

September 15, 2022

Mr. George Bogdan
NY State Department of Financial Services
1 State Street
New York, NY 10004

Re: Proposed Amendment to 3 NYCRR 400.11 – SAPA Rulemaking

Dear Mr. Bogdan,

We, the undersigned organizations, strongly support the New York State Department of Financial Services' proposed amendment to its check cashing regulation (3 NYCRR 400.11). The purpose of the amendment authorizes the DFS Superintendent to review and limit increases in check cashing fees charged to New York consumers, based upon a review of expense and profitability data submitted by licensees.

The purpose of the regulation is to protect consumers, especially low and moderate-income New Yorkers, by more carefully considering the impacts of fee increases, which are currently tethered to increases in the Consumer Price Index. The CPI may not adequately reflect either the ability of consumers to afford the fees, changes that they have experienced in income and spending power during the same period, and also the costs and expenses of providing check cashing services. The DFS is concerned that by granting further increases that are automatically tethered to the CPI, New York State could be unfairly raising the price of check cashing services in a way that is inconsistent with the principles of economic fairness and the practices of other states.

As organizations that advocate for consumers and residents of New York neighborhoods, we are concerned that many users of check cashing services are unfairly burdened by financial fees that eat away at their limited incomes. While we recognize there may be significant costs and expenses involved in operating check cashing companies, the New York State DFS should carefully consider the financial ability of the consumers who are served by these businesses to afford the fees that are charged, the actual costs and profitability of providing the services, and only permit increases if they are truly warranted by underlying financial and expense data, and other factors that DFS deems important.

Background on the Proposed Amendment

On June 15, 2022, the New York State Department of Financial Services (DFS) promulgated a proposal to amend check cashing regulation NYCRR 400.11¹, following an earlier emergency

¹ 3 NYCRR 400.11, available at: https://www.dfs.ny.gov/system/files/documents/2022/05/rp_3nyccr400-11_text_20220615_0.pdf See also: https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202206151

regulation announced in February 2022.² The proposed regulation sets forth a new fee methodology which evaluates the needs of licensees and consumers who use check cashing services.

The proposed regulation recommends two tiers of fees for check cashers, which is similar to the approach that many other states take. The maximum fee that any check casher can charge for a public assistance check issued by a federal or state agency is 1.5%. This includes checks for social security, unemployment, emergency relief, veteran's benefits, and the like. For all other checks, the maximum fee that any check casher can charge is 2.2% or \$1, whichever is greater.

Beginning in January 2027 and every five years thereafter, the industry may request an increase in the maximum fees established. Any such request must be supported in writing by submission of annual information regarding the licensee's costs and expenditures, profitability, and additional information requested by DFS. The DFS may review any fee request submitted by a licensee and approve, modify or deny a request for an adjustment to the maximum fees described above.

The issuance of the proposed regulation follows the emergency regulation published in February 2022, which maintained the 2021 maximum check casher fee while the Department reexamined the methodology to determine such fee.

To develop the proposed regulation, the Department conducted extensive research, and met with industry, academics, and consumer advocates to inform the new methodology and maximum fees. In announcing the proposed regulation, Superintendent Adrienne Harris said:

As our world evolves, so must our approach to regulation. DFS undertook a data-driven review of the check cashing fee methodology and current maximum fees to understand the impacts of fees on both the industry and New Yorkers, particularly members of immigrant communities and people of color, who depend on check cashers as an essential service to fulfill their financial service's needs. We are continually working to promote access to affordable and safe financial products to all communities, while also ensuring the safety and soundness of institutions."

Unbanked and Underbanked Households Rely on Non-Bank Services such as Check Cashers

Approximately 25% of New York State households do not have bank accounts or seldom use one and rely on costly non-bank services for their financial activities, according to the Federal Deposit Insurance Corporation. In 2019, the FDIC estimated that about 5.5% of households nationally used check cashing services specifically.³ Younger households, less-educated households, and Black, Hispanic, and Native American households were more likely to use

² 3 NYCRR 400.11, available at:

https://www.dfs.ny.gov/system/files/documents/2022/08/re_bank_amend_3nycrr400_11_text_20220810.pdf

See also: https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202202141

³ Federal Deposit Insurance Corporation, *How America Banks: Household Use of Banking and Financial Services*, last updated 12/17/21, available at: <https://www.fdic.gov/analysis/household-survey/index.html>

money orders, bill payment and/or check cashing (3 services measured together), as were lower-income households and households with volatile income.⁴

90% of money order, bill payment and check cashing users had incomes of less than \$75,000. Of that amount, 30% had incomes of less than \$15,000 and 25% had incomes between \$15,000 and \$25,000. The FDIC estimated that 18% of New York households, including approximately 18% of NYC-metro households use these 3 transaction services.⁵ The U.S. Census Bureau reports New York State has 7.4 million households with an average size of 2.55 members each. This suggests there are possibly as many as 1.3 million New York State HOUSEHOLDS who use check cashers at least some of the time, with a downstream impact on 3.4 million INDIVIDUALS, including children, teenagers and other adults.⁶

In 2017, the New York City Department of Consumer and Worker Protection (DCWP) commissioned a survey which reported that 354,000 city households don't have bank accounts.⁷ At 11.2%, that was almost double the national figure but slightly lower than it was in 2015 at 11.7%. The survey also found almost 690,000 additional households have bank accounts but also use check cashing and other services with fees like pre-paid cards. Unbanked residents tend to be concentrated predominantly in communities of color and low-income neighborhoods, according to the DCWP. They include undocumented immigrants, even though many can open bank accounts through the IDNYC program. They also include homeless individuals and families.

The Economic Squeeze Affecting Low- and Moderate-Income New Yorkers

New York State has a very high cost of living for low- and moderate-income families, according to the United Way of New York State. Based on a "Household Survival Budget" developed by United Way, the agency estimates more than four in ten New York households can't afford the basics of housing, food, health care, technology, child care, and transportation. New York has some of the highest housing costs in the U.S.; in 2017 the New York State comptroller reported that New York ranked third among all the states in the proportions of both renter and owner households devoting half or more of their income to housing.⁸

Further, in 2020, more than half of all jobs in New York paid less than \$20/hour (or \$40,000/year if full-time) which is about two-thirds of the Household Survival Budget for a family of four. The most job growth has occurred in low-wage jobs that cannot support a family

⁴ Ibid.

⁵ FDIC, *How America Banks*, Appendix D, p. 61-63, available at: <https://www.fdic.gov/analysis/household-survey/2019appendix.pdf>

⁶ U.S. Census Quick Facts, New York state, available at: <https://www.census.gov/quickfacts/NY>

⁷ New York City Department of Consumer and Worker Protection, *Where are the Unbanked and Underbanked in New York City? Updated Findings, 2017 Data*, available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-UnAndUnderbankedNewYorkers.pdf>

⁸ Office of the New York State Comptroller, *Housing Affordability in New York State, 2019*, available at: <https://www.osc.state.ny.us/files/reports/special-topics/pdf/housing-affordability-2019.pdf>

household survival budget, even with two earners.⁹ Some 31% of households in the state are characterized as “Asset-Limited, Income-Constrained, Employed,” which means they are struggling to pay for necessities and living paycheck to paycheck - in addition to 14% of households who live below the federal poverty level. As a result, the United Way estimates that 45% of New York households are “already one emergency away from financial ruin.”¹⁰

At the national level, real wages have been stagnant for many workers for decades, according to the Center for American Progress:

From 1979 to 2019, inflation-adjusted wages for the bottom 10 percent of households rose by just 6.5 percent; the median household saw growth of just 8.8 percent over those 40 years, while the 90th percentile of earners saw a whopping 41.3 percent growth.¹¹

Similarly, New Yorkers who rely on public assistance and rental assistance programs may face substantial gaps between what those programs provide and their actual living costs.

The New York Times reports that low-income Americans are in general struggling harder with inflation because of the lack of home equity and financial savings.¹² “Because such a big chunk of their budgets is devoted to food and housing, lower-income families have less room to cut back before they have to stop buying necessities,” the Times said.

The negative impact of check cashing fees was recently highlighted by the high cost that New Yorkers had to pay to cash stimulus checks provided by the CARES Act during the COVID-19 pandemic. Some 350,000 unbanked households in New York City were likely affected by these fees, which cost 2.3% of the value of the government checks intended to provide emergency relief for individuals and households.

Jonathan Mintz, president and CEO of the Cities for Financial Empowerment Fund, commented on the costs of cashing stimulus checks for low-income New Yorkers in March 2021:

A family of four getting their checks will have to pay over \$127 in fees. And then they have to start buying money orders to convert the cash that they just paid to get into instruments where they can start to pay their bills.

These are people who are generally lower income. Often, they have uneven streams of income. And so, they are worried that a bank account might be too expensive, that if

⁹ United Way of New York State, *Have You Met ALICE? Asset-Limited, Income-Constrained, Employed 2020 Fact Sheet*, available at: https://uwnys.org/wp-content/uploads/ALICE-NY-2020Sheet_vweb.pdf

¹⁰ Ibid.

¹¹ Center for American Progress, *Wages and Employment Do Not Have to Decline to Bring Down Inflation*, 9/2/2022, available at: <https://www.americanprogress.org/article/wages-and-employment-do-not-have-to-decline-to-bring-down-inflation/>

¹² Smialek, J. and Casselman, B., *In An Unequal Economy, The Poor Face Inflation Now and Job Loss Later*, The New York Times, 08/08/2022, available at: <https://www.nytimes.com/2022/08/08/business/economy/inflation-jobs-economy.html>

there's a bad month there might be surprise fees like overdraft and insufficient funds fees.¹³

New York's neighboring states of Connecticut and New Jersey impose significantly tighter caps on fees for cashing public benefits checks than New York currently permits. According to a fee schedule from 2013, both states capped the fee for cashing state-issued public benefits checks at 1% of the face value of the check (or 90 cents in NJ, whichever is greater). New Jersey capped the fees for cashing social security checks at 1.5%.¹⁴

In 2016, researchers Ryan McDevitt and Aaron Sojourner estimated that a New York breadwinner living in a household of three with an annual income of \$20,000 a year would pay \$400 a year in check cashing fees.¹⁵

Charges for Check Cashing Services Should Be Reasonable and Affordable, For People Who Use Them

As should be clear from the forgoing, low- and moderate-income New Yorkers face stark challenges using their limited household budgets to pay for the basic costs of living, and should not be charged excessive costs and fees for using basic financial services. Financial fees are not just a nuisance, they are a costly nuisance that hits low and moderate-income consumers especially hard.

Check-cashing fees should bear a reasonable and proportionate relationship to the underlying costs of providing the particular service they are imposed for. Federal and state financial regulators such as New York State DFS should consider ways to eliminate or reduce excessive, predatory and/or inappropriate fees that are not justified by the cost of providing the service, and/or diverge sharply from market norms and ethical business practices.

As discussed above, the incomes of low- and moderate-income New Yorkers often do not increase at the same rate as the Consumer Price Index, and tend to lag behind the increase in prices for housing, transportation, groceries and other goods and services.

For all these reasons, it is highly appropriate for the New York State DFS to closely scrutinize whether specific increases in check cashing fees are justified by the underlying cost and

¹³ Fertig, Beth. *Many New Yorkers Who Need Stimulus Checks the Most Face High Fees Just to Cash Them*, WNYC/Gothamist, March 25, 2021, available at: <https://gothamist.com/news/many-nyers-who-need-stimulus-checks-most-face-high-fees-just-cash-them>

¹⁴ Financial Service Centers of America (FISCA), *Summary of State Check Cashing Laws – Updated August 2013*, available at: <https://www.natcnc.com/wp-content/uploads/2016/10/FISCA-State-CC-Laws-2013.pdf> See also: New Jersey Administrative Code Section 2.24-4.1, available at: <https://casetext.com/regulation/new-jersey-administrative-code/title-3-banking/chapter-24-check-cashing/subchapter-4-check-cashing-fees-posting-returned-checks/section-324-41-check-cashing-fees>

¹⁵ McDevitt, Ryan and Sojourner, Aaron, *Banks Need to Improve and Accelerate Payment Systems*, Albany Times Union, 4/3/16, available at: <https://www.timesunion.com/tuplus-opinion/article/Banks-need-to-improve-and-accelerate-payment-7391120.php> See also: Demand Regulation and Supply on the Margin of Alternative Financial Services, available at: https://files.consumerfinance.gov/f/documents/P4a_-_McDevitt_-_ElasticityCheckCashing.pdf

expense of providing that service, and industry profitability requirements. As advocates for consumers, seniors, union members, affordable housing, and neighborhood economic and community development, we strongly support the proposed amendment to enhance DFS's authority to limit potential increases in fees for check cashing services. We urge policymakers to work to make basic financial services affordable and accessible to everyone who needs them, especially low-income New Yorkers, immigrants and people of color who often lack lower-cost alternatives in their neighborhoods.

Sincerely,

Contact Person	Organization
Christian Moriarty	American Debt Resources, Inc.
Kevin M. Quinn	Center for Elder Law & Justice
Joe Di Fiore	City Roots Community Land Trust
Chuck Bell	Consumer Reports
Kirsten Keefe	Empire Justice Center
Michelle de la Uz	Fifth Avenue Committee
Charles Das	Housing and Family Services of Greater New York
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Trina Kokalis	Long Island Housing Services, Inc.
Joseph Barden	Margert Community Corporation
Andy Morrison	New Economy Project
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Gail Padadlino	Rensselaer County Housing Resources, Inc.
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Gina Calabrese*	Consumer Justice for the Elderly: Litigation Clinic of St. John's University School of Law

* Endorsed as an individual, organization listed for affiliation purposes only.

All other endorsements are on behalf of the listed organizations.

New Yorkers for Responsible Lending is a statewide coalition of over 150 organizations concerned with fair financial services and financial justice.

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