

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Check Cashing

Proposed Readoption: N.J.A.C. 3:24

Authorized By: Thomas B. Considine, 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 2010-101

Submit comments by September 4, 2010 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt without change N.J.A.C. 3:24, which is scheduled to expire on November 21, 2010 pursuant to N.J.S.A.

52:14B-5.1c. These rules implement many essential provisions of the Check Cashers Regulatory Act of 1993, N.J.S.A. 17:15A-30 et seq., (Act) and its subsequent amendments.

N.J.A.C. 3:24-1 provides definitions of key terms and prescribes requirements for applications and licensing fees for check cashers.

N.J.A.C. 3:24-2 requires an applicant for a check cashing license to furnish proof of net worth and liquid assets as required by N.J.S.A. 17:15A-37 in the form of an unqualified audited financial statement and, in the event the licensee utilizes the services of an accountant who does not maintain a New Jersey office, to make their accountant's records of the licensee's operations available for inspection in New Jersey.

N.J.A.C. 3:24-3 requires the applicant to demonstrate compliance with applicable State, county and municipal laws and ordinances.

N.J.A.C. 3:24-4 sets limits on the fees which a licensee may charge for cashing a check, and prescribes the location and content of signs which a licensee must post at every location where checks are cashed.

N.J.A.C. 3:24-5 regulates licensees' conduct of business, including check cashing procedures, recordkeeping, cash reconciliation, deposits and prohibitions on commingling funds or the records of the check cashing business with those of any other business that may, in accordance with N.J.S.A. 17:15A-47e and f, be conducted on the same premises.

N.J.A.C. 3:24-6 sets forth requirements for annual reports to the Commissioner and provides authority for the commissioner to require additional reports.

As part of this readoption process, the Department has undertaken a review of N.J.A.C. 3:24. Each rule was examined to determine whether it continues to fulfill a useful function or imposes an undue regulatory burden on licensees. The Department has determined that N.J.A.C.

3:24 continues to provide the check cashing industry with appropriate regulatory standards and that the original purpose of each rule continues to exist.

Amendments to N.J.A.C. 3:24-4 to increase the maximum fees check cashers can charge for cashing certain types of checks were set forth in a notice of proposal that appeared in the New Jersey Register at 41 N.J.R. 4583(a) on December 31, 2009. The Department anticipates moving forward with the adoption of this proposal in the near future.

The Department's proposal to readopt these rules 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

These rules are designed to promote the financial responsibility of licensees, to maintain the integrity of the check cashing industry, and to provide necessary protections to consumers. An applicant for a check casher's license must demonstrate that he or she possesses capital or a net worth of at least \$50,000 for each office or mobile office and liquid assets of at least \$50,000 for each office or mobile office.

Check cashers provide an important financial service to their customers, many of whom are low and moderate income individuals who do not have easy access to traditional banking institutions or who prefer to use check cashers. The rules proposed for readoption provide reasonable standards for recordkeeping and the conduct of business, are not overly burdensome, and authorize an appropriate level of Department oversight with respect to the licensure, branching and operations of check cashers. The rules proposed for readoption, therefore, have a positive social impact.

Economic Impact

The rules proposed for readoption continues long-standing regulatory requirements. Check cashers will continue to be required to bear any costs associated with recordkeeping and reporting requirements. The information required to be filed in annual reports or maintained as a business record is already maintained in the regular course of business of check cashers. The reported information will continue to permit the Department to monitor a licensee's financial condition and its compliance with applicable law. Therefore, these rules will not impose an undue burden on check cashers.

Applicants will continue to incur professional costs for the services of a Certified Public Accountant (CPA) or public accountant with respect to the certified financial statement required to accompany a license application. This cost will vary based on the volume of business and the professional accountant who is retained. Current licensees who apply for branches may need to update their financial statement. The application fee for licenses is established by these rules at \$700.00. The Department determined this fee based on staff time and Department resources needed to process these types of license applications. The Act authorizes an application fee of up to \$2,000. The current fee is well below this statutory maximum. The Department will continue to incur costs to oversee the regulation of check cashers contained in this chapter.

Costs to the check cashing industry include fees and expenses to become licensed, to establish a branch or branches, and to maintain records and make notifications to the Department. Costs to the industry also include expenses to file an annual report and produce documents for and otherwise cooperate with the Department's examiners when they conduct financial examinations of the licensee. Lastly, costs imposed include the expense to create and

post signs in licensed locations advising customers of the fees charged to cash checks and the prohibition upon charging fees higher than those permitted by rule. The vast majority of these costs are established and required by the Act.

The benefits afforded by these rules are that check cashing services with capped fees are available to the public from well-regulated licensees who follow established standards that protect consumers from unscrupulous operators. A majority of the customers of check cashers are lower income residents of urban New Jersey communities who do not maintain an account at a traditional financial institution. For these reasons, the Department believes the benefits derived from the requirements and restrictions imposed by the rules proposed for readoption outweigh the costs of compliance.

Interested parties who possess cost/benefit data supporting a different conclusion are invited to submit such data as a comment on the proposed readoption.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption are consistent with, but do not exceed, Federal standards. Federal standards applicable to, but not exceeded by, the rules proposed for readoption, are 31 U.S.C. §§ 5331 et seq. and 31 CFR 103 et seq.

Jobs Impact

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

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption 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 rules proposed for readoption.

Regulatory Flexibility Analysis

Most check cashers are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. These rules impose recordkeeping, reporting and compliance requirements on all applicants and licensees, and are necessary both to meet statutory mandates and to monitor compliance with the Act and rules. Recordkeeping requirements, in addition to those set forth in N.J.S.A. 17:15A-30 et seq., include a Summary of Business Record, return items record, and daily cash reconciliation. Funds and records of the check cashing business are required to be kept separate from funds and records of other permissible businesses conducted on the same premises. No differentiation is made for small businesses because the check cashing activities, fees collected and procedures are the same for small as well as large businesses, and the need for Department examiners to monitor all of these factors, grounded in the need to afford an adequate level of consumer protection to the customers of licensed check cashers, is the same for all check cashers, regardless of business size. The purpose of these requirements is to maintain the integrity of the check cashing industry, to promote healthy competition and to provide services to the general public. Licensees will incur professional expenses to comply with the recordkeeping requirements of these rules; however, these expenses

are not overly burdensome and are necessary to insure the financial integrity of the check cashing businesses, as well as the protection of the public. Professional expenses are discussed in the Economic Impact above.

Smart Growth Impact

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

Housing Affordability Impact

The rules proposed for readoption rule will have an insignificant impact on affordable housing in New Jersey because the rules concern the licensing and regulation of check cashers.

Smart Growth Development Impact

The rule proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the readopted rules 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 rules concern the licensing and regulation of check cashers.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:24.