

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Check Cashing
Deposits

Proposed Amendments: N.J.A.C. 3:24-1.3 and 5.5

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 17:1-15e, and 17:15A-30 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-297

Submit comments by October 14, 2005 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to amend N.J.A.C. 3:24. The rules currently require a check casher licensee to deposit a check, draft, or money order received in the course of its check cashing business in a financial institution in this State. The underlying statute, N.J.S.A. 17:15A-30 et seq., also known as “The Check Cashers Regulatory Act of 1993,” does not mandate that the financial institution in which such deposit items are to be deposited be located in this State.

The Department proposes to amend N.J.A.C. 3:24-5.5(a) to revise the requirement that the financial institution be located in New Jersey by permitting out-of-State financial institutions to be used by check cashers in the course of their business if the out-of-State financial institution is approved by the Commissioner. In making this determination whether to approve such an institution, the Commissioner shall consider whether the out-of-State financial institution: (1) is insured by the Federal Deposit Insurance Corporation; (2) is adequately capitalized and managed; and (3) does not engage in payday lending, title lending or refund anticipation lending through the check casher or otherwise in New Jersey. Once approved, an out-of-State financial institution could lose its approval if it did not continue to meet the approval criteria or if it operated in an unsafe or unsound manner. Under that circumstance, the check casher licensee would have to move their account(s) used in the check cashing business to an in-State institution or an approved out-of-State institution.

The Department also proposes to amend the definitions section at N.J.A.C. 3:24-1.3 to add definitions of the terms “payday loan,” “title loan” and “refund anticipation loan” and to clarify the language that introduces the definitions.

The Department’s rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

Check cashers provide an important financial service to their customers, many of whom may be low or moderate income individuals, immigrants, or young individuals who do not have easy access to traditional banking institutions. The proposed amendments provide flexibility to

check cashers in choosing a financial institution to service their business needs and ensure that they have a wider variety of financial institutions from which to select to service those needs. In addition, the proposed amendments establish an appropriate level of Department oversight with respect to the out-of-State financial institutions in which check cashers may seek to deposit items they receive in the course of their check cashing operations. Thus, the proposed amendments will also protect the interests of check cashers and their customers and will, therefore, have a positive social impact.

Economic Impact

The proposed amendments continue a long-standing regulatory requirement that check cashers deposit the monetary items they receive in the course of their business in sound financial institutions. The proposed amendments alleviate a burden on check cashers that resulted from limiting their choice of financial institutions to those located in New Jersey. They will afford check cashers a wider choice of financial institutions that they may use for the deposit of checks, drafts and money orders received in the course of their business. Consequently, check cashers may be able to secure better service at a more favorable cost that, in turn, may result in lower fees being charged to consumers for their services. The proposed amendments are consistent with the legislative intent of the statute, which is to protect and serve the public interest by permitting check cashing services to be offered by regulated licensees to the general public at a reasonable cost. The proposed amendments will have no affect on the ability of check cashers to use in-State institutions.

Proposed N.J.A.C. 3:24-5.5 imposes regulatory requirements on out-of-State financial institutions which choose to enter into business relationships with New Jersey as check cashers.

The costs of compliance are anticipated to be minimal, and would include the financial institution arranging to receive a letter from its primary regulator confirming that the financial institution is adequately capitalized and managed or the financial institution providing a certification to the Department that they did not make or facilitate, directly or indirectly, pay day loans, title loans, or refund anticipation loans through check cashers or otherwise in New Jersey.

The Department will incur costs to implement the process of approving out-of-State financial institutions proposed to be used by check cashers. However, the proposed amendments should not have a significant effect on the Department's costs.

Federal Standards Statement

The proposed amendments are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that any jobs will be lost or gained as a result of the proposed amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed amendments.

Regulatory Flexibility Analysis

Many check cashers are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. The proposed amendments impose compliance requirements on all applicants and licensees in that the out-of-State financial institutions they may seek to utilize will have to be approved by the Commissioner. Out-of-State financial institutions that choose to participate with check cashers in providing check cashers financial services for their businesses would not be considered small businesses because they are out-of-State. Compliance requirements for out-of-State institutions are set forth in Economic Impact above.

No differentiation is made for small businesses because the requirement that the Commissioner approve an out-of-State financial institution to be used by a check cashing licensee is an important financial safeguard for small, as well as large check cashers, and for their customers. The purpose of these requirements is to maintain the viability of the check cashing industry, to promote healthy competition for check casher business and to make check cashing services available to the general public. These purposes do not vary with business size.

It is anticipated that professional services will not be needed to be used by check cashers in order to comply with the proposed amendments.

Smart Growth Impact

The proposed amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:24-1.3 Definitions

Words and terms, when used in this chapter, shall have the meanings as defined [at N.J.S.A. 17:15A-31 unless defined] below [or] **, unless** the context clearly indicates otherwise.

...

"Payday loan" means an agreement to defer the presentment of a negotiable item, or defer the deposit of an item for collection, or defer debiting the borrower's account electronically or by any other means, in return for a consideration or other thing of value where the rate, fee or other consideration charged for such forbearance exceeds the limitation on usury set forth at N.J.S.A. 2C:21-19. "Payday loan" shall include, but not be limited to, such loans made:

1. In person;

2. Through an agent;

3. By electronic means (including telephone, fax, computer, internet or similar means); or

4. Through response to an advertisement or solicitation made in this

State.

...

"Refund anticipation loan" means an agreement to lend a borrower funds, or to extend any other consideration to a borrower, in return for a promise by the borrower to repay the loan or other consideration that includes an assignment of the borrower's Federal and/or state tax refund, where the rate, fee or other consideration charged for such

forbearance exceeds the limitations on usury set forth at N.J.S.A. 2C:21-19. "Refund anticipation loan" includes, but is not limited to, such loans made:

- 1. In person;**
- 2. Through an agent;**
- 3. By electronic means (including telephone, fax, computer, internet or similar means); or**
- 4. Through response to an advertisement or solicitation made in this State.**

...

"Title loan" means an agreement to lend a borrower funds, secured by a title to a motor vehicle, which loan is in return for a consideration or other thing of value where the rate, fee or other consideration for such forbearance exceeds the limitation on usury set forth at N.J.S.A. 2C:21-19. "Title loan" shall include, but not be limited to, such loans made:

- 1. In person;**
- 2. Through an agent;**
- 3. By electronic means (including telephone, fax, computer, internet or similar means); or**
- 4. Through response to an advertisement or solicitation made in this State.**

...

(a) All checks, drafts and money orders shall be deposited no later than the next business day in [the] a financial institution located in this State which has been identified to the Department or located outside this State, if the out-of-State financial institution is approved by the Commissioner as set forth in this section. Use of a bank's night deposit facility, if any, is permitted. In order for an out-of-State financial institution to qualify for approval by the Commissioner, it shall:

1. Be insured by the Federal Deposit Insurance Corporation;
2. Provide a letter from its primary regulator confirming that the financial institution is adequately capitalized and managed; and
3. Not make or facilitate, directly or indirectly, payday loans, title loans or refund anticipation loans through the check casher or otherwise in this State, and shall provide a certification to the Department to that effect.

(b) - (d) (No change.)

(e) If an out-of-State financial institution approved by the Commissioner fails to maintain the standards specified in (a) above or if the institution is placed under a supervisory order from its primary regulator or operates in a manner inconsistent with safe and sound financial practices, the Commissioner may take such action as he or she deems appropriate and necessary to protect the licensee and the public. The action may include revoking the approval conferred by the Commissioner on the institution pursuant to (a) above and requiring any check casher utilizing that institution to submit and comply with a plan for moving its business account(s) to a different institution within a short timeframe established by the Department. If a check casher utilizing such an institution

fails to supply such a plan or fails to comply with a plan submitted, the Department may suspend, revoke or refuse to renew the license of the check casher pursuant to N.J.S.A.

17:15A-48(a)1.

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