

Regulatory Impact Statement for the Amendment to Section 400.11 of the Superintendent's Regulations of 3 NYCRR 400.11

1. Statutory Authority: Financial Services Law Sections 202 and 302 and Banking Law Sections 10, 14, 371 and 372.

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent").

Financial Services Law Section 302 authorizes the Superintendent to prescribe regulations interpreting the Banking Law and to effectuate any power granted to the Superintendent in the Banking Law, Financial Services Law, and any other law.

Pursuant to Banking Law Section 372, licensed cashers of checks may only charge a fee for cashing checks for retail consumers that does not exceed the maximum fee established by the Superintendent of Financial Services by regulation. Pursuant to that authority, the Department sets the maximum fee, and a process for increasing the maximum fee, in Part 400.11 of Title 3 of the NYCRR. Additional authority for setting the fee is provided by Banking Law Sections 10, 14, and 371.

2. Legislative Objectives: By requiring the Department of Financial Services to establish the maximum fee that may be charged for by licensed cashers of checks for cashing checks for retail consumers, the Legislature intended for the Department to balance the interests of consumers in paying a reasonable fee to cash their checks and the needs of the industry to conduct their business.

3. Needs and benefits: Pursuant to Banking Law Section 372, the Superintendent of Financial Services is required, by regulation, to "establish the maximum fees which may be charged by licensees for cashing a check, draft, or money order." Since 1994, the maximum

check cashing fee has been established by Part 400.11. That Part provides a base maximum check cashing fee that increases every year “based upon an increase in the consumer price index for the New York - Newark - Jersey City, NY - NJ - PA area for all urban consumers” (“CPI”).

Following a 2019 amendment to Section 400.11, the maximum fee that a licensee may charge for cashing a retail check was set at the greater of “2.19 per centum of the amount of the check, draft or money order in addition to any increase that shall hereafter be made pursuant to subdivision (b) of this section,” or one dollar. The increase to the maximum fee is calculated by multiplying the existing maximum fee by the increase in the CPI and adding the result to the existing maximum fee. These increases are cumulative, meaning that each annual maximum fee increase results in a new base maximum fee. As a result of the increase established by Section 400.11, the base maximum fee for cashing a check rose to 2.23% in 2020, and 2.27% in 2021.

In light of the prolonged adverse economic impact on New York consumers, particularly those that utilize the services of check cashing industry, the Department of Financial Services (the “Department”) believes the process established by Section 400.11 is inadequate.

The calculation of the maximum check cashing fee is a nuanced issue, requiring a balancing of a number of competing interests, and the process currently set forth in Section 400.11 must be changed. Therefore, while the Department proposes and ultimately adopts a new methodology to set the maximum fee for cashing a check, there will be no increase in the maximum check cashing fee for 2022. Accordingly, until a permanent regulation is adopted codifying a new methodology, this emergency regulation will maintain the status quo by setting the base maximum rate set forth in subdivision (a) of Section 400.11 at last year’s rate of 2.27%.

4. Costs: The new regulation does not increase the costs imposed on regulated industries or anyone else.

5. Local government mandates: The regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

This regulation creates no new paperwork requirements.

7. Duplication: The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives: The Department of Financial Services weighed other alternatives, including allowing the existing fee increase mechanism provided by Section 400.11 to continue in effect. However, the Department concluded that no increase to the maximum check cashing fee is necessary this year.

Regulated entities will have an opportunity to participate in the rulemaking process at two future stages. First, the Department is conducting a small business outreach by posting a draft permanent regulation on its website before filing a proposal. Second, when the amendment is proposed as a permanent change to the regulation, regulated entities will have an opportunity to make public comments at that time. The proposal will be published in the State Register and posted again on the Department's website.

9. Federal Standards: Federal law does not govern the maximum fee that check cashers may charge for cashing retail consumer checks.

10. Compliance Schedule: The emergency adoption is effective immediately.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Amendment to Section 400.11 of the Superintendent's Regulations of 3 NYCRR

1. Effect of the Rule: The amendment does not apply to any local government. Seventy-one (71) of seventy-five (75) of the Department's licensed check cashers qualify as small businesses that employ less than one hundred (100) employees. The amendment does not impose any additional impacts on small businesses. Small businesses must continue to maintain the maximum fee that may be charged by licensed check cashers to cash checks for retail consumers for this year.

2. Compliance Requirements: The amendment does not change existing compliance requirements. Pursuant to Banking Law Section 372 and 3 NYCRR Section 400.11, the maximum fee that may be charged for cashing a check is already regulated by the Department of Financial Services ("Department"). The amendment maintains the maximum amount that may be charged this year while the Department assesses the methodology.

3. Professional Services: No regulated entity that is a small business should need to retain professional services, such as lawyers or auditors, to comply with this amendment.

4. Compliance Costs: No additional compliance costs are expected as a result of the amendment.

5. Economic and Technological Feasibility: No additional economic or technological burden on regulated entities that are small businesses are expected.

6. Minimizing Adverse Impacts: No adverse impacts are expected.

7. Small Business and Local Government Participation: Regulated entities that are small businesses will have an opportunity to participate in the rulemaking process at two future stages. First, the Department is conducting a small business outreach by posting a draft permanent

regulation on its website before filing a proposal. Second, when the amendment is proposed as a permanent change to the regulation, regulated entities will have an opportunity to make public comments at that time. The proposal will be published in the State Register and posted again on the Department's website.

Rural Area Flexibility Analysis for the Amendment to Section 400.11 of the Superintendent's Regulations of 3 NYCRR

1. Types and Estimated Numbers of Rural Areas: There are entities regulated by the New York State Department of Financial Services located in all areas of the State, including rural areas. Six (6) of the seventy-five (75) check cashers licensed by the Department do business in rural areas of the state. However, amendments are not expected to impose any additional costs on regulated entities. Rather, the amendments hold the maximum fee that may be charged for cashing retail consumer checks steady while the Department of Financial Services proposes and ultimately adopts a new methodology for establishing the maximum check cashing fee.

2. Reporting, recordkeeping, and other compliance requirements; and professional services: The amendment does not create any new reporting, recordkeeping or other compliance requirements. No entity subject to the regulation should need to retain professional services, such as lawyers or auditors, to comply with this amendment.

3. Costs: The amendment will not increase costs for regulated entities.

4. Minimizing Adverse Impacts: The regulation maintains the current maximum fee that may be charged for cashing retail checks while the Department proposes and ultimately adopts a new methodology for establishing the maximum check cashing fee.

5. Rural Area Participation: Regulated entities in rural areas will have an opportunity to participate in the rulemaking process as the Department proposes as a permanent change to the regulation. On [date], the Department posted the proposed amendment on its website for informal outreach and comments, in compliance with State Administrative Procedures Act Section 202-b(6). Regulated entities in rural areas also will have another opportunity to

participate in the rulemaking process when the amendment is published in the State Register and again posted on the Department's website.

Statement Setting Forth the Basis for the Finding that the Amendment to Section 400.11 of the Superintendent's Regulations of 3 NYCRR Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

This emergency regulation maintains the status quo in terms of the maximum fees that check cashers may charge consumers. The calculation of the maximum check cashing fee is a nuanced issue, requiring a balancing of a number of competing interests, and the process currently set forth in Part 400.11 is inadequate. Therefore, the Department is proposing a new methodology soon to set the maximum fee for cashing a check. There will be no increase in the maximum check cashing fee for 2022.

This amendment should not adversely impact jobs or employment opportunities in New York State. In reaching this conclusion, the Department notes that many check cashers have other sources of revenue, including commercial check cashing, for which there is no limit on the fees that check cashers may charge, and income related sources of business, including agency agreements with money transmitters. The income generated by check cashers over the last several years has been sufficient to support substantial salaries and expenses for high level employees of check cashers. Moreover, many licensed check cashers offer discounted fees to certain customers and employees while charging the maximum fee to others, resulting in a tiered pricing scheme that raises additional questions about the need to continuously raise the maximum check cashing fee. For these reasons, an inflation adjustment for the maximum fee is not necessary this year.