

**NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
AMENDMENT TO 3 NYCRR 400.11**

**FEES**

I, Adrienne A. Harris, Superintendent of Financial Services of the State of New York, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 10, 14, 371 and 372 of the Banking Law, do hereby promulgate the following amendment to Section 400.11 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon filing of the Notice of Emergency Adoption with the Secretary of State, to read as follows:

**(Matter In Brackets Is Deleted; New Matter Is Underlined)**

**Section 400.11 is amended to read as follows:**

(a) Except with respect to the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons, a licensee shall be permitted to charge or collect a fee for cashing a check, draft or money order not to exceed:

(1) [2.19] 2.27 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

(2) \$1, whichever is greater.

(b) Effective January 1, [2005] 2023, and annually thereafter, the maximum per centum fee specified in subdivision (a) of this section, shall be increased by a per centum amount, based upon an increase in the consumer price index for the New York - Newark - Jersey City, NY - NJ - PA area for all urban consumers (annual CPI-U), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor for the calendar year preceding the year in which such increase is made compared to such annual CPI-U for the year prior to such preceding year. The maximum per centum fee that may be charged or collected for cashing a check, draft or money order pursuant to this section in effect at such time shall be multiplied by such computed per centum amount and the result added to such maximum per centum fee. The resulting sum shall be the revised maximum per centum fee, which shall be posted upon the internet site of the Department of Financial Services ([www.dfs.ny.gov](http://www.dfs.ny.gov)) by the superintendent not later than 45 days following the public release of such annual index by the U.S. Department of Labor. Such revised maximum per centum fee shall be calculated and posted to the nearest one-hundredth of a per centum. Such revised maximum per centum fee shall be effective not later than 45 days after the superintendent shall have notified the Majority Leader of the Senate, the Speaker of the Assembly, and the chairperson of the Senate and Assembly Committees on Banks of his/her intention to change the maximum per centum fee pursuant to the provisions of section 372.3 of the Banking Law and shall continue in effect until revised and increased in the next succeeding year based upon an increase in such annual index. If such CPI-U does not increase in any one year, the maximum per centum fee in effect during the

year in which the index does not increase shall remain unchanged in the next succeeding year. Nothing herein shall be deemed to prohibit the superintendent from setting, by regulation, a different maximum per centum fee at any time where the superintendent shall find that such a fee is necessary and appropriate to protect the public interest and to promote the stability of the check cashing industry for the purpose of meeting the needs of the communities that are served by check cashers. No maximum fee shall apply to the charging of fees by licensees for the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons.

KATHY HOCHUL  
Governor



ADRIENNE A. HARRIS  
Superintendent

## CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the attached amendment to Section 400.11 of the Superintendent's Regulations, Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, was duly authorized by me, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 10, 14, 371, and 372 of the Banking Law, to take effect upon filing of the Notice of Emergency Adoption with the Secretary of State of New York.

Pursuant to Section 202(6) of the State Administrative Procedure Act, this regulation is being promulgated as an emergency measure for the preservation of the general welfare. A statement of the specific reasons for the finding of the need for emergency action is attached.

A handwritten signature in black ink, appearing to read "Adrienne A. Harris".

Adrienne A. Harris  
Superintendent of Financial Services

Dated: May 13, 2022

**Statement of the Reasons for the Emergency Measure  
Amendment to Section 400.11 of the Superintendent's Regulations of 3 NYCRR**

Pursuant to Section 372 of the Banking Law, 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 Section 400.11. That section 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 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.

However, Section 400.11 provides that “[n]othing herein shall be deemed to prohibit the Superintendent from setting, by regulation, a different maximum per centum fee at any time where the Superintendent shall find that such a fee is necessary and appropriate to protect the public interest and to promote the stability of the check cashing industry for the purpose of meeting the needs of the communities that are served by check cashers.”

Section 400.11 establishes a fixed methodology by which the maximum fee increases every year, based on an increase in a broad, regional measure of consumer prices that measures the average prices of a basket of consumer goods and services.

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”) is concerned with the adequacy of the process established by Section 400.11 and does not believe the fixed methodology established several years ago adequately considers other factors that need to be taken into account to protect the public interest. For example, the Department does not believe CPI is an appropriate basis to increase the maximum check cashing fee on an annual basis. CPI is a broad regional measure of the cost of living for a variety of consumers based on changes in prices of a host of consumer goods and services, such as food, energy, transportation, and medical care. It is a measure of the prices that consumers pay to buy goods and services for their day-to-day living. This is not necessarily a reliable or accurate indicator of the costs of operating a business generally, or a check cashing business, specifically, particularly as unexpected events, such as a prolonged pandemic, could have significant adverse impact on the financial health of the users of check cashing services. In fact, Section 400.11 essentially treats check cashers as urban consumers, granting annual fee increases without taking into account that, for example, an increase in CPI means that the purchasing power of the consumer declines.

Focusing solely on CPI ignores other, more relevant factors relating to costs of a check casher, and entirely ignores the associated impact of CPI increases on consumers. Among other things, solely relying on CPI ignores actual business expenses, other additional streams of income that many check cashers generate, such as cashing commercial checks that are not subject to statutory fee limits, or because they use their business as a platform to offer additional services, and their business practices. Moreover, it discounts the potential that CPI increases may beneficially impact check cashing fees, and does not consider whether the increase in fees, along with the rising costs of other goods and services, has an undue and unfair impact on consumers. For example, if wages increase with inflation, the face value of the checks being cashed increases as well. Larger checks generate higher fees for check cashers, and an annual fee increase, in essence, would result in the maximum check cashing fee increasing twice. Conversely, if wages are stagnant, automatic increases in check cashing fees mean that consumers are being hit with price increases and an increase in the cost of cashing checks.

All of this indicates that 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 is inadequate. Therefore, while the Department 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%, and subdivision (b) shall provide that the annual maximum fee calculation will resume in 2023 based on a new methodology to be established pursuant to the permanent regulation.

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.

While the check cashing industry has continuously received fee increases, including two fee increases in 2019—a special fee increase as well as an increase based on CPI changes—and an increase in 2020, and 2021, the consumers that check cashers generally serve have been struggling due to the impact of COVID-19. The fee increase process implemented by Section 400.11 does not consider the impact of the constant increases in the maximum fee on the consumers. Instead, it provides for a fixed process, without considering the full impact of the prevailing market conditions and the socio-economic impact of unforeseen events, such as a prolonged pandemic on consumers. To balance the consumer interest implicated by the maximum check cashing fee, keeping the fee steady for this year is warranted.

The emergency adoption of this regulation is necessary because, as Section 400.11 is currently drafted, the Department was scheduled to post the increase to the maximum check cashing fee indicated by the CPI increase by February 11, 2022. Because the Superintendent is not authorizing an increase to the maximum check cashing fee this year, the emergency will eliminate the posting requirement for this year and provide time for the Department to revise the process by which increases to the maximum check cashing fee are implemented.



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Adrienne A. Harris  
Superintendent of Financial Services

Dated: May 13, 2022