limited partnership, or unless the person is a partner in a limited or general partnership, or a member of a joint venture or unincorporated association, if such partner or member, by law, by the terms of the partnership, joint venture, or membership agreement, or by the terms of an agreement with the depository financial services loan company, is not to be held liable to the depository financial services loan company for the debts of the partnership, joint venture, or association. In computing the total loans and extensions of credit made by a depository financial services loan company to any firm, partnership, joint venture, or unincorporated association, all loans and extensions of credit to and all credit exposure arising from a derivative transaction with its individual partners or members shall be included unless such individual partner is a limited partner, but not a general partner, in a limited partnership, or unless such individual partner or member, by law, by the terms of the partnership, joint venture, or membership agreement, or by the terms of an agreement with the depository financial services loan company, is not to be held liable to the depository financial services loan company for the debts of the partnership, joint venture, or association.

(e) Alternatively, a depository financial services loan company, with the prior approval of the commissioner, may comply with the lending limits applicable to federal financial institutions as and to the same extent it would, at the time, be so required by federal law or regulation if it were a federal financial institution. A depository financial services loan company utilizing this alternative shall use a single method for calculating lending limits, including any credit exposure to the person arising from a derivative transaction, repurchase agreement, reverse purchase agreement, securities lending transaction, or securities borrowing transaction between the depository financial services loan company and the person. In monitoring a depository financial

services loan company's compliance with the federal financial institution lending limits, the commissioner shall give substantial weight to the Office of the Comptroller of the Currency's regulations and opinions interpreting the federal financial institution lending limits, including but not limited to those related to the internal model method or the conversion factor matrix method for calculating credit exposure to derivative transactions as described in title 12 Code of Federal Regulations part 32 of the Interim Rule as may be amended. The commissioner will regard the regulations and opinions as strong evidence of safe and sound banking practices.

Credits
Laws 1993, ch. 350, § 1; Laws 2013, ch. 172, § 9, eff. June 24, 2013.

**§ 412:9-405. Loans and extensions of credit fully secured by real property**

(a) For loans and extensions of credit fully secured by real property other than unimproved raw land, a depository financial services loan company may advance, directly or indirectly, up to and including ninety-five per cent of the appraised value or real property evaluation required under the Federal Deposit Insurance Act and the rules and regulations of the Federal Deposit Insurance Corporation of the real property securing the loan and extension of credit. The principal amount of the loan and extension of credit shall be added together with the outstanding balances of all prior liens on the real property to determine the ninety-five per cent loan-to-value ratio.

(b) For loans and extensions of credit fully secured by mortgages on unimproved raw land, the maximum loan-to-value ratio shall not exceed seventy per cent of the appraised value or real property evaluation required under the Federal Deposit Insurance Act and the rules and regulations of the Federal Deposit Insurance Corporation of the unimproved raw land. Parcels of land with direct access by road and served by electric power shall not be deemed unimproved raw land.

(c) Notwithstanding the provisions of subsections (a) and (b), depository financial services loan companies, which make loans fully secured by real property in excess of twenty per cent of their capital and surplus, shall obtain appraisals of the real property securing those loans.

Credits
Laws 1993, ch. 350, § 1; Laws 1995, ch. 17, § 1.

**§ 412:9-407. Limits on transactions with affiliates, executive officers, directors or principal shareholders**

No depository financial services loan company shall make any loan and extension of credit or engage in any transaction in violation of section 18j of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(j) or sections 22(g), 22(h), 23A or 23B of the Federal Reserve Act, 12 U.S.C. §§ 375a, 375b, 371c and 371c-1.

Credits
Laws 1993, ch. 350, § 1.

**§ 412:9-408. General requirement for investments**

(a) A depository financial services loan company shall make investments that are consistent with prudent banking practices and in compliance with all applicable federal and state law.

(b) The board of directors of a depository financial services loan company and any other person charged with the responsibility of investing the depository financial services loan company's assets shall exercise such reasonable diligence, discretion, judgment, and intelligence as would be expected of a prudent investor. Among other things, they shall not engage in speculative or unsound investments, and they shall at all times consider the probable safety as well as the probable income of the capital being invested.

(c) The board of directors shall establish written investment policies.

Credits
Laws 1993, ch. 350, § 1.

**§ 412:9-409. Permitted investments**

(a) To the extent specified in this subsection, a depository financial services loan company may invest its own assets in:

(1) Securities and obligations of the United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;

(2) Bonds, notes, mortgage backed securities, and other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks;

(3) Securities and obligations of United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Intermediate Credit Banks, Federal Land Banks, the Financing Corporation, the Resolution Funding Corporation, the Student Loan Marketing Association, the Tennessee Valley Authority, the United States Postal Service, and securities and obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks that are not bonds, notes, mortgage backed securities, or other debt obligations of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks; provided that the total amount

invested in obligations of any one issuer shall not exceed twenty per cent of the depository financial services loan company's capital and surplus; and

(4) Securities and obligations of quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions in which the United States government is a shareholder or contributing member; provided that the total amount invested in any one issuer shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.

(b) A depository financial services loan company may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified in this subsection, a depository financial services loan company may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of these states, territories, or possessions, or by any foreign country or political subdivision of that country; provided that:

(1) The bond, note, or warrant has been issued in compliance with the constitution and laws of that government;

(2) There has been no default in payment of either principal or interest on any of the general obligations of that government for a period of five years immediately preceding the date of the investment; and

(3) The total amount invested in the obligations of any one issuer by a depository financial services loan company shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.

(d) To the extent specified in this subsection, a depository financial services loan company may invest its own assets in notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided that the aggregate amount invested by a depository financial services loan company under this subsection and subsections (e) and (g)(3) in any one corporation shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.

(e) To the extent specified in this subsection, a depository financial services loan company may invest its own assets in securities of investment grade quality. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality including, without limitation, those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar

quality as reasonably determined by the depository financial services loan company in its prudent judgment, which may be based in part upon estimates which it believes to be reliable. Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a depository financial services loan company under this subsection and subsections (d) and (g)(3) in any one company or other issuer shall not exceed twenty per cent of the depository financial services loan company's capital and surplus. Subject to the approval of the commissioner, the twenty per cent limitation shall not apply to investment grade securities secured entirely by mortgage loans originated by the depository financial services loan company. In approving any transaction under this section, the commissioner may impose any conditions to ensure the safety and soundness of the institution.

(f) To the extent specified in this subsection, a depository financial services loan company may purchase, hold, convey, sell, or lease real or personal property as follows:

(1) The real property in or on which the business of the depository financial services loan company is carried on, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary for the accommodation of the depository financial services loan company's business, including but not limited to parking facilities, data processing centers, and real property held for future use where the depository financial services loan company in good faith expects to utilize the property as depository financial services loan company premises; provided, if the depository financial services loan company ceases to use any real property and improvements thereon for one of the foregoing purposes, it, within five years thereafter, shall sell the real property or cease to carry it as an asset; provided further, the property, without the approval of the commissioner, shall not exceed seventy-five per cent of the depository financial services loan company's capital and surplus;

(2) Personal property used in or necessary for the accommodation of the depository financial services loan company's business, including but not limited to furniture, fixtures, equipment, vaults, and safety deposit boxes; provided that the depository financial services loan company's investment in furniture and fixtures, without the approval of the commissioner, shall not exceed twenty-five per cent of the depository financial services loan company's capital and surplus;

(3) Personal property and fixtures which the depository financial services loan company acquires for purposes of leasing to third parties and any real property interests that is incidental thereto;

(4) Any real property or tangible personal property that may come into its possession as security for loans or in the collection of debts; or that may be purchased by or conveyed to the depository financial services loan company in satisfaction of or on account of debts previously contracted in the course of its business, when the property was held as security by the depository financial services loan company; and

(5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85 including, without limitation, the reversionary interest in the real property and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section, any tangible personal property coming into the possession of any depository financial services loan company pursuant to paragraph (4) shall be disposed of as soon as practicable and, without the written consent of the commissioner, shall not be considered a part of the assets of the depository financial services loan company after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section, any real property acquired by a depository financial services loan company pursuant to paragraph (4) shall be sold or exchanged for other real property by the depository financial services loan company within five years after title thereto has vested in it by purchase or otherwise, or within any further time that may be extended by the commissioner.

Any depository financial services loan company acquiring any real property in any manner other than provided by this section immediately, upon receiving notice from the commissioner, shall charge the same to profit and loss, or otherwise remove the same from the assets, and when any loss impairs the capital and surplus of the depository financial services loan company, the impairment shall be made good in the manner provided in this chapter.

(g) To the extent specified in this subsection, a depository financial services loan company may invest its own assets in capital stock of:

(1) Service corporations as set forth in this article;

(2) A corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by the stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within any further time that may be granted by the commissioner;

(3) Companies listed on the New York or American stock exchanges or on the National Association of Securities Dealers Automated Quotations; provided that the aggregate amount invested by a depository financial services loan company under this paragraph and subsections (d) and (e) in any one corporation shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.

(h) To the extent specified in this subsection, a depository financial services loan company may invest its own assets in securities issued by a diversified investment management company (as defined in the Investment Company Act of 1940), commonly known as a diversified mutual fund. The fund must have been in existence for at least five years. The aggregate amount invested by a depository financial services loan company under this subsection in any one diversified mutual fund shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.

(i) To the extent specified herein, a depository financial services loan company may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the total amount invested by a depository financial services loan company under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not, without the prior approval of the commissioner, exceed two per cent of the depository financial services loan company's capital and surplus and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the depository financial services loan company's capital and surplus. In no case shall the aggregate amount invested by a depository financial services loan company under this subsection exceed ten per cent of the depository financial services loan company's capital and surplus.

Credits
Laws 1993, ch. 350, § 1; Laws 1995, ch. 27, § 1; Laws 1995, ch. 48, § 4; Laws 1997, ch. 258, § 18; Laws 2001, ch. 170, § 12; Laws 2006, ch. 228, § 43; Laws 2009, ch. 107, § 6, eff. June 10, 2009.

**§ 412:9-410. Deposits made by depository financial services loan companies**

A depository financial services loan company may deposit any of its funds with:

(1) A Federal Reserve Bank or a Federal Home Loan Bank in any amount; or

(2) Another depository institution; provided that the deposits in any one depository institution do not exceed twenty-five per cent of the depository financial services loan company's capital and surplus, unless otherwise permitted by federal law.

Credits
Laws 1993, ch. 350, § 1; Laws 1994, ch. 107, § 17.

**§ 412:9-500. Prohibitions**

Except as otherwise expressly authorized by this chapter or other law, a nondepository financial services loan company shall not solicit, accept, or hold deposits, investment certificates, thrift certificates, or other accounts or instruments identical or similar to a deposit account, nor shall it borrow money in the form of, or issue, promissory notes, debentures, bonds, or other obligations to the public; provided that a nondepository financial services loan company may borrow funds from, and issue its notes, debentures, bonds, or other obligations to financial institutions and other institutional lenders and not more than twenty-five institution-affiliated parties at any one time.

Credits
Laws 1993, ch. 350, § 1; Laws 1996, ch. 9, § 3.

**§ 412:9-501. Registration of nondepository financial services loan companies with NMLS**

(a) A nondepository financial services loan company licensed under this chapter is not a mortgage loan originator company as defined in section 454F-1.

(b) A nondepository financial services loan company shall register with NMLS if any employee of the nondepository financial services loan company acts as a mortgage loan originator as defined in section 454F-1 or if the nondepository financial services loan company uses the services of an exclusive independent contractor mortgage loan originator, or loan processor or underwriter, as defined in chapter 454F.

(c) This section does not exempt an employee of a nondepository financial services loan company who originates mortgage loans, or an independent contractor providing mortgage loan originating, processing, or underwriting services to a nondepository financial services loan company, from licensure under chapter 454F.

Credits
Laws 2010, ch. 84, § 2, eff. July 1, 2010; Laws 2013, ch. 168, §§ 1, 20, eff. June 21, 2013.