

WSR 24-24-103

PROPOSED RULES

DEPARTMENT OF

FINANCIAL INSTITUTIONS

[Filed December 4, 2024, 7:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-19-071.

Title of Rule and Other Identifying Information: Information system database fee increase for payday lenders.

Hearing Location(s): On January 15, 2025, at 10:00 a.m. Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501. Teams option available. Information will be posted on DFI's rule making docket web page at <https://dfi.wa.gov/agency-rulemaking>.

Date of Intended Adoption: January 16, 2025.

Submit Written Comments to: Rochelle Henderson, P.O. Box 41200, Olympia, WA 98504-1200, email Rochelle.Henderson@dfi.wa.gov, beginning December 4, 2024, by January 14, 2025.

Assistance for Persons with Disabilities: Contact Rochelle Henderson, phone 360-701-0581, TTY 1-800-833-6384, email Rochelle.Henderson@dfi.wa.gov, by January 15, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed rule increases the information system database fee from \$1.00 to \$2.00.

Reasons Supporting Proposal: Payday lender licensees are required to verify a borrower's eligibility to receive a small loan through a real-time information system database. Through the information system database, payday lenders may determine whether a consumer has an outstanding loan, the number of outstanding small loans, whether the borrower is eligible for a loan subject to RCW 31.45.073, whether the borrower is in an installment plan, and any other information. DFI is required to set the fees licensees shall pay to the information system database vendor, RCW 31.45.093(5). The information system database fee has not been updated since 2010.

Statutory Authority for Adoption: RCW 43.320.040 and 31.45.093(5).

Statute Being Implemented: Chapter 31.45 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DFI, division of consumer services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jeanju Choi, 150 Israel Road S.W., Tumwater, WA 98501, 360-725-7821.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act Requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

Section 1: Description of the proposed rule: DFI, division of consumer services (division), has prepared this SBEIS in support of

the proposal of an amendment to WAC 208-630-556, pertaining to the information system database transaction fee. The proposed amendment would increase the information system database fee from \$1.00 to \$2.00. The \$1.00 information system database fee is no longer economically viable for the information system database vendor. Further, the information system database fee has not been updated since its original implementation on January 1, 2010. See WSR 09-24-089.

Small loans (more commonly known as "payday loans") are regulated under the Check Cashers and Sellers Act, chapter 31.45 RCW. A payday loan is a short-term loan that is no more than \$700 or 30 percent of a borrower's gross monthly income, whichever is lower. RCW 31.45.073(2). Any person making a small loan must obtain and maintain a check casher or seller license with a small loan endorsement (more commonly known as "payday lenders").

Before making a payday loan, payday lenders must first verify a borrower's eligibility to receive a payday loan through a real-time information system database as set forth in RCW 31.45.093. Through the information system database, payday lenders may determine whether a consumer has an outstanding loan, the number of outstanding small loans, whether the borrower is eligible for a loan subject to RCW 31.45.073, whether the borrower is on an installment plan, and any other related information. RCW 31.45.093(1). If the information system database states that a borrower is eligible to receive a small loan, the payday lender must submit all required borrower information necessary to register the transaction in the information system database. WAC 208-630-556(7). The information system database transaction fee is \$1.00 per small loan registered. WAC 208-630-556(13). If a borrower is found to be ineligible for a small loan, the information system database provides a printable message with a reason for the determination. WAC 208-630-556(8).

Prior to preparing this SBEIS in support of the rule amendment, the division met with industry members that would be affected by this rule amendment. Following discussion with industry members, The division is proposing to amend WAC 208-620-556 to increase the information system database fee from \$1.00 to \$2.00.

Section 2: Identify which businesses must comply with the proposed rule using the North American Industry Classification System (NAICS) codes and the minor cost thresholds: In accordance with the Check Cashers and Sellers Act, any person making a small loan must first obtain and maintain a check casher or seller license with a small loan endorsement (more commonly known as "payday lenders") and will be required to comply with the proposed rules.

The NAICS code for payday lenders is 52239. The minor cost threshold that applies to this rule making under the Regulatory Fairness Act, chapter 19.85 RCW, is a cost per business of less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.

Section 3: Analyze the probable cost of compliance: In drafting the proposed rule, the division attempted to balance the purpose of the information system database with the financial impact on payday lender licensees. As set forth in WAC 208-630-555, the purpose of the information system database is to prevent predatory or prohibited practices including, but not limited to, the practice of refinancing a small loan with another small loan or ensure that small loan due dates are set in accordance with the requirements of Check Cashers and Sellers Act. Additionally, the information system database is designed to prevent licensees from making more than eight loans to any one borrow-

er in any 12-month period, making a loan to a borrower who already has an outstanding small loan principal balance or making a loan to a borrower who is in default on a small loan or in an installment plan, or multiple licensees from making simultaneous loans to individual borrowers so that the total principal balance exceeds \$700 or 30 percent of the borrower's gross income.

RCW 19.85.040 states that the small business economic impact statement must include a brief description of the reporting, record-keeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with the amended rule. The division does not anticipate changes related to reporting, recordkeeping, or use of professional services necessary to comply with the amended rule as the rule amendment is limited to increasing the transaction fee for the statutory required information system database that is already in use.

RCW 19.85.040 also states that the small business economic impact statement must analyze the costs of compliance for businesses required to comply with the proposed rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs. Further, the small business economic impact statement must include whether compliance with the proposed rule will cause businesses to lose sales or revenue. The division does not anticipate additional or new costs of equipment, supplies, labor, or professional services. However, the proposed rule would cause an increase in administrative costs.

Based on the annual assessment and report, and consolidated annual report, in 2023 there were 298,705 small loan transactions. The information system database fee is a flat fee of \$1.00 per registered loan. As such, the total fee amount in 2023 that payday lenders paid is \$298,705. As set forth in the proposed rule, increasing the information system database fee from \$1.00 to \$2.00 would result in a 100 percent fee increase. To avoid confusion, the total fee amount at \$2.00 the payday lenders would pay equals \$597,410.

The information system database fee is a cost to payday lenders. As an increase in cost would not impact sales or revenue, strictly speaking, the proposed rule would not cause businesses to lose sales or revenue. However, the division notes that the information system database fee is a cost that payday lenders are statutorily required to pay. RCW 31.45.093(5) provides that DFI must adopt rules to set fees "licensees shall pay to the vendor or service provider for the operation and administration of the system." Pursuant to the statute, licensees are not permitted to charge borrowers an additional sum to recover the fee. Accordingly, the information system database fee is a direct cost to payday lenders and would ultimately lead to a decrease in income.

Section 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry: RCW 19.85.030 provides that an agency must prepare a small business economic impact statement if the agency proposes rules that would impose more-than-minor costs on the businesses in an industry. RCW 19.85.020 defines a "minor cost" as a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whatever is greater; or one percent of annual payroll.

The division has determined, based on annual assessment and report and consolidated annual report information filed by payday lender licensees, that the rule amendment would impose more-than-minor costs

because such costs are more than three-tenths of one percent of our licensees' annual revenue or income or exceed \$100.

Section 5: Determine whether the proposed rule may have a disproportionate impact on small businesses compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Also consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue: RCW 19.85.040 requires that the division determine whether compliance with the rule amendment would have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the costs of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules. "Small business" is defined as any business entity that is owned and operated independently from all other businesses, and that has 50 or fewer employees. RCW 19.85.020(3).

Currently, there are 11 payday lender licensees in Washington. Based on the information provided by licensees in their annual assessment and report and consolidated annual report filings, two licensees do not meet the definition of "small business" as they reported having more than 50 employees. Due to the small number of industry participants, the division categorized the two largest licensees as the "10 percent of businesses that are the largest businesses."

Based on the information provided by licensees in the 2023 annual assessment and report and consolidated annual report, the two licensees that have been categorized as the 10 percent of businesses that are the largest businesses, make 80 percent of the small loans in Washington. In terms of total small loan volume, the same two licensees account for approximately 78 percent of small loans made to Washington borrowers. It appears that the proposed rule would disproportionately impact small businesses due to the current composition of industry players.

RCW 19.85.040 requires that the division determine whether the proposed rule will have a disproportionate impact on small businesses by comparing the cost of compliance for small businesses and the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Basis for comparing costs includes cost per employee, cost per hour of labor, or cost per \$100 of sales.

As the proposed rule is related to an actual cost, the division believes that reviewing the impact of the cost on income would be a more appropriate basis for comparison to determine whether the proposed rule will have a disproportionate impact on small businesses.

Based on the information reported in DFI's annual payday lending report, the overall number of small loans made has declined since 2010. Revenue for payday lenders is, in part, dependent on the fees received from making small loans. Separate from this proposed rule, licensees are likely to experience a general decline in revenue.

Using the best information available to the division at this time and assuming similar information provided by licensees in the 2023 annual assessment and report and consolidated annual report, the proposed rule would result in an estimated average decrease of 8.6 percent in income for the largest 10 percent of businesses, and 43 percent estimated average decrease in income for small businesses.

Section 6: If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses: In drafting the proposed rule, the division took into consideration the legal requirements set forth in the Check Cashers and Sellers Act, the purpose of the infor-

mation system database, and the financial impact on payday lender licensees. DFI is statutorily required to set and implement the information system database fee. As set forth in the Check Cashers and Sellers Act, DFI is statutorily required to "adopt rules to set the fees licensees shall pay to the vendor or service provider for the operation and administration of the system." RCW 31.45.093(5).

As described in Section 7 below, and as a result of discussions and input received from affected businesses, the division reduced the information system database fee as detailed below. The division outlines additional mitigation steps we intend to take to reduce the burden of compliance. The division does not believe that it can reduce the cost of the information system database further and still accomplish the consumer protections contemplated by the Check Cashers and Sellers Act.

Reducing, modifying, or eliminating substantive regulatory requirements: The division does not believe that removing the requirement to report small loan transactions would be in the interest of the public.

Simplifying, reducing, or eliminating recordkeeping and reporting requirements: The division does not believe that removing the requirement to report small loan transactions would be in the interest of the public.

Reducing the frequency of inspections: The division does not believe that removing the requirement to verify whether borrowers are eligible for a small loan would be in the interest of the public. As set forth in WAC 208-630-555, the information system database serves as a mechanism to prevent borrowers from debt traps, while also acting as a tool for payday lenders to ensure they are in compliance with the Check Cashers and Sellers Act.

Delaying compliance timetables: The division does not believe that removing the requirement to report small loan transactions would be in the interest of the public.

Modifying fine schedules for noncompliance: There are no fines directly associated with a licensee's failure to pay the information system database fee. However, the information system database vendor will lock out any person that does not pay the database fee.

Any other mitigation techniques including those suggested by small businesses or small business advocates: The division considered whether there were other ways to mitigate the impact of this cost. However, RCW 31.45.093(5) requires that licensees pay the vendor or service provider for the operation and administration of the information system database.

The division originally contemplated incrementally increasing the fee from \$1.00 to \$3.00 over a period of two years. The division initially received a proposal to increase the fee beginning fall of 2024. The division met with members of the industry to discuss the potential fee increase. Upon discussion and receiving input from industry members, the division reduced the proposed fee increase from \$3.00 to \$2.00.

The division will further consider any comments received on the CR-102 that address how to reduce costs or suggest any additional mitigation techniques.

Section 7: Describe how small businesses were involved in the development of the proposed rule: Throughout the rule-making process, the division has involved the payday lender licensees. Most of the payday lender licensees are small businesses with fewer than 50 employees.

On August 28, 2024, the division met with payday lender licensees to discuss the need to increase the information system database. Licensees were also informed of the division's plan to initiate the rule-making process. During and following the meeting, the division received feedback from licensees. In particular, input related to a small increase of the fee.

The division filed a CR-101 preproposal statement of inquiry with the code reviser's office on September 16, 2024, stating that the division was considering amending WAC 208-630-556. On September 26, 2024, the division electronically notified the payday lender distribution list of the CR-101 filing and provided a link to DFI's rulemaking docket website. The division did not receive any comments on the CR-101.

The division intends to proceed with the rule making by formally proposing the amended rule in this CR-102 filing with the code reviser. The division will distribute the CR-102 to the payday lender licensees. The payday lenders and all interested members of the public will have the opportunity to submit comments on the proposed rule and participate in the rule-making hearing.

Section 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: Based on a review of the financial condition of each licensee, and in conjunction with a declining market, the proposed rule may result in a loss of jobs.

Section 9: Summarize the results of the analysis, including the determination if costs are disproportionate: As discussed in Section 5 above, the proposed rule may impose disproportionate costs on small businesses as compared to the largest 10 percent of businesses required to comply with the rules. To mitigate this, the division revised its draft rule to lower the fee increase as detailed in Section 6.

While the proposed rule increases costs to licensees, the division believes the purpose the information system database serves in protecting borrowers outweighs the concerns regarding cost increases.

A copy of the statement may be obtained by contacting Jeanju Choi, P.O. Box 41200, Olympia, WA 98504-1200, phone 360-725-7821, TTY 1-800-833-6384, email jeanju.choi@dfi.wa.gov.

December 3, 2024
Charlie Clark
Director

OTS-5983.1

AMENDATORY SECTION (Amending WSR 16-10-046, filed 4/29/16, effective 6/1/16)

WAC 208-630-556 How do I use the database system for small loan transactions? (1) Beginning January 1, 2010, each small loan transaction must be registered with the database system and receive a database system-generated transaction authorization number. The transaction authorization number demonstrates that the transaction has been

recorded in the database prior to you making the small loan to the borrower.

(2) **Do I have to buy any equipment, hardware, or software to use the database system?** You must have a computer with access to the internet and Microsoft Internet Explorer 6 or higher. Dial-up capacity of at least 56 kps is sufficient. DSL or broadband access will provide faster access and response. It is also possible to interface directly with the database system; the database vendor can provide you with information about that process.

(3) **How and when may I access the database system?**

(a) The database system is the means by which real-time access to the data is made available to you through your internet connection.

(b) You must use a computer and the internet to access the database system.

(c) The database system will be accessible (~~(twenty-four)~~) 24 hours a day every day of the year, except for routine scheduled system maintenance and upgrades performed by the database vendor.

(4) **What must I do to maintain confidentiality of the borrower's information provided to the database?** In order to maintain the confidentiality and security of the borrower's information, you must not transmit information to the database system using publicly accessible computers, computers that are not under your control, unsecured wireless connections, or other connections that are not secure. Maintaining a secure connection includes, but is not limited to, installing and regularly updating antivirus and antispyware software and a fire-wall.

(5) **How do I use the database system to determine a borrower's eligibility for a small loan?** You must:

(a) Access the database system using the assigned user identification and password provided by the security administrator of your company;

(b) Enter the borrower's Social Security number, individual tax identification number (ITIN), or alien identification number, and the borrower's gross monthly income into the system.

(6) **What information will the database system give me when an eligibility search is conducted?** The database system will state a borrower's eligibility or ineligibility for a small loan and will give a reason for the eligibility determination. If the borrower is eligible for a small loan, the database system will provide the dollar amount the borrower is eligible to receive.

(7) **What must I do once the initial search determines that the borrower is eligible for a small loan?**

(a) If you receive an initial indication from the database vendor that the borrower is eligible for a small loan, you must then submit all of the required borrower information necessary to register the transaction in the database, as prescribed by the database vendor.

(b) When the required information has been submitted to the database, the database system will confirm the initial borrower search. If the borrower's eligibility is confirmed, the small loan transaction will be recorded as open and assigned a transaction authorization number evidencing that the transaction has been authorized by the database system. You must place the transaction authorization number on the small loan agreement.

(8) **What must I do if the borrower is determined to be ineligible for a small loan?** If the borrower is deemed ineligible you will be provided with a printable message with a reason for the determination. The message will also include the name, address, and toll-free support

number of the database vendor. You must provide a copy of the printable message to the borrower.

(9) **If I make a mistake entering data and must void the transaction, what do I do?** Follow the database vendor's instructions to administratively void the transaction.

(10) **If the database system is inaccessible via the internet, how do I access the database?**

(a) You will be given at least (~~twenty-four~~) 24 hours notice for scheduled maintenance or system upgrades. The notice will be by electronic mail to the designated security administrator, or by a broadcast message on the database vendor's website.

(b) In the event the database system is unavailable, you must adhere to the following procedures:

(i) Confirm that the database system remains unavailable by attempting to access the database system with every borrower seeking a new small loan transaction. You need not comply with this procedure if you have been notified via electronic mail by the database vendor of an expected period of time necessary to correct whatever problem is causing the database system to remain unavailable;

(ii) Contact the database vendor's toll-free help desk or voice response system to obtain a temporary transaction authorization number directly from the database vendor; and

(iii) Enter the remaining transactional data into the database system within (~~twenty-four~~) 24 hours of obtaining the temporary transaction authorization number from the database vendor.

(c) In the event that either the department of financial institutions or the database vendor notifies you that the database system is unavailable and that all alternative methods for registering a transaction and receiving a transaction authorization number are also unavailable:

(i) You are authorized to conduct transactions during the specific period of unavailability, after receiving written authorization, via electronic mail or facsimile from either the department of financial institutions or the database vendor with the department of financial institutions' consent.

(ii) Copies of the written authorization for any transactions conducted during an unavailability period must be attached to the small loan agreement for those transactions. One copy of the authorization must be provided to the borrower and another copy must be kept as an audit record.

(d) Transactions created during a period of authorized unavailability must be registered with the database within (~~twenty-four~~) 24 hours of notification that the database system is available; provided, however, that if the database system is unavailable for more than (~~twenty-four~~) 24 hours, then the period for registration shall be extended by (~~twenty-four~~) 24 hours for each additional (~~twenty-four~~) 24-hour period of unavailability.

(e) Once the transaction has been registered with the database, the transaction number assigned to that transaction must be placed on the licensee's record copy of the small loan agreement signed by the borrower for that transaction. If the borrower requests that transaction number at any time, the licensee must provide it to the borrower.

(11) **Once a loan is made, how can it be canceled or rescinded as authorized under RCW 31.45.086?** A borrower may rescind a small loan agreement before the close of business on the next day of business after the date of the transaction without incurring a transaction fee. If a borrower elects to cancel a small loan agreement you must close

the transaction on the database as soon as practicable after the borrower rescinds the small loan transaction. A loan that has been rescinded does not count toward the eight loan limit; nor will you incur a ((~~one~~)) two dollar transaction fee on that loan. For the purpose of rescinding a loan, the date of the transaction is the date the borrower actually receives the proceeds either in person or by direct deposit or other electronic transfer of funds into the borrower's bank account.

(12) When must I update information on the database system?

(a) When a borrower's small loan is paid (date of cash received, check deposited, or ACH authorization initiated), you must update open transactions on the database system as soon as practicable to ensure that all identifying information regarding both the borrower and the transaction are accurate, including any comments on the transaction which you deem relevant. You must input the date and time a transaction closes, as well as the payment method, unless you previously entered the payment method.

(b) When a small loan that was in default is paid, it is considered paid when the loaned amount and default fee is paid.

(c) When a loan is in default, you must mark the loan in the database as in default as soon as practicable after the default as follows:

(i) A small loan is in default if not paid on the date and by the time indicated in the small loan agreement. If no time is indicated the small loan is in default the first day after the due date.

(ii) A small loan in an installment plan is in default if unpaid on the 11th day after the due date, with the due date being day zero. If the due date for an installment plan payment is January 1st and is not paid, the loan is considered in default and the database must be updated on January 11th.

(d) When you receive formal notice that a small loan has been discharged in bankruptcy you must close the loan as having been paid, leaving a comment in the comment box about the bankruptcy. Do not administratively close the loan. The loan must continue to count toward the borrower's eight loan limit.

(13) How much will each database transaction cost me? The database vendor's transaction fee is ((~~one-dollar~~)) two dollars per loan registered. The database vendor will assess this fee for each transaction that has been registered on the database.

(14) What happens if I do not pay the database fees to the database vendor? The database vendor will lock you out of the database system.

(15) What happens if I do not receive training and become certified in using the database? If you or another designated person in the company do not receive training and certification to use the database, you will not be given an access number for the database.