



New Mexico Regulation and Licensing Department FINANCIAL INSTITUTIONS DIVISION

Toney Anaya Building ▪ 2550 Cerrillos Road ▪ Santa Fe, New Mexico 87504
Mailing Address P.O. Box 25101 Santa Fe, NM 87504
Information (505) 476-4500 ▪ Direct (505) 476-4885 ▪ Fax (505) 476-4670
www.rld.state.nm.us/financialinstitutions

August 16, 2018

Susana Martinez
Governor

TO: All New Mexico Small Loan Company Licensees & Interested Parties

Robert "Mike" Unthank
Superintendent

RE: Adoption, Publication and Enactment of New Rules, Amended Rules and Repeals of Old Rules Concerning Small Loans.

Pat McMurray
Deputy Superintendent

Licensees and Interested Parties:

Claudia Armijo
Deputy General Counsel

On August 14, 2018, the Financial Institutions Division (FID) completed its internal review of the Division's previously proposed additions, amendments and repeals of rules under Title 12, Chapter 18 of the New Mexico Administrative Code, concerning Small Loan companies. On August 14, 2018, the FID formally adopted the repeal of NMAC rules 12.18.2, 12.18.7 and 12.18.8, the replacement of NMAC rules 12.18.7 and 12.18.8, the amendment of NMAC rules 12.18.3 and 12.18.4, and the creation of new NMAC rules 12.18.9 and 12.18.10. These new rules, amendments and repeals will become effective September 15, 2018. All steps necessary for licensees to achieve compliance with the new, or changed, rules requirements must be completed prior to September 15, 2018.

Christopher Moya
Acting Director

Official notice of the proposed rulemaking was originally published by the FID on February 27, 2018, with an additional notice published on April 10, 2018. Public hearings regarding the proposed rules changes were conducted on April 3, 2018, in Santa Fe, New Mexico, and on May 15, 2018, in Gallup, New Mexico. The FID received written comments and recommendations addressing the proposed rules changes from multiple community groups, members of the Small Loan industry, consumer advocates, and others. Additionally, representatives of organizations, and individuals, from across New Mexico appeared and spoke at the public hearings, expressing their ideas, concerns, and areas of agreement regarding the proposed rules changes. The FID gave careful consideration to the valuable suggestions and criticisms expressed regarding the proposed rules, and, in recognition of that input, certain changes were made to the language of the final adopted rules.

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800

Full versions of the new, amended, and repealed-and-replaced rules, will be officially published in the New Mexico *Register* on August 28, 2018. You may also review copies of each of the newly adopted rules now on the FID's website, which may be accessed at:

http://www.rld.state.nm.us/financialinstitutions/Small_Loan_Companies.aspx

Over the next month we will all need to work together to adapt to, and insure compliance with, the newly adopted changes to our Small Loan rules. Many individuals and organizations have expressed interest in continuing efforts to identify and draft additional rule language, with goals of reinforcing protections for New Mexico consumers and strengthening the safety and soundness of the Small Loan industry. The FID looks forward to the participation and involvement of all those interested in making our New Mexico laws and rules for financial institutions the best they can be.

Respectfully,



Christopher Moya
Acting Director
Financial Institutions Division

The Director of the Financial Institutions Division of the New Mexico Regulation and Licensing Department, after rule hearings conducted on both 04/03/2018 and 05/15/2018, has approved a repeal of its rule 12.18.2 NMAC, Lenders' Exchange (originally filed on May 1, 1976), adopted August 14, 2018, and effective September 15, 2018.

This is an amendment to 12.18.3 NMAC, Section 8, effective 09/15/2018.

12.18.3.8 MANDATORY BROCHURE FOR SMALL LOAN BUSINESS:

- A.** All small loan companies licensed by New Mexico must have an informational brochure readily available to all small loan consumers.
- B.** The brochure rack containing the brochure must be placed by the main door entrance. The brochure rack must always be stocked with the brochure.
- C.** Using lettering no smaller than 24-point font, the front of the brochure shall have in bold capital letters, the words, "IMPORTANT CONSUMER INFORMATION" followed by the words in bold 14-point font, "This brochure contains some common terms and definitions, which are intended to help you better understand your credit transaction. Credit costs money, so it is important that you fully understand the terms of your credit transaction. If you come across terms you do not understand, look up the terms, or ask our personnel to explain the terms to you. Ask questions. Make certain the questions that you ask are answered. Make certain you understand the terms and costs of your loan."
- D.** Using lettering no smaller than ~~[10-point]~~ 12-point font, the brochure shall state:
- (1)** Common Terms and Definitions.
 - (2)** Equal Credit Opportunity Act (ECOA). A federal regulation which requires lenders to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to whether all or part of the applicant's income derives from a public assistance program; or to whether the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors.
 - (3)** Contract. A written binding document, describing terms of an agreement between two or more persons. (Keep all paperwork. Later, if there are any questions, you will have your agreement in writing.)
 - (4)** Annual Percentage Rate (APR). The cost of your credit as a yearly rate. ~~[This measures the cost of credit expressed as a yearly interest rate.]~~ APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes both fees and interest as finance charges. It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another. Under New Mexico law, the APR for a loan in an amount of \$5,000 or less made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed one hundred seventy-five percent, effective January 1, 2018.
 - (5)** Finance Charge. The dollar amount the credit will cost you. Finance charges include interest, and may also include transaction fees and service fees.
 - (6)** Principal. The amount of money owed on a debt, on which interest is calculated.
 - (7)** Interest. The cost of borrowing money, generally a percentage of the amount owed.
 - (8)** Balance. The total amount of money owed to a lender.
 - (9)** Default. Failure to pay a debt as agreed to on a contract. When a loan is in default, the lender may demand full payment of the remaining debt.
 - (10)** Collateral. Security pledged by a borrower to protect the interests of the lender; in case of default, the lender may take ownership of the security, if any, pledged by the borrower.
 - (11)** Credit Bureau. A private company that keeps a record of your credit history for distribution upon request by authorized parties. When you apply for credit, a lender may request a credit report to review when considering your application.
 - (12)** Credit History. A record containing information about you, including your payment history on previous debts.
 - (13)** Credit Report. A report of the credit history and other information about you that is kept by credit bureaus, which may include: your name, address, social security number, payment history (good and bad), current and previous debts, employers, income, etc. Accurate information on a credit report may not be legally removed. Incorrect information may be removed by disputing the information to the credit bureau involved.
- E.** The brochure shall have the following words, using lettering no smaller than ~~[10-point]~~ 12-point font: "This ~~[business]~~ lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico [87505] 87504. To

report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: www.rld.state.nm.us/financialinstitutions/.

[12.18.3.8 NMAC - N, 10/1/2001; A, 08/13/2004; A, 09/15/2018]

This is an amendment to 12.18.4 NMAC, title of part, and Sections 2, 6, 7, and 8, effective 09/15/2018.

PART 4 MANDATORY SIGNAGE FOR ~~[PAYDAY LENDERS AND TITLE]~~ ALL SMALL LOAN COMPANIES

12.18.4.2 SCOPE: Loan companies conducting ~~[Title Loan and Payday Loan]~~ business in New Mexico.
[12.18.4.2 NMAC - N, 10/1/2001, A, 09/15/2018]

12.18.4.6 OBJECTIVE: The objective of this part is to require prominent signage disclosing the ~~[schedule of charges to obtain a]~~ loan rates and fees to obtain a loan and to assist consumers in the loan decision process.
[12.18.4.6 NMAC - N, 10/1/2001, A 09/15/2018]

12.18.4.7 DEFINITIONS:

~~_____ A. "Title" loan means a loan secured by the borrower's vehicle title, which is structured to be a short term, fixed rate, closed end transaction usually paid in one installment.~~

~~_____ B. "Payday" loan means a loan where the business operator cashes a personal check tendered by the customer and agrees in writing to defer presentation of that check until the customer's next payday, or another date agreed to by the business operator and the customer.]~~ "Annual Percentage Rate" or "APR" means the measure of the cost of credit, expressed as a yearly rate.

[12.18.4.7 NMAC - N, 10/1/2001; A, 09/15/2018]

12.18.4.8 MANDATORY SIGNAGE FOR ALL SMALL LOAN COMPANIES:

A. All ~~[Title and Payday]~~ small loan companies must display in each licensed place of business a prominent sign, readily visible to borrowers, disclosing the ~~[schedule of charges]~~ annual percentage rate and fees. ~~[The prominent sign in a reduced form, with font, no smaller than 10 point, must be displayed at every workstation where loans are originated.]~~ On all company websites, social media pages, and mobile applications where content regarding loans offered or made to borrowers in New Mexico may be accessed by consumers, the prominent sign, in a reduced form, shall be easily accessible to consumers to review via an interactive link to a New Mexico specific web page maintained by the company containing all information required to be on the sign mandated by this section.

B. The lettering on the prominent sign must be no smaller than 24-point font, unless specified otherwise.

C. The sign must state in bold capital letters, the words, ~~["SCHEDULE OF CHARGES"]~~ "LOAN RATES AND FEES."

D. Below the words ~~["schedule of charges"]~~ "loan rates and fees," in bold capital letters, the sign shall state, ~~["THE CHART BELOW REPRESENTS ILLUSTRATIVE EXAMPLES OF THE COST OF A LOAN TO THE BORROWER."] "BELOW IS GENERAL INFORMATION REGARDING ALL RATES AND FEES THAT WILL ASSIST YOU IN MAKING YOUR LOAN DECISION. IF YOU HAVE ANY QUESTIONS, OR WOULD LIKE MORE INFORMATION, PLEASE ASK. MAKE CERTAIN THE QUESTIONS THAT YOU ASK ARE ANSWERED. MAKE CERTAIN YOU UNDERSTAND THE TERMS AND COSTS OF YOUR LOAN."~~

E. The ~~[chart must have the following headings starting from left to right. The borders for the first two]~~ disclosure shall consist of two distinctive sections. Each section heading must be printed from left to right. The borders for the two section headings must be more prominent than the others.

(1) The first heading shall have in bold capital letters the words, "ANNUAL PERCENTAGE RATE (APR)" followed by the words in bold ~~[14 point]~~ font, "The cost of your credit as a yearly rate. ~~[Assumes a _____ day repayment period. The blank is to be replaced with the actual number of days used for the illustrative Annual Percentage Rate calculation shown on the chart.]~~ APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes both fees and interest as finance charges."

(a) Below the preceding sentences in bold type the following words shall appear: "Your actual terms and the Annual Percentage Rate (APR) will be determined at the time your application is submitted and will be based upon your application and credit information. Not all applicants will qualify for the lowest rate."

(b) Below the preceding sentences in bold type the following words shall appear: "Under New Mexico law, the APR for a loan in an amount of \$5,000 or less made pursuant to the Small Loan Act of

1955 or the Bank Installment Loan Act of 1959 cannot exceed one hundred and seventy-five percent, effective January 1, 2018.”

(2) The second heading shall have in bold capital letters the ~~[words, “FINANCE CHARGE”]~~ word “FEES” followed by the ~~[in 14 point font]~~ words: ~~“[“The dollar amount the credit will cost you.”] “A list of all fees that you may be charged.”~~ The heading shall be followed with a table containing a list of all fees that a borrower may be charged.

~~[(3) The third heading shall have the words, “Amount Financed” followed by the words in 14-point font, “The amount of credit provided to you or on your behalf.”~~

~~(4) The fourth heading shall have the words “Total of Payments” followed by the words in 14-point font, “The amount you will have paid after you have made all payments as scheduled.”~~

~~(5) The fifth heading shall have the words “Number of Payment(s) used in the APR calculation.”~~

~~F. Below the chart headings, the company must have illustrative examples of each class of loans the company offers.]~~

~~[G.]F. Below the [chart] second heading in bold capital letters the following words shall appear: “TO REPORT A PROBLEM OR COMPLAINT WITH THIS LENDER, YOU MAY WRITE OR CALL _____.” The blank shall be filled in with a position title, address, phone number, and email address of the company’s problem resolution person.~~

~~[H.]G. The bottom of the sign shall have the following words, “This [business] lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico [87505] 87504. To report any unresolved problems or complaints, contact the division by telephone number (505) 476-4885 or visit the website <http://www.rld.state.nm.us/financialinstitutions/>”.~~

[12.18.4.8 NMAC - N, 10/1/2001; A, 08/13/2004; A, 09/15/2018]

The Director of the Financial Institutions Division of the New Mexico Regulation and Licensing Department, after rule hearings conducted on both 04/03/2018 and 05/15/2018, has approved a repeal of its rule 12.18.5 NMAC, Annual Data Report for Payday Lenders (originally filed on January 1, 2004), adopted August 14, 2018, and effective September 15, 2018.

The Director of the Financial Institutions Division of the New Mexico Regulation and Licensing Department, after rule hearings conducted on both 04/03/2018 and 05/15/2018, has approved a repeal of its rule 12.18.6 NMAC, Annual Report for Title Loan Companies (originally filed on January 1, 2004), adopted August 14, 2018, and effective September 15, 2018.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 18 LOAN COMPANIES
PART 7 HEARING PROCEDURES FOR SMALL LOAN COMPANIES

12.18.7.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.18.7.1 NMAC - Rp, 12.18.7.1 NMAC, 09/15/2018]

12.18.7.2 SCOPE: Small loan licensees conducting business in New Mexico.
[12.18.7.2 NMAC - Rp, 12.18.7.2 NMAC, 09/15/2018]

12.18.7.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.7.3 NMAC - Rp, 12.18.7.3 NMAC, 09/15/2018]

12.18.7.4 DURATION: Permanent.
[12.18.7.4 NMAC - Rp, 12.18.7.4 NMAC, 09/15/2018]

12.18.7.5 EFFECTIVE DATE: September 15, 2018, unless a later date is cited at the end of a section.
[12.18.7.5 NMAC - Rp, 12.18.7.5 NMAC, 09/15/2018]

12.18.7.6 OBJECTIVE: The objective of this part is to establish regulations governing the conduct of small loan licensees.
[12.18.7.6 NMAC - Rp, 12.18.7.6 NMAC, 09/15/2018]

12.18.7.7 DEFINITIONS: [RESERVED]
[12.18.7.7 NMAC - Rp, 12.18.7.7 NMAC, 09/15/2018]

12.18.7.8 HEARING PROCEDURES:

A. Venue for all hearings held pursuant to the New Mexico Small Loan Act of 1955 shall be in Santa Fe, New Mexico unless the director, upon motion by a party, finds that it would be appropriate to hold the hearing elsewhere in New Mexico.

B. Service of subpoenas, summary orders, findings, and final orders shall be made either:

- (1) personally;
- (2) by certified mail, return receipt requested, sent to the last known address of the person; or
- (3) by such other means as are reasonably calculated to give actual notice.

C. Upon written request to another party, any party is entitled to:

- (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
- (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

D. Default orders: A respondent that has received actual or constructive notice of a hearing having been set and fails to appear, either in person or through counsel, at the time and place set for such hearing shall be deemed to have admitted the allegations set forth in the summary order or notice of intent that was entered in the matter before the hearing officer and shall be deemed to have consented to entry of a final order.

[12.18.7.8 NMAC - Rp, 12.18.7.9 NMAC, 09/15/2018]

12.18.7.9 - 12.18.7.16 [RESERVED]
[12.18.7.9 NMAC - 12.18.7.16 NMAC - Repealed 09/15/2018]

HISTORY OF 12.18.7 NMAC:

12.18.7 NMAC - Terms And Conditions Of Payday Loan Agreements, filed 11/01/2007 was repealed and replaced by 12.18.7 NMAC - Hearing Procedures For Small Loan Companies, effective 09/15/2018.

The Director of the Financial Institutions Division of the New Mexico Regulation and Licensing Department, after rule hearings conducted on 04/03/2018 and 05/15/2018, approved to repeal its rule 12.18.7 NMAC - Terms and Conditions of Payday Loan Agreements (originally filed 11/01/2007) and replace it with 12.18.7 NMAC - Hearing Procedures for Small Loan Companies, adopted on 08/14/2018 with amendments, and effective 09/15/2018.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 18 LOAN COMPANIES
PART 8 LICENSING OF NONRESIDENT LENDERS

12.18.8.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.18.8.1 NMAC - Rp, 12.18.8.1 NMAC, 09/15/2018]

12.18.8.2 SCOPE: Loan companies conducting business in New Mexico.
[12.18.8.2 NMAC - Rp, 12.18.8.2 NMAC, 09/15/2018]

12.18.8.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.8.3 NMAC - Rp, 12.18.8.3 NMAC, 09/15/2018]

12.18.8.4 DURATION: Permanent.
[12.18.8.4 NMAC - Rp, 12.18.8.4 NMAC, 09/15/2018]

12.18.8.5 EFFECTIVE DATE: September 15, 2018, unless a later date is cited at the end of a section.
[12.18.8.5 NMAC - Rp, 12.18.8.5 NMAC, 09/15/2018]

12.18.8.6 OBJECTIVE: The objective of this part is to define the requirements for licensure for persons conducting a business of making small loans to residents of New Mexico solely from locations outside of New Mexico.
[12.18.8.6 NMAC - Rp, 12.18.8.6 NMAC, 09/15/2018]

12.18.8.7 DEFINITIONS: [RESERVED]
[12.18.8.7 NMAC - Rp, 12.18.8.7 NMAC, 09/15/2018]

12.18.8.8 LICENSING OF NONRESIDENT LENDERS:

A. When the proceeds of a small loan in the amount or of the value of \$5,000 or less have been delivered to a New Mexico resident borrower by mail within New Mexico or have been otherwise made available to a New Mexico resident borrower within New Mexico, by a lender who solicited such small loan by mail or otherwise and the solicitation is received by a New Mexico resident in New Mexico, the loan is considered to have been made in New Mexico for the purposes of the New Mexico Small Loan Act of 1955, and both the lender and the loan are thereby subject to the provisions contained in said act. Any person making small loans under such circumstances is deemed to be engaging in the business of lending, as that term is used in Section 58-15-3 NMSA 1978, and the person must first have obtained a license from the director under the provisions of the New Mexico Small Loan Act of 1955 and this regulation if the person contracts for, exacts or receives, directly or indirectly on or in connection with the loan, charges, whether for interest, compensation, consideration or expense, which in the aggregate are greater than the maximum as provided by the applicable laws of New Mexico.

B. Such loans and licensees must comply with all the requirements and provisions contained in the New Mexico Small Loan Act of 1955, including the limitations on the maximum allowable charges contained in Section 58-15-14.1 NMSA 1978.

C. Such a loan made by a licensee under such conditions is not considered to have been made outside of New Mexico so as to be unenforceable under Section 58-15-24 NMSA 1978, even though the lender's place of business is located outside of New Mexico.

D. If a person applies for a small loan license in order to engage in the business of making small loans to resident borrowers solely from locations outside of New Mexico, the "community" in which the business of the applicant is to be conducted, as that term is used in Section 58-15-5 NMSA 1978, shall mean the geographic area, which may be statewide, in which the applicant proposes to solicit such small loans.

E. Upon the granting of a small loan license to a lender who indicates an intention to conduct a small loan business solely from locations outside of New Mexico, that lender shall establish and maintain a toll-free telephone service available in New Mexico to resident borrowers, or shall agree to accept collect calls at the lender's principal place of business from resident borrowers so that borrowers may contact the lender or his representatives concerning details of their loan transactions. Upon the delivery of the proceeds of such a small loan to a resident of

New Mexico, the licensee shall immediately notify the borrower in writing of the existence of such toll-free telephone service, or of the agreement to accept collect calls.

F. If a licensee engages in the business of making small loans to New Mexico residents solely from locations outside of New Mexico, the director will conduct, in his discretion, the examinations authorized by Section 58-15-9 NMSA 1978, in either of two ways:

(1) the licensee may be required to make available to the director for examination at the offices of the director such of the loans, transactions, books, papers and records of the licensee, insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955, as the director may deem necessary; or

(2) the examinations of the loans, transactions, books, papers and records of the licensee, insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955, may be conducted by the director or the director's authorized representative at the licensee's principal place of business outside of New Mexico, and the licensee shall be required to pay to the director the actual and reasonable travel and living expenses incurred during such examinations for one examiner per examination. Said payments for expenses shall be in addition to such other fees and expenses as may be authorized under the New Mexico Small Loan Act of 1955. The director may require the licensee to pay such expenses prior to the examination.

[12.18.8.8 NMAC - Rp, 12.18.8.8 NMAC, 09/15/2018]

HISTORY OF 12.18.8 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

FID 79-2, Regulation 79-, CCB, Licensing of Nonresidential Lenders, filed 10/25/79.

Other History:

12.8.8 NMAC - Licensing of Nonresident Lenders, filed 9/30/1997 was repealed and replaced by 12.8.8 NMAC - Licensing of Nonresident Lenders, effective 09/15/2018.

The Director of the Financial Institutions Division of the New Mexico Regulation and Licensing Department, after rule hearings conducted on 04/03/2018 and 05/15/2018, approved to repeal its rule 12.18.8 NMAC - Licensing of Nonresident Lenders (originally filed 11/09/1979) and replace it with 12.18.8 NMAC - Licensing of Nonresident Lenders, adopted on 08/14/2018 with amendments, and effective 09/15/2018.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 18 LOAN COMPANIES
PART 9 REFUND ANTICIPATION LOANS

12.18.9.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.18.9.1 NMAC - N, 09/15/2018]

12.18.9.2 SCOPE: Loan companies conducting refund anticipation loans in the state of New Mexico.
[12.18.9.2 NMAC - N, 09/15/2018]

12.18.9.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.9.3 NMAC - N, 09/15/2018]

12.18.9.4 DURATION: Permanent.
[12.18.9.4 NMAC - N, 09/15/2018]

12.18.9.5 EFFECTIVE DATE: September 15, 2018, unless a later date is cited at the end of a section.
[12.18.9.5 NMAC - N, 09/15/2018]

12.18.9.6 OBJECTIVE: The objective of this part is to require a small loan licensee engaged in the business of making refund anticipation loans to provide the consumer with a disclosure of the loan information on a form as prescribed by the director.
[12.18.9.6 NMAC - N, 09/15/2018]

12.18.9.7 DEFINITIONS: [RESERVED]
[12.18.9.7 NMAC - N, 09/15/2018]

12.18.9.8 MANDATORY DISCLOSURE OF LOAN INFORMATION: All small loan companies engaged in the business of making refund anticipation loans must provide a form to consumers that includes the following:

- A.** a statement that “refund anticipation loan” means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee;
- B.** a list of the annual percentage rate and all fees that the borrower may be charged upon entering the refund anticipation loan agreement;
- C.** the estimated time to which the consumer may receive the proceeds from their anticipated tax refund or tax credit; and
- D.** the following statement in at least 12-point bold type:
 - (1)** This agreement is considered to be a loan and not your actual tax refund or tax credit. You are borrowing money against your anticipated tax return.
 - (2)** Neither the internal revenue service (IRS) nor the New Mexico taxation and revenue department guarantees that you be paid the full anticipated amount of a tax refund or tax credit, nor do they guarantee that a tax refund or tax credit will be deposited into your bank account or mailed on a specific date.
 - (3)** You are responsible for the full repayment of this refund anticipation loan and for the payment of the total interest, fees, and charges incurred.
 - (4)** Prior to executing a refund anticipation loan agreement, a small loan licensee shall require the borrower to provide a hand written or electronic signature acknowledging that the borrower understands the all required disclosures and has received a copy of the required disclosure. A copy of the acknowledgment form must be permanently kept with the loan records.
 - (5)** This business is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: www.rld.state.nm.us/financial_institutions/.

[12.18.9.8 NMAC - N, 09/15/2018]

12.18.9.9 PROHIBITED ACTS: All small loan licensees engaged in the business of making refund anticipation loans shall not:

- A.** directly or indirectly represent a refund anticipation loan as a refund or tax credit;
- B.** require a borrower to enter into a loan agreement in order to complete a tax return;
- C.** engage in a transaction, practice, or course of business that operates a fraud upon a borrower in connection with a refund anticipation loan, including making oral statements contradicting any of the information required to be disclosed pursuant to 12.18.9.7 NMAC - Mandatory Disclosure of Loan Information;
- D.** take or arrange for a creditor to take possession of or a security interest in any property of the consumer other than the proceeds of the consumer's tax refund or tax credit to secure payment of a refund anticipation loan; and
- E.** withhold from a consumer, or from a dependent of a consumer, original personal identification documents.

[12.18.9.9 NMAC - N, 09/15/2018]

HISTORY of 12.18.9 NMAC: [RESERVED]

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 18 LOAN COMPANIES
PART 10 ELECTRONIC MEDIA REQUIREMENTS

12.18.10.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.18.10.1 NMAC - N, 09/15/2018]

12.18.10.2 SCOPE: All licensees conducting business in the state of New Mexico.
[12.18.10.2 NMAC - N, 09/15/2018]

12.18.10.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.10.3 NMAC - N, 09/15/2018]

12.18.10.4 DURATION: Permanent
[12.18.10.4 NMAC - N, 09/15/2018]

12.18.10.5 EFFECTIVE DATE: September 15, 2018, unless a later date is cited at the end of a section.
[12.18.10.5 NMAC - N, 09/15/2018]

12.18.10.6 OBJECTIVE: The objective of this part is to establish required content to be included on electronic marketing and business sites utilized by small loan lenders.
[12.18.10.6 NMAC - N, 09/15/2019]

12.18.10.7 DEFINITIONS:

A. “Business of Lending” means any person or business entity engaged in the origination of any extension of credit in the amount of \$5,000.00 or less, or the acceptance of a credit application containing a consumer’s personal information beyond the below listed items:

- (1) consumer’s name;
- (2) consumer’s home address;
- (3) consumer’s phone number or electronic mail address;
- (4) purpose of the potential loan; and
- (5) loan amount requested.

B. “Marketing Site” means 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.

C. “Business Site” means any website, social media page, or mobile application which a small loan business utilizes to engage in the business of lending through such site.
[12.18.10.7 NMAC - N, 09/15/2018]

12.18.10.8 MARKETING SITE REQUIREMENTS:

A. Small loan businesses operating one or more marketing site(s) shall be responsible for providing all mandatory disclosures and consumer information as required by Subsection C of 12.18.3.8 NMAC and Subsection A of 12.18.4.8 NMAC to consumers. The required disclosures and consumer information shall be easily accessible to consumers to review on a New Mexico specific web page maintained by the small loan company. The small loan company must ensure active links to the New Mexico specific web page are included on all company marketing sites utilized for loans made to borrowers in New Mexico.

B. All small loan businesses operating one or more marketing site(s) shall provide a disclosure in a location or locations on the marketing site that will be easily accessible and visible to consumers accessing such marketing site with the following words “TO REPORT A PROBLEM OR COMPLAINT WITH THIS LENDER, YOU MAY WRITE OR CALL _____.” The blank shall be filled in with a position title, address, phone number, and email address of the company’s problem resolution person.

C. The above shall also contain a separate disclosure stating the following words, “This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or

complaints, contact the division by telephone at (505) 476-4885 or visit the website <http://www.rld.state.nm.us/financialinstitutions/>.”
[12.18.10.8 NMAC - N, 09/15/2018]

12.18.10.9 BUSINESS SITE REQUIREMENTS:

A. Small loan businesses operating one or more business site(s) shall obtain a separate license for each site pursuant to Subsection A of Section 58-15-3 NMSA 1978.

B. Small loan businesses shall make the most current small loan license certificate easily accessible and available for review within the business site.

C. Small loan businesses operating one or more business site(s) shall be responsible for all disclosures to be posted on such site(s). This shall include making the mandatory consumer information brochure pursuant to Subsection C of 12.18.3.8 NMAC and the mandatory signage for all small loan companies pursuant to Subsection A of 12.18.4.8 NMAC.

D. All small loan businesses operating one or more business site(s) shall provide a disclosure in an easily accessible and visible location the following words “TO REPORT A PROBLEM OR COMPLAINT WITH THIS LENDER, YOU MAY WRITE OR CALL _____.” The blank shall be filled in with a position title, address, phone number, and email address of the company’s problem resolution person.

E. The above shall also contain a separate disclosure stating the following words: “This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the Division by telephone at (505) 476-4885 or visit the website <http://www.rld.state.nm.us/financialinstitutions/>.”
[12.18.10.9 NMAC - N, 09/15/2018]

HISTORY of 12.18.10 NMAC: [RESERVED]