

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

Dedicated Funding  
Fees and Annual Reports  
Office of Consumer Finance

Adopted Amendments: N.J.A.C. 3:1-7.4 and 7.6; 3:15-2.1 through 2.8, 2.12, 2.13, 2.14, 2.15, 4.2, 6.3, 6.15, and 6.16; 3:16-1.2 and 2.1; 3:19-1.2; 3:22-1.3; 3:23-1.1, 2.1, 3.1 and 3.2; 3:24-1.5, 1.6, 6.1 and 6.2; 3:25-2.2 and 3.3; and 3:27-2.1, 2.2, 3.2 and 3.6.

Adopted New Rules: N.J.A.C. 3:23-4.

Adopted Repeals: N.J.A.C. 3:15-4.3; 3:24-1.4; 3:25-2.4; and 3:27-3.3, 3.4 and 3.5.

Proposed: January 3, 2006 at 38 N.J.R. 10(a).

Adopted: May 24, 2006 by Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Filed: May 25, 2006 as R. 2006 d.235, **without change**.

Authority: N.J.S.A. 17:1-8, 17:1-15e, and 17:1C-33 et seq.

Effective Date: June 19, 2006.

Expiration Date: September 2, 2006, N.J.A.C. 3:1;  
October 10, 2007, N.J.A.C. 3:15;  
November 30, 2006, N.J.A.C. 3:16;  
November 2, 2006, N.J.A.C. 3:19;  
April 29, 2010, N.J.A.C. 3:22;  
November 18, 2007, N.J.A.C. 3:23;  
May 25, 2010, N.J.A.C. 3:24;  
January 7, 2008, N.J.A.C. 3:25;  
March 19, 2009, N.J.A.C. 3:27.

**Summary** of Public Comments and Agency Responses:

The Department received comments from Gerald Goldman, General Counsel, New Jersey  
Check Cashers Association.

COMMENT: The commenter thanked the Department for its efforts on the proposed regulation and its efforts in attempting to allocate the financial burden of the dedicated funding assessments fairly across all regulated sectors.

RESPONSE: The Department appreciates the expression of support for the proposal.

COMMENT: The commenter stated that they were generally in agreement with the policies underlying the proposed regulations and that dedicated funding is the preferred funding mechanism for financial regulatory activities because it provides greater assurance that the regulator will have sufficient operating funds in the event of economic fluctuations which would otherwise impact the state budget. The commenter stated that they believed that past budgetary and resource issues have negatively affected the Department's efficiency and timeliness in processing licenses and other applications and that shortages in personnel and resources have negatively affected the Department's ability to pursue unlicensed and illegal check cashers and other money service businesses which still continue to operate in New Jersey. The commenter noted that they hoped that dedicated funding will provide resources to the Department that will allow it to be more responsive to industry and to rid the state of illegal and unlicensed check cashers.

RESPONSE: The Department appreciates the expression of support for the proposal.

COMMENT: The commenter concurred with the proposal to amend N.J.A.C. 3:1-7.2 and 7.4 to change the spelling of the word "cashiers" to "cashers." The commenter stated the term for the licensed activity is the cashing of checks, in which case "cashers" is the appropriate term.

RESPONSE: The Department appreciates the expression of support for the proposal.

COMMENT: The commenter agreed with the need for an amendment to require check casher licensees to provide proof of compliance with the 2,500 foot distance restriction imposed by N.J.S.A. 17:15A-41(e) prior to continuation of business operations at a new location.

RESPONSE: The Department appreciates the expression of support for the proposal.

COMMENT: The commenter stated that the proposed amendment to N.J.A.C. 3:1-7.6 provides for a mandatory \$50.00 per diem penalty for the late filing of annual reports and a mandatory \$150.00 per diem penalty for late payment of assessments, up to a maximum of 20 percent of the assessment due. The commenter stated they understand the need for a penalty mechanism to encourage and enforce the timely filing of reports and payment of assessments; however, they disagree with the non-discretionary nature of the proposed language, which would appear to require assessment of a penalty in all cases of late annual report filings or late assessment payments, without regard to emergent or mitigating circumstances.

RESPONSE: The Department thanks the commenter for acknowledging the need for a penalty mechanism to encourage and enforce the timely filing of reports and payment of assessments. The failure to timely file annual reports or pay assessments affects not just the Department, but all other comparable licensees who will bear the financial burden of those licensees who do not pay their assessments. The assessment of penalties serves to impress upon licensees the importance of their obligations and provides an effective means of ensuring the timely filing of annual reports and the timely remission of assessment payments

COMMENT: The commenter noted that proposed N.J.A.C. 3:1-7.6(a)1 provides for electronic filing of annual reports. The commenter stated that, because there presently exists no mechanism

for the electronic filing of reports, they are unable to comment on the efficiency and accuracy of the system proposed. Further, the same regulation provides for an April 1st deadline for filing electronic reports, whereas proposed N.J.A.C. 3:1-7.6(a)2 provides for a March 1st deadline for filing annual reports via hard copy. The commenter proposed there be one single due date for all reports regardless of filing method. Further, the commenter noted that some licensees do not have access to data systems, which are not required by statute, in which case such licensees will be placed at a disadvantage by having a 30-day shorter deadline.

RESPONSE: The Department notes that the commenter has suggested that there be one single due date for all annual reports regardless of whether they are filed electronically or by hard copy. In recognition of the possibility that some licensees may not have computer capability, the Department provided the option of filing annual reports in hard copy in the proposed amendments.

The rules establish the March 1 deadline for the manual filing of annual reports because the Department needs additional time to enter the data supplied in such reports into its computerized database.

Rather than imposing mandatory electronic filing and requiring certain filers to incur the added expense of creating electronic data, the Department will accept manual filings and will convert those filings to electronic form. The earlier date for manual filing is required to allow time for the entry of data by Department personnel so as to enable the Department to determine the volume assessment component of the dedicated funding assessment to be made upon check casher licensees as set forth in N.J.A.C. 3:5-4(c)1. The Department does not believe that those who file electronically should be forced to file earlier than necessary, as their data will not have to be manually entered by Department staff.

The commenter suggested that those filing by hard copy will be disadvantaged by having a March 1 deadline, as opposed to those filing electronically who will have an April 1 deadline. The Department believes that these deadlines must be considered along with proposed N.J.A.C. 3:23-4.2, dealing with annual reports. This section requires licensees seeking permission to file by hard copy to submit their request by January 15. Thus, those filers not having the ability to electronically file annual reports will already be on a different time track regarding the filing of their annual report. Such licensees will need to request permission to file by hard copy not later than January 15, monitor their receipt of the granting of such a request, and then prepare to meet the March 1 deadline.

COMMENT: The commenter noted proposed N.J.A.C. 3:1-7.6(a)3 provides that an “incomplete” annual report shall be deemed to be not filed, in which case the licensee would be subject to a \$50.00 per day penalty. The commenter noted that the corresponding subsection, N.J.A.C. 3:1-7.6(c), does not provide for any maximum amount that can be imposed upon a licensee for a late report. The commenter also noted that the proposed regulation at N.J.A.C. 3:1-7.6 provides no description of what the Department would consider to be a material error and the regulation provides no mechanism for fair notice to a licensee that their annual report is found erroneous. The commenter found these provisions, which do not provide for notice to the affected licensee and make no allowance for inadvertent human or computer error, to be unfairly punitive.

RESPONSE: The \$50.00 per day penalty to which the commenter refers does not begin to run until the date that the annual report is due. Therefore, if an error or an omission is discovered and corrected prior to that date, no penalty would be assessed. The application of the material

error standard for annual reports can be found in N.J.S.A. 17:1C-48b, which provides for a penalty for any licensee who submits figures on loan volume, number of branches or any other factor used by the Department to compute the license's assessment that are substantially or materially in error. The standard legal definition of those terms would apply.

It is the obligation of the regulated entity to file a complete and accurate annual report by the date due. The Department will provide assistance and information on its website and through educational programs to help regulated entities fulfill their obligation. Because the assessment process is dependent upon the Department's timely receipt of complete and accurate data from all regulated entities, the authority to impose significant sanctions upon entities that fail to fulfill that obligation is essential.

COMMENT: The commenter noted that proposed N.J.A.C. 3:1-7.6 is unclear whether a licensee submitting an incomplete report will be assessed a per diem penalty for each day until the error is discovered by the Department and subsequently corrected by the licensee. The commenter gave the example of a licensee who did not receive notice from the Department of the error for 100 days. The issue would be whether the licensee would be assessed a \$50.00 per diem penalty, which in the example would be \$5,000. The commenter recommended that there be a cap on the maximum amount that could be assessed. With regard to errors, the commenter proposed that there be language allowing for the assessment of a penalty only for material errors and a requirement that the Department first provide notice of an incomplete filing and permit the licensee a reasonable period of time to correct a report prior to assessment of a per diem penalty.

RESPONSE: As stated earlier, it is the regulated entity's obligation to submit a complete and accurate annual report by the date due and no penalty will be incurred prior to that date. The

regulated entity can commence the process of compiling the data needed for the report during the year to which the report will pertain. The regulated entity will then have at least two months to finalize the data, if they are filing manually, prior to the date it must be filed with the Department. Those who are filing electronically will have at least three months to finalize their data. The Department believes that this is a reasonable amount of time prior to the assessment of a penalty. Because the timely filing of annual reports is critical to the accurate calculation of the assessment amounts to be imposed upon licensees, the penalties provided for in N.J.A.C. 3:1-7.6 will run from the date upon which the annual report was to have been filed.

COMMENT: The commenter noted that proposed N.J.A.C. 3:1-7.6(b), which provides that licensees will be issued penalties of \$150.00 per day for late payments of assessments, up to a maximum of 20 percent of the amount of the assessment, could result in unreasonably punitive penalties. The commenter continued that under proposed N.J.A.C. 3:1-7.6(b)1, an assessment paid with a dishonored or returned check will be deemed unpaid and the \$150.00 daily penalty will continue to accrue until a replacement check is received by the Department. The commenter noted under current N.J.A.C. 3:1-6.7, which relates to payment of examination fees, the Department will notify a licensee in writing if a check is returned and the licensee is then required to provide either a certified or cashier's check plus \$10.00. The commenter stated they understood that annual assessments are intended to pay for expenses previously incurred by the Department in regulating licensees; however, the proposed new penalty structure seems to indicate a new attitude by the Department toward its licensees. The commenter suggested that a requirement that a licensee first be given notice in the event of the late payment of an assessment be added. The commenter also proposed that in the case of a declined or returned check, the

licensee be given notice and an opportunity to provide a replacement check before a penalty would be assessed.

RESPONSE: The Department notes that N.J.S.A. 17:1C-42 requires the Department to report all assessments on which payment has not been made and objections have not been filed to the State Treasurer within 30 days. Given these statutory time constraints, the Department does not believe that the penalty structure is unreasonably punitive. Further, a returned check for an assessment is not subject to penalty until after the due date indicated on the assessment. It is the obligation of the regulated entity to pay the amount assessed by the due date on the assessment. If a payment is returned or declined prior to that date and the regulated entity issues a replacement check prior to the due date, no penalty will be imposed.

The Department acknowledges that under N.J.A.C. 3:1-6.7 the Department gives notices of returned checks and requires a replacement and a \$10.00 fee. The Department understands that in the daily course of business, a regulated entity may have a check returned or dishonored. However, the Department does not believe, given the import of the assessment, that it is unreasonable to expect a regulated entity to ensure that the funds to pay the assessment are available at the time that the payment is made. To clarify any perceived ambiguity between the two provisions, upon the adoption of amendments to N.J.A.C. 3:1-6.7, elsewhere in this issue of the New Jersey Register, that rule is being amended to clarify that returned or dishonored checks submitted in payment of an annual assessment are governed by N.J.A.C. 3:1-7.6(b) and not N.J.A.C. 3:1-6.7.

COMMENT: The commenter noted that proposed N.J.A.C. 3:1-7.6(d) provides that, in addition to any monetary penalty, “a licensee shall be subject to revocation” for an unpaid assessment



and/or the failure to file an annual report. The commenter objected to the apparently non-discretionary and punitive nature of the language. The commenter noted that although an enforcement mechanism must be in place, the proposed language is truly harsh. The commenter stated the regulation provides absolutely no requirement for notice to the affected licensee and does not provide the affected licensee any opportunity to be heard. Moreover, the commenter stated that the regulation does not provide for a suspension as an interim measure. The commenter suggested a fairer and more reasonable approach would be to require that the Department provide notice of a late report or assessment payment and, additionally, the licensee should be subject to a license suspension as opposed to revocation, but only after notice and an opportunity to be heard.

RESPONSE: The Department does not believe the language is unduly harsh. The language that the commenter stated is nondiscretionary and punitive in nature simply states that if the assessment remains unpaid after the date due or if the annual report is not filed after it is due, in addition to monetary penalties the "the licensee shall be subject to revocation." The intent of the language is to make clear that, whether or not penalties have been assessed, the Commissioner retains the authority to seek to revoke the license of the regulated entity. If the Commissioner does commence an action seeking revocation, it would be in accordance with the normal procedures and would provide to the entity all requisite due process.

COMMENT: With respect to proposed N.J.A.C. 3:24-1.4, relating to check casher application fees, the commenter believed that "the flat increase of all check cashing licensing fees across the board to \$700.00 is an excessive increase." The commenter stated that the existing \$300.00 fee for a principal office application would be increased by 233 percent and the present \$250.00 fee

for mobile and branch office applications would be increased by 280 percent. The commenter stated these increases are excessive and unprecedented, and, further, there has been no showing as to how the increase in application fees is tied into or affects the overall methodology for assessment calculation.

RESPONSE: The Department believes that the commenter does not fully understand the intent of the assessment process or its effects on the fees paid by assessed entities. Application fees are not tied to the effect or methodology of the assessment calculation. Application fees reflect the costs of assessing and processing the respective applications. Prior to the implementation of the dedicated funding statute, a regulated entity would usually be charged both an application fee and a license fee at the time of initially applying for a credential, license fees again upon each renewal, and other fees for miscellaneous services which were subsequently provided. The initial and renewal licensing fees and other miscellaneous fees have been eliminated. The adjustment of the application fee to \$700.00 reflects a change that more accurately reflects the costs to the Department of reviewing an initial application for a license and actually decreases the total amount an applicant for a new check casher license had been required to pay under the former funding structure.

COMMENT: The commenter stated that the increase in the fee for “limited branch office” applications to \$700.00 flatly contradicts the recent statutory amendments to the Check Casher Regulatory Act. The commenter stated that, specifically, by virtue of an amendment to N.J.S.A. 17:15A-40(b), “the initial license fee” for a limited branch office shall not exceed \$100.00. The commenter stated that the proposed rule amendment would violate the Check Casher Regulatory Act and is thus beyond the Department’s rulemaking authority. The commenter noted that the

Department's application for a limited branch office is currently rather simple and does not require either financial analysis or submission of survey information. The commenter stated the proposed amendments to N.J.A.C. 3:24-1.4 eliminate the fees charged for applications for changes of control and changes of address, both of which involve much more complicated application procedures. The commenter proposed that, in order to comply with the statutory limitation at N.J.S.A. 17:15A-40(b), the charge for a limited branch office be eliminated.

RESPONSE: The Department disagrees that the proposed \$700.00 application fee for a "limited branch office" violates the Check Cashers Regulatory Act of 1993 (the Act) and is beyond the Department's rulemaking authority. The Act, at N.J.S.A. 17:15A-41c, states that "[t]he commissioner shall authorize a licensee, pursuant to an application approved by the commissioner, to operate a limited branch office or offices, the business of which shall be limited to cashing checks for a particular group or groups at one or more private premises, provided that the holder of a limited branch authorization observes all of the rules and regulations issued by the commissioner applicable to all licensees except that: (1) the books and records required to be kept may be kept at the principal office of the licensee; and (2) the requirements of section 8 of this act concerning capital and net worth shall not apply with respect to a limited branch office if the licensee is in compliance with section 8 of this act with respect to its principal office." N.J.S.A. 17:15A-41c. Thus, the Legislature did not include, among the exceptions to the requirement that licensees seeking to operate limited branch offices comply with all of the rules and regulations of the Department, any provision exempting applicants for limited branch office licenses from the obligation to pay an application fee as set forth in those rules.

The rationale of the commenter's conclusion that the proposed application fee of \$700.00 violates the Check Casher Regulatory Act is based on a recent statutory amendment to the Act at N.J.S.A. 17:15A-40(b) which limits an initial license fee for a "limited branch office" to a maximum of \$100.00. In fact, the proposed rule amendments eliminate the initial license fee for a "limited branch office" in accordance with the recently enacted statute on dedicated funding, P.L. 2005, c. 199, which statutorily eliminated annual license fees. In addition, P.L. 2005, c. 199 specifically continued the authority of the Department to charge application fees to its licensees. The comment fails to recognize this distinction in the controlling statute between license fees and application fees. License fees were annual or biennial fees. An application fee is a one-time fee and should be seen by the licensee as a cost to be amortized over the life of the business. The commenter also notes that the proposal at N.J.A.C. 3:24-1.4 eliminates "application fees" charged for changes of control or changes of address. The commenter suggests that likewise the application fee for a "limited branch office" should be eliminated, especially to comply with N.J.S.A. 17:15A-40(b). As stated earlier, the Department has adjusted the amounts of the application fees to more accurately reflect the costs to the Department of reviewing applications. In the case of "limited branch offices" the Department must review the lease, the survey (for compliance with N.J.S.A. 17:15A-41(e), the "2500 foot rule"), the capital requirements and several of the other criteria for initial check casher license applications. On that basis, the Department believes the application fee for "limited branch office" specified at N.J.A.C. 3:24-1.4 is authorized by statute and is an appropriate amount that is within the range specified by the law. The Department therefore declines to make the suggested change.

COMMENT: The commenter stated that, with respect to proposed N.J.A.C. 3:24-6.1, the amendment provides that "in accordance with N.J.A.C. 3:1-7.6," the Department shall assess a

penalty for the filing of a late report. The commenter stated that, although they understand the need for a penalty mechanism to encourage and enforce the timely filing of annual reports, the proposed language would appear to require the assessment of a penalty in all cases of late filing without regard to emergent or mitigating circumstances. The commenter also noted that the regulation provides for no maximum limit on the penalty amount, causing the proposed regulation to be unreasonably punitive.

RESPONSE: As was noted above in a prior Response, the \$50.00 per day penalty to which the commenter refers does not begin to run until the date that the annual report is due. Therefore, if an error or an omission is discovered and corrected prior to that date, no penalty would be assessed.

It is the obligation of the regulated entity to file a complete and accurate annual report by the due date. The Department will provide assistance and information on its website and through educational programs to help regulated entities in their obligation. However, the fairness and efficacy of the assessment process is dependent on the timely receipt of complete and accurate data from all regulated entities.

#### Federal Standards Statement

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

**Full text** of the adoption follows:

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