

**BANKING**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF BANKING**

**Check Cashing**

**Fees**

**Proposed New Rule: N.J.A.C. 3:24-4.1**

**Proposed Recodification: N.J.A.C. 3:24-4.1 as 4.3**

**Proposed Amendments: N.J.A.C. 3:24-1.3, 4.2 and 5.2**

Authorized By: Neil N. Jasey, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A.17:1-8.1, 15e, 17:15A-43(e) and (f) and 17:15A-52.

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

Proposal Number: PRN 2009-379.

Submit comments by February 19, 2010 to:

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The agency proposal follows:

### **Summary**

N.J.S.A. 17:15A-43e permits the Commissioner of Banking and Insurance (Commissioner) to set, by regulation, increases to the fees chargeable by licensed check cashers for the cashing of standard checks, that is, those checks that are not special status checks. Special status checks are those issued by the government for Temporary Assistance for Needy Families (TANF), formerly Aid to Families with Dependent Children (AFDC), Supplementary Security Income (SSI) and Social Security Old Age and Survivors checks. N.J.S.A. 17:15A-43f sets forth the factors the Commissioner shall consider when undertaking rulemaking in setting fees. Those factors are: the rates charged in the past; the income, cost and expense of the operation of licensees; rates charged by licensed check cashers or other similar entities located in other states for the same or similar services and the factors upon which those rates are based; changes in the population served; and a reasonable profit for check cashers. The Commissioner may also consider other factors.

The current fees permitted to be charged by licensed check cashers were established by statute in 1993. Prior to this notice of proposal there has been no change to the 1993 fee schedule through rulemaking. Although there has been inflation in the years since 1993, because the permitted maximum fee is not a flat fee, but rather a percentage rate based on the dollar amount of the check cashed, the Department is not inclined to propose an increase in the fees on the basis of inflation alone. However, the Commissioner notes that there have been substantial changes in the check cashing industry and in the overall business environment in the last 16 years.

Check cashers must comply with Federal anti-money laundering requirements imposed subsequent to 1993 as a result of the USA Patriot Act passed on October 26, 2001, PL 107-56,

which strengthens Federal anti-money laundering and anti-terrorism reporting requirements under the Bank Secrecy Act (BSA). The USA Patriot Act extended to check cashers and other money services businesses requirements to register with the U.S. Treasury Department and file reports of certain types of currency transactions and suspicious activities. BSA regulations require that check cashers maintain rigorous anti-money laundering programs and that they are now subject to enhanced periodic compliance examinations by IRS examiners. These compliance programs require written policies and procedures for customer identification and instruction on filing of currency transaction reports and suspicious activity reports, record retention, and responding to law enforcement requests; appointment of a compliance officer, with defined duties and responsibilities, to implement and oversee the compliance program; development and implementation of an anti-money laundering training program for employees. Costs are incurred by licensed check cashers that relate to the creation, in accordance with new requirements, of the compliance program, development of policies and procedures, employee training and testing, purchase of data systems to facilitate these recordkeeping requirements, increased operational expenses for personnel to fill compliance office requirements and upgrading overall program management. Licensed check cashers now need periodic compliance reviews conducted by appropriately trained internal staff or by attorneys, accountants or other outside experts which has also increased costs to licensees.

As a result of the BSA, the USA Patriot Act and other increased regulatory requirements imposed on banking institutions that have historically serviced the check casher industry, certain banking institutions have terminated their customer relationships with check casher businesses in order to avoid compliance costs, resulting in less competition among banking institutions servicing the sector. Further, banking institutions still servicing check cashers have to develop

and enhance their BSA compliance protocols and account due diligence and monitoring procedures, resulting in increased banking costs to licensed check cashers in the form of higher initial account set-up fees, higher per-item processing fees, multi-account maintenance and monitoring fees, and increased security amounts and collateral requirements.

It has also been noted that there has been a reduction in the number of overall check cashing transactions due to the migration of check issuers to electronic payment systems, including direct deposit of payroll checks by employers, direct deposit of Social Security checks by the Federal government, the use of stored value cards for the delivery of government benefits, the distribution of court-monitored child support payments through direct deposit or a New Jersey State-sponsored debit card program and, lastly, a U.S. Treasury program that began in 2008 entitled "Direct Express." This program provides for the delivery of Social Security benefits through stored value cards for those Social Security recipients who do not have a bank account and could not otherwise receive Social Security payments through direct deposit into a bank account.

The Commissioner has reviewed rates charged by other states and notes that of the 25 states that have enacted check casher fee limitations, only two currently have established lower maximum rates than those now in effect in New Jersey. The current rate in New York is 1.75 percent, but New York has a greater number of checks being processed per capita than New Jersey and New York statutes expressly permit an increase in the rates with a periodic Consumer Price Index adjustment. In Pennsylvania, the rates are three percent for payroll checks and 2.5 percent for public assistance checks.

Lastly, in connection with this review of the maximum fee rate for standard checks, the Department has conducted an analysis of the revenue, expenses and net income generated by all

New Jersey licensed check cashers that filed their 2006 and 2007 annual reports with the Department. That analysis consisted of calculating the average revenue, expenses and net income for the two years on a per-branch level and determining the resultant overall profit margin. The Department then calculated the level of profitability that would be necessary to provide a 17 percent overall profit margin for all of the check cashers licensed in New Jersey. The 17 percent overall profit margin represents the average overall profitability for check cashers on a national basis according to information provided by the New Jersey Financial Service Centers, Inc., a trade association representing check cashers. The Department's analysis indicated that a new fee rate of 2.21 percent on standard checks (an increase of 10.66 percent to the current rate of 2.00 percent), was necessary to achieve a 17 percent overall profit margin, which the Department accepts as a reasonable profit for purposes of this proposal.

Based on all of the above factors, the Commissioner has concluded that the two percent maximum fee for standard checks should be increased to 2.21 percent, which is approximately a 10.5 percent increase.

With regard to the minimum fee applicable to standard checks, which is currently \$.90, the Commissioner notes that it is the lowest minimum fee in the nation, that the majority of minimum fees in other states range from \$3.00 to \$5.00 per check and that the minimum fee in New York is \$1.00. In recognition that certain fixed unit costs are incurred for cashing each check, the Commissioner has concluded that an increase in the minimum fee for standard checks from \$.90 to \$1.00 per check is appropriate. This increase would only affect those checks for which the percentage fee calculation would result in a fee of less than \$1.00, which are checks in amounts of less than \$45.00.

Based upon the foregoing, the Department of Banking and Insurance (Department) proposes to adopt a new rule at N.J.A.C. 3:24-4.1 to set out the minimum and maximum permitted fees for cashing standard checks, to increase the minimum per check fee that may be charged on standard checks from \$.90 to \$1.00, and to increase the maximum fee from two percent to 2.21 percent. The proposed increases would not affect Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI) or Social Security Old Age and Survivors checks (special status checks), which fees are set by statute and cannot be changed by rule. The Department also proposes to include in the new and amended rules the minimum and maximum check fees for special status checks prescribed by N.J.S.A. 17:15A-43b, c and d.

The Department proposes to recodify existing N.J.A.C. 3:24-4.1 as 4.3 and amend N.J.A.C. 3:24-4.2 to cross reference the new rule at N.J.A.C. 3:24-4.1. The Department also proposes to amend N.J.A.C. 3:24-4.2 to require that the fees and examples be displayed on the signs required to be posted in the locations of check cashing facilities, to provide that the name of AFDC checks be changed to Temporary Assistance for Needy Families (TANF) and to require that such signs also include the minimum check fees prescribed by N.J.S.A. 17:15A-43b, c and d and new N.J.A.C. 3:24-4.1. The heading of Subchapter 4 is proposed to be amended to include a reference to the existing returned check requirements.

Lastly, the Department proposes to amend N.J.A.C. 3:24-5.2 to clarify a citation, to conform the references to the fees charged by check cashers to the amended and new rule and to change the name for AFDC checks in the rule to TANF checks, and to amend the definition of "essential records" in N.J.A.C. 3:24-1.3 to clarify a citation.

This 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**

Licensed check cashers provide a means by which persons who do not maintain bank accounts are able to conveniently obtain cash. The proposed new rule and amendments would apply to all New Jersey check cashers. They are intended to enable check cashers to continue in operation through the receipt of additional revenue necessary to meet increased costs of operations and regulatory requirements. The proposed amendments and new rule, therefore, should have a positive social impact.

### **Economic Impact**

The proposed permitted fee increases represent an increase of about 10 percent in the cost of cashing a standard check. This will have a negative effect on some consumers of check cashing services but a positive effect on the financial integrity of the check cashing industry. The proposed permitted fee increases appropriately balance the interests between the check cashing industry and members of the public who use their services. As set out in the Summary above, the Commissioner has reviewed a large number of factors in reaching the decision to propose an increase of this amount applicable to the cashing of standard checks. The proposed permitted fee increases will not affect special status checks. In addition, based on Department surveys, only about six percent of checks are issued in amounts small enough to be affected by the proposed increase in the minimum check cashing fee from \$.90 to \$1.00. For example, currently the fee for cashing a check for \$40.00 would be the minimum fee which is \$.90, as the

two percent calculation would produce a fee of \$.80 and the check casher is able to charge the greater of the calculated fee or the minimum fee. Under the proposal, the fee would be the new \$1.00 minimum fee and applying the new 2.21 percent standard would yield a fee of \$.88. The fees on checks in higher amounts, for example, \$55.00, would increase from \$1.10 to a \$1.21, and on a \$100.00 check from \$2.00 to a \$2.21, and on a \$500.00 check from \$10 to a \$11.05.

### **Federal Standards Statement**

The proposed new rule and 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 new rule and amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed new rule and 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 new rule and amendments.

### **Regulatory Flexibility Analysis**

Many New Jersey check cashers are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule and amendments will impose compliance requirements on these entities. The proposed new rule and amendments will continue to require check cashers to maintain records concerning the checks they cash, post their fees and sample calculation in their office locations and be subject to examinations of their books and records by the Department.

The Department does not believe that these requirements are unduly burdensome and should not create a need for professional services or additional staff in order for licensees to comply.

The purposes of the proposed new rule and amendments are to strike a balance between the financial integrity of check cashers and the economic interests of consumers who use check cashers, while providing for adequate notice to consumers of the fees charged by licensed check cashers and provide for the proper supervision of check cashers by the Department. These purposes do not vary based upon business size. Accordingly, no differentiation based on business size is provided.

### **Smart Growth Impact**

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

### **Housing Affordability Impact**

The proposed new rule and amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the regulation would evoke a

change in the average costs associated with housing because the proposed amendments and new rule concern check cashing.

### **Smart Growth Development Impact**

The proposed new rule and amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the regulation would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed amendments and new rule concern check cashing.

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

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 3:24-1.3 Definitions

Words and terms, when used in this chapter, shall have the meanings as defined below, unless the context clearly indicates otherwise.

...

“Essential records” includes all records listed in N.J.S.A. 17:15A-44(l) and (m); N.J.A.C. 3:24-5.3(a); and all corporate resolutions.

...

#### SUBCHAPTER 4. CHECK CASHING FEES; POSTING; **RETURNED CHECKS**

**3:24-4.1 Check cashing fees**

(a) A licensed check casher shall be permitted to charge a fee for cashing a check drawn on a depository institution or other financial entity located in this or any other state, up to an amount as follows:

1. For cashing a check payable to a recipient of Temporary Assistance for Needy Families (TANF), one percent of the face amount of the check, or \$.90, whichever is greater;

2. For cashing a check payable to a recipient of Supplemental Security Income pursuant to Subchapter XVI of the Social Security Act, 42 U.S.C. §§1381 et seq., one and one half percent of the face amount of the check, or \$.90, whichever is greater;

3. For cashing a check payable to a recipient of Old-Age and Survivors benefit payments pursuant to Subchapter II of the Social Security Act, 42 U.S.C. §§401 et seq., one and one half percent of the face amount of the check, or \$.90, whichever is greater; and

4. For cashing any other check, 2.21 percent of the face amount of the check, or \$1.00, whichever is greater.

(Agency Note: N.J.A.C. 3:24-4.1 is proposed for recodification as N.J.A.C. 3:24-4.3.)

**3:24-4.2 Posting of fees; signs**

(a) The licensee shall post and at all times display in a conspicuous place on the premises the license and also the schedule of fees to be charged, which fees shall not exceed the maximums permitted pursuant to [N.J.S.A.17:15A-43] **N.J.A.C. 3:24-4.1**. The Department shall determine the number of signs which shall be posted and shall designate those areas in the check cashing facility where these signs will be displayed, depending upon the size of the office and its

physical layout. These signs shall be in both the English language and Spanish language except where the Department deems it necessary that a different or additional language be used.

(b) Each sign shall be printed on heavy cardboard or other durable material, with printed information in a minimum of 22 point type with appropriate headings of at least 24 point bold type. These signs shall read as follows:

**STATE LICENSED CHECK CASHER MAXIMUM  
AND MINIMUM FEES YOU CAN BE CHARGED  
[2] 2.21% OF YOUR CHECK**

Example:

New Jersey check	\$300.00	
Maximum fee	[6.00] <b>6.63</b>	[2] <b>2.21%</b>
Cash to you	\$[294.00] <b>293.37</b>	

**The minimum fee is \$1.00.**

**CHECKS PAYABLE TO PERSON UNDER [AID TO FAMILIES  
WITH DEPENDENT CHILDREN (AFDC)]  
TEMPORARY ASSISTANCE FOR NEEDY  
FAMILIES (TANF) 1% OF YOUR CHECK**

Example:

[AFDC] TANF check	\$300.00	
Maximum fee	3.00	1%
Cash to you	\$297.00	

**The minimum fee is \$.90.**

**SUPPLEMENTAL SECURITY INCOME CHECKS  
(Sub XVI) 1½% OF YOUR CHECK**

Example:

SSI check	\$300.00	
Maximum fee	4.50	1½ %
Cash to you	\$295.50	

**The minimum fee is \$.90.**

SOCIAL SECURITY  
 OLD AGE AND SURVIVORS CHECKS  
 (Sub II) 1½ % OF YOUR CHECK

Example:

SS check	\$300.00	
Maximum fee	4.50	1½ %
Cash to you	\$295.50	

**The minimum fee is \$.90.**

3:24-[4.1]4.3 (No change in text.)

SUBCHAPTER 5. CONDUCT OF BUSINESS

3:24-5.2 Recordkeeping

(a) In addition to the requirements of N.J.S.A. 17:15A-44(1), a Summary of Business Record shall be maintained in which the number of checks, drafts, or money orders cashed, their total face amount, and the aggregate fees received, shall be shown for each business day and totaled for each calendar month. If this information is included in a horizontal form of daily cash reconciliation, that record will be acceptable in lieu of a separate summary of business. The summary record shall consist of six categories:

1. All [two] **2.21** percent checks cashed;
2. All one percent checks cashed, including [AFDC] **TANF** checks;
3. – 6. (No change.)

(b) - (c) (No change.)