

Alert – New Mexico Amends Small Loan Company Rules, Broadens License Applicability to Include Any Company Taking Loan Applications, and Requires Business Website Licensure

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On August 16, 2018, the New Mexico Financial Institutions Division (the Division) amended the [Small Loan Company Regulations](#) (the Rules). The Rules adopted new requirements applicable to Small Loan licensees. The Rules' most high profile changes are to website licensing requirements, revisions to the text of the existing consumer brochure, the creation of a new sign requirement for licensees (previously only applicable to title lenders and payday lenders), the adoption of new disclosure requirements for refund anticipation loans, and the application of the new 175% APR interest rate limit imposed on Small Loan licensees.

Most notably, the Rules adopt a section relating to "Electronic Media Requirements," which appears to broaden the Small Loan Company license requirement to apply to websites through which loans are obtained. This license requirement could potentially include lead generators or small loan brokers if such entities are collecting credit applications that require personal information beyond a consumer's name, address, phone number or e-mail address, purpose of the loan, and the requested loan amount. The adoption of this section appears to reflect a public stance by the Division that a license is required for an entity collecting a credit application for a small loan, even if it does not originate loans. Previously the license requirement only applied to entities that originated loans of \$5,000 or less in New Mexico.

The Rules' Electronic Media Requirements differentiate between a "business site" and a "marketing site," and adopt requirements for each. A "marketing site" is defined to mean any website, social media page, or mobile application utilized only for marketing, advertising, or referring a consumer to complete a credit application and which is not utilized by a small loan business for the business of lending. On the other hand, a "business site" is defined to mean any website, social media page, or mobile application which a small loan business utilizes to engage in the business of lending, which includes both originating credit and accepting a credit application with

a consumer's personal information beyond his or her name, address, phone number or e-mail address, purpose of the loan, and loan amount requested. Through these definitions, the Rules differentiate between entities holding a Small Loan license for the purposes of acting as a loan broker or lead generator, and entities intending to originate loans pursuant to the Small Loan Company law.

Pursuant to the Rules, both a marketing site and a business site must adopt new disclosures, but, as noted above, the Rules require a business site to be licensed as a separate location of a licensee. Accordingly, an existing licensee must now obtain a license for each website, social media page, or mobile application through which it either extends covered loans or accepts a credit application including consumer information beyond a consumer's name, address, phone number or e-mail address, purpose of the loan, and requested loan amount. In addition, lead generators, loan brokers, and other entities not currently licensed that receive applications would need to evaluate whether a license is required. Entities that accept a limited amount of information, not including a credit application, will likely constitute marketing sites and will not require a license. However, entities that collect a significant amount of consumer information, including a credit application, will likely constitute business sites and will require a license. This new licensure requirement will be most impactful on online lenders or loan brokers who originate, broker, or generate leads for small loans online, as it may require such entities to seek licensure or adopt certain business rules for lending in New Mexico.

The Rules became effective September 15, 2018. Please advise if you have any questions or would like assistance in confirming that your business remains properly licensed and in compliance in New Mexico.

If you have questions, reach out to the authors of this alert or another member of the firm's Consumer Financial Services Compliance team.

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Robert W. Savoie