

Regulatory Analysis

TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

LSA Document # 20240103-IR-750230837RAA

I. Description of Rule

a. History and Background of the Rule

This rulemaking sets forth a schedule for fees, fines, and civil penalties as may be assessed by the Department of Financial Institutions (the “Department”) as required under IC 4-22-2-19.6(b). The proposed rule will establish the Department’s fees at the same amounts that were most recently adopted by the Members effective July 1, 2023. The proposed rule will not change or increase any fee that is currently being assessed by the Department.

Similarly, the proposed rule sets forth a schedule of civil penalties for violations of specific statutes; however, the Department will not be obligated to issue a civil penalty. In the last five years, the Department has averaged issuing one civil penalty a year and the dollar amounts have been small. Civil penalties are not considered a revenue source for the Department.

b. Scope of the Rule

The proposed rule is intended to align the Department’s rules with HEA 1623 and I.C. 4-22-2-19.6. Specifically, 750 IAC 10 will set forth all the Department’s current fees, fines, or civil penalties.

c. Statement of Need

The proposed rule will bring the Department’s practices into compliance with HEA 1623 and I.C. 4-22-2-19.6 by setting forth the Department’s fees, fines, and civil penalties. The Department is a dedicated fund agency that is required, pursuant to I.C. 28-11-3-5(b), to “fix and collect, on an annual basis, a schedule of fees for the services rendered and the duties performed by the department in the administration of financial institutions.”

The public policy reason for assessing fees is that I.C. 28-11-3-5(b) requires the Department to set a fee schedule for the services rendered. Further, I.C. 28-11-3-5(c) requires that “in determining the costs, the department may classify the assets of financial institutions and fix fees at different rates for the examination, supervision, regulation, and liquidation of the classes of assets, based on the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions.” The regulatory model of the Department has been time tested and has resulted in a system producing sound financial supervision and a strong financial institution system in Indiana all the while being a value-priced regulator.

The Department is not statutorily required to assess fines or civil penalties; however, it has broad statutory authority to generally assess fines and civil penalties in an amount of up to \$10,000 per violation. The proposed rule will bring the Department into compliance with HEA 1623 and I.C. 4-22-2-19.6(d) by setting forth a civil penalty schedule. The civil penalty schedule identifies a baseline civil penalty amount along with factors that may

increase or decrease the amount of the civil penalty. Included in the proposed factors are those that are statutorily required, and factors enumerated in I.C. 4-22-2-19.6(d).

Additionally, the Department has included a provision that will not obligate it to issue a civil penalty. This provision is intended to allow the Department to continue the practice of focusing on requiring refunds for those borrowers who are unlawfully charged, in lieu of the Department receiving a civil penalty. While there are multiple public policy reasons for issuing civil penalties—including, but not limited to, protecting the public, ensuring full compliance with the law, deterring violations, promoting respect for the law, and providing just punishment—the Department focuses on requiring consumer refunds. There are times, however, when the violation warrants civil penalties in addition to consumer restitution. For these rare occasions in which a civil penalty is warranted, the Department’s proposed rule will conform with HEA 1623 thereby preserving the Department’s discretion to issue a civil penalty.

d. Statutory Authority for the Proposed Rule

Pursuant to 24-4.4-3-105, 24-4.5-6-104, I.C. 24-4.5-7-414, I.C. 24-7-7-1, I.C. 24-12-10-1, I.C. 28-1-29-2, I.C. 28-4.1-401, and I.C. 28-11-1-12, the Department has statutory authority to adopt and enforce administrative rules that are necessary to administer each relative article.

The Department has statutory authority to assess fees to financial institutions in general pursuant to I.C. 28-11-3-5(b), which provides that “the department shall fix and collect, on an annual basis, a schedule of fees for the services rendered and the duties performed by the department in the administration of financial institutions.” Further, I.C. 28-11-3-5(c) requires that “in determining the costs, the department may classify the assets of financial institutions and fix fees at different rates for the examination, supervision, regulation, and liquidation of the classes of assets, based on the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions.”

Additional statutory authority for specific fees are as follows:

Fee Type	Statutory Reference
Check Cashing License	
Application Fee	IC 28-8-8-5-11(c)
Renewal Fee	IC 28-8-5-15(a)(1)
Renewal Late Fee	IC 28-5-15(b)(2)
Hourly Exam Fee	IC 28-8-5-19(b)
Late Exam Fee Payment	IC 28-8-5-19(b)
Civil Proceeding Advance Payment Provider (CPAP)	
Application Fee	IC 24-12-9-5(h)(1)
Renewal Fee	IC 24-12-9-5(h)(3)
Renewal Late Fee	IC 24-12-9-5(i)
Hourly Exam Fee Payment	IC 24-12-9-5(h)(2)
Late Exam Fee Payment	IC 24-12-9-5(i)

Debt Management License		
	Application Fee	IC 28-1-29-3(d)
	Renewal Fee	IC 28-1-29-3(d)
	Renewal Late Fee	IC 28-1-29-3(d)
	Hourly Exam Fee Payment	IC 28-1-29-10.5(d)(2)
	Late Exam Fee Payment	IC 28-1-29-10.5(d)(2)
Creditor's Notification Return for Depository Institutions		
	Renewal Fee	IC 24-4.5-6-203(1)
Hoosier Traditional Mortgage		
	Certification Fee	IC 24-5-23.6-9(b)(4)
	Recertification Fee	IC 24-5-23.6-9(b)(4)
Consumer Loan License		
	Application Fee	IC 24-4.5-3-503(8)(a)
	Renewal Fee	IC 24-4.5-3-503(8)(c)
	Renewal Late Fee	IC 24-4.5-3-503(9)
	Hourly Exam Fee Payment	IC 24-4.5-6-106(3)(b)
	Late Exam Fee Payment	IC 24-4.5-6-106(3)(b)
Money Transmitter License		
	Application Fee	28-8-4.1-503(c)
	Renewal Fee	28-8-4.1-506(a)(1)
	Renewal Late Fee	28-8-4.1-401(b)(3) and IC 28-8-4.1-1103(b)(1)
	Hourly Exam Fee Payment	IC 28-8-4.1-401(b)(3)
	Late Exam Fee Payment	IC 28-8-4.1-104(b)(3)
Mortgage Lending License		
	Application Fee	IC 24-4.4-2-402(8)(a)
	Renewal Fee	IC 24-4.4-2-402(8)(b)
	Renewal Late Fee	IC 24-4.4-2-402(9)
	Hourly Exam Fee Payment	IC 24-4.4-2-402(8)(c)
	Late Exam Fee Payment	IC 24-4.4-3-104(6)
Mortgage Loan Originator (MLO) License		
	Application Fee	750 IAC 9-3-2(h)(1)
	Renewal Fee	750 IAC 9-3-2(h)(2)
	Hourly Exam Fee	750 IAC 9-3-2(h)(3)
Non-Lender Registration (Credit Sellers/Lessors) (Notice of Intent – State Form 83)		
	Renewal Fee	IC 24-4.5-3-203(1)
	Hourly Exam Fee	IC 24-4.5-6-106(3)(b)

	Late Exam Fee	IC 24-4.5-6-106(3)(b)
Pawnbrokering License		
	Application Fee	IC 28-7-5-5(a)
	Renewal Fee	IC 28-7-5-5(a) and IC 28-7-5-11(a)(1)
	Renewal Late Fee	IC 28-7-5-11(b)(2)
	Hourly Exam Fee Payment	IC 28-7-5-16(a)
	Late Exam Fee Payment	IC 28-7-5-16(a)
Rental Purchase Registration		
	Application Fee	IC 24-7-8-4(a)(1)
	Renewal Fee	IC 24-7-8-4(a)(2)
	Renewal Late Fee	IC 24-7-8-4(c)
	Hourly Exam Fee Payment	IC 24-7-8-4(b)
	Late Exam Fee Payment	IC 24-7-7-2(h)
Small Loan License		
	Application Fee	IC 24-4.5-3-503(8)(a)
	Renewal Fee	IC 24-4.5-3-503(8)(c)
	Renewal Late Fee	IC 24-4.5-3-503(9)
	Hourly Exam Fee Payment	IC 24-4.5-3-503(8)(b)
	Late Exam Fee Payment	IC 24-4.5-3-503(9)

Additional statutory authority for civil penalties is as follows:

Civil Penalty	Statutory Authority
Violating naming convention standards	IC 28-1-20-4(m)
Unsafe or unsound practices or violations of law; and violations by certain individuals	IC 28-11-4-7 and 9
Violation of statute, cease and desist order, or any condition imposed in writing by the director by individuals	IC 24-4.4-2-404.4(3)(c)
Violations of the First Lien Mortgage Act	IC 24-4.4-3-111(1)
Pattern or practice of refusal to issue refund for prepayment owed for a consumer credit sale or consumer loan credit insurance	IC 24-4.5-4-108(6)
Violations of the Uniform Consumer Credit Code	IC 24-4.5-6-113(3)
Violation of statute, cease and desist order, or any condition imposed in writing by the director by directors, officers, or manager of a creditor	IC 24-4.5-6-122(c)
Violations of limits and number of amounts of outstanding small loans, lender verification requirements, and third-party data base requirements	IC 24-4.5-7-404(10)
Violations of the Rental Purchase Agreement Act	IC 24-7-7-1(b)

Violations of the Civil Proceeding Advance Payment Act	IC 24-12-5-1
Violations of the Debt Management chapter	IC 28-29-13(b)
Knowingly authorized, directs, or aids violations of the Debt Management chapter	IC 28-29-13(c)
Violations of the Pawnbroking Law	IC 28-7-5-38.1
Violations of Money Transmission Modernization Act	IC 28-4.1-1105
Violations of the Check Cashing Act	IC 28-8-5-24(a)

e. Fees, Fines, and Civil Penalties

The proposed rule adds fees and civil penalties and will comply with HEA 1623 and I.C. 4-22-2-19.6.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule

July 1, 2024

b. Estimated Fiscal Impact on State and Local Government

The proposed rule establishes fees and civil penalties for the Department. The Department does not consider civil penalties to be a revenue source. In the last five years, the Department has averaged issuing one civil penalty a year and the dollar amounts have been insignificant. The Department is wholly dependent upon the fees it collects to fund its annual budget as determined by its legislative appropriation. The fee schedule in the proposed rule would generate \$10,698,000 in annual revenue, which is significantly less than the legislative appropriation for the Department. This rule does not impact expenditures or revenues of local government.

c. Sources of Expenditures or Revenues Affected by the Rule

The proposed rule will impact the Department’s revenue. Pursuant to I.C. 28-11-2-9(c), all revenue accruing to the Department is required to be paid into the financial institutions’ fund, which is a dedicated fund. The proposed rule will go into effect on July 1, 2024, and will impact the Department’s revenue in each successive fiscal year.

III. Impacted Parties

There will be no new impacted parties as a result of the proposed rule. The proposed rule is adopting fees that are already being assessed to regulated persons. Similarly, the proposed rule does not add new civil penalties but rather reflects the Department’s current practices. As such, only persons who are regulated by the Department are subject to the assessment of fees. Only persons who have been found to violate specific statutes, identified below, will be potentially liable for the civil penalties.

IV. Changes in Proposed Rule

The proposed new rule adopts a schedule of fees and civil penalties. The fee schedule as proposed in the new rule does not represent a change but rather incorporates the Department’s existing fee schedule as set by the Department’s board members. The proposed civil penalty schedule is rooted in the Indiana Code; there is not something that exists in another document. The Department does not intend to change its enforcement practice—which is to issue civil penalties only when the violation warrants civil penalties in addition to consumer restitution.

The fee schedule in the proposed new rule adopts the Department’s existing fee schedule. The existing fees are either based on a schedule applied to asset size, a schedule based on volume, or set fees. The existing fees are as set forth below.

- a. Pursuant to I.C. 28-11-3-5, the schedule of fees for services rendered and the duties performed by the department in the administration of financial institutions for banks, savings banks, building and loan associations, and industrial authorities shall be as follows:

IF THE AMOUNT OF TOTAL ASSETS IS:		THE FEE WILL BE:		
OVER	BUT NOT OVER	THIS AMOUNT	PLUS	OF EXCESS OVER
\$ 0	\$ 10,000M	4,380		
10,001M	15,000M	4,380	.2160 per Thousand	10,000M
15,001M	25,000M	5,460	.0970 per Thousand	15,000M
25,001M	50,000M	6,430	.0748 per Thousand	25,000M
50,001M	100,000M	8,301	.0683 per Thousand	50,000M
100,001M	500,000M	11,717	.0660 per Thousand	100,000M
500,001M	1,000,000M	38,101	.0644 per Thousand	500,000M
1,000,001M	3,000,000M	70,279	.0482 per Thousand	1,000,000M
3,000,001M	5,000,000M	166,669	.0378 per Thousand	3,000,000M
5,000,001M	10,000,000M	242,269	.0346 per Thousand	5,000,000M
10,000,001M	20,000,000M	415,204	.0324 per Thousand	10,000,000M
20,000,001M	40,000,000M	739,339	.0318 per Thousand	20,000,000M
40,000,001M		1,376,269	.0297 per Thousand	40,000,000M

- b. Pursuant to I.C. 28-11-3-5, the schedule of fees for services rendered and the duties performed by the department in the administration of financial institutions for trust departments shall be as follows:

IF THE AMOUNT OF TOTAL ASSETS IS:		THE FEE WILL BE:	
OVER	BUT NOT OVER	THIS ASSESSMENT	
\$ 0	\$ 2,000M	\$ 800	
2,001M	5,000M	1,500	
5,001M	10,000M	2,000	
10,001M	20,000M	3,000	
20,001M	30,000M	4,000	
30,001M	40,000M	5,000	
40,001M	50,000M	6,000	
50,001M	100,000M	8,500	
100,001M	500,000M	11,000	
500,001M	1,000,000M	21,000	
1,000,001M		\$21,000 plus \$.0022 per thousand on Trust Assets over \$1,000,000M	

- c. Pursuant to I.C. 28-11-3-5, the schedule of fees for services rendered and the duties performed by the department in the administration of financial institutions for corporate fiduciaries shall be as follows:

IF THE AMOUNT OF TRUST ASSETS IS:			THE FEE WILL BE:	
OVER	BUT NOT OVER	THIS AMOUNT	PLUS	OF EXCESS OVER
\$ 0	\$ 20,000M	5,150		
20,001M	50,000M	5,150	.1578 per Thousand	20,000M
50,001M	100,000M	9,884	.0922 per Thousand	50,000M
100,001M	500,000M	14,494	.0205 per Thousand	100,000M
500,001M	1,000,000M	22,694	.0102 per Thousand	500,000M
1,000,001M	10,000,000M	27,794	.0050 per Thousand	1,000,000M
10,000,001M	20,000,000M	72,794	.0035 per Thousand	10,000,000M
20,000,001M	40,000,000M	107,794	.0025 per Thousand	20,000,000M
40,000,001M		157,794	.0020 per Thousand	40,000,000M

- d. Pursuant to I.C. 28-11-3-5, the schedule of fees for services rendered and the duties performed by the department in the administration of financial institutions for credit unions shall be as follows:

IF THE AMOUNT OF TOTAL ASSETS IS:			THE FEE WILL BE:	
OVER	BUT NOT OVER	THIS AMOUNT	PLUS	OF EXCESS OVER
\$ 0	\$ 545M	510		
546M	1,000M	510	.7373 per Thousand	\$ 545M
1,001M	5,000M	845	.7607 per Thousand	1,000M
5,001M	10,000M	3,888	.2534 per Thousand	5,000M
10,001M	50,000M	5,155	.0677 per Thousand	10,000M
50,001M	100,000M	7,861	.0665 per Thousand	50,000M
100,001M	500,000M	11,188	.0660 per Thousand	100,000M
500,001M	1,000,000M	37,572	.0644 per Thousand	500,000M
1,000,001M	3,000,000M	69,749	.0631 per Thousand	1,000,000M
3,000,001M	5,000,000M	196,001	.0232 per Thousand	3,000,000M
5,000,001M		242,306	.0227 per Thousand	5,000,000M

- e. If a bank, savings banks, building and loan association, industrial authority, trust department, corporate fiduciary, or credit union, receives a composite 3 rating at its most recent state or federal safety and soundness examination, its annual fee shall be increased by 12.5%. This assessment shall be prorated on a quarterly basis. The increased supervisory assessment shall stay in effect until the quarter following the financial institution's receipt of a composite 1 or 2 rating at a state or federal safety and soundness examination.
- f. If a bank, savings banks, building and loan association, industrial authority, trust department, corporate fiduciary, or credit union, receives a composite 4 or 5 rating at its most recent state or federal safety and soundness examination, its annual fee shall

be increased by twenty-five percent (25%). This assessment shall be prorated on a quarterly basis. The increased supervisory assessment shall stay in effect until the quarter following the financial institution's receipt of a composite 1 or 2 rating at a state or federal safety and soundness examination.

g. Newly chartered and converted financial institutions, which include thrift and national to state-chartered financial institutions, shall be charged a percentage of their annual fee, as calculated above, based on the number of months that it is in existence as an Indiana state-chartered financial institution during the department's fiscal year.

h.

1. Pursuant to I.C. 28-11-3-5, the schedule of fees for services rendered and the duties performed by the department in the administration of financial institutions for the following applications shall be as follows:

FINANCIAL INSTITUTION FORMATION	BASE FEES
Interim Institution	\$2,000
Full-Service Institution Upon Submission of Application	\$4,000
Full-Service Institution Upon Department's Approval of Application	\$4,000
BANK HOLDING COMPANY	
Bank Holding Company Acquisition	\$5,000
Bank Holding Company Acquisitions (including Interim Bank and Merger)	\$5,000
CHANGE OF CONTROL	\$500
MERGER FEE FOR BANKS, TRUST COMPANIES, SAVINGS BANKS, BUILDING AND LOAN ASSOCIATIONS, INDUSTRIAL AUTHORITIES, TRUST DEPARTMENTS, AND CORPORATE FIDUCIARIES	\$1,000
MERGER FOR CREDIT UNIONS	\$500
CONVERSIONS	
National Bank to State Charter	\$0.00
Federally Chartered Savings and Loan to Bank or Savings Bank	\$0.00
Mutual Savings Bank to Stock Savings Bank	\$0.00
State Chartered Savings and Loan to Bank or Savings Bank	\$0.00
Federal Credit Union to State Charter	\$0.00
MUTUAL HOLDING COMPANY REORGANIZATION	\$1,000
ESTABLISHMENT OF A BRANCH	
Full-Service Branch	\$500
ESTABLISHMENT OF A TRUST OFFICE	\$500
RELOCATION OF MAIN OFFICE OR BRANCH	\$500
BANK HOLDING COMPANY FORMATION	\$1,000

CONSOLIDATION	\$1,000
VOLUNTARY DISSOLUTION	
Time of Submission of Application	\$2,500
ISSUANCE OF SUBORDINATED DEBT AS CAPITAL	\$0.00
ESTABLISHMENT OF A NONQUALIFYING SUBSIDIARY	\$500

2. Base Fees in subsection h(1) are the minimum amount charged for an application. Actual expenses will be charged at \$80 per hour or a portion thereof for all personnel involved in processing, analyzing, or investigating an application. Actual expenses also include transcript preparation, Administrative Law Judge fees, and travel expenses for the Members of the department and office personnel. If actual expenses exceed the basic fee for an application the amount of the actual expense will be charged for the application. Actual expenses of an application for conversion, merger, or consolidation examination shall not exceed \$30,000.
3. Financial Institutions that are in the process of voluntary dissolution will not be charged an annual fee after the board resolution authorizing the dissolution has been approved by the Department in accordance with IC 28-1-9-3.
4. Fees shall not be imposed if an institution involved in an application is insolvent or is in imminent danger of becoming insolvent, as determined by the Director.

- i. Pursuant to I.C. 28-11-3-5, the schedule of fees for services rendered and the duties performed by the department in the administration of financial institutions, as defined by IC 28-1-2-30, for the licenses and registrations included below shall be as follows:

Entity Type	Fee Type	Amount of Fee
Check Cashing License		
	Application Fee	\$1,000
	Renewal Fee	\$500 + \$250 per each additional location, \$2,000 maximum
	Renewal Late Fee	\$20 per day
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day
Civil Proceeding Advance Payment Provider License		
	Application Fee	\$1,000
	Renewal Fee	\$1,000
	Renewal Late Fee	\$20 per day
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day

Debt Management License		
	Application Fee	\$1,000
	Renewal Fee	\$1,000
	Renewal Late Fee	\$20 per day
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day
Creditor's Notification Return for Depository Institutions		
	Application Fee	N/A
	Renewal Fee	Volume Fee Due at \$2/\$100,000
	Renewal Late Fee	N/A
	Hourly Exam Fee	N/A
Hoosier Traditional Mortgage		
	Certification Fee	\$50
	Recertification Fee	\$50
Consumer Loan License		
	Application	\$1,000
	Renewal Fee	The greater of \$1,000 or Volume Fee of \$2/\$100,000
	Renewal Late Fee	\$20 per day
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day
Money Transmitter License		
	Application Fee	\$1,000
	Renewal Fee	\$1,000
	Renewal Late Fee	\$20 per day
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day
Mortgage Lending License		
	Application	\$1,000
	Renewal Fee	\$1,000
	Renewal Late Fee	\$20 per day
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day
Mortgage Loan Originator (MLO) License		
	Application Fee	\$100
	Renewal Fee	\$100
	Hourly Exam Fee	\$80 per hour
Non-Lender Registration (Credit Sellers/Lessors) (Notice of Intent – State Form 83)		
	Notification Fee	N/A
	Renewal Fee	Volume Fee Due at \$2/\$100,000
	Renewal Late Fee	N/A
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day

Pawnbroker License		
	Application Fee	\$1,000 + \$500 for each additional location
	Renewal Fee	\$1,000 + \$500 for each additional location
	Late Renewal Fee	\$20 per day
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day
Rental Purchase Registration		
	Notification Fee	\$500
	Renewal Fee	\$500 + \$250 for each additional location, not to exceed \$10,000
	Renewal Late Fee	\$20 per day
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day
Small Loan License		
	Application Fee	\$2,000 + \$750 per each additional location
	Renewal Fee	\$2,000 + \$750 per each additional location
	Renewal Late Fee	\$20 per day
	Hourly Exam Fee	\$80 per hour
	Late Exam Fee	\$20 per day

1. The exam fee may be offset by license and renewal fees paid. The first three days of the exam fee are waived, plus an additional \$600 of the exam fee is waived per additional location examined.
2. If the total amount owed for the Volume Fee in this subsection is \$100 or less, the volume fee is waived.
3. The mortgage lending license application fee is waived if the applicant's mortgage loan originators are exempt from licensure pursuant to 760 IAC 9-3-1(h)(2)(i).

The proposed rule has the following newly added civil penalty schedule.

Legal Citation	General Description of Violation	Base Violation
IC 28-1-20-4(m)	Violating naming convention standards	\$7,500 per day
IC 28-11-4-7 and 9	Unsafe or unsound practices or violations of law; and violations by certain individuals.	\$500 per day

The amount of a civil penalty in IC 28-1-20-4(m) and 28-11-4-7 and 9 may be adjusted downward to reflect mitigating factors. Factors that may be considered are the following:

- (1) The appropriateness of the civil penalty with respect to the financial resources and good faith of the person or individual charged.
- (2) Existence of written policies governing the conduct.
- (3) Cooperation with the Department in addressing the violation.

- (4) The person’s history of compliance
- (5) Remedial or corrective action taken by the person.
- (6) Whether the violation was voluntarily disclosed to the Department.
- (7) Evidence of any restitution paid.
- (8) Other factors that justice requires¹.

The amount of civil penalty in IC 28-1-20-4(m) and 28-11-4-7 and 9 may be adjusted upward to reflect aggravating factors. Factors that may be considered are the following:

- (1) The gravity of the practice, violation or act including:
 - a. Loss or risk of loss to the person;
 - b. Loss or risk of loss to consumers;
 - c. Impact other than loss;
 - d. Concealment; and
 - e. Number of violations at issue.
- (2) Economic benefit derived by the person or individual from the practice, violation, or act.
- (3) Willful or intentional misconduct.
- (4) Duration and frequency of the violation.
- (5) History of similar prior violations.
- (6) Fraudulent conduct.
- (7) Whether the violation negatively impacts the integrity or public trust of financial institutions in the state of Indiana.
- (8) Other factors justice requires².

¹ This factor is a statutorily required factor for the violations of IC 28-11-4-7 and 9. In order to make the factors consistent so institutions are held to the same standards, it is being applied uniformly.

² See footnote 1.

Legal Citation	General Description of Violation	Base Violation
IC 24-4.4-2-404.4(3)(c)	Violation of statute, cease and desist order, or any condition imposed in writing by the director by individuals	\$7,500
IC 24-4.4-3-111(1)	Violations of the First Lien Mortgage Act	\$2,500
IC 24-4.5-4-108(6)	Pattern or practice of refusal to issue refund for prepayment owed for a consumer credit sale or consumer loan credit insurance	\$500
IC 24-4.5-6-113(3)	Violations of the Uniform Consumer Credit Code	\$5,000
IC 24-4.5-6-122(c)	Violation of statute, cease and desist order, or any condition imposed in writing by the director by directors, officers, or manager of a creditor	\$7,500
IC 24-4.5-7-404(10)	Violations of limits and number of amounts of outstanding	\$50

	small loans, lender verification requirements, and third-party data base requirements	
IC 24-7-7-1(b)	Violations of the Rental Purchase Agreement Act	\$5,000
IC 24-12-5-1	Violations of the Civil Proceeding Advance Payment Act	\$5,000
IC 28-29-13(b)	Violations of the Debt Management chapter	\$5,000
IC 28-29-13(c)	Knowingly authorized, directs, or aids violations of the Debt Management chapter	\$10,000
IC 28-7-5-38.1	Violations of the Pawnbroking Law	\$5,000
IC 28-4.1-1105	Violations of Money Transmission Modernization Act	\$5,000
IC 28-8-5-24(a)	Violations of the Check Cashing Act	\$5,000

The amount of a civil penalty listed in the above table may be adjusted downward to reflect mitigating factors. Factors that may be considered are the following:

- (1) The appropriateness of the civil penalty with respect to the financial resources and good faith of the person or individual charged.
- (2) Existence of written policies governing the conduct.
- (3) Cooperation with the Department in addressing the violation.
- (4) The person's history of compliance
- (5) Remedial or corrective action taken by the person.
- (6) Whether the violation was voluntarily disclosed to the Department.
- (7) Evidence of any restitution paid.
- (8) Other factors that justice requires³.

The amount of civil penalty listed in the above table may be adjusted upward to reflect aggravating factors. Factors that may be considered are the following:

- (1) The gravity of the practice, violation or act including:
 - a. Loss or risk of loss to the person;
 - b. Loss or risk of loss to consumers;
 - c. Impact other than loss;
 - d. Concealment; and
 - e. Number of violations at issue.
- (2) Economic benefit derived by the person or individual from the practice, violation, or act.
- (3) Willful or intentional misconduct.
- (4) Duration and frequency of the violation.
- (5) History of similar prior violations.
- (6) Fraudulent conduct.

- (7) Whether the violation negatively impacts the integrity or public trust of financial institutions in the state of Indiana.
- (8) Other factors justice requires⁴.

³ This factor is a statutorily required factor for the violations of IC 24-4.4. In order to make the factors consistent so institutions are held to the same standards, it is being applied uniformly.

Nothing in the rule shall require the Department or Director to assess a civil penalty for a violation.

- 2) The civil penalties will be effective on July 1, 2024, after the department passes a rule. They will be in effect for the duration of the rule.
- 3) Only individuals and entities who have been found to violate the specific statute will be liable for the civil penalties.

V. **Benefit Analysis**

There are no new fees or civil penalties as a result of the proposed rule. There are no modified fees or civil penalties as a result of the proposed rule. Rather, the proposed rule is a reflection of the Department's current assessment of fees and civil penalties. As mentioned previously, the revenue collected from assessing fees to regulated entities is the sole source of revenue for the Department. As a result, the primary benefit of adopting the fees and civil penalties pursuant to the requirements of HEA 1623 and I.C. 4-22-2-19.6 is that it will allow the Department to continue to fulfill its statutory obligations to supervise the financial industry in Indiana.

VI. **Cost Analysis**

a. Estimate of Compliance Costs for Regulated Entities

The proposed rules do not impose additional compliance costs or requirements on regulated entities. As stated previously, the proposed rules simply adopt the Department's current fee schedule so there are no additional costs imposed on regulated entities.

b. Estimate of Administrative Expenses Imposed by the Rules

The proposed rules do not impose additional administrative expenses on regulated parties.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6

Regarding the fees, pursuant to I.C. 4-22-2-19.6(c), the amounts of the proposed fees are based on the amount necessary to carry out the purposes for which the fees are imposed. First, the application fees are only applicable to entities that submit the specific application. Additionally, the department performed a calculation averaging the amount of time typically spent on each application multiplied by the labor cost to arrive at the application fee. Further, the application fees are based on the amount of work necessary to carry out the purpose of the fees and the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions pursuant to I.C. 28-11-3-5.

Regarding the asset-based fees, I.C. 28-11-3-5(c) directs the department in determining costs to classify the assets of financial institutions and fix fees and different rates for the examination, supervision, regulation, and liquidation of the classes of assets, based on the proportionate cost and expense incurred by the department in making examinations and in the administration of financial institutions. The code further states that the fees may not exceed the comparative cost to the department in the administration of financial institutions. Annually, when setting fees, the Department's board members have considered the department's legislative appropriation, projected expenses, and the balance of the financial institutions' fund. The financial institutions' fund, which is the department's dedicated fund, must maintain a minimum four (4) months of reserves for accreditation purposes. It is common practice to require six (6) months reserves. The fees are reflective of the amount of labor involved in the supervision of Indiana's state-chartered financial institutions. This process works conjointly with the requirements of I.C. 4-22-4-19.6(c) that "fees be reasonably based on the amount necessary to carry out the purposes for which the fee is imposed."

To comply with I.C. 4-22-2-19.6(d), the department has created a list of civil penalties authorized in the portions of the Indiana code that it is charged with overseeing and has proposed a base penalty. Second, pursuant to I.C. 4-22-2-19.6(d)(1) it has proposed factors that may either increase or decrease the amount of the civil penalty. Included in the proposed factors are factors that are statutorily required, including the identical factors enumerated in IC 4-22-2-19.6(d).

Additionally, the department has included a provision that will not obligate it to issue a civil penalty. This provision is intended to allow the department to continue the practice of focusing on restitution of those consumers and borrowers who are harmed in lieu of the department receiving a civil penalty. As stated above, there are times when a violation warrants civil penalties, so adopting the proposed framework in an administrative rule will preserve the tool, but not impose any unnecessary civil penalties.

VII. Sources of Information

In making the above determinations, regarding its fees, the Department consulted its current fee schedules and conducted a financial analysis to project expected revenue based on the most recent data. Regarding civil penalties, the Department consulted state statute to derive a schedule of penalties and both mitigating and aggravating factors.

VIII. Regulatory Analysis

The proposed new rule complies with HEA 1623 and I.C. 4-22-2-19.6. While the proposed rule is new, the fees and civil penalties are not and have been assessed for numerous years throughout the Department's history. The proposed rule establishes the Department's current fee schedule and civil penalty practices in a rule as required by HEA 1623. As such, there are no new costs associated with the proposed new rule. If the fees are not promulgated into a rule pursuant to I.C. 4-22-2-19.6, then the Department will not be able to assess fees, its reserves will fall below the required reserves, and the supervision of Indiana's financial institutions will largely shift to the federal government. As a result, the primary benefit of the rule is to allow the Department to continue assessing fees, thereby allowing it to comply with statutory requirements to supervise the state's financial institutions using a regulatory model that has been time-tested and has resulted in a system producing sound financial supervision and a strong financial system in Indiana.

Additional Information for OMB and SBA Review

IX. Contact Information of Staff to Answer Substantive Questions

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X. Redline Draft of Proposed Rules

Attachments: **Proposed Rule LSA Document #23-XXX**