



STATE OF WASHINGTON

DEPARTMENT OF FINANCIAL INSTITUTIONS

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SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Concerning proposed rule amendments to regulate check cashers and sellers businesses
September 23, 2009

Introduction

The Department of Financial Institutions (the Department) has prepared this Small Business Economic Impact Statement (SBEIS) in compliance with Chapter 19.85 RCW, the Regulatory Fairness Act. This SBEIS is written in support of rules proposed by the Department to implement amendments to Chapter 31.45 RCW, the Check Cashers and Sellers Act (the Act) from the 2009 legislative session. The Department filed the Preproposal Statement of Inquiry (CR-101) on May 4, 2009 as WSR 09-10-066.

Background for Proposed Rules

During the 2009 legislative session, the Washington legislature passed Senate Bill 5164 (SB 5164) and Engrossed Substitute House Bill 1709 (ESHB 1709). Governor Gregoire signed SB 5164 into law on March 25, 2009, as chapter 13, Laws of 2009 and signed ESHB 1709 into law on May 15, 2009, as chapter 510, Laws of 2009.

The proposed rules impact companies licensed under the Act that have a small loan endorsement (Licensees). Key changes required by the legislature affecting Licensees include:

- Licensees are required to maintain a log of all communications with borrowers regarding collection communications
- Small loan amounts are limited to \$700 or 30 percent of the borrower's gross monthly income, whichever is lower
- Borrowers are limited to eight loans in any twelve-month period
- Licensees must access a statewide database to determine a borrower's eligibility for a small loan
- Borrowers are entitled to an installment plan on each small loan they are unable to repay
- Licensees must provide a disclosure to borrowers about the availability of an installment plan
- Licensees must provide a notice to applicants highlighting changes to the Act

REQUIRED ELEMENTS OF SBEIS

ELEMENT 1. A brief description of the reporting, record keeping, and other compliance requirements of the proposed rules and the kinds of professional services that a small business is likely to need in order to comply with the requirements.

RESPONSE:

Reporting

There are no new reporting requirements for Licensees.

Record keeping

Licensees will be subject to the following new record keeping requirements:

1. Create and maintain a communication log of all Licensee initiated collection communications with a borrower, including telephone and written communications;
2. Maintain the income documentation used to determine the borrower's eligibility for a small loan;
3. Include a disclosure to borrowers, on the small loan application form, about the availability of the installment plan; and
4. Provide borrowers with contracts that meet the amended installment plan terms and conditions

Other compliance requirements

Licensees will be subject to the following other compliance requirements:

1. Licensees must use a database implemented by the Department to determine a borrower's eligibility for a small loan;
2. Licensees must use a database implemented by the Department to update required information on small loans outstanding or that have not expired;
3. Licensees will incur a database transaction fee of approximately \$1.00 for each small loan recorded on the database; and
4. Licensees must provide a notice to applicants and borrowers describing the changes to the Act resulting from the Laws of 2009. The Department will provide the content of the notice.

Professional services required.

The reporting, record keeping and other compliance requirements of the proposed rules do not necessarily require professional services. These functions can be performed by a Licensee. However, many Licensees will likely choose to hire additional employees or outside professional services to create and maintain a communications log, maintain income documentation, amend application forms, create installment plan agreements, access the database, or produce the required notice.

ELEMENT 2. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, and increased administrative costs.

RESPONSE:

The Department gathered the data needed for analysis using an online survey of Licensees. The survey was available to Licensees from August 10, 2009, to August 31, 2009. To promote Licensee participation, on August 10, 2009, the Department used its Check-Casher-Seller ListServ to send an email to the 736 individual ListServ subscribers (consisting of Licensees and other interested persons) advising them of the survey. This communication resulted in a total of 82 survey responses; however, after eliminating incomplete and duplicate entries, the Department found that just 31 of the responses were acceptable. These 31 responses came from the Department's population of 126 Licensees, for a 25 percent response rate. Only 6 of these 31 respondents have more than 50 employees. All other respondents are "small businesses" under RCW 19.85.020. The small businesses that participated in the survey had from 1 to 48 employees.

Each survey participant was asked to estimate the cost of the proposed rules on the business. The attached tables, Appendices A and B, summarize the results of the survey from small businesses with 50 or fewer employees and businesses with more than 50 employees respectively, with each response assigned a number rather than the respondent's name.

Analysis of survey results for Licensees with 50 or fewer employees

The highest cost elements of the proposed rules for this group are the income documentation and database utilization provisions. Respondents indicated that a majority of the income documentation costs were associated with labor, while the costs associated with using the database were evenly split between labor and other administrative costs. Among the other elements of the proposed rules, labor represented the highest cost component by a significant margin in all cases except the requirement to provide a brochure to borrowers where the cost of supplies slightly exceeds labor costs.

There is a wide range of cost estimates among the respondents. The Department believes this is due to the varied business models, delivery channels, and uses of technology among Licensees.

Analysis of survey results for Licensees with more than 50 employees

The highest cost element of the proposed rules for this group is by far the income documentation requirement. Accessing the database, using installment plan contracts, and keeping and maintaining the communication log are other elements identified as higher cost. Respondents indicated that a majority of the income documentation, database use, and installment plan contract costs were associated with other administrative costs; while labor was the highest cost associated with maintaining a communication log.

ELEMENT 3. Whether compliance with the proposed rules will cause businesses to lose sales or revenue.

RESPONSE:

The proposed rules do not restrict a Licensee's ability to provide services. However, the Act was amended to limit borrowers to eight small loans in any twelve-month period. This amendment will likely cause Licensees to lose sales and revenue. The proposed rule requiring Licensees to provide borrowers with a notice explaining the amendments to the Act may increase the borrower's awareness of the installment plan provision and could result

in more borrowers exercising that right. However, the Department does not believe that enhanced disclosure of this provision of the law will have a measurable effect on a Licensee’s volume of business or revenue.

ELEMENT 4. A comparison of compliance costs for the small and large business segments of the affected industries, and whether the impact on small business is disproportionate.

RESPONSE:

It appears that the cost of compliance for a small business runs from a low of \$1,669 per employee to a high cost of \$60,938 per employee with an average of \$12,197 per employee. For businesses with over 50 employees, the cost of compliance runs from a low of \$63 per employee to a high cost of \$4,178 per employee with an average of \$1,293 per employee. Therefore, it does appear that the proposed rules will have a disproportionate impact on small businesses.

ELEMENT 5. Steps taken by the agency under RCW 19.85.030(2) to reduce costs of the proposed rules on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.

RESPONSE:

The Department’s analysis of these new Licensee requirements, listed in the response to Element 1 above, found that several of the requirements addressed are either entirely or partially attributable to legislative changes to the Act rather than the proposed rules. The Department has fully considered and pursued methods to reduce the costs on small businesses in accordance with RCW 19.85.030(3)(a) through (f). The following table summarizes each new requirement, the Department’s findings related to the requirement’s source, and the steps taken by the Department to mitigate the costs to small businesses.

New Requirement	Source of Requirement	Department Mitigation Efforts
Licensees must create and maintain a communication log of all Licensee initiated collection communications with a borrower, including telephone and written communications.	This is a requirement of the Act. SB 5164 Section 1(4).	The Department amended an earlier version of the proposed rules to limit the required elements of the communication log to only those items required by the Act.
Licensees must maintain the income documentation used to determine the borrower’s eligibility for a small loan.	Partially attributable to proposed rules.	The Department has expanded the acceptable forms of income verification from earlier versions of the proposed rule and reduced the frequency that Licensees must obtain income verification from once every 30 days to every 90 days. In addition, most Licensees already collect income documentation as part of their routine processes; therefore, any additional cost would be negligible.

New Requirement	Source of Requirement	Department Mitigation Efforts
Licensees must include a disclosure to borrowers, on the small loan application form, about the availability of the installment plan.	This is a requirement of the Act. SB 1709 Section 5(1).	The Department is unable to mitigate the impact of this statutory change.
Licensees must provide borrowers with contracts that meet the amended installment plan terms and conditions.	This is a requirement of the Act. SB 1709 Section 4(1).	The Department is unable to mitigate the impact of this statutory change.
Licensees must use a database implemented by the Department to determine a borrower's eligibility for a small loan.	This is a requirement of the Act. SB 1709 Section 6(1).	The Department is unable to mitigate the impact of this statutory change.
Licensees must use a database implemented by the Department to update required information on small loans.	This is a requirement of the Act. SB 1709 Section 6(4).	The Department is unable to mitigate the impact of this statutory change.
Licensees will incur a database transaction fee of approximately \$1.00 for each small loan recorded on the database.	Partially attributable to proposed rules.	This cost is tied to a Licensee's volume of business and therefore should be comparable for all Licensees regardless of business size. In addition, the nature of this charge is self-mitigating, since a Licensee must make a small loan, and thus will charge the borrower a loan fee of up to \$95, in order to incur the \$1 database transaction fee.
Licensees must provide a notice, using content provided by the Department, to each small loan applicant outlining the changes to the Act resulting from the Laws of 2009.	Attributable to proposed rules	The Department requires Licensees to provide the notice to borrowers only during 2010.

ELEMENT 6. A description of how the agency will involve small business in the development of the proposed rules.

RESPONSE:

The Department involved industry representatives and consumer advocates to assist in developing the proposed rules. The Department met with each group individually and jointly during rule drafting. All rule drafts were available on the Department's website. The Department has received numerous comments on the amendments to the Act and the proposed rules. The Department will continue to solicit comments until November 13, 2009.

ELEMENT 7. A list of the industry(ies) affected by the proposed rules.

RESPONSE:

The industry affected by the proposed rule is check cashers, check sellers, and small loan ('payday loan') lenders licensed under the Act. Check cashers and sellers must obtain a license before engaging in business. Small loan lenders must first obtain a check casher and seller's license and then obtain an endorsement that permits them to make small loans. Not all companies provide all three services.

ELEMENT 8. An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rules.

RESPONSE:

Based upon the survey responses, Licensees with 50 or fewer employees estimate that an average of 1 job would be lost as a result of the proposed rules, and none indicated that any jobs would be created. Licensees with more than 50 employees estimated that an average of 10 jobs would be lost, and an average of 1 job would be created.

Responses from the 50 or fewer employee Licensee group ranged from zero to eight lost jobs. Just one respondent with more than 50 employees reported that any jobs would be lost; however, this respondent indicated that all 56 of its employees would lose their jobs. The two respondents that indicated jobs would be created reported that two and four jobs would be created as a result of the proposed rules.

Appendix A

Small Businesses with 50 or Fewer Employees

	Communication Log: Equipment, Supplies, Labor, and Other Admin Costs	Communication Log: Recordkeeping Costs	Income Documentation: Equipment, Supplies, Labor, and Other Admin Costs	Income Documentation: Recordkeeping Costs	Installment Plan Disclosure: Equipment, Supplies, Labor, and Other Admin Costs	Using The Database: Equipment, Supplies, Labor, and Other Admin Costs	Annual Costs for Professional Services \$	Installment Plan Contracts: Equipment, Supplies, Labor, and Other Admin Costs	Law Change Brochure: Equipment, Supplies, Labor, and Other Admin Costs	Total Costs	Jobs Created	Jobs Lost	Number of Employees	Cost Per Employee
1	\$ -	\$ -	\$ 45,000	\$ 10,000	\$ 2,080	\$ 86,000	\$ 4,000	\$ 10,000	\$ 6,600	\$ 163,681	0	0	48	\$ 3,410
2	\$ -	\$ -	\$ 17,000	\$ 2,500	\$ 3,000	\$ 97,660	\$ 10,000	\$ 14,000	\$ 3,500	\$ 147,662	0	0	22	\$ 6,712
3	\$ -	\$ 500	\$ 30,361	\$ 4,032	\$ 60,963	\$ 28,924	\$ 4,152	\$ 80,412	\$ 11,485	\$ 220,832	0	8	17	\$ 12,990
4	\$ 13,300	\$ 13,300	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 26,604	0	0	14	\$ 1,900
5	\$ 12,500	\$ 5,000	\$ 102,500	\$ 5,000	\$ 7,000	\$ 15,000	\$ 3,000	\$ 9,000	\$ 27,500	\$ 186,505	0	1	10	\$ 18,651
6	\$ 8,020	\$ 500	\$ 1,000	\$ 5,000	\$ 1,300	\$ 18,612	\$ 25,000	\$ 5,000	\$ 5,000	\$ 69,438	0	7	10	\$ 6,944
7	\$ 19,092	\$ 200	\$ 17,050	\$ 200	\$ 2,308	\$ 71,408	\$ 9,600	\$ 20,184	\$ 28,222	\$ 168,271	0	0	9	\$ 18,697
8	\$ 5,075	\$ 2,500	\$ 10,450	\$ 2,500	\$ 6,450	\$ 20,500	\$ 4,500	\$ 10,700	\$ 13,500	\$ 76,183	0	3	8	\$ 9,523
9	\$ 25,600	\$ 25,600	\$ 24,450	\$ 24,450	\$ 25,500	\$ 31,000	\$ 3,000	\$ 24,500	\$ 25,500	\$ 209,609	0	0	6	\$ 34,935
10	\$ 18,600	\$ 300	\$ 9,600	\$ 500	\$ -	\$ 225	\$ 1,000	\$ -	\$ 1,025	\$ 31,260	0	2	5	\$ 6,252
11	\$ 9,000	\$ -	\$ 14,400	\$ -	\$ 500	\$ 9,100	\$ 1,000	\$ 1,200	\$ 2,250	\$ 37,461	0	0	5	\$ 7,492
12	\$ 2,440	\$ 2,440	\$ 21,100	\$ -	\$ -	\$ 2,000	\$ 3,000	\$ -	\$ 3,000	\$ 33,992	0	2	5	\$ 6,798
13	\$ -	\$ -	\$ 300	\$ 120	\$ 1,150	\$ 11,420	\$ 1,000	\$ 10,920	\$ 4,350	\$ 29,273	0	2	5	\$ 5,855
14	\$ -	\$ -	\$ 300	\$ -	\$ 900	\$ 3,900	\$ 1,200	\$ -	\$ 360	\$ 6,674	0	0	4	\$ 1,669
15	\$ 7,100	\$ 4,200	\$ 109,500	\$ 2,000	\$ 5,500	\$ 35,000	\$ 7,000	\$ 4,500	\$ 8,000	\$ 182,815	0	5	3	\$ 60,938
16	\$ 400	\$ 1,000	\$ 4,800	\$ 1,000	\$ 300	\$ 10,000	\$ 10,000	\$ 2,200	\$ 2,400	\$ 32,116	0	0	3	\$ 10,705
17	\$ 8,400	\$ 200	\$ -	\$ -	\$ 1,500	\$ 705	\$ 3,000	\$ 5,600	\$ 1,500	\$ 20,922	0	1	3	\$ 6,974
18	\$ 1,200	\$ 1,200	\$ 1,200	\$ 600	\$ 2,000	\$ 4,400	\$ 4,000	\$ 500	\$ 2,200	\$ 17,318	0	3	3	\$ 5,773
19	\$ 250	\$ 50	\$ 850	\$ 50	\$ 800	\$ 2,350	\$ 3,500	\$ 3,700	\$ 1,700	\$ 13,269	0	0	2	\$ 6,635
20	\$ 1,320	\$ -	\$ 5,520	\$ -	\$ 120	\$ 4,100	\$ 800	\$ 400	\$ 680	\$ 12,960	0	0	2	\$ 6,480
21	\$ 4,000	\$ -	\$ -	\$ 2,000	\$ 500	\$ 4,400	\$ 5,000	\$ 5,000	\$ 2,000	\$ 22,921	0	1	2	\$ 11,461
22	\$ 2,000	\$ -	\$ 2,250	\$ -	\$ 700	\$ 5,500	\$ -	\$ 3,000	\$ -	\$ 13,472	0	0	2	\$ 6,736
23	\$ 1,250	\$ 50	\$ 5,550	\$ 500	\$ 1,050	\$ 2,250	\$ 500	\$ 3,000	\$ 20	\$ 14,193	0	0	2	\$ 7,097
24	\$ 1,750	\$ 250	\$ 7,800	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,824	0	0	1	\$ 9,824
25	\$ -	\$ -	\$ 7,461	\$ 10,140	\$ 373	\$ 9,468	\$ 960	\$ 561	\$ 1,489	\$ 30,476	0	1	1	\$ 30,476
Average	\$ 5,652	\$ 2,292	\$ 17,538	\$ 2,824	\$ 4,960	\$ 18,957	\$ 4,208	\$ 8,575	\$ 6,091	\$ 71,109	0	1	8	\$ 12,197

Appendix B

Businesses with More Than 50 Employees

	Communication Log: Equipment, Supplies, Labor, and Other Admin Costs	Communication Log: Recordkeeping Costs	Income Documentation: Equipment, Supplies, Labor, and Other Admin Costs	Income Documentation: Recordkeeping Costs	Installment Plan Disclosure: Equipment, Supplies, Labor, and Other Admin Costs	Using The Database: Equipment, Supplies, Labor, and Other Admin Costs	Annual Costs for Professional Services \$	Installment Plan Contracts: Equipment, Supplies, Labor, and Other Admin Costs	Law Change Brochure: Equipment, Supplies, Labor, and Other Admin Costs	Total Costs	Jobs Created	Jobs Lost	Number of Employees	Cost Per Employee
1	\$ -	\$ -	\$ 335,000	\$ 5,000	\$ 5,000	\$ 25,000	\$ 5,000	\$ 5,000	\$ -	\$ 380,000	2	0	573	\$ 663
2	\$ 156,112	\$ 6	\$ 30,835	\$ -	\$ 151	\$ 226,568	\$ 5,000	\$ 160,000	\$ 6,300	\$ 584,972	4	0	140	\$ 4,178
3	\$ 20,000	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,000	0	0	113	\$ 221
4	\$ -	\$ -	\$ 13,800	\$ 7,200	\$ 14,859	\$ 6,600	\$ -	\$ 3,894	\$ 12,135	\$ 58,488	0	0	77	\$ 760
5	\$ 18,000	\$ 5,000	\$ 12,500	\$ 2,000	\$ 6,500	\$ 31,500	\$ 5,000	\$ 42,500	\$ 17,500	\$ 140,500	0	5	75	\$ 1,873
6	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ -	\$ -	\$ -	\$ 3,000	\$ 3,500	0	56	56	\$ 63
Average	\$32,352	\$ 1,668	\$ 65,356	\$ 2,367	\$ 4,502	\$ 48,278	\$ 2,500	\$35,232	\$ 6,489	\$198,743	1	10	172	\$ 1,293