



# PROPOSED RULE MAKING

**CR-102 (June 2024)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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FILED

**DATE: December 04, 2024**  
**TIME: 7:50 AM**

**WSR 24-24-103**

**Agency:** Department of Financial Institutions

**Original Notice**  
 **Supplemental Notice to WSR** \_\_\_\_\_  
 **Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 24-19-071 ; or**  
 **Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or  
 **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**  
 **Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Information System Database Fee Increase for Payday Lenders

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
January 15, 2025	10:00 AM	Department of Financial Institutions, 150 Israel Road SW, Tumwater, WA 98501	Teams option available. Information will be posted on the Agency's Rulemaking Docket webpage at <a href="https://dfi.wa.gov/agency-rulemaking">https://dfi.wa.gov/agency-rulemaking</a> .

**Date of intended adoption:** January 16, 2025 (Note: This is **NOT** the **effective** date)

Submit written comments to:	Assistance for persons with disabilities:
Name Rochelle Henderson	Contact Rochelle Henderson
Address P.O. Box 41200, Olympia, WA 98504-1200	Phone (360) 701-0581
Email Rochelle.Henderson@dfi.wa.gov	Fax
Fax	TTY 1-800-833-6384
Other	Email Rochelle.Henderson@dfi.wa.gov
Beginning (date and time) December 4, 2024	Other
By (date and time) January 14, 2025	By (date) 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. The Department of Financial Institutions 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 RCW 31.45.093(5)

**Statute being implemented:** chapter 31.45 RCW

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Department of Financial Institutions, Division of Consumer Services  
**Type of proponent:**  Private.  Public.  Governmental.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting	Jeanju Choi	150 Israel Road SW, Tumwater, WA 98501	(360) 725-7821
Implementation	Jeanju Choi	150 Israel Road SW, Tumwater, WA 98501	(360) 725-7821
Enforcement	Jeanju Choi	150 Israel Road SW, Tumwater, WA 98501	(360) 725-7821

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

No: Please explain: The Department of Financial Institutions is not one of the agencies listed in RCW 34.05.328.

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570](#)(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:

- |   |  |
|---|--|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

- The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

**Section 1: Description of the proposed rule**

The Department of Financial Institutions, Division of Consumer Services, has prepared this Small Business Economic Impact Statement (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 of Consumer Services met with industry members that would be affected by this rule amendment. Following discussion with industry members, The Division of Consumer Services 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 rulemaking 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 of Consumer Services 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 borrower in any 12-month period, making a loan to a borrower who is 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, recordkeeping, 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 of Consumer Services 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 of Consumer Services 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 of Consumer Services 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 the Department of Financial Institutions 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 of Consumer Services 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 of Consumer Services 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 of Consumer Services 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 of Consumer Services 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 of Consumer Services 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 the Department of Financial Institutions' 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 of Consumer Services 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 of Consumer Services took into consideration the legal requirements set forth in the Check Cashers and Sellers Act, the purpose of the information system database, and the financial impact on payday lender licensees. The Department of Financial Institutions is statutorily required to set and implement the information system database fee. As set forth in the Check Cashers and Sellers Act, the Department of Financial Institutions 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 of Consumer Services reduced the information system database fee as detailed below. The Division of Consumer Services outlines additional mitigation steps we intend to take to reduce the burden of compliance. The Division of Consumer Services 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 of Consumer Services 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 of Consumer Services 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 of Consumer Services 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 of Consumer Services 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 of Consumer Services 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 of Consumer Services originally contemplated incrementally increasing the fee from \$1.00 to \$3.00 over a period of two years. The Division of Consumer Services initially received a proposal to increase the fee beginning Fall of

2024. The Division of Consumer Services met with members of the industry to discuss the potential fee increase. Upon discussion and receiving input from industry members, the Division of Consumer Services reduced the proposed fee increase from \$3.00 to \$2.00.

The Division of Consumer Services 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 rulemaking process, the Division of Consumer Services 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 of Consumer Services met with payday lender licensees to discuss the need to increase the information system database. Licensees were also informed of the Division of Consumer Services' plan to initiate the rulemaking process. During and following the meeting, the Division of Consumer Services received feedback from licensees. In particular, input related to a small increase of the fee.

The Division of Consumer Services filed a Form CR-101: Pre-Proposal Statement of Inquiry with the Code Reviser's Office on September 16, 2024, stating that the Division of Consumer Services was considering amending WAC 208-630-556. On September 26, 2024, the Division of Consumer Services electronically notified the payday lender distribution list of the CR-101 filing and provided a link to the Agency's Rulemaking Docket website. The Division of Consumer Services did not receive any comments on the Form CR-101.

The Division of Consumer Services intends to proceed with the rulemaking by formally proposing the amended rule in this CR-102 filing with the Code Reviser. The Division of Consumer Services 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 rulemaking 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 of Consumer Services revised its draft rule to lower the fee increase as detailed in Section 6.

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

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

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Other

<b>Date:</b> 12/3/2024	<b>Signature:</b> 
<b>Name:</b> Charlie Clark	
<b>Title:</b> Director	